

Delhi High Court

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State vs Jasbir Singh @ Billa And Kuljeet ... on 16 November, 1979

Equivalent citations: 17 (1980) DLT 404, ILR 1979 Delhi 571

Author: V Misra

Bench: V Misra, F Gill

JUDGMENT

V.D. Misra, J.

(1) Kuljeet Singh @ Ranga and Jasbir- Singh @ Billa have been convicted by an Additional Sessions Judge, Delhi, under section 302/34, Indian Penal Code, and sentenced to death for having committed the murder of Gee'a and Sanjay. Both of them have also been convicted under sections 365/363 read with section 34, Indian Penal Code; under sections 366/363 read with section 34, Indian Penal Code, and under section 376 read with section 34, Indian Penal Code. Each of them has been sentenced to rigorous imprisonment for five years under the first count as well as the second, and to rigorous imprisonment for seven years under the third count. Jasbir Singh @ Billa has also been convicted under section 27 of the Arms Act and sentenced to rigorous imprisonment for one year. All the sentences have been directed to run concurrently. Ranga and Billa have filed separate appeals against their convictions and sentences. The trial court has also submitted the proceedings to the High Court under section 366 of the Code of Criminal Procedure for confirmation of the sentences of All the appeals (Criminal Appeals Nos. 108 to 110 of 1979) and Murder Reference No. 1 of 1979 will be disposed of by this judgment.

(2) Madan Mohan Chopra, a Captain in the Indian Navy, was residing with his family in August, 1978 at 145 Services Officers Enclave, Dhaula Kuan, New Delhi. He had a daughter named Geeta and a son named Sanjay. Geeta, aged about 16-1/2 years, was a student of 2nd Year in Jesus & Mary College, New Delhi. Sanjay who was about. two years younger, was a student of 10th Standard in Modern School, New Delhi.

(3) On August 26, 1978, which was a Saturday, Geeta was to compere a programme of the 'YUV VANI' at 8 P.M. Sanjay was to take part in the same programme. They were to reach All India Radio, Parliament Street, at 7 P.M. They left the house at 6.15 P.M. for the All India Radio.

(4) It was arranged that Captain Chopra would pick them up from the gate of the All India Radio at 9 P.M. sharp. At 8 P.M. Captain Chopra and his wife tuned their radio to listen to the Yuv Vani programme. What they heard was not the voice of their daughter Geeta but another female voice. They presumed' that either the programme might have changed or they were not catching the correct station. At 8.45 P. M. Capt. Chopra left the house on his scooter to keep up the appointment with his children outside the All India Radio. However, he did not find his children at the gate where they promised to be. He made enquiries and came to know that in fact they had not even reported at the All India Radio. He rang up his house in the hope that the children might have reached home by that time. However, his wife informed him that the children were not there. Capt. Chopra got worried. He rushed back home and made enquiries from his friends and relatives to find out if the children had not gone to any one of them.

(5) At 10.15 P.M. Capt. Chopra decided to inform the police. He telephoned the Police Control Room, gave description of the children, and reported that they were missing (Exhibit P1).

(6) In order to search his children, Capt. Chopra went to Willingdon Hospital (now Dr. Ram Mahohar Lohia Hospital) and various other places including Parliament Street Police Station to find out if the children had been involved in some accident. After drawing a blank he came back to his house at 11.30 P.M. He lodged another report (Exhibit P2) with the Police Control Room. Thereafter he went to Police-post Dhaula Kuan and lodged still another report (Exhibit P3).

(7) The same evening one Bhagwan Dass (Public Witness 6) came out of Gurdwara Bangla Saheb and proceeded towards North Avenue on his scooter. It was about 6.30 P.M. when he noticed a mustard coloured Fiat car bearing registration number Hrk 8930 standing near the IN-gate of the Yog Ashrarn near Gole Dak Khana. As he passed the car, he heard some noise coming from inside the car. He stopped his scooter and ran back towards the car. He saw two persons sitting on the front seat of the car while a boy and a girl were on the back seat. He noticed that the girl was pulling the hair of the driver and the boy was quarrelling with the person sitting next to the driver. However, before he could reach the car it sped away. Many persons were seen running to the car and one of them was about to catch the door handle when the car escaped in the direction of Willingdon Hospital. Bhagwan Dass decided to ring up the Police Control Room. His report Exhibit PW61/A was recorded at 6.44 P.M.

(8) It so happened that one Inderjeet Singh Noata (Public Witness 9), a young Junior Engineer of the Delhi Development Authority, was going home on his scooter on Baba Kharak Singh Marg. When he was near the Willingdon Hospital Casualty a fiat car suddenly overtook him. He noticed that a boy and a girl sitting on the rear seat of the car were struggling with the driver and the person sitting next to him. Feeling suspicious he speeded up his scooter and succeeded in coming near the car. He shouted 'KAYA Ho Gaya HAT. The boy looked towards him through the rear glass screen of the car and showed his bleeding right shoulder. The boy waived his hands beseeching help. Inderjeet Singh decided to chase the car. The car turned towards the road leading to Shankar Road, Inderjeet Singh followed. Before they reach the first crossing, the traffic lights turned red. The car, which was being driven at a high speed, jumped the lights. By the time Inderjeet Singh reached the lights, the traffic from the other direction started flowing and he was forced to stop. He saw the car speeding on Shankar Road up the Ridge and the boy still waiving for help. By the time Inderjeet Singh made to Shankar Road, he lost sight of the car. As he had noted the number of the car, he decided to report the matter (Exhibit Pw 9/A) to Police-Station Rajinder Nagar. It was now 6.45 P.M.

(9) The Police Control Room relayed the first report (i.e. of Bhagwan Dass) to Police-Static". Mandir Marg. The report was handed over to one Sub-Inspector Om Parkash (Public Witness 64) at 7.05 P.M. He left for Gole Dak Khana on his motor-cycle Along with a constable. By the time he reached Gole Dak Khana there was no one to tell him about the incident. After making enquiries from various places he returned to the police-station at 9.55 P.M.

(10) But the report of Inderjeet Singh had no affect on Police-Station Rajinder Nagar. It was to take an hour before relaying the report to Police Control Room. To be exact, it was at 7.40 P.M. that the duty officer of this police-station relayed Inderjeet Singh's report to the Police Control Room as well as to Police-Station Mandir Marg. With this the police at Police-Station Rajinder Nagar washed their hands off this report.

(11) On the same day at 10.15 P.M. one Vinod was brought to the Casualty Department of the Willingdon Hospital by one Harbhajan Singh. Vinod was examined by Dr. Preet Singh Chawla (Public Witness 12). Vinod told the doctor that he had been beaten by somebody. On medical examination the doctor found a clean lacerated wound on the forehead which was approximately 5" X 1/2" (medico-legal certificate (Exhibit Public Witness 12/A). Dr. Yasmin Imam (Public Witness 13), who was working as Assistant Casualty Medical Officer, gave first-aid to Vinod. The doctor Exhibit Public Witness 12/A). Dr. Yasmin Iman (Public Witness 13), who was working advised X-ray of the head of Vinod, and prepared the X-ray slip Exhibit (Public Witness 13/B) on which Vinod's thumb-impression was taken. Dr. Imam referred Vinod to Surgery with slip Exhibit Public Witness 13/A. As it was a medico-legal case, Constable Ranbir Singh (Public Witness 25), duty constable at Willingdon Hospital, questioned Vinod about the injury. The constable was told that 2 or 3 persons had snatched his watch and caused him the injury on Bangla Saheb Marg near Kali Mandir. The constable duly informed Police-Station Mandir Marg about it.

(12) SUB-INSPECTOR Ram Chander of Police-Station Mandir Marg was directed at 10.40 P.M. to investigate the matter. The sub-inspector Along with Constable Harish Ram (Public Witness 38) came to the hospital at 10.50 P.M. After getting the doctor's opinion that Vinod was fit for making a statement, the sub-inspector

recorded Vinod's statement (Exhibit Public Witness 22/A). Vinod told the sub-inspector that he had been robbed of his watch at about 9.30 P.M. near Kali Mandir on Gurdwara Bangia Saheb Road. The injury on the head was ascribed to one of the assailants who hit him with some iron object. The sub-inspector sent the statement to Police-Station Mandir Marg for registration of a case under section 394/34, Indian Penal Code.

(13) The sub-inspector also interrogated Vinod's companion Harbhajan Singh. Harbhajan Singh told the sub-inspector that he had brought Vinod in his car Dht 280 from the place of incident.

(14) Vinod was advised by the doctors to remain in the hospital as an in-door patient. But Vinod refused to remain in the hospital and decided to leave against medical advice (LAMA). At 11.10 P.M. Vinod Signed document Exhibit Public Witness 15/A expressing his intention to leave against medical advice. When Sub-Inspector Ram Chander came to know that Vinod was leaving the hospital, he asked Vinod as well as Harbhajan Singh to take him to the place where Vinod had been robbed. Harbhajan Singh took Vinod, Sub-Inspector Ram Chander, and Constable Harish Ram in the car. Harbhajan Singh drove the car to Bangia Saheb Road and Vinod pointed out the place of crime. The sub-inspector inspected the scene of crime but did not see any marks of struggle or any bloodstains. No witness to the alleged robbery could be traced. The sub-inspector directed Harbhajan Singh to drive to Police-Station Mandir Marg so that the Station House Officer could verify the facts. At 1.45 A.M. (night) they reached the police station. There Vinod complained of pain in his forehead and expressed a desire to see his mother. Vinod and Harbhajan Singh promised to report to the sub-inspector at 10 A.M. The sub-inspector accepted their request and allowed them to go after directing them to report back as promised.

(15) Vinod and Harbhajan Singh failed to keep the promise. The sub-inspector, therefore, went to Fatehpuri to contact Vinod. He discovered that "Quarter No. 4, Pushpa Building", Fatehpuri the address given by Vinod simply did not exist at Fatehpuri. The sub-inspector then tried to locate Harbhajan Singh at C-124 Moti Nagar, the address given by the latter. Again, the sub-inspector drew a blank since no such person was found to be living there. The sub-inspector also tried to locate 'Century Robin Factory at Moti Nagar near D.C.M. Chemical', whose driver Harbhajan Singh claimed to be, and found that no such factory existed.

(16) On August 27, 1978 Sub-Inspector Ram Chander went to Regional Transport Office to verify the car number Dhi 280. On enquiry he came to know that this number in fact belonged to one Vespa scooter.

(17) On August 28, 1978 at about 6 P.M. Dhani Ram (Public Witness 27) was grazing his cattle at the Ridge. He came across two dead bodies. One was of a girl and the other of a boy. These were lying in the jungle. At midnight he came across Head Constable Rohtas Singh who was patrolling that area. Dhani Ram informed the head constable about the dead bodies. At 2.12 A.M. the head constable apprised the Police Control Room which informed Police-Station Rajinder Nagar at 2.25 A.M.

(18) SUB-INSPECTOR Hari Chand (Public Witness 37) of Police-Station Rajinder Nagar was given a copy of this report and asked to investigate. The sub-inspector Along with other police-officers came to the place where the bodies were lying. He summoned the crime team and sent a wireless message to Police-Station Delhi Contonment asking the latter to contact Capt. Chopra and bring him there. Capt. Chopra with his wife came there and identified the dead bodies as being of their children Geeta and Sanjay. The sub-inspector sent his report at 4.30 A.M. to Police-Station Rajinder Nagar asking it to register a case under section 302, Indian Penal Code, and, therefore, the First Information Report (No. 465 of 1978) was registered at 5 A.M. After the scene, of crime had been inspected and photographed by the crime team, the sub-inspector held an inquest on the dead bodies of Geeta and Sanjay and sent them for post-mortem examination.

(19) 19. Dr. Bharat Singh (Public Witness 30), Police Surgeon, conducted the post-mortem examination on the dead body of Geeta at 11 A.M. on August 29, 1978. He found the body thus :

"In a state of advance decomposition with bluish discolouration of face which was also partially destroyed by maggots. There was distention of abdomen, superficial skin from nearly all over the body. Skull hair was falling on its own due to decomposition. Eye-balls were decomposed and liquified. Mouth was open. Soft tissues of lips were decomposed. Tongue was decomposed. Soft tissues of nose were partially destroyed by maggots. Both ears were intact. Nails were pale. Vagina was swelling due to decomposition. There was no evidence of injury to vaginal wall. Hymen admitted tips of two fingers. There was no discharge from vagina. There was no evidence of fallen hair over the public area. No injury to perineum. Vaginal swab was collected and sealed for Chemical analysis. Faecal matter was coming out from the rectum. I found the following injuries on the body of the deceased :

(1) One incised wound over the right frontal parietal area, placed obliquely horizontal. Size of the wound was 1-1/4" X 1/4" X bone deep. Cut on the wound on the right parietal wound was 1" long, and up to upper table.

(2) One incised wound over the right side neck on his upper part placed obliquely with its medial end reaching 1/2 above the angle of mandible. Size of the wound was 4" X 1 1/2" X bone deep. All the major blood vessels of neck on the right side were cut in one line. Lower jaw was partially cut and then fractured completely in two pieces. Bone at the cut ends and fractured end was stained, light brown in colour. Soft tissues of neck in the region of the injury were stained dark brown in colour.

(3) One incised wound over the medial side of right wrist joint placed horizontally, size of the wound was 1-1/2" x 1/2" X bone deep. There was 2/10" deep cut on the ulna bone. Soft tissues around the wound were stained in dark brown in colour.

(4) One incised wound over the back of first inter-phalangeal joints of right index finger and middle finger bone deep (1/2" long cut on each finger).

(5) One incised wound over the left forearm near the wrist joint placed horizontally. Size of the wound was 2-1/4" x 3/4" X bone deep (both bones were cut up to 2/10" deep). All the major blood vessels and nerves were cut in the track of wound and were discoloured dark brown to light black in colour near the cut end of the wound.

(6) One incised wound over the left hypothenar eminence placed obliquely, size of the wound was 2 1/2" X 1/2" X muscle deep. Soft tissues were stained dark brown in colour.

Internal examination. There was dark brown staining of scalp under and around external injury No. 1. Bones were also cut in sharp manner as described already. Brain was liquified and was only 1/4th of the total volume left in the cavity. Meninges were normal. Hyoid bone was intact. Trachea showed decomposition. Both lungs were decomposed. Heart was decomposed and empty. Stomach contained about 2 ounces of semi-digested food. Walls showed decomposition. Ribs were intact. Intestines were distended with gases. Liver spleen and kidneys showed decomposition. Uterus was empty and normal. Bladder was empty. Rectum contained faecal matter. Viscera was preserved. There was no blood in the body cavity. Hence the same was not preserved. Hair from the skull, vaginal swab, were preserved and sealed and handed over to the police. Injuries were ante-mortem possible by sharp cutting object. Injury to the neck was sufficient to cause death in ordinary course of nature. Death was due to haemorrhage and shock resulting from injuries. Time since death was about 54 to 60 hours." * * * * The body was in a state of decomposition and under such circumstances no definite opinion was possible about the sexual intercourse having been done but on the examination of private part no injury was noticed and there was also no injury in the surrounding area suggestive of any violent sexual act. By violent sexual act I mean that when the act is done against the will of the lady and the act is also forceful and full penetration of the male organ was done. Again if the victim is in a helpless condition in that case also there is likelihood of getting injury to the private part if the lady is not used to habitual sexual act, and the penetration is full."

(20) On the same day at 12,30 P.M. Dr. Bharat Singh conducted- post-mortem examination on the dead body of Sanjay. He found as under:

"THE body was in a state of advance decomposition with floating of the face, bluish discolouration of skull, pulling of culical. Distention of abdomen and maggots on the body. Scalp hair were loose from the root and were falling of their own. Eye-balls were soft and partially liquified. There was no discharge from nose and ears. Mouth was open. Tongue was touching the teeth margin. Nails were pale. Faecal matter was coming out from the rectum. There was no injury to rectum or anal opening. I found the following injuries on the body of the deceased :

(1) One incised wound over the left parietal area placed horizontally, size 1 1/2" X 1/4" X bone deep with superficial cut on the underline bone.

(2) One incised wound over the left temporal area placed horizontally, size 1" X 1/4" X bone deep with superficial cut on the wound.

(3) One incised wound over the left mastoid area placed obliquely, size 1 1/2" x 1/4" X bone deep which was cut completely and size of the cut on the bone 1" long through which brain material was coming out.

(4) One incised wound over the right frontal area placed obliquely. Size of the wound was 1" X 2/10" X scalp deep.

(5) One incised wound over the left side of neck on its upper lateral part placed obliquely size 3" X 2/10" X 2/10".

(6) One incised wound over the right side upper part front of chest 2" below the medial and of right clavicle placed horizontally. Size of the wound was 1" x 1/4" X muscle deep.

(7) One incised wound over the left side lower side of the chest 10" below the pit of axilla in mid line. Size of the wound was 1-1/4" X skin deep. Wound was placed horizontally. Trailing was downwards.

(8) One superficial incised wound one inch medial to injury No. 7 in the same line size. The wound was 1/2" X skin deep.

(9) One incised wound over the back of right upper arm near the elbow joint placed obliquely. Size of the wound was 4" X 1 1/2" x 1" with trailing upwards. No major blood vessels were cut.

(10) One incised wound over the back right elbow joint placed obliquely size 1 1/2" X 1/2" X bone deep.

(11) One incised wound over the posterior medial size of right fore arm in the middle part placed obliquely. Size 5" X 2/10" X 1/10".

(12) Four incised wound over the right palm placed vertically oblique 1/4" apart, size of each wound was 4" X 1/2" x bone deep. Bones of the hand were also cut underneath the wound. Blood vessels and nerves were cut in one line.

(13) One incised wound over the left deltoid area lower part placed obliquely horizontally. Size of the wound was 4" X 1 1/2" x bone deep.

(14) One incised wound over the left upper arm in its mid outerpart placed vertically oblique. Size 6" X 2/10" x 2/10".

(15)One incised wound over the front of left elbow joint placed horizontally oblique. Size of the wound was 5" X 1 "x bone deep, with superficial cut on the lower part of the humerus and upper part of the radius. Ah the major blood vessels were cut in one line.

(16)One incised wound over the medial side of left arm on its lower third, placed vertically. Size of the wound was 5"X1"X1/2". No major blood vessels were cut.

(17)One incised wound over the left thumb on the web and also on the index finger. Size of the wound 2" X 1/2" X muscle deep.

(18)One incised wound over the back part of the tip of the left thumb placed horizontally. Size 1/2" X 1/4" Xbone deep.

(19)One incised wound over the back of left thigh in the middle part placed horizontally. Size 5" X 2" x 21/2". Major blood vessels on the back of the thigh were completely cut.

(20)One incised wound over the front of left knee joint placed obliquely, size 3" X 1 "X bone deep.

(21)Superficial incised wound over the lateral side of left thigh on its lower part placed horizontally. Size of the wound was 3" X skin deep.

Internal examination. There was staining of scalp underneath the injury on the skull. Dark brown in colour. Injury No. 3 was cranial cavity deep. Meninges underneath the cut on the bone were also cut. Brain was liquified and reduced in mass and was mixed with decomposition blood. Neck tissues were normal Trachea showed decomposition. Hyoid bone was intact. Injury No. 6 on the chest had entered the chest cavity through second intercostal space and had cut the upper lobe of right lung 1" deep. Right lung was decomposed and collapsed chest cavity on the right side contained 100 Mi of fluid blood. Left lung was decomposed. Heart was decomposed and empty. Ribs were intact. Stomach contained semi digested food about 3 ounces in amount. Wall showed decomposition intestines were distended with gasses and faces at places. Rectum contain faecal matter. Liver, spleen and kidneys were decomposed and pale in colour. Bladder was empty. Blood and viscera were preserved and scaled. Skull hair and clothes were also sealed. All injuries were ante mortem. Some of the injuries were caused by heavy cutting weapon and some were possible by light sharp object such as knife. Injuries No. 3,6. 15 and 19 were sufficient to cause death in ordinary course of nature. Death was due to haemorrhage and shock, as a result of injuries. Time since death was about 54 to 60 hours."

(21) The doctor opined that injuries of Geeta were possible by kirpan (Exhibit P 22) and all injuries except Nos. 3,6,7,8 and 18 found on Sanjay were possible by that kirpan (Exhibit P 22). The remaining injuries of Sanjay were possible by kirpan (Exhibit P 21). The doctor duly converted the clothes, hair etc. of the deceased into sealed parcels and handed them over to the police.

(22) According to the doctor, there could be a variation of 5 to 6 hours in the estimate of timings of death.

(23) After the discovery of the dead bodies, the Press played up the murders under screaming headlines blaming the police for its inefficiency. Some of the newspapers printed the photographs of the deceased. One Dr. M. S. Nanda (Public Witness 56) saw the photographs and contracted Dsp Chabra and informed him that he had probably given a lift to the deceased on the fateful day. The deceased were standing at roundabout of Dhaula Kuan and had thumbed a lift at 6.10 or 6.15 P.M. It was slightly drizzling acid he decided to carry the children. He stopped the car. The boy sat besides him on the front seat while the girl occupied the rear seat. As they reached Gole Dak Khana the boy asked him to drop them since they were to go to All India Radio. The doctor dropped both of them in front of Jesus & Mary School, Gole Dak Khana.

(24) The police started investigation's on various lines. Their investigations revealed that there was a likelihood of the appellants being involved in the case. Bombay police was contacted and a hunt for the arrest of the appellants was organized. On drawing a blank, rewards for their arrest were announced and their photographs were released to the press and people were asked to help the police.

(25) On August 31, at 6.45 or 7 A.M. Ishwar Singh (Public Witness 43), ex-Secretary of Majlis Park Welfare Association, was informed by some residents of the locality that a mustard coloured Fiat car Dhd 7034 was lying parked in street No. 10. Ishwar Singh was asked to make enquiries about its ownership. Enquiries were made but nobody came forward to claim the car. O. P. Sharma (Public Witness 39), Secretary of the Majlis Park Welfare Association, was apprised of the situation and requested to inform the police. He, therefore, rang up the Police Control Room at 7.25 A.M. and reported about the car lying abandoned. (Exhibit Public Witness 97/A is a copy of the report). The report was flashed on wireless and Assistant Sub-Inspector 13. R. Smgh (Public Witness 97), in charge of a Flying Squad van, was directed to proceed to the spot. The Assistant Sub-Inspector came to Gali No. 10, verified the report and reported back to the Police Control Room about its correctness. The Police Control Room informed Police Station Adarsh Nagar as the car was found in its jurisdiction. Assistant Sub- Inspector Prahlad Singh (Public Witness 35) of this police-station was handed over a copy of the report at 7.35 A.M. and was directed to investigate. He came to Gali No. 10 and asked for the crime team of the police. Inspector Vidya Sagar (Public Witness 93) of the C.I.D. Crime Branch reached there with a team of Central Forensic Science Laboratory experts.

(26) The police summoned one Ashok Sharma (Public Witness 40) who had reported the loss of his mustard coloured fiat car No. Dea 1221 from Ashoka Hotel at about 10 P.M. (Report Exhibit Public Witness 40/A). Ashok Kumar had lost his car within six weeks of his buying the same. Ashok Kumar came there, identified the car as his, and supplied the keys of the car. The police opened the car with these keys. Ashok Kumar found his, stereo of Sharp make with its two loud speakers missing from the car. The original white colour grill was found to have been exchanged with a black: colour grill.

(27) Dr. G. D. Gupta (Public Witness 80), Junior Scientific Officer of the Central Forensic Science Laboratory, New Delhi, examined the fiat car Dhd 7034 carefully. He developed finger and palm prints which were photographed. Exhibit Public Witness 80/1 to 4 are the photographs. Exhibit PW80/1 is the finger-print which) was developed from the outer side of the triangular glass pane of the right front door of the car. This door is next to the driver's seat. Exhibit Public Witness 80/2 and 3 are the fingerprints developed from inside the glass panes whereas Exhibit Public Witness 80/4 is the palm print developed from the inner side of the triangular glass pane. Exhibit Public Witness 80/5 is the finger-print which was inside of the rear glass screen. Exhibit Public Witness 80/6 is the finger-print taken from outer side of the glass pane of the rear left door of the car. Exhibit Public Witness 80/7 is the finger-print found on inner side of the triangular glass pane of the left front door of the car. Exhibit Public Witness 80/8 shows the finger-prints which were taken from the rear view mirror fixed inside the car. Exhibit Public Witness 80/9 and 10 are the finger-prints found on the mobil oil tin which was found lying in the dickey of the car. The rear view mirror Exhibit P40 was also taken into possession for photographing and developing the finger-prints which could only be carried out in the laboratory. Car number plate Exhibit P41 was found inside the dickey. On this plate registration number Hrf 5411 was written with white paint.

(28) Inspector Vidya JSagar got the car photographed. After finger print impressions had been developed and photographed by the experts of the Central Forensic Science Laboratory, the Inspector searched the car. A bunch of hair was found on the foot-mat of the driver's seat; butt of a smoken Char Minor gold-make cigarette was found on the right side of the foot-mat of the driver's seat; and some hair were found lying on the foot-mat of the left rear seat. All these were duly taken into possession and made into parcels and scaled. Bloodstains were noticed inside the car at various places. These were also lifted. A rexin bag containing 4 dog chains, 4 small tiger locks, 3 keys, 8 mandrex tablets and a few iron nails, was found lying on the front seat. A pair of car number plates on which Dea 1221 was painted, a number plate with No. Hrf 5411 painted on one side and number Hrk 8930 scratched on its reverse were found lying in the dickey of the car. Another car

number plate on which Hrf 5411 was painted was also found in the dickey. These were all duly taken into possession. Earth found on the foot-mat of the driver's seat was also taken into possession.

(29) Dr. R. P. Singh (Public Witness 95) and P. K. Biswas of the Central Forensic Science Laboratory Along with Dr. Gupta (Public Witness 80) had helped the Inspector in examining the car.

(30) The car number plates found lying in the dickey of the car were treated with Chemicals in order to decipher other numbers which may have been written underneath the paint visible on the number plates The number plate Exhibit P32, which had Dhd 7034 written with white paint on black painted surface, had on its reverse Dhd 7034 written with black paint on unpainted surface. On deciphering it was found that Dhi 280 was written with white paint. It was also noted that another number Dha 3548 was also written with white paint on the same side of the lumber plate. The reverse of this number plate did not show any number written under Dhd 7034. The number plate having Dhd 7034 written with white paint on the black painted surface was found, after deciphering, to have two more numbers, Dhi 280 and Dhd 3548 both written with white paint. All these were got photographed by the expert. Number plates Hrf 5411 were also' deciphered but no number was found painted underneath.

(31) Dr. Singh compared the earth lifted from the driver's footmat with the bloodstained earth and the sample of controlled earth lifted from near the place where the dead bodies were found. Some of the ingredients were found similar.

(32) The investigations revealed that Subhash (Public Witness 41) and Jeetendra Kumar (Public Witness 42), residents of Majlis Park, had seen the car in question at about 10.30 P.M. on August 30 coming and stopping near Jeetendra Kumar's shop in Gali No. II. Driver of the car enquired about Gali No. 10 Jeetendra Kumar asked him the name of the person whom he wanted to meet. The driver replied that he wanted to meet one Anwar residing in Gali No. 10. The driver was directed to Gali No. 10. On the morning of August 31 Subhash and Jeetendra Kumar saw the car lying parked in Gali No. 10.

(33) On September 8, 1978 Lance Naiks Gurtej Singh (Public Witness 45) and A. V. Shetty (Public Witness 82) Along with, other military personnel were traveling in a railway compartment meant for military personnel in the Kalka Mail train. As the train approached Jamuna Bridge, which has to be crossed before reaching Agra City railway station, the train slowed down and was moving at a very low speed. Two civilians entered the military compartment. They were told not to enter the compartment since that was for military personnel only. One of the civilians told the Lance Naiks that they also belonged to military. They were asked to show their identity cards. The first civilian asked his companion, who was standing on the foot-board, "ISKO Bhara Hua Identity Card DIKHAO". The Lance Naiks suspected the intruders' bona-fides and took them to be robbers or thieves Both the Lance Naiks immediately caught hold of the first civilian (Billa appellant). Thereafter they also apprehended his companion (Ranga appellant) who had got down the moving train and came into moving compartment after 2 or 3 minutes. Since the intruders resisted their apprehensions there was a scuffle and they were tied with ropes. Lance Naik Shetty was carrying a Hindi newspaper "Nav Yug" which had Billa's photographs. The Lance Naiks now compared the photographs with the appellants and questioned them. The iatruders admitted that they were Billa and Ranga. The Lance Naik now realised that they had in fact stumbled upon the most wanted criminals.

(34) The train reached Delhi Main at about 3.30 A.M. on 9th September. The Lance Naiks, with the help of the other military personnel, handed over the appellants to Inspector V. P. Gupta, Station House Officer, Delhi Railway Main, Along with the handbags which the appellants had brought into their compartment. Both the appellants were directed by the police to muffle their faces since they would be put up for identification. They were produced before D.I.G. Shri Mander at 4.30 or 4.45 A.M, and ultimately brought to New Kotwali for interrogation.

(35) The person of the appellants was searched by the police in the presence of Lance Naiks and others. A live .32 bore cartridge (Exhibit P23) was recovered from the pants pocket of Billa. Clothes of Billa, which were suspected to be bloodstained, were also taken into possession. The two handbags carried by Billa were searched and all the articles, including keys, found therein were duly seized. The clothes of Ranga were also suspected to be bloodstained and were therefore taken into possession. Search of the bag carried by Ranga led to the recovery of a Kirpan (Exhibit P21). Since injuries were noticed on the person of the appellants, Inspector Gupta prepared their injury sheets.

(36) Inspector R. P. Kochhar (Public Witness 101), who had been entrusted with the investigation on August 29, 1978, was informed about the arrest of the appellants. Inspector Kochhar, therefore, took over custody of the appellants from Inspector V. P. Gupta. He produced the appellants before Mr. P. K. Jain, Chief Metropolitan Magistrate, along with an application (Exhibit Public Witness 94/A) requesting for holding a test identification parade. The Magistrate asked the appellants about the parade but they refused to participate in it. Inspector Kochhar then made an application Exhibit Public Witness 94/F and obtained the police remand of the appellants.

(37) The appellants were interrogated. Billa made a disclosure statement (Exhibit Public Witness 73/A) offering to get a sword recovered from a room near Baba's Mandir at Sita Nagar, Agra. He offered to point out Gupta Guest House, Delhi, where the appellants stayed on 31st August, and Purnima Lodge, Agra, where they stayed f

(38) The same evening the appellants were produced before Dr. A. K. Bhardwaj (Public Witness 16) of the Pole Hospital. The doctor examined Billa at 6.30 P.M. He found a healed stitched wound 4-1/2" long over left side of Billa's forehead. This injury appeared to be approximately 15 days old. On each arm bruises 3/4" all around the arm just above elbow were noticed. These were opined to be possible by tying a ligature. Generalised swelling on the back of both hands was found and it was opined to be possible by blunt object. Duration of the bruises and the swelling was opined to be 15 hours. At 7 P.M. Dr. Bhardwaj examined Ranga. Abrasions on his face, neck, back and various other parts of the body were noticed. A healing wound 1 1/2" X 1/8 on the right wrist forearm lower part was seen. This wound was found to be infected and was opined to be of a duration of 15 days. According to the doctor, the other injuries were caused by blunt object within 15 hours. The doctor took samples of their blood and skull hair along with their roots and handed the samples over to the police.

(39) On 10th September Billa was taken to Willingdon Hospital for X-ray of his skull. Satish Aggarwal (Public Witness 19), Senior Radiographer in the Willingdon Hospital, took two X-rays (Exhibit Public Witness 11/F&G) of Billa's skull. Dr. (Miss) J. Chatterjee (Public Witness 11), Radiologist of the Willingdon Hospital, compared these X-rays with the skiagrams of the skull of Vinod taken on August 26, 1978. The doctor opined that "both the skiagrams exactly tallied with each other, suggesting that the skiagrams belong to one and the same person."

(40) On the same day Sub-Inspector Pratap Singh (Public Witness 90) went to Gupta Guest House, Fatehpuri, Delhi, and took into possession register (Exhibit Public Witness 72/A) from Anil Kumar (Public Witness 72) who, with his father, runs the Guest House.

(41) On 11th September Billa made a disclosure statement (Exhibit Public Witness 101/A) offering to point out the shop in Delhi from where the appellants had purchased one small and one large size kirpans (Exhibits P21 and P22). He also offered to point out a doctor known as Sharma, practicing near Purnima Hotel in Agra, who had removed the stitches from his head injury. Ranga also made a disclosure statement (Exhibit Public Witness 101/B) offering to point out the shop from where he got a kirpan sharpened. He also offered to point out the person who had charged the parking fee from him for parking car at Budha Jayanti Park, and had also sold him bottles of Campa Cola. He also offered to point out the person from whom he had brought icecream at that time. He further offered to point out the persons from whom he got various number plates of the car

painted.

(42) OIL' the same day Ranga took the police party headed by Inspector Kochhar to Budha Jayanti Park and pointed out Susheel Kumar (Public Witness 24) and Mahesh (Public Witness 23). Both the witnesses were interrogated and counterfoil (Exhibit Public Witness 24/A) of the car parking ticket, on which "8930" was written, was taken into possession.

(43) On 12th September the appellants were produced before Mr. P. K. Dham, Metropolitan Magistrate, for their finger-print impressions, samples of hair and saliva etc. As the appellants agreed to give the samples, these were duly taken in the presence of the Magistrate. The samples were made into sealed parcels and handed over to the police. The Metropolitan Magistrate duly recorded the proceedings (Exhibit Public Witness 79/0 and Exhibit Public Witness 79/0-1).

(44) On 12th September at about noon information was received by the police that roads leading to Agra had been thrown open to traffic. The police party headed by Inspector Kochhar Along with the appellants left Delhi on 13th September for Agra in two separate Matador vehicles. On reaching Agra, Billa led the police party to the room where he had kept a sword. The lock (Exhibit P37) found cm the door of the room was opened by Billa after taking out a key (Exhibit P45) which had been earlier recovered from him at the time of his arrest. Kirpan (Exhibit P22) (hereinafter referred to as the 'sword') wrapped in mat Exhibit P35 was taken from the parchhati of that room by Billa and handed over to the police. A sketch of the sword was prepared and the sword was made into a sealed parcel. Various other articles taken into possession from the room were made into sealed parcels and taken into possession. From that room four newspapers and newspaper cuttings (Exhibit Public Witness 101/C1 to C4) containing news items about the murder of Geeta and Sanjay, were also taken into possession.

(45) On 14th September Billa led the police to Rajesh Sharma (PW88), proprietor of Purnima Lodge, Agra. Sharma produced register Exhibit Public Witness 7S/C maintained by the Lodge for recording the names, addresses etc. of the visitors coming to stay in the Lodge. He also produced bill book Exhibit Public Witness 88/B containing counterfoil (Exhibit PW88/C) showing receipt of Rs. 14.00 as advance from one Pawan Kumar. It may at this stage be noticed that original of this counterfoil is Exhibit Public Witness 88/D which was recovered from Billa at the time of his arrest. A carbon copy (Exhibit Public Witness /88E) of the receipt showing the amount received from Parveen Kumar was also produced by Rajesh Sharma. The police took into possession all these documents. The police party Along with the appellants returned 'to Delhi on the same day.

(46) On 15th September Ranga led the police to Meerut San' House at Nai Sarak, Delhi, and pointed out the shop of Manjeet Singh (PW49) from whom the kirpan was got sharpened. Ranga also led the police to the shop of painter Sunil Kumar (Public Witness 53) from whom he got the car number plate Hrf 5411 painted. Thereafter Ranga took the police to Ghantaghar Subzi Mandi and pointed out Mohinder Kumar (Public Witness 52) from whom he got the number Dhd 7034 painted. On the same day Billa took the police to Darshan Singh (Public Witness 46) from whom he bought the sword. Thereafter he led the police party and pointed out Harbans Singh (Public Witness 47) from whom he had bought a kirpan.

(47) On 16th September Billa led the police party and pointed out Ghyas-ud-Din (Public Witness 51) from whom he got the sword sharpened. On the same day both the appellants were again produced before Mr. P. K. Dham, Metropolitan Magistrate, for their specimen writings. finger-prints and palm impression. Their statements (Exhibits Public Witness 79/B and Public Witness 79/C) expressing willingness to give the specimens were recorded by the Magistrate. Specimens were taken in the presence of the Magistrate and handed over to the police.

(48) On 19th September the appellants were produced before the Magistrate for remand. Ranga made an application (Exhibit PW79/PI) requesting the court to record his confession. The Magistrate warned him that he was not legally bound to make any statement and if he did make a statement he could be convicted and

sentenced thereupon to suffer death. Since Ranga insisted on making a confessionul statement, he was sent to judicial lock-up till 21st September. The police, however, asked for and got police remand of Billa till 23rd September.

(49) OR. 21st September Ranga was produced from judicial custody in the court of Mr. P. K. Dham, Metropolitan Magistrate, at 10.15 A.M. Since Ranga was still willing to make a confession he was given further time of more than an hour for more reflection. The Magistrate again warned Ranga about the consequences of making a confessional statement. After satisfying himself that Ranga was making a voluntary statement, the Magistrate recorded his statement in his own handwriting. Since the statement could not be completed that day Ranga was again sent back to judicial custody with a direction to be produced on the following day. On 22nd September Ranga was produced from judicial custody. The Magistrate again warned him and after satisfying himself that Ranga was making a voluntary statement, his remaining statement was recorded. The record of the proceedings and the statement is Exhibit Public Witness 79/PI to P65. After about two months Ranga retracted his confession on November 20, 1978.

(50) Billa was produced before the Magistrate on 23rd September after his police remand was over. He was remanded to judicial custody till 7th October. However, on 6th October the Chief Metropolitan Magistrate handed over the custody of Billa to Bombay Police directing them to bring Billa back on 16th October. The Bombay Police duly produced Billa in the court of the Chief Metropolitan Magistrate on 16th October when he was sent to judicial custody till 17th October. On 17th October when Billa was produced from judicial custody, he moved an application for recording his confession. The Chief Metropolitan Magistrate marked the application to the Link Magistrate Mr. P. K. Dham. The application is Exhibit Public Witness 79/Q. Mr. Dham duly warned Billa about the consequences of making a confession and gave him time for thinking over the matter till 19th October and sent him back to judicial custody. On 19th October Billa was again produced before the Magistrate. Billa was again duly warned and given more time to think over the matter. The Magistrate, after satisfying himself that Billa wanted to make a voluntary statement recorded his statement in his own hand. Since the statement could not be completed on that day, Billa was sent back to judicial custody with a direction that he be produced on the following day. On 20th October Billa was again produced before the Magistrate from judicial custody. Once again the Magistrate warned him and after satisfying himself that Billa was making a voluntary statement, recorded his remaining statement. It was after about a month, i.e. on 27th November when Billa retracted his confession in the court.

(51) All the bloodstained articles taken into possession from the car by the police were sent to the Central Forensic Science Laboratory. Along with the samples of blood, hair, finger-print impressions and specimen signatures and hand writings of the appellants. Finger-prints lifted from the car were found to tally with the finger-prints of Ranga. Hair found on the left foot-mat of the rear seat of the car were found to resemble the hair of Ranga. Hair of Ranga were also found on the clothes of Sanjay. Blood of Ab group (which was found to be of Sanjay and Geeta deceased) was detected on the shirt of Ranga. Billa's blood, which was of Group 'A', was found in the car. Blood of the deceased was also found in the car. Hair picked up from the foot-mat of driver's seat were found to resemble the hair of Billa. Billa's hair were also found on the clothes of Geeta.

(52) According to the opinion of the handwriting expert, it was Billa who had signed the case history at the Willingdon Hospital as Vinod. The signature on the statement Exhibit P22/A made to sub inspector Ram Chander by Vinod was, in the opinion of the handwriting expert, that of Billa. Clothes of Billa were also found to carry bloodstains of blood group AB.

(53) After completing the investigation, the appellants were charge-sheeted for various offences. The trial Judge charged the appellants under sections 365/34, 364/34, 366/34, Indian Penal Code. Each one of them was individually charged "under section 376, Indian Penal Code. Two charges under section 302/34, Indian Penal Code, were also framed against them for committing the murder of Sanjay and Geeta respectively.

(54) The appellants pleaded not guilty. Their defense, as disclosed in their statements under section 313, Criminal Procedure Code, was one of the complete denial. Billa stated that though he had come to Delhi but from 25th August to 1st September he was at Bombay. Billa also denied visiting Willingdon Hospital Along with Ranga at 10.15 P.M. on 26th August for getting injury on his forehead stitched under the assumed name of Vinod. He, however, admitted that on 5th September he had visited a doctor at Agra to get stitches of his wound on the forehead removed. But he did not remember if the name of that doctor was Dr. Avdesh Singh Shanna. His explanation for the injury was that on 28th August at 7 or 7.30 P.M. he tried to steal a taxi parked at Agri-Pada Bombay. As soon as he opened the car and sat in it, 3 or 4 persons surrounded him before he could drive away the car. These persons took him out and one of them gave a blow en the left side of his forehead with a Kamani. He started bleeding. In order to escape he took out a knife and threatened those persons with dire consequences. On seeing the knife those persons retreated and raised an alarm. On hearing the alarm he fled through another gali, engaged a taxi and escaped. He went to a doctor near Alexendra Paras Road, Bombay and got the wound stitched. He denied staying in the Guest Houses in Delhi or at Agra. He, however, stated that he and Ranga had reached Agra on 4th September but had stayed in a dharamsala near Raja Mandi. On 6th September they hired a room in Sita Nagar. He admitted that Ranga and he were apprehended by the military personnel when they were trying to enter a military compartment of the Kalka Mail and were produced before the police at Delhi Main. He admitted the recovery of diary (Exhibit P. 38) as well as key (Exhibit P45) from him. He, however, denied recovery of a live cartridge (Exhibit P23) and claimed that it had been planted by the police. He admitted that the pages in question of his diary Exhibit P.38 were in his handwriting. He also admitted that the writings in question on pages 13 and 14 of the register Exhibit Public Witness 78/C were in his hand, but stated that he was forced to write the same. He also admitted that after his arrest he had been examined by the police doctor and thereafter his skull had been X-rayed at Willingdon Hospital. He denied making any disclosure statement but admitted that he was taken to Agra on 13th September and from the room in Sita Nagar a sword (Ex. P22) wrapped in a mat was taken into possession by the police. According to Billa, he was asked by the investigating officer where the sword was. He started looking for it in the room but the investigating officer indicated that it was lying in the parchhati. He obeyed and from the parchhati picked up the sword and the mat and handed over the same to the police. He also denied leading the police to any witness. He admitted making a confessional statement which was correctly recorded by Mr. P. K. Dham, Metropolitan Magistrate, but explained that he had been forced to make the statement by the police.

(55) Billa made a detailed statement running into eight pages of the paper-book about his antecedents, running away from Bombay to Delhi and his movements till his arrest. In brief, he stated that Bombay police had falsely involved him in various cases and wanted to arrest him. The search intensified after he joined Ranga. They decided to take shelter in Delhi. They came to Delhi with one Jugal Kishore on 15th August via Surat and Ahmedabad. After some days they came to know that Bombay Police had come to Delhi in search of them. On 18th August they went to Panipat where Ranga's sister lives. After Rangli got a rakhi tied from his sister, they left Panipat for Delhi where they stayed at the house of Jugal Kishore up to 25th August when he (Billa) left for Bombay by train. On 28th August he tried to steal a taxi in Bombay when he was apprehended by 3 or 4 persons and one of them gave a 'Kamini' blow on his left forehead. He (Billa) took out his knife and threatened them and was able to escape. On 29th August he succeeded in stealing a taxi from near Taj Mahal Hotel. He approached one Luis, a motor mechanic. Billa offered to give his room to Luis after removing his valuable articles. Luis was asked to survey the scene. As Luis tried to open the lock of Billa's room, he was apprehended. On seeing this Billa escaped. He successfully travelled back to Delhi after bribing some railway police officers who wanted to interrogate him about the foreign tape-recorder and the umbrella he was carrying. At Delhi he was informed by Ranga that both of them were wanted by the Delhi police for the murder of Sanjay and Geeta. After perusing the news appearing in the Press they decided to leave for Agra where they stayed for some time in a dharamsala in Raja Mandi. Then they hired a room in Sita Nagar. They wanted to go to Madras via Delhi but were apprehended by the military personnel when they were trying to enter a military compartment of Kalka Mail.

(56) He alleged that he had been given a severe beating after his arrest by the Delhi police which threatened to liquidate him like Sunder dacoit. He was tutored to make a statement which he did.

(57) Ranga in his statement under section 313 of the Code of Criminal Procedure, flatly denied all allegations made against them. He, like Billa, admitted their apprehension by the military personnel who handed them over to the police at Delhi. He admitted that their shirts and pants were taken into possession by the police but denied that they had any bloodstains. He denied carrying any bag at the time of his arrest and stated that the Kirpan Exhibit P21 had been foisted on him. He admitted being taken to Agra Along with Billa in two separate Matador vans. He also admitted making a confessional statement. However, he alleged that it was not voluntary but was the result of threats given to him by the police. He also made a detailed statement about his criminal career at Bombay where he was engaged in the manufacture and sale of illicit liquor. At one stage he was introduced to Billa as Bengali. Later on, he came to know about his true identity. Realizing that the police was searching for them, they came to Delhi. On coming to know that the Delhi police was foisting the murders' of Sanjay and Geeta on them they decided to go to Agra and on their way back to Delhi they were apprehended by the military personnel.

(58) They also produced defense witnesses to prove alibi of Billa and to show that they had been made scapegoats.

(59) The learned counsel for the appellants contend that the murder of Sanjay and Geeta, who belonged to upper middle class society, had rocked the capital. Newspapers reflected the public concern by printing the news under screaming headlines on their front pages. Even the Parliament was rocked and the Prime Minister had to make a statement in the Parliament. Police was then driven to solve the crime of the decade. They were out to pin it on someone. Billa had a had reputation in Bombay and he Along with Ranga had come to Delhi a few days before the murder. No one could be more handy than the appellants and so the police framed them up. It is contended that there is no evidence on the record about the identity of the assailants. The confessions of the appellants are stated to be the result of threats and coercion and are not true.

(60) It is not disputed that Geeta was to compere a programme of the All India Radio on that fateful evening Sanjay was also to take part in that programme; and that they were to reach the broadcasting house at 7 P.M. It is also not challenged that they left their house at 6.15 P.M. However, the statement of Kula Nand (Public Witness 3) is challenged and it is contended that he had not seen Geeta and Sanjay standing on the round-about of Dhaula Kuan. Statement of Dr. M. S. Nanda (Public Witness 56-) is assailed on the ground that he is not in a position to specifically state that the girl and the boy who were given a lift from Dhaula Khan to Gole Dak khana, were in fact Geeta and Sanjay.

(61) Now it is not disputed that Dr. Nanda had given a lift to a boy and a girl at about 6.15 P, from Dhaula Kuan round-about to Gole Dak khana. Dr. Nanda tells us that it was drizzling and so he decided to give a lift. As he stopped his car at Dhaula Khan roundabout the boy came running up to him and enquired if he was going towards Connaught Place. On getting a reply in the affirmative the boy sat besides him on the front seat while the girl occupied the back seat. Though he had given a casual look at these two persons, he was definite that both of them were quite young. The boy was looking younger than the girl. The boy had told him that they were going to All India Radio. After seeing the photographs (Exhibits P4 and P5) of the children, the doctor stated that "they look like the same children whom I gave the lift up to Gole Dak khana." He had contacted the* police after reading the news of their murder in a newspaper. It is true that this witness goes on to state that he had told the police that he had not seen the children minutely and, therefore, he could not definitely identify them, but his statement as a whole leaves no doubt that Sanjay and Geeta had travelled in his car from Dhaula Kuan round-about to Gole Dak khana. Therefore, even if Kula Nand (PW3), who deposes that he saw Sanjay and Geeta at Dhaula Kuan road about asking for lift from passing motorists, is not believed, it does not affect the case.

(62) It is not disputed that Bhagwan, Dass (Public Witness 6) must have seen some sort of struggle in a car which made him ring up the Police Control Room at 6.44 P.M. His report Exhibit Public Witness 6 I/A, which necessarily had to be a sketchy one, reveals that a woman was raising an alarm of 'Bachao-Bachao' in Fiat car No. Mrk 8930. In the witness-box Bhagwan Dass deposed that he had, in fact, given the number as Hrk and not MRK. We have no reason to disbelieve him. Indeed, the subsequent events, which we will presently discuss, leave no doubt that the car bore a number plate of Hrk 8930. Bhagwan Dass deposed that he was going on a scooter. He had come out of Gurdwara Bangia Saheb and was going towards North Avenue when he noticed a Fiat car of mustard colour bearing No. Hrk 8930 standing near the gate of the Ashram (At the Gole Dak khana roundabout there is a Yoga Ashram which laymen call as Ashram). He had seen two persons sitting on the front seat of the car while a boy and a girl were sitting on the back seat. He had seen the girl catching hold of the hair of the driver who was sitting in front of her and the boy quarrelling with the person sitting next to the driver in front of him. He had stopped his scooter and rushed to the car. He noticed Babu Lal (Public Witness 8) throwing away his cycle, reaching the car and about to lay his hand on the door of the car which, however, sped away with the girl raising alarm 'Bachao-Bachao'. After looking at the photographs (Exhibits P4 and P5) of the deceased, Bhagwan Dass positively states that these were the youngsters who were sitting on the back seat of that car. The whole occurrence had taken hardly a minute and a half or so. Thereafter, he rang up the Police Control Room. Of course it must have taken him some time to assess the situation and decide to ring up the control room at 6.44 P.M.

(63) Babu Lad (Public Witness 8) had come in the witness-box to support the prosecution. His presence at the place cannot be said to be by chance. He was living in one of the servant quarters of bungalow No. 50, Ashoka Road, which is not far away from Gole Dak Khana. True, he is a labourer working in the store of the telephone department and his place of work is at Vinay Nagar. But the incident had taken place shortly before 6.44 P.M. His statement cannot be doubted only on the ground that he was a mere labourer and could be procured to support the prosecution version. In this case we find that at various stages persons from the public had tried to help the kidnapped children and had promptly reported the matter to the police.

(64) Narinder Singh (Public Witness 7), a scooter-rickshaw driver, who happened to be present at the scooter stand near the Ashram and witnessed the occurrence, corroborates others.

(65) It is contended that though these witnesses did see some struggle in some car, these persons should not be relied upon as regards the identity of the persons sitting on the front seat of the car especially when they depose that they were none other than the appellants. We will be discussing separately the question of identity of the assailants in detail. At this stage it is sufficient to say that these witnesses must have had a fair view of all the occupants of the car because of their attention having been directed to it on account of the struggle and the youngsters shouting for help. They would thus be in a position to definitely identify them.

(66) We may at this stage also dispose of another contention advanced on behalf of the appellants. The contention is that the statements of these witnesses were recorded after a few days of the kidnapping. In our opinion the witnesses cannot be blamed for it. As we will be presently discussing this is one of those cases where there was a complete apathy on the part of the police. They failed to take a serious note of the reports which were being sent public. the of persons various by them to

(67) Lnderjeet Singh (Public Witness 9) is a Junior Engineer working with the Delhi Development Authority. He was going home on his scooter via Baba Kharak Singh Marg when Fiat car No. Hrk 8930 overtook him near the Willingdon Hospital Casualty. He heard shrieks of the girl from the car and saw four persons struggling with each other. He chased the car. The boy sitting on the rear seat looked back through the rear screen of the car, showed his right shoulder which was bleeding and waived his hands seeking help. Inderjeet Singh kept up the chase. Unfortunately for him as well as for the children, he had to stop at the red traffic lights of the crossing on the road leading towards Shankar Road while the car jumped the lights and sped away. It must, however, be said to the credit of this young man that he did not give up the pursuit; and still went on Shankar Road. He even did not lose heart after not finding the car anywhere in sight and decided to

report the matter to Police Station Rajinder Nagar. His report is. Exhibit Public Witness 9/A. The report is of course sketchy but it is apparent that since the police had decided to treat it as a non-cognizable offence which was also not falling within the territorial jurisdiction of this police-station, they were not interested in getting more details. But one thing is clear. He gave the number of the car as Hrk 8930. Four persons were stated to be sitting in that car. A boy and a girl sitting on the rear seat of the car were grappling with the two persons sitting in front. Inderjeet Singh had to tell the police "I have come to lodge a report, on humanitarian ground". This report was recorded at 6.45 P. M. Unfortunately, this police-station slept over this report and did not inform the Police Control Room for more than an hour. It took still longer time to report the matter to Police Station Mandii Marg in whose jurisdiction Inderjeet Singh had seen the struggle in the car.

(68) When photographs Exhibits P4 and P5 of the children were shown to this witness, he frankly stated that he could only identify Exhibit P5, the photograph of Sanjay. This speaks volumes about the honesty and straightforwardness of the public spirited young man. He also frankly stated that he was not in a position to identify the appellants as the persons sitting on the front seat of the car. He is positive that the girl was catching hold of the driver's hair by both of her hands and that Sanjay's hand was being held by the other person sitting next to the driver's seat.

(69) Though it is true that Inderjeet Singh does not identify anyone except Sanjay yet there is no doubt that the car, which was seen by Bhagwan Dass and others at Gole Dak khana, was the car chased by Inderjeet Singh. Presence of Sanjay, who was accompanying his elder sister Geeta to the All India Radio, leaves no doubt that the girl sitting in the car by the side of Sanjay was none other than Geeta. This fact is also corroborated by Bhagwan Dass and others who have identified their photographs. In other words, we are definite that a mustard coloured Fiat car displaying registration No. Hrk 8930 was the car in which Sanjay and Geeta were being taken away at about 6.40 P.M.

(70) We will now examine the evidence to test the prosecution case that the appellants had visited Willingdon Hospital at 10.15 P.M. the same night for getting the injury on Billa's forehead treated. Dr. Preet Singh Chawla (Public Witness 12), Senior Resident Surgeon of Willingdon Hospital (re-named as Dr. Ram Manohar Lohia Hospital), on the basis of the hospital record, deposes that on 26th August at 10.15 P.M. he examined one Vinod son of Hari Siogh, aged 23 years, resident of Pushpa Building, Quarter No. 4, Fatehpuri, Delhi. The patient was brought by one Harbhajan Singh son of Ratta Ram, resident of C-124 Moti Nagar, New Delhi. The patient gave the history of having been beaten by somebody. The doctor found a clean lacerated wound on the forehead (left side) which was approximately 5" X 1/2". The patient was advised X-ray of the skull and he was referred to Surgical Ward. The injury was opined to have been caused by a blunt weapon. Of course, the doctor could not identify the said Vinod in court. But this was because the doctor was making statement after about four months.

(71) Dr. Yasmin Imam (Public Witness 13), Junior Resident of this hospital, was working as Assistant Casualty Medical Officer on that day. At 10.20 P.M. he examined patient Vinod, gave him first-aid, and after preparing slip Exhibit Public Witness 13/A referred him to surgery. The doctor also prepared X-ray form Exhibit Public Witness 13/B, obtained the thumb-impression of the patient Vinod and sent it with the patient to X-ray department. After examining the freshly healed injury on the forehead of Billa, this doctor opined that the injury was in the same position as was found on the left forehead of patient Vinod. The doctor was also of the opinion that this injury could be caused by the blunt edge of a sword. The doctor could not, of course, identify the patient.

(72) Sadhu Rain (FW21) is the Radiographer of this hospital. On the receipt of X-ray form (Exhibit Public Witness 13/B) he took two X-rays (Exhibits Public Witness II/C and Public Witness II/D) of the patient Vinod. These X-rays were examined by Dr. (Miss) J. Chatterjee (Public Witness II), Radiologist of the hospital. The Radiologist did not find any bone injury. Her report is Exhibit Public Witness II/A on the reverse of the X-ray slip Exhibit Public Witness 13/B. On 10th September she compared these skiagrams with the skull skiagrams Exhibits Public Witness II/F & G of Billa taken by Satish Aggarwal (PW19), Senior

Radiographer of the hospital. After comparing the same, she was of the opinion : "the features of both the skiagram;- exactly tallied with each other, suggesting that the skiagrams belong to one and the same person." Her report is Exhibit Public Witness I.I/E. She was not cross-examined on this aspect by the appellants.

(73) Still another evidence. establishing the patient's identity, consists of a comparison of fingerprint impressions of patient Vinod on X-ray slip Exhibit Public Witness 13/B with the specimen fingerprint impressions of the appellants taken before the Magistrate. P. S. Nayar, Assistant Director of the Central Forensic Science Laboratory, who is a fingerprint expert, opined that the thumb-impression on the X-ray slip exactly tallied with the specimen fingerprint impression of Billa.

(74) There is thus no doubt that it was Billa who had gone to the hospital at 10.15 P.M. on 26th August. He wanted to bide his identity and, therefore, assumed the name Vinod.

(75) Constable Randhir Singh (Public Witness 25). who was on duty at the hospital, questioned the injured about the cause of the injury. The constable was told that two or three persons had injured him on Bangla Saheb Marg near Kali Mandir. The constable immediately informed Police Station Mandir Marg in whose jurisdiction the alleged incident had taken place. Sub-Inspector Ram Chander (Public Witness 22) Along with constable Harish Ram (Public Witness 38) came to the hospital for investigation at 10.50 P. M. After the doctor on duty had declared the injured fit for making a statement, the Sub-Inspector recorded the statement Exhibit Public Witness 22/A. The injured signed the statement as Vinod Kumar. (As we have come to the conclusion that patient Vinod Kumar was none other than Billa appellant, we will now refer Vinod Kumar as Billa). Since the statement disclosed an offence under section 394/34, Indian Penal Code, it was sent to the police station for registration of the case.

(76) SUB-INSPECTOR Ram Chander on coming to known that Billa has been brought to the hospital by one Harbhajan Singh, he interrogated Harbhajan Singh. Harbhajan Singh told the Sub-Inspector that the injured had been brought in Fiat car Dhi 280 and corroborated the statement of Billa.

(77) It is not disputed that Constable Randhir Singh (Public Witness 25), who was on duty at the hospital, questioned the injured about the injury and informed Police Station Mandir Marg. It is also not disputed that Sub-Inspector Ram Chander (Public Witness 22) Along with Constable Harish Ram (Public Witness 38) came to the hospital for investigation; recorded the statement (Exhibit Public Witness 22/A) of the injured; interrogated Harbhajan Singh, companion of the injured; the injured left the hospital against medical advice after signing Exhibit Public Witness 15/A at 11.10 P.M.; the injured and his companion took Sub-Inspector Ram Chander and Constable Harish Ram in Fiat car Dhi 280 to the alleged scene of robbery; they went to Police Station Mandir Marg, and the injured and his companion left the Sub-Inspector there promising to come back at 10 A.M. It is not challenged that the injured and his companion did not keep their promise; the addresses given by them were found to be fictitious; and number Dhi 280 was that of a Vespa scooter.

(78) The learned counsel for Ranga however assails the testimony of Sub-Inspector Ram Chander and Constable Harish Ram about Ranga being Billa's companion who gave his name as Harbhajan Singh. The Sub-Inspector had remained with the injured and his companion for more than two hours. He had closely questioned both of them about their allegations of a serious offence like robbery. It was, therefore, very easy for him to identify the two. He has been believed by the trial court and we see no reasons to doubt his testimony.

(79) It was on 29th August that dead bodies of Geeta and Sanjay were discovered lying in the bushes on the Upper Ridge Road. The identity of the deceased is beyond doubt. It was Sub-Inspector Hari Chand (Public Witness 37), who prepared the inquest reports. Exhibit Public Witness 37/A is the inquest report of Sanjay while Exhibit Public Witness 37/B is the inquest report of Geeta. Purse Exhibit P20 was found lying near the dead body of Sanjay. It was taken into possession. It was found to contain Rs. 17, an identity card and a telephone diary. Various other articles lying around the dead bodies were also taken into possession. The dead

bodies were found to be about 8 paces away from the edge of the road under construction.

(80) It appears that after the discovery of the dead bodies of Geeta and Sanjay on 29th August the police came to the conclusion that the persons, who had visited Willingdon Hospital on 26th August at 10.15 P.M. and gave false information and fictitious names and addresses, might be connected with the crime. The statement of Sub-Inspector Ram Chander was, therefore, recorded on 29th August by Inspector Vidya Sagar (Public Witness 93) who was investigating the murder.

(81) It is contended by the learned counsel for the appellants that the bodies were in fact dumped at the place from where they were recovered, and that the place of murder was not that place. There is no evidence on record to show that the bodies were dumped there. On the other hand, the recovery of bloodstained earth from near the dead body of Geeta shows the likelihood of her being murdered at that place. It is true that no bloodstained earth was found near the dead body of Sanjay, but we cannot overlook the fact that on 26th August there was a drizzle in the evening. Though there is no direct evidence to show the amount of rain which fell between 26th and 29th August in 1978, yet we cannot overlook the fact that August is a rainy month, and in 1978 it rained heavily in August and September. Mere absence of the bloodstained earth near the dead body of Sanjay after about three days of murder does not mean that the murder had not taken place there.

(82) The discovery on 31st August of an abandoned mustard coloured Fiat car displaying registration number Dhd 7034 in Gali No. 10 of Majlis Park is not disputed. The recovery of various articles from this car and the finger-prints which were lifted from this car are also not disputed. We need not therefore analyze the statements of the witnesses who depose about these facts though we have already referred to these witnesses. It may be noticed that the car was discovered long before the apprehension of the appellants.

(83) It is also not doubted that the aforesaid car was of Ashok Sharma (Public Witness 40) who lost it in Ashoka Hotel on the night of 19th August. The actual registration number of this car was Dea 1221. It is not in controversy that number Dhd 7034 is of a Fiat car belonging to M/s. Mohan Lal Janak Raj while number Dea 3548 is of a Fiat car owned by one Baljeet Kaur.

(84) It may be recalled that Dr. R. P. Singh (Public Witness 95), Senior Scientific Officer of the Central Forensic Science Laboratory (CFSL), New Delhi, had succeeded in finding out various numbers written under the numbers found written on the number plates recovered from the car. It will bear repetition that discovered numbers were Dhi 280 and Dha 3548, and the number plates recovered from the car bore registration numbers Hrf 5411 (Exhibits P41 and P34), and on the reverse of Exhibit P41 registration number Hrk 8930 was found written by scratching the unpainted surface. A pair of car number plates bore numbers Dea 1221.

(85) It is obvious that persons using this car were out to use false number plates. We may now recall that Fiat car No. Dhi 280 (which was found to be the registration number of a Vespa scooter) came to Willingdon Hospital and was used by the appellants. It may also be recalled that Sanjay and Geeta were kidnapped in mustard coloured Fiat car bearing registration No. Hrk 8930 which number was found written by scratching the unpainted surface on the reverse of car number plate Exhibit P 41.

(86) It is Dr. G. D. Gupta (Public Witness 80), Junior Scientific Officer, CfsL, New Delhi, who compared the finger-prints lifted from the car with the specimen finger-prints of the appellants. Dr. Gupta was the person who had developed the finger-prints found at various places in the car. Finger-prints (Q 9) lifted from rear view mirror of this car were found to be of Ranga appellant. Finger-prints (Q 3) lifted from outside triangular glass on right side of the car near the driver's seat were also found to be of Ranga appellant (Exhibit Public Witness 93/F).

(87) Blood test of the appellants revealed that blood group of Billa was 'A', while that of Ranga was 'B'. The blood group of Sanjay and Geeta was found to be 'AB'. Now the blood lifted from various places from inside

this car was tested. Blood group 'A' was found on the rear glass screen, rexin piece front seat, and left side back door of the car. Blood group 'AB' was detected on a rexin piece of roof above back seat, on rubber mat cut from the left back door, and on metallic ring at the back of the left front seat. Blood of groups 'A' and 'AB' was found on the back of left front seat. Reports of the Chemical Examiner and the Serologist are Exhibits Public Witness 93/G & M.

(88) It may now be recalled that Sanjay, who was sitting on the left side of the rear seat of the car, had been injured in the car and he had shown his bloody shoulder to Inderjeet Singh Public Witness. The presence of his blood group 'AB' on the ceiling above back seat, rubber mat of left door and metallic ring on the back of left front seat, reinforces our conclusion that this was the car in which Sanjay was sitting. The presence of blood group 'A' on the front seat corroborates that Billa was driven in this car to Willingdon Hospital after he had received an injury on his head on the evening of 26th August.

(89) Hair were also found at various places in the car and they were taken into possession. Hair collected from the foot-mat of the left back seat of the car were found to resemble the hair of Ranga. Hair found from the foot-mat of driver's seat were found similar to Billa's hair (Exhibit Public Witness 93/M). It is contended that the opinion of the expert about the resemblance of the hair has no value and so should be rejected. Modi in his *Medical Jurisprudence and Toxicology*, 14th Edition (1963), on page 122, writing under the heading "The Source of Hairs", says : "It is extremely difficult to determine whether the hairs sent for examination belong to a particular individual or not. though it may be easy to ascertain the source (part of the human body) from which they are derived." But Modi in the 20th Edition (1977) of this book amends the statement extracted above. On page 107 in para 8 he says : "By laboratory examination of hair it may be possible to say that it cannot belong to a particular individual but it cannot be opined whether it definitely belongs to him. In this context micro-Chemical examination of a dye or occupational dust on hair may enhance the probative value of the opinion given. The detection in hair of several inorganic ions by neutron activation analysis and of blood group substances may prove more helpful as indicated by recent work." In the foot-note a reference is made to the works of 'Forslev' published in 1966, and that of 'Heifer' published in 1968. It is obvious from the material change made in the two editions that with the progress of science it has become possible to say about the individual person as the source of the hair.

(90) GLAISTER'S "Medical Jurisprudence and Toxicology. 13th Edition (1973) has this to say on the subject : "As a result of macroscopic and microscopic examination it is possible to distinguish human hair from animal hairs and from fibres. Detailed examination of human hairs may indicate very strong probability that they have come from the same source. It is not, however, possible to identify an individual definitely by examination of hairs." A reference to the following case is also made in this book on the same page. "A rather exceptional case was where a comparison was made, in a murder case, between short beard hairs found upon the cutting edges of a safety razor blade, discovered among bricks, and three-day-old hairs shaved from the face and chin of the accused man while in custody. Gross and detailed structure of these specimens were so similar that they were consistent with a common source of origin."

(91) TAYLER'S *Medical Jurisprudence*, Vol. I, 12th Edition (1965) page 161 states : "although one cannot say that a hair came from a particular individual, by careful comparison one can state that it could have come from him." Evidently Taylor's edition of 1965 has not taken note of the subsequent progress in the forensic science.

(92) In view of the above we cannot agree with the learned counsel for the appellants that the opinion of the expert on the question of the source of hair has no value. It has a great probative value and coupled with other circumstances of the case it can be used as corroborative evidence of the fact that the appellants were using the car. It also corroborates the witnesses who had seen the struggle between two persons occupying the front seat and the boy and the girl sitting on the rear seat. It may be recalled that these persons had seen the boy and the girl pulling the hair of the persons occupying the front seat. The similarity of the hair also shows that this was the car which was being used by the appellants on 26th August for kidnapping Sanjay and Geeta.

(93) The earth removed from inside the car (Exhibit 16) was compared with the earth removed from the clothes of Geeta and Sanjay as well as the bloodstained earth and the sample of controlled earth lifted from near the dead bodies. Dr. R. P. Singh (Public Witness 95) deposes that he found some ingredients common to all the respect of their physical characteristics. No body questioned him in detail about this aspect. No one even asked him about his final opinion whether he was in a position to say definitely that the earth could be said to be the same. The opinion, therefore, remains vague.

(94) The prosecution examined Lance Naiks Gurti Singh (Public Witness 45) and A. V. Shetty (Public Witness 82) to prove that the appellants were apprehended by these witnesses with the help of their colleagues when the appellants tried to enter their compartment on the Jamuna Bridge near Agra. We need not discuss this evidence since it has not been challenged by the learned counsel for the appellants. These witnesses had identified Billa with the help of photograph published in the newspaper they were carrying. These witnesses had handed over the appellants to the police at Delhi Railway Station. When the persons of the appellants were searched, one 32 live cartridge (Exhibit P 23) was recovered from the pants pocket of Billa, while Kirpan (Exhibit P 21) was recovered from the bag carried by Ranga. It is contended by the learned counsel for the appellants that these articles have, in fact, been planted on the appellants. We see no reason to disbelieve Gurtej Singh and Shetty Public Witnesses who had no axe to grind and had, in fact, apprehended the appellants without knowing their importance.

(95) During interrogation the appellants made various disclosure statements. Exhibit Public Witness 73/A is the disclosure statement of Billa, while Exhibit Public Witness IOI/B is the disclosure statement of Ranga. Both the statements run into pages and practically amount to confessions. We have, therefore, to discard the confessional parts of these statements. The only portion which can be said to be admissible in evidence in Exhibit Public Witness 73/A is : "The sword..... is lying in the room at Agra..... My bloodstained clothes are lying at Agra. I can point out the house and get recovered the sword and the clothes." In Exhibit Public Witness IOI/B nothing is admissible in evidence. We may record that in both the disclosure statements the appellants had stated, amongst others, that they could point out various witnesses. Whereas Ranga had talked about witnesses from whom the swords were bought and got sharpened, the painters who had painted various car number plates, and persons from whom he had bought Campa Cola and ice cream, Billa had offered to point out the persons and the various Lodges where they had stayed in Agra and at Delhi. It is contended that offer to point out witnesses is not admissible under section 27 of the Evidence Act. Now section 27 of the Evidence Act reads thus :

"PROVIDED that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

Obviously, the disclosure statement has to be about a fact and that fact must be discovered in consequence of that statement. The discovery of a witness cannot, by any stretch of imagination, be treated as a discovery of a fact.

(96) The Supreme Court in *Himachal Pradesh Administration v. Om Prakash*, after noticing the conflict between

various High Courts on the question whether the disclosure about a witness amounts to a disclosure of a fact, approved the Full Bench decision of seven Judges in *Sukhan v. Emperor*, Air 1929 Lahore 344 (2). It observed thus : ".....normally Section 27 is brought into operation where a person in police custody produces from some place of concealment some object said to be connected with the crime of which the informant is the accused. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that the information was true. No witness with whom some material fact, such as the weapon of murder, stolen property or other incriminating article is not hidden, sold or kept and which is unknown to the police can be said to be discovered as a consequence of the information

furnished by the accused. These examples, however, are only by way of illustration and are not exhaustive. What makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until the information was furnished to them by the accused. A witness cannot be said to be discovered if nothing is to be found or recovered from him as a consequence of the information furnished by the accused and the information which disclosed the identity of the witness will not be admissible." In this view of the law the disclosure statement furnished by Ranga has to be completely rejected. Though the disclosure statements about the discovery of the witnesses are not admissible, yet the conduct of the appellants in leading the Investigating Officer to the witnesses and pointing them out is admissible as conduct under section 8 of the Evidence Act. In Om Parkash's case (supra) the Supreme Court, after rejecting the disclosure statements made under section 27 of the Evidence Act, held : ".....the evidence of the Investigating Officer and the panchas that the accused had taken them to Public Witness Ii and pointed him out and as corroborated by Public Witness Ii himself would be admissible under section 8 of the Evidence Act as conduct of the accused." Therefore the conduct of the appellants in pointing out witnesses who corroborate it, is admissible.

(97) Sohan Lal (Public Witness 31) is the owner of house No. B-314, Gali No. 3 Majlis Park, Delhi. He deposes that property broker Banke Lal had brought the appellants to him on 24th August. The rent of one room was settled at Rs. 160 per mensem and Billa gave him two months rent in advance. Some of their luggage was placed in the room and after locking it they had gone away in the car in which they had come. They again came back on 25th August in the evening. On 26th August they had left the house in the morning and had come- very late. He also deposes that he had seen a bandage on the forehead of Billa on the morning of 27th August. On enquiry the witness was told that the injury was received from fan of the car. He further deposes that Billa came to the house on 30th August at about 7 P.M. and on the morning of 31st August (when the car was taken into possession by the police), both of them had left the house. The room given to the appellants had an independent entrance and its door opened in the Gali.

(98) Sohan Lal was not cross-examined by the appellants. However, the trial court had cross-examined him on various aspects. The learned counsel for the appellants has not assailed the statement of this witness before us. We have already held that it was Billa who had visited the Willingdon Hospital on the night of 26th August with a head injury and he had left Police Station, Mandir Marg at about 1 A.M. in the night. On the night of 30th August, Ranga was found driving the car in Gali No. 9 and he was asking about Gali No. 10 where the car was found parked in the morning. The finger-prints of Ranga have been found on the rear view mirror as well as on the triangular glass of the door of the driver's seat. Moreover, diary (Exhibit P38), which was recovered from the person of Billa had a writing showing the advance payment of two months rent of Rs. 320, Billa admits the recovery of the diary and the writing in question. This also corroborates (though no corroboration is necessary) the statement of Sohan Lal that he had taken two months rent in advance from the appellants.

(99) The evidence of Sohan Lal, therefore, shows that the appellants had hired his house on 24th August where they lived till the morning of 31st August, and that they were using the car which was found abandoned in Gali No. 10. (It may be noticed that whereas the date of hiring is mentioned as '28-8-78' in the English record of Sohan Lal's statement, the Vernacular record mentions the date as '24-8-78. Even otherwise the tenor of the statement leaves no doubt that date '28' mentioned in the English record is a typographical error.)

(100) Manohar Lal (Public Witness 85) is running a Guest House under the name and style of Mini Guest House at 3427, Deshbandhu Gupta Road, Pahar Ganj, Delhi. He deposes that on 23rd August at about 9-30 P.M. three persons, including the two appellants, had come to him for a room. Billa stated his name to be Ajay Kumar while Ranga posed as Raj Kumar. Room No. 5 was allotted to them. Since they did not have any luggage with them, the witness noted down the number of car Dea 3548' in which they had come. The names of the persons were duly entered in the register. The register is Exhibit PW78/E. At serial No. 569 there is an entry dated August 23, 1978 at 9.30 P.M. showing Ajay Verma, Raj Kumar and Pradeep Kishore being

allotted room No. 5. These persons had given their addresses in Hindi as "Asthi Building, Riddy Road, Ahmedabad". They were shown to have arrived from Ahmedabad and left for Chandigarh. It is signed by Ajay Verma, Raj Kumar and Pradeep. Ajay Verma is signed in English, whereas the other two signatures are in Hindi. The witness explains that he had made all the entries except the signatures. The cutting of the word Pradeep and then rewritten in the column meant for signatures is explained by the witness thus : "It so happened that Raj Kumar signed as Raj Kumar for himself and also wrote Pradeep. But on my insistence that the person who is staying at the guest house should sign himself, then the word Pradeep written by Raj Kumar was cut off and the person who posed himself as Pradeep signed the same in my presence." The register shows that the persons left the Guest House on the same night at 12 mid-night. The witness goes on to say that the register had been checked by Bombay police when they had come with a third person (apparently referring to person posing as Pradeep). We have perused this register. It has entries till August 28, 1978 and thus there is no doubt that the entry in question was made in the ordinary course of business by this witness. In cross-examination the witness explains that whenever a person comes to stay without bringing any luggage it is their practice to note the number of the car brought by him. He also explains that he had filled up the column in the register in question on the information given to him by Ajay alias Billa.

(101) On Parkash (Public Witness 86) is running a Guest House under the name and style of Gautam Hindu Hotel at 187, Fatehpuri, Delhi. He deposes that on August 16, 1978 at 7.30 P.M. three visitors, including the two appellants, came to the Guest House. They stayed in the Guest House till 8.50 P.M. of 23rd August. He deposed that Ranga had then posed as Balwant Rai. The witness produced register Exhibit PW78/D which was issued to him by the District Magistrate on September 8, 1977. This register is maintained by him under section 4 of the Sarais Act Xxii of 1867. There is an entry at serial No. 2802, dated August 16, 1978 showing the arrival of three persons. They had given their address in the register as "Ahmedabad, Liberty Cinema, Prabu Kirpa Building, 3rd Floor, Room No. 15". It bears the signatures Balwant Rai in Hindi in the column meant for the signatures of the visitors. The place for which they left the hotel on 23rd August is shown as 'Ahmedabad'. Police from Bombay had come to his hotel on August 28, 1978 and the police officer, after checking the entry in question, had signed the same. We have scrutinised this register. This register has entries till August 28, 1978 when the Bombay police finally took this register into possession.

(102) We may record that the learned counsel for the appellants have not challenged before us the statements of Manohar Lal, Om Parkash, Anil Kumar Gupta and Rajesh Sharma Public Witness s.

(103) Anil Kumar Gupta (Public Witness 72) is looking after the Guest House run by his father under the name and style of Gupta Guest House at 969, Gali Telian, behind Novelty Cinema, Delhi. He deposes that the appellants had come to the Guest House on August 31, 1978 at 11-55 P.M. Ranga posed as Ram Kumar whereas Billa posed as Vibu Kumar. He produced register Exhibit Public Witness 72/A maintained by the Guest House. This register was started on June 1, 1978 and has entries till September 10, 1978. There is an entry showing the arrival of Ram Kumar and Vibu Kumar at 11-55 P.M. They gave their address as Motel Mele, Room No. 62, Kalloke Chali. They left on September 2, 1978 at 11.45 P.M. It is signed by Ram Kumar in English. Now the date of arrival in this entry is shown as "31-9-78". Evidently the month has been incorrectly given. Instead of "8" '9' has been written. Now the date changes at midnight. The arrival is shown at 11-55 P.M. Therefore, one could not make a mistake in mentioning the number of month. The mistake is also evident from the fact that while the previous entry is dated '31-8-78', the subsequent entry is dated '1-9-78'. This register was checked by the police-officer on September 10, 1978 and on the same day the police officer signed the entry.

(104) Rajesh Sharma (Public Witness 88) is a proprietor of Purnima Lodge, Chippitola, Agra. He deposes that the appellants had come to the Lodge and stayed there from September 3, 1978 to September 6, 1978 when they left at 10 A.M. He produced the register Exhibit Public Witness 78/C which is maintained by the Lodge in the ordinary course of business. At serial No. 48 there is an entry showing the arrival of Parveen Kumar on September 3, 1978 at 12 P.M. Room No. 7 was allotted for two male persons. They left on September 6, 1978 at 10 A.M. The whole of this entry, except the time of arrival and the date and time of departure, is stated to

be in the handwriting of Billa who posed as Pawan Kumar. The entry is in English it may at this stage be noticed that writing of Billa is indeed very peculiar since he writes indistinctly at about 45 degree slant.

(105) The witness deposes that he had charged Rs. 141- as advance from Billa alias Pawan Kumar and had issued a receipt from his bill book. He produced the carbon counterfoil Exhibit PW88/C. This counterfoil is from bill book Exhibit Public Witness 88/A. It mentions the register number as "48" and the room No. 7 allotted to them. When the appellants left the Lodge on September 6, 1978 they were charged Rs. 28.00 and a receipt from bill book Exhibit Public Witness 88/B was issued. The counterfoil of this bill book is Exhibit Public Witness 88/E. In this the room number is mentioned as '7' and the serial number of the register as '48' It also mentions the advance receipt number 16' by which Rs. 14.00 had been taken as advance. They were charged at the rate of Rs. 14.00 per day and the total charges came to Rs. 42.00 . After deducting the advance of Rs. 14.00 , they were charged Rs. 28.00 . Now in this receipt the name of the lodger is shown as 'Parveen Kumar' and not as 'Pawan Kumar'. The witness explains that at the time of leaving the Lodge, Billa had mentioned his name as Parveen Kumar and the witness had, therefore, issued the receipt in the name of Parveen Kumar. We may at this stage also record that while we were trying to decipher the name from the register, we were not sure whether it was Pawan Kumar or Parveen Kumar, and it was with great difficulty that we concluded that it is Pawan Kumar. It may now be recalled that when the appellants were arrested by the Delhi Police and their persons were searched, original receipt Exhibit Public Witness 88/D was recovered from the possession of Billa. And its counterfoil is Exhibit Public Witness 88/E.

(106) Now Billa in. his statement under section 313 of the Code of Criminal Procedure deposes that the entry in question on register Exhibit Public Witness 78/C is in his handwriting. However, he says that he was forced to make the entry in the register by the Investigating Officer at New Kotwali, Delhi. We have seen the register. It shows regular entries till September 13, 1978 when it was seized by the police. Serial No. 95 is the last entry in this register. How could Billa have been forced to make the entry at serial No. 48 ? We are satisfied that the entry in question was duly made by Billa on the date and time it purports to have been made.

(107) Mahesh (Public Witness 23) sells ice-cream at Budha Jayanti Park. Ranga had led the police to Budha Jayanti Park and had pointed out this witness and Susheel Kumar (Public Witness 24). Mahesh deposes that on 26th August at about 7 P.M. Ranga had bought one ice-cream and took it to the car parked there. After some time Ranga again came back and bought another ice-cream. The witness left the place at about 7-30 P.M. and till then the car had not left.

(108) Susheel Kumar (Public Witness 24) was in charge of the Car Parking stand at Budha Jayanti Park and also used to sell campa cola etc. He had charged 50 P. as the parking fee from Ranga and had given a coupon to him. The witness had noticed a boy and girl sitting in a car when he issued the coupon. This witness produced counterfoils of the coupon and produced the coupon on which the number 8930 was written in ink. He states that he had given the bundle of counterfoils of coupons to the police when they came there. We cannot rely on this witness as regards the counterfoils produced by him since we find that no other counterfoils contains the number of any vehicle.

(109) Now, viscera of Sanjay was analysed. Milk product was found present. It shows that Sanjay had taken some milk product shortly before he was killed. Capt. Chopra (Public Witness 1), father of the deceased, deposes that the deceased had left the house at about 6-15 P.M. The time of death is about 9.30 P.M. There is nothing on record to show that before leaving the house they had taken any milk product. In these circumstances the presence of milk product in the viscera of Sanjay strongly corroborates the sale of two icecreams to Ranga and Sanjay eating the same. (We are not considering at the moment the appellants confessions that Sanjay had been given ice-cream by them at Budha Jayanti Park.)

(110) At Agra Billa approached Dr. Avdesh Singh Shanna (PW 14) on September 4, 1978 to get the stitches removed. Dr. Sharma tells us that Billa had come to him between 1-30 and 1.45 P.M. He had given his name as 'Ram Lal. When the doctor enquired about the place from where Billa had got his wound stitched he

informed the doctor that he had got it stitched from some hospital. Dr. Sharma removed the stitches and dressed his wound. As the doctor and compounder went to another room for cleaning their hands, Billa left the place without making any payment to the doctor. The doctor tells us that it was on September 14, 1978 at about 9 A.M. that Billa had come to his clinic in the company of Delhi Police.

(111) Billa, in his statement recorded under section 313 of the Code of Criminal Procedure, was questioned about it. Question No. 34 reads as under :

"Q.34. It is in evidence against you that on 4-9-1978 between' 1.30 and 1-45 P.M. you went to Public Witness 14 Dr. Avdesh Singh Sharma in his clinic at Chippitola, Agra and gave your name as Ram Lal to him.

"WHEN the witness enquired from you as to from where you had got your wound stitched, you informed him that you had got the wound stitched from some hospital and the witness removed your stitches and dressed your wound. What have you to say?

A. On 5-9-1978 I had gone to a doctor at Agra and got my stitches on the wound removed. But I do not remember if Dr. Avdesh Singh Shanna removed my stitches or by some other doctor. I cannot tell the location of the clinic of that doctor from whom I got my stitches removed." It is obvious from the answer that Billa does not deny getting stitches on the wound removed from this doctor, and posing as Ram Lal.

(112) It was on September 13, 1978 that the appellants and the police party headed by Inspector R. P. Kochhar went to Agra. According to the prosecution, Billa led to house No. 11-A/14/G/5-A-1, Ram Nagar, Agra, and after obtaining key Exhibit P45, which was recovered from him when he was arrested at Delhi, opened the lock and got sword (Exhibit P22), which was wrapped in mat (Exhibit P35), recovered. During the examination of Billa accused, Court had put question No. 72 to him about this recovery. Billa states that he did go with the police party to Agra but he did not supply the key; that key was supplied by someone; after opening the door the Investigating Officer asked him about the sword ; he started looking for the sword and on the pointing out of the Investigating Officer he took out a mat from the parchhati and out of the mat took out and handed over the sword (Exhibit P22).

(113) The recovery of sword is supported by Chander Parkash Avasthi (Public Witness 66) who is working as Chemist in charge in the Directorate of Marketing and Inspection, Agra, Staya Pal Singh (Public Witness 67) and Inspector Vidya Sagar (Public Witness 93). We see no reason to disbelieve these witnesses. Indeed, the learned counsel for the appellants, did not even assail the recovery of the sword.

(114) Billa stated in his statement under section' 313 of the Code of Criminal Procedure that the Bombay police was in search of him as they had falsely involved him in a number of cases. The search became intense after he had joined Ranga. They decided to shift their residence and joined one Jugal Kishore. They asked Jugal Kishore to get them a room in the area of Church Gate, Bombay. After one or two days Jugal Kishore showed his inability to do so and offered to get them a room in a hotel. The appellants declined to hire a room there. The appellants thereafter approached one Bindra who owned a number of flats. He offered to let out a room at Rs. 500 per mensem. Billa agreed to rent the flat and paid the advance rent. After some time Bindra told Ranga appellant that Bombay police had already searched his premises and were out to arrest him. Bindra ultimately suggested that the appellant should not hire a room in that locality. Thereafter the appellants and Jugal Kishore decided to shift to Delhi. Jugal Kishore promised to get them a place to live in Delhi. They left Bombay on the night of 14th August, 1978 for Surat in a taxi. They reached Surat at 6 A.M. On the following morning they boarded a bus for Ahmedabad and reached Ahmedabad at 2 P.M. They took a train and left for Panipat where Ranga's parents were staying. On the way they came to know that Bombay police was after them. The elder brother of Ranga suggested that they should not stay in his house at Panipat. After Ranga got the Rakhi tied from his sister in Panipat they returned to Delhi. They stayed at the house of Jugal Kishore up to August 25, 1978. Billa and Jugal Kishore left for Bombay on August 25, 1978 by train and reached Bombay on the afternoon of August 26, 1978. Noticing a number of police officers at Bombay Central, BiUa

suspected trouble and he along with Jugal Kishore managed to come out of the railway station. Billa thereafter stayed in the room of Ranga for two days. He then thought of stealing a car or a taxi. On the night of August 28, 1978 he came to Agnipara for stealing a vehicle. He "selected one of the taxis parked in that area for stealing. As soon as I managed to open the door and sat in driver's seat, three/four persons surrounded me and questioned me as to how and under what circumstances he had sat in the taxi. After some altercation those persons dragged me out of the taxi and one of them gave me 'Kamani' blow on my forehead, as a result of which I started bleeding. I immediately took out a knife from my pocket and threatened them with dire consequences. On seeing the knife all the four persons ran away from the place and started raising alarm. However, I managed to escape from there. After hiring a taxi directed the driver of the taxi that he should take me to Agnipara Police Station as I was being followed by 3/4 Gundas." In this manner he succeeded in escaping and got his head injury stitched at the clinic of a doctor at Paras Road.

(115) Billa goes on, to say that "on the evening of August 29, 1978 I hired a taxi and went to Taj Mahal Hotel, Gateway of India, and started searching for lifting another taxi. After some time I succeeded in stealing a taxi and came to Guru Nanak Nagar." He wanted to go to his residence at Shivaji Nagar, Chamboor, but sensed trouble. He asked one Luis, a mechanic, to go to his house. He dropped Luis at some distance from his room and watched him as he went towards the room. As soon as Luis reached there, he was caught hold of by some police-officers. On seeing this, Billa managed to escape from there in the taxi and went towards Colaba side and abandoned the taxi in a lonely place "as I was afraid that after the arrest of Luis he might disclose the number of the taxi as well as my identity to the police. In fact I abandoned the taxi near Mahalaxmi station at about 4 A.M." According to Billa, he left Bombay on the morning of August 31, 1978 and after bribing two plain clothed railway police officers, who suspected him of carrying contraband tape recorder, succeeded in reaching Delhi on September 1, 1978 at about noon. He went to the house of Jugal Kishore and thereafter contacted Ranga. Ranga showed him some newspapers in which Billa's photo had appeared. He read the news item about the appellants being wanted by the police. Both of them decided that it was not safe for them to stay at Delhi. Ranga also informed him that Jugal Kishore had already been arrested by the Bombay Police, and that he had heard in the news bulletin of All India Radio that one of the members of the gang had already been arrested and the Delhi police will very soon apprehend Billa and Ranga. "They stayed at the house of Kewal Krishan in Moti Nagar, where Ranga had already shifted, till September 4, 1978. Thereafter the appellants left Agra without informing Kewal Krishan of their destination. At Agra they went to a dharamsala in Raja Mandi and started looking for vacant room. They came to know that a room was lying vacant in Sita Nagar. They were taken to Ram Dutt Joshi who let out the room to them at the rate of 701- per mensem. Billa got his stitches removed from a doctor whose clinic and name he did not remember. On the night of September 8, 1978 the appellants thought of going to Madras and for that purpose bearded the Kalka Mail which was scheduled for Delhi. However, while trying to enter a compartment reserved for military personnel they got into an altercation with military officers who apprehended them. They were given a beating by the military officers and handed over to the police at Delhi Main Railway Station.

(116) Ranga in' his statement under section 313 of the Coda of Criminal Procedure had this to say. He had shifted to Bombay in 1968. After learning driving he started driving a truck owned by the son of his maternal uncle. However, he met with an accident and was not, therefore, allowed to drive. Thereafter, he "joined service as a driver with Yusuf Patel, notorious smuggler of Bombay. I remained bids driver for two years. After Yusuf Patel was arrested under Misa I left his service and again started driving the truck of my cousin brother". After earning a sufficient amount he purchased a small house in Guru Nanak Nagar Ghat Ke Upar, Bombay. Later on, be purchased a taxi and started plying it. In 1977 his taxi met with an accident and so he started driving the taxi of another person. Within two months his taxi was repaired and he started plying his taxi once more. "In my taxi I used to transport illicit liquor from the place to another, as during this period I had come in contract with the

bootleggers..... After coming into contact with the bootleggers of Bombay, I started manufacturing illicit liquor in GuruNanak Nagar. I earned sufficient amount from this trade." In the third week of July, 1978, his driver Sham Singh brought Billa and introduced him as Bengali. In those days Bombay police had

published posters with the photo of Billa for his arrest. In August, 1978 Sham Singh was arrested by the Bombay police. The appellants decided to go to Sham Singh's house to find out the cause of his arrest. While Billa remained in the taxi, Ranga went towards the house. As he approached the house, Billa shouted "Ranga come back and sit in the taxi". In the meantime, some plain clothed policemen recognised Billa and started raising alarm "Billa, Billa". However, the appellants succeeded in speeding away the taxi. At that time Billa "disclosed his true identity to Ranga. When they tried to come back, Billa suggested to him that they should immediately shift their residence since Sham Singh may not disclose his identity. Ranga suggested to him that they should go to Guru Nanak Nagar so that he could supervise his business. As they approached the place, they noticed that the police had surrounded it. Ranga made enquiries and came to know that Sham Singh had disclosed to the police that Billa was in fact moving with Ranga. Ranga informed about it to Billa. Now they decided that it was not safe to live in Bombay. They approached Jugal Kishore and asked him to arrange for a room.

(117) Ranga repeated the version of Billa of their leaving Bombay for Surat, going to Ahmedabad. catching a train, reaching Delhi etc.. and on August 25, 1978 Jugal Kishore and Billa leaving for Bombay. Ranga, however, goes on to say that on August 27 or 28, 1978 he read a news item about Chopra children having been kidnapped. In this connection the name of Billa was mentioned. However, after 2/3 days he noticed that his name was also being mentioned along with Billa regarding the disappearance of Chopra children. On September 1, 1978 when Billa came back from Bombay, he showed him the news papers. Thereafter, on one day they heard a broadcast on the All India Radio that Jugal Kishore, an accomplice of Billa. had been arrested. Thereafter they shifted to Agra on the night of September 8, 1978 when they boarded the Kalka Mail train and tried to enter a military compartment they were apprehended.

(118) The sum up, the following facts stand proved:

(1)The appellants were wanted by police of Bombay for various offences and so they left Bombay and came to Delhi on 16th August, 1978.

(2)They never gave their correct names and addresses at the places they stayed and even kept on changing their assumed names and false addresses.

(3)Billa was in the habit of stealing cars.

(4)They got various car number plates painted with fictitious registration numbers.

(5)They purchased two kirpans and got them sharpened.

(6)Ashok Sharma (Public Witness 40) lost his Fiat car bearing registration No. Dea 1221 on 19th August from Ashoka Hotel.

(7)The appellants hired one room of house No. B-314, Gali No. 3, Majlis Park, Delhi belonging to Sohan Lal (Public Witness 31) on 24th August and paid advance rent for two months.

(8)At about 6.15 P.M. on 26th August Sanjay and Geeta left their house at Dhaula Kuan for going to the All India Radio and thumbed a lift up to Gole Dak Khana.

(9)Between 6.30 and 6.40 P.M. Sanjay and Geeta were kidnapped by the appellants in the stolen car displaying registration number Hrk 8930.

(10)Sanjay and Geeta were seen struggling with, the appellants in the car and shouting for help.

(11)Sanjay received a bleeding injury on his shoulder in the car.

(12)At about 6.45 P.M. the appellants with the kidnapped children were seen going in the car towards Shankar Road.

(13)At about 7.30 P.M. Ranga bought three campa colas and two ice-cream after parking the car in the car parking area of Budha Jayanti Park, Upper Ridge Road.

(14)At about 9.30 P.M. Sanjay and Geeta were killed in the jungle of Upper Ridge Road at a place between Budha Jayanti Park and Shankar Road Upper Ridge Road roundabout.

(15)At 10.15 P.M. Billa, who had no head injury at the time of kidnapping the children, came with a head injury to Willingdon Hospital Along with Ranga in the car showing registration No. Dhi

280.

(16)The appellants gave false names and addresses and falsely stated that the injury was caused by robbers.

(17)At 11.15 P.M. the appellants left the hospital against medical advice after getting the injury stitched and dressed.

(18)The appellants duped Sub-Inspector Ram Chander by leading him to a non-existing place of robbery and promising to report to him the following morning.

(19)On the morning of 27th August Sohan Lal questioned Billa about the head injury and he was told that it was received from the fan of the car.

(20)Ranga parked the car showing registration No. Dhd 7034 on the night of 30th August in Gali No. 10. Majlis Park.

(21)On the morning of 31st August the car was seized by the police and the appellants suddenly left their house in Majlis Park though they had paid two months advance rent.

(22)The appellants went to Agra, lived at different places under assumed names.

(23)Ranga was found to have kirpan Exhibit P 21 while Billa got sword Exhibit P22 recovered.

(24)Injuries found on the dead body of Sanjay were the result of two sharp edged weapons and, according to medical opinion, these were possible by Exhibits P21 and P22. Injuries found on the body of Geeta were opined to be possible by sword Exhibit P22.

(25)Viscera of Sanjay was found to contain milk products which suggests that he had eaten ice-cream shortly before his death.

(26)The brassiere and panties worn by Geeta were found missing when her dead body found.

(27)The appellants do not tell us what they did with Sanjay and Geeta.

(28)All their explanations have been found false.

(119) We will now deal with the confessions made by the appellants.

(120) Both the appellants made confessions. These confessions were duly recorded by Mr. P. K. Dham, Metropolitan Magistrate. However, the confessions were retracted during the trial. It is contended before us

that these confessions are neither voluntary nor true and so should not be taken into consideration. It is also contended that each appellant has made an exculpatory statement as regards the actual murder and blamed the other for the same.

(121) We will first take note of some relevant dates proceeding the confessions in order to examine whether the confession are voluntary or not.

(122) The appellants were arrested on September 9, 1978. They were remanded to police custody till 19th September. On 19th September they were produced before the Chief Metropolitan Magistrate. An application (Exhibit Ph 79/P-1) was moved by the Investigating Officer slating that Ranga was desirous of making a voluntary statement disclosing true facts of the case and, therefore, his statement be recorded under section 164 of the Code of Criminal Procedure. The Chief Metropolitan Magistrate marked the application to Mr. P. K Dham, Metropolitan Magistrate, for recording his statement. When Ranga was produced before Mr. Dham, he stated that he wanted to make a confessional statement. The Magistrate warned him that he was not legally bound to make any statement and if he made one he could be convicted and sentenced thereupon and could even suffer death sentence on the basis of the same. As the accused insisted upon making his statement he was sent to judicial custody till 21st September to think over the matter (Exhibit Public Witness 79/P-4).

(123) On 21st September Ranga was produced before Mr. Dham at 10.00 A.M. from judicial custody. He still insisted on making a statement. The Magistrate got Ranga's handcuffs removed. The jail guards were sent out. The curtains on all the windows of the Court room were drawn and the Magistrate satisfied himself that no police official was in sight or within hearing. The Magistrate only allowed his Reader and his Stenographer to remain in the court room after getting the doors of the court room as well as his chamber closed and bolted from inside. Once more the Magistrate explained to Ranga that he was not bound to make a confession and warned him that if he did make one it could be used against him as evidence whereupon he could be convicted and even suffer death penalty. When Ranga was again questioned about his willingness to make the statement, Ranga insisted on doing so. Ranga was given more time to think over the matter and was asked to take a chair near the dais. After about an hour the Magistrate once again questioned Ranga whether he was willing to make the statement. Since Ranga still insisted to make the statement, usual questions were put to him by Mr. Dham. The Magistrate satisfied himself that Ranga knew he was before a Metropolitan Magistrate; that he was not bound to make statement; that his statement could be used against him during the trial; and that he could be sentenced to death on the basis of the statement. Ranga assured the Magistrate that nobody had put pressure on him to make a statement nor anyone had assured or promised him that on his making a statement he may be forgiven or made an approver or his sentence reduced. Ranga also stated that neither the police had threatened him to make the statement nor anyone in jail had done so. After administering all these warnings and asking detailed questions and assuring himself that Ranga was out to make a voluntary statement, the Magistrate started recording the confessional statement of Ranga at 11.45 A.M. (Exhibit Public Witness 79/P 7 A to P7G is the record).

(124) On 21st September statement of Ranga could not be completely recorded and at 4.20 P.M. the Magistrate stopped recording the statement, gave the usual memorandum and certificate at the end of the statement, and sent Ranga back to judicial Custody with the directions that he be produced on the following day.

(125) On 22nd September Ranga was again produced before the Magistrate from judicial custody. All the precautions taken by the Magistrate on the previous days were taken. Once more Ranga was warned about the consequences of his statement, usual questions were put and answers were recorded. After assuring himself that Ranga was still willing to make further statement the Magistrate recorded the remaining part of his statement. The necessary memorandum/certificate was duly given by the Magistrate (Exhibit Public Witness 79/P 12 to P 65). It may be noticed that the full record of confessional statement is in the handwriting of the Magistrate.

(126) It was on 20th November that Ranga retracted his statement.

(127) On 19th September while Ranga has been remanded to judicial custody, Billa was remanded to police custody till 23rd September. On 23rd September he was remanded to judicial custody till 7th October. However, on 6th October custody of Billa was handed over to Bombay police by the Chief Metropolitan Magistrate with a direction to return Billa to Delhi on 16th October. The Bombay police duly produced Billa before the Chief Metropolitan Magistrate Delhi, on 16th October and the Magistrate sent him to judicial custody till 17th October.

(128) On 17th October Billa made an application' (Exhibit Pw 79/(Q) to the Magistrate requesting the Magistrate to record his statement. The Magistrate directed that Billa be produced before Mr. P. K. Dham, Metropolitan Magistrate. Billa was therefore produced before Mr. Dham. Billa was warned that he was not bound to make a statement and that if he did so he could be convicted and punished on the basis of his statement. He was sent back to judicial custody till 19th October to re-think over the matter and to decide whether he should make a statement (Exhibit Public Witness 79/Q3). On 19th October at about 11.15 A.M. the custody warrant of Billa was produced before Mr. Dham with a request that endorsement be made to produce Billa before the court without fetters. The Magistrate duly made the endorsement and directed the production of Billa without fetters (Exhibit Public Witness 79/Q 4).

(129) At 12.45 P.M. Billa was produced from judicial lockup before Mr. Dham. Mr. Dham got Billa's handcuffs removed. sent out the jail guards, got curtains on all the windows of the court room drawn and satisfied himself that no police officer or any person likely to influence Billa was in sight or inside the court or within hearing. Except his stenographer and the ahlmad and Billa, nobody remained in the room and the doors of the court room and chamber were got closed and bolter from inside. Once more Billa was warned that he was not bound to make a statement and if he did so it could be used against him and he can be convicted thereupon and even suffer death punishment. He was given an hour more to rethink over the matter (Exhibit Pw 79/Q 5).

(130) At 2.15 P.M. Billa was again questioned by the Magistrate. Billa still wanted to make a statement. Questions, similar to these put to Ranga, were put to Billa and his answers were duly recorded. After satisfying himself that Billa realised that he was making a statement before a Magistrate, was not bound to make a statement; had not been threatened, pressurised, persuaded or duped to make a statement; and that he was making a voluntary statement. the Magistrate started recording his statement. Billa's statement was recorded till 4.15 P.M. by the Magistrate in his own hand writing. After reading over the statement to Billa, the required certificate was given at the foot of it; Billa was remanded to judicial custody and directed to be produced on the following day (Exhibit Pw 79/Q 19 to Q 73).

(131) On 20th October Billa was again produced before the Magistrate at 10.40 A.M. from judicial custody. His handcuffs were got removed. All the precautions taken on the previous day. including warning the accused and once again asking him questions. were taken once more. He was given another hour to think over the matter. The Magistrate recorded his statement till 3.05 P.M. The usual certificate was given at the foot of the statement.

(132) It was on 27th November that Billa retracted his confession.

(133) It is contended by the learned counsel for the appellants that the appellants had been given beating every day by police while in police custody and they had been threatened and tutored to make the statements. Bachan Singh (DW 3), Assistant Superintendent Central Jail, New Delhi, is examined to show that both the appellants were being kept separately in solitary cells and special guard had been posted. It is thus argued that the confessions were not voluntary.

(134) There is not an iota of evidence on record to show that the appellants had been given beatings by the police or anyone else. The Supreme Court in the case of Nand Kumar and others v. State of Rajasthan, held that keeping the accused in solitary cell does not effect the confession made by him. The Metropolitan Magistrate, Mr. Dham had given the appellants sufficiently long time to think over the matter. To begin with, 48 hours were given'. During this period the appellants were kept in judicial custody. After they were produced before the Magistrate, more time was given. The Magistrate repeatedly warned the appellants that their statements could be used against them and they could even be awarded death penalty. The appellants were making such long statement that these could not be recorded on one day. On the subsequent days the Magistrate had again warned them. It may also be noticed that the appellants were produced before the Additional Sessions Judge on 25th October to stand their trial. Thereafter they were produced before the court on 6th, 10th, 15th and 20th November. It was only on the last mentioned date that Ranga decided to move an application for retracting his confession. We have perused this application. There is no allegation against the police of their beating him

(135) Billa also moved an application before the trial court retracting his confession. It is dated 27th November. It is in Hindi and is on the record of the trial court. He states that he was absconding from Bombay and had taken shelter in Delhi. Within a few days they were thinking of committing robberies but they could not succeed. Thereafter they decided to loot some goldsmiths' shops. Before they could do so, they read in the newspaper that the murder of Sanjay and Geeta was being foisted on them. They were, therefore, very afraid of the police especially when a reward had been announced for their arrest. They therefore escaped to Agra. However, after their apprehension and arrest by Delhi police he agreed to make any statement which the police would desire. Therefore, he made the statement confessing the guilt.

(136) Like Ranga, no allegation has been made by Billa that any beating had been given to him by the police at any stage. We cannot believe that Billa would have kept quiet even after the Metropolitan Magistrate had sent him to judicial custody, or after he had been produced before the trial court. Evidently, the allegations of police beating etc. are an after thought.

(137) It is true that the appellants had been kept in separate cells in Ward No. 11. However, there were other persons also in the adjoining cells. Bachan Singh explains that Billa was kept in a separate cell under Para 569A of the Punjab Jail Manual as applicable to Delhi. He also admitted that the appellants had been kept in fetters. For some time special guards were posted to ensure that they do not escape.

(138) Bachan Singh explains that Billa had attempted to escape from the jail by cutting the iron grating of cell and his fetters. Billa had in fact gone on hunger strike after his bid to escape had failed. The necessity of keeping the appellants under fetters arose for reasons of security. Bachan Singh also explains that the previous history of Billa shows that he once succeeded in escaping from custody. Since both the appellants were considered dangerous and having tendency to escape, both were kept separately and under fetters.

(139) In view of the evidence of Bachan Singh (DW 3) it is evident that the necessity of keeping the appellants in separate cells in fetters and under special guards arose to ensure that they do not escape. These cannot, therefore, be taken as amounting to any coercion or threat affecting the voluntary nature of the confessions made by the appellants.

(140) Still another objection, raised by the learned counsel for the appellants is that though detailed warnings were given to the appellants by the Magistrate, he failed to inform the appellants that they would not be handed back to police in case they refused to make the statement. We do not find any substance in this contention in the circumstances of this case. It may be recalled that Billa had already been remanded to judicial custody on 23rd September and so was no more in the custody of the Delhi Police. When he was produced by Bombay police on 16th October before the Chief Metropolitan Magistrate, the latter had again sent him to judicial custody. On 17th October, he knew that he was being produced from judicial custody. On that day he made an application for recording his confession. In these circumstances there was no occasion for

informing him that he would not be sent back to police custody. Ranga had also been sent to judicial custody on 19th September and was produced from judicial custody till 23rd September when his statement was completely recorded. The Magistrate had given repeated warnings to the appellants and put a number of questions. In these circumstances the failure of the Magistrate to inform the appellants that they would not be handed over to the police in case they refused to make the statement, would not affect the voluntary nature of the statement. We must, however, clarify that it is better if the Magistrates recording the confessions while warning and questioning the accused, also inform them that they would not be handed over to police custody in case they refused to make statements.

(141) We will take up the confession of Ranga first. It runs into about 30 pages of the cyclostyled paper book. We will, therefore, be extracting only relevant portions wherever necessary. The statement can broadly be divided into :

- (1) His antecedents including his association with Billa in Bombay,
- (2) the crimes committed by them in Bombay,
- (3) their activities in Delhi before kidnapping Sanjay and Geeta,
- (4) kidnapping, rape and murder of Sanjay and Geeta, and (5) their movements at Agra till their arrest.

(142) Ranga tells us that he started his career as a truck driver and later on took to plying taxis in Bombay. He came in touch with one Raj Kumar who was dealing in illicit liquor. Raj Kumar appointed Ranga as the manager of his business. Then he came in contact with one Sham Singh at whose instigation Ranga started his own business of illicit liquor. Sham Singh introduced him to Bengali (another alias of Billa) who was said to own a taxi. Ranga did not know at that time that Bengali was, in fact, Billa whose name was well-known in the under world.

(143) One day Bengali took Ranga to Juhu in the taxi at about 12 noon. There Bengali changed the number plates of his taxi. When questioned Bengali told Ranga that before committing a mischief number plate must be changed to escape apprehension. Thereafter, they continued roaming till 2.30 P.M. and stopped the taxi in front of an English School. Bengali got down and asked Ranga to give a round and come back to that place. When Ranga returned to that place in the taxi, Bengali lifted a boy and made him sit in the taxi. Ranga was asked to drive away the taxi. At Bengali's insistence Ranga took the taxi to Vihar Lake. Thereafter he replaced the previous number plate. When questioned Bengali told Ranga that they would ask a ransom of Rs. 3 lacs from the child's father. They proceeded to Coper Ghat. Then Bengali handed over the custody of the child to Ranga asking him to keep the boy at his house. After making the child asleep, Bengali left the place. Ranga was told that if the child's father was not willing to give Rs. 50,000 the child would be killed. For two days the child was kept by Ranga who got suspicious that the child was likely to be killed and so he took the child in his taxi and dropped him at the child's house. The next day Bengali came to know about it and he abused Ranga. Billa told about it to Sham Singh who also reprimanded Ranga. Ranga and Sham Singh took liquor. After taking liquor Sham Singh questioned Ranga as to why he had disobeyed the directions of Bengali and released the child. At that time the true identity of Billa was disclosed to Ranga. Sham Singh told him that two Arabs had recently been murdered by him in the company of Billa. Sham Singh advised Ranga not to disclose to Billa about his knowledge of Billa having murdered the two Arabs.

(144) Ranga stayed at the house of Billa for a night because Ranga was afraid that the freed child might not bring the police to his house. At Billa's house Ranga saw an imported tape-recorder and questioned Billa about it. Billa replied that it was a smuggled one. Ranga retorted that it belonged to the Arabs whom Billa and Sham Singh had killed, and that Sham Singh had told him about it. Billa got perturbed. Next morning Billa and Ranga rushed to the house of Shama since Billa wanted to ensure that Shama would not go on spilling the beans. At Shama's house, Shama's wife told them that the police had arrested him the previous night. Now

Billa got frightened thinking that Shama might confess and may also disclose about the kidnapping of the child by Billa and Ranga. Ranga also got frightened. They came back to Billa's house, kept all their valuables in the taxi and left the house. They were afraid to go to Ranga's house also because of the fear of police.

(145) They came to one Tasna restaurant. Here they met one Jugal alias Bhedoo. Jugal was not willing to keep their articles. So they went to Coper Ghat and placed their goods in a room. They slept that night in the taxi itself. In the morning they again came back to Jugal and asked him to find a room for them. Jugal was not told the real name of Billa and he was introduced as Anwar. Jugal suggested them to move to Delhi. They went to Coper Ghat to collect their goods and found large number of police-men roaming there. After collecting their goods, they drove to Surat reaching Surat on August 15, 1978. After leaving the taxi near a cinema they hired a bus and reached Ahmedabad. They took a train for Delhi and reached Delhi on 16th August.

(146) At Delhi they first went to Gautam Lodge at Fatehpuri and hired room No. 5, under assumed names. On 17th August they roamed about in Delhi. On the same day they purchased a pair of car number plates from Karol Bagh and got fictitious registration numbers painted on them. They went to Moti Nagar where they found a parked car. Billa and Jugal unlocked the vehicle and brought it on the road. After driving 3 to 4 Kms., it was abandoned since it was discovered that the car was not sound.

(147) On 18th August Ranga went to Panipat and after getting the Rakhi tied from his sister came back to Delhi. On 19th August they started roaming in Connaught Place. At noon they noticed a person coming in a Fiat Car Dhe 828. As he came out of the car and walked away, Billa and Jugal got into the car. Ranga was asked to bring the bag containing the spanners and meet them at the place where they had bought the car number plates. After 1-1/2 hours Ranga reached Karol Bagh with the tools and met Billa and Jugal. The number plates of this car were replaced by number plates Dea 3548. They tested the car to find out whether it was really in a sound condition. They found that the car did not have a good pick-up. Then they went to Ashoka Hotel to pick up a really good car. After roaming for some time Billa stopped the car "near a Fiat car DEA/1221 or 2112". Billa unlocked this car, started it and followed Ranga and Jugal who were in the previously stolen car. Jugal stopped the car in front of his house in Moti Nagar. The number plate of the newly stolen car was changed to Dea 3548. The original number plates of the first car were put back. After exchanging the grills of these two cars, the first car was abandoned near the Nullah in Moti Nagar and they returned to the hotel in the new car.

(148) They kept on roaming on 20th, 21st and 22nd August. On 23rd August Billa asked Jugal to point out a person of sound financial condition so that they could extract money from him. Jugal pointed out his uncle. Billa told him that the plan was to kill all the persons of the house and so he should point out some other house. Jugal retorted that he did not care for his uncle and his family and all could be conveniently killed. Jugal gave the full sketch of his uncle's house. Leaving Jugal in the car with instructions to keep a watch, Billa and Ranga went to that House. Billa was armed with a sword. They searched the house and could recover only Rs. 100 or Rs. 150 from a shirt. They also picked up 2/3 shirts from that house. When they came back they found that Jugal had disappeared with the car. In the morning they found Jugal Along with one Kewal. Jugal was questioned and he explained that he had to leave the place since chowkidar had come there. Jugal told them that he was going to Bombay because his nephew had died. Billa suggested that they would all go to Bombay since they could not do any job here. Billa suggested that they should go by air,

(149) On way to the airport Billa stopped the car after removing the handles of the doors. He suggested that now Jugal and Kewal be done away with. Billa took out a knife. Jugal and Kewal both started weeping. Ranga questioned Billa as to why he was killing them. Billa stated that in case they were allowed to go, they were likely to put them (Billa and Ranga) into trouble. Ranga pleaded for them. Billa agreed to spare them on the condition that each of them would kill a man so that they would not dare to put Billa and Ranga into trouble. They came to Budha Jayanti Park with the idea of getting two persons murdered by Jugal and Kewal. It was now evening. They saw a man and a lady sitting in the garden. Billa directed that they should, be looted, and Jugal and Kewal should kill them thereafter. They were surrounded and Billa caught hold of that man

whereupon the woman started weeping. Ranga and Kewal slipped away and came out of the park. Jugal also slipped away. Billa came out and told Ranga and Kewal that Jugal had slipped away. Thereafter they came back in the car and shifted to Mini Guest House at Paharganj. That night even Kewal slipped away on the pretext of buying a betel-leaf. Ranga and Billa now got frightened that Kewal might disclose their hide out. They returned to the hotel and after taking away the luggage left the hotel. Once more number plates of the car were replaced to escape detection. New number plates read Hrk 8930. They passed that night in the car.

(150) The next morning they succeeded in hiring a room in Majlis Park. The rent was Rs, 160 per mensem and they paid two months advance rent.

(151) The following day was Janam Ashtami and they continued roaming in Connaught Place. Billa planned that they would offer a lift to a man and a woman and after tying them up they would be taken to their house which would be ransacked. However, they could not locate any person.

(152) Next morning, i.e. 26th August, they kept roaming in the car without getting a prey. At 6.20 P.M. that day as they came to Gole Dak Khana, a boy and a girl (the deceased) asked for a lift. Since they were in search of a prey they had already loosened the inner handles of the doors of the car. They noticed that the boy and the girl belonged to some rich family. After giving a round Billa stopped the car near them and asked them where they wanted to go. They talked in English. Thereafter they sat on the rear seat of the car. The girl sat behind Billa, who was driving, while the boy sat behind Ranga. As the rear door was closed the inner handle fell down. They took the car towards Patel Chowk. From there the car was turned back to Gole Dak Khana Billa pulled out the handle from the other rear right door. Both the handles were thereafter kept by Billa. The boy and the girl questioned Billa in English asking him where he was taking them. Billa started abusing them and asking them to shut up. Both of them started quarrelling. The girl caught hold of Billa's hair and the boy gave several kicks to Ranga. In order to frighten the boy Ranga took out a small kirpan and the boy tried to snatch away the kirpan as a result of which the boy got 3 or 4 cuts including an injury on his chest. By this time the car was encircling Gole Dak Khana. The boy and the girl were raising a hue and cry but all the four window panes were up. During this struggle the victims succeeded in changing the gears to neutral and the car stopped for about one or two minutes. However, Billa managed to take out the car from there. The car started taking the roads leading to Budha garden. At one stage the car was followed by a scooterist who was a Sardar. Ranga told Billa that perhaps the Sardar was following them and so they should drop the children and run away. Billa refused. They succeeded in taking the road leading to Budha garden. They found that there was no traffic. Ranga again suggested to Billa to drop the children but Billa again refused. They parked the car in the Budha garden. Ranga paid eight annas for parking charges to the park attendant. The boy asked for water but Ranga told him that he could get him campa cola only. Ranga bought three campa cola bottles. The boy refused to take campa cola. The girl suggested that the boy should be given ice-cream since he was fond of it. Ranga now bought one ice-cream, and gave it to the boy. One more ice-cream was bought and given to the boy.

(153) At this stage Billa asked Ranga to change the number plate of the car. Ranga suggested that children be dropped first otherwise they would note down the number. With his hands Billa gestured that the children had to be killed because they were live snakes. Billa changed the number plate while Ranga kept sitting in the car. Now the number plates read Dhi 280. The children were questioned about their father. They replied that their father was a Captain in the Navy. Ranga told Billa that it was not possible to ransack their house since their father might shoot them down and in any case the booty will not be much.

(154) The girl questioned Billa as to why they had been detained for such a long time. Billa, who was waiting for the darkness of the night, told them that they were expecting a jeweller from Palam airport at 8.30 P.M. and the plan was that the girl would ask for a lift in that car, the moment that car stopped its way will be blocked by their car, the jeweller would be looted, and thereafter they would be set free. After some time a chowkidar came there asking them to take away the car. Billa tipped him and he went away. Ranga again suggested to Billa to set the children free but Billa refused. After some time another person came there and

asked them to remove the car.

(155) Billa drove away from the parking area and now headed 'in the direction of the airport. After some time Billa turned the car back. At one place another ice-cream was bought. On Dhaula Kuan crossing, the children asked to be dropped. Ranga also asked Billa to drop them but Billa did not stop. They brought the car back to a place near Budha garden. They stopped the car on a kacha road. Billa now suggested to the girl that she was to request the coming car for a lift and in the mean- time the boy would be made to sit somewhere else.

(156) Billa and Ranga got down from the car. Billa asked Ranga to take out the kirpan (bigger sword three feet long) from 'he dickey and place the same at some distance and then come back. They had purchased the sword and a smaller kirpan earlier from Chandni Chowk and had got them sharpened from Nai Sarak. Ranga again asked Billa to let the children go. Billa refused and directed Ranga to do what he was told to do.

(157) What happened thereafter is best described in the words of Ranga himself. He states thus:

"I returned after placing the kirpan at a distance of 100 yards from the vehicle. When I returned, Billa asked me to make the boy sit at a distance. When I was taking the boy with me, Billa followed us. The boy was made to sit on the place where "the kirpan was lying. Billa asked him to lie down. The boy replied that he was comfortable and that there was no such need. He was sitting with a piece of cloth keeping on the injury on his chest, which I had given to him. Billa asked me as to where that (the sword) was. I replied that it was in the bush on the front. I took out and brought the sword. Billa asked me that he may be done away with. I lifted the sword and aimed to hit. The boy was shivering and as such the sword-blow hit on the left arm. The boy started raising an alarm to the effect, "Mat Maro, Mat Maro, Kyon Martey Ho" (The boy raised an alarm to the effect, "Do not kill, Do not kill and why do you kill me"). Billa snatched away the sword from my hand and addressing me as 'Behande Khasman' stated that neither I knew anything to do nor I was capable of doing any thing. Saying this he started killing the boy. He went on striking wherever he could. He made the boy bleeding profusely. For 10 minutes Billa continued to kill the boy. I kept aloof thinking that he may not give a blow to me as well. In haste I left my Chappals over there. After throwing away the sword over there Billa went away. Billa questioned me as to what I was seeing and directed me to drag him away at some distance. I caught hold of the arms of the boy and placed him amongst the bushes. That was a lower level place. I broke some branches (of the bushes) and placed the same over him. Thereafter I wore my chappals and cleaned the kirpan with the help of grass. (?) and approached the car and kept the sword standing against the rear bumper of the car.

(At this stage the accused laughs and states) The girl was naked in the car and was raising a hue and cry but some of her voice was being heard outside. I approached the road and stood over there in order to see as to whether the voice was being heard over there or not. Billa was engaged in sexual intercourse with the girl on the back seat in the car itself. Billa was naked. All his clothes were lying 635 in the dickey outside the car whereas the clothes of the girl were lying on the back dash board inside the car. After 10/15 minutes I returned whereupon Billa came out. Billa told me that I should also do the same (sexual intercourse). I told him that she will give a kick and consequently I shall be flat. Billa again persisted that I should do. I told him that as I was tall, it was not possible to perform it inside. I suggested to him that in case the seat was taken outside, I would do it. The seat was taken out and was placed by the dickey. The girl was perspiring profusely when she was taken out. The girl slipped from the seat as the seat was having slope. 4/5 times she was made to lie on the seat. A lot of dust had fallen on her. I kept back. Billa questioned me as to whether I had done my job. I replied him in the affirmative. Billa asked me to let him do the sexual intercourse again. Billa again went for sexual intercourse. At that time I was putting on my clothes. The girl lifted the sword and struck it against Billa. Billa happened to place his hand on the sword, as a result thereof the sword struck slightly and he was saved. The sword had struck Billa on his forehead. The girl in its naked position ran towards the road. I ran and caught hold of her while she was naked. Billa aimed to kill her in her naked position itself. I suggested to him to let her wear the clothes. I told the girl that we had made her brother sit with the Khurana (?) (with the Gurkha ?) and that half an hour time had been given. I questioned the girl saying that in case he

sees her naked, what he will say ? She wore the Jhagula (coat) and I helped her in wearing the pants. I suggested to her that I should take her to her brother and that she should go away from there. I was taking her to that side towards which her brother was lying dead. I was on the right hand side of the girl. BiUa gave a signal to me and I got a little ahead. Billa struck the sword with full force against her neck and as a result thereof she was no more alive. She took a turn and fell down. Billa gave 5/7 more blows to her. She was raising alarm to the effect 'Hai, Hai'. I caught hold of her by one side and Billa caught hold of her by the other side and threw her away amongst the bushes. On return we started the car. Billa tied down a handkerchief on the portion where he was given a blow. There is a pump near the circle towards Karol Bagh. We made provision of water for the car and threw away 2/3 boxes of water on the back seat where there were slight stains of blood."

(158) Now Ranga drove the car. They wanted to go to a hospital to get Billa's injury bandaged. They decided that if they were questioned about the cause of the injury, Billa was to say that while he was walking near Bangla Saheb goondas beat him and took away his watch. Billa took off his watch and gave it to Ranga. Ranga made inquiries about a hospital from passersby. He was directed to Moti Bagh Dispensary. There they were told to go to Willingdon Hospital as it was a police case. Therefore, they came to Willingdon Hospital. After parking the car in the hospital, Billa and Ranga went inside the hospital. Billa gave his name as Vinod Kumar whereas Ranga gave his name as Harbhajan Singh. Billa's injury was stitched and bandaged. Billa was told to get himself admitted in the hospital. He was asked to lie down with other patients since no separate bed was available at that time. Billa told them that he wanted to go home and would come back for getting the stitches removed. Thereafter Sub-Inspector Ram Chander enquired about the facts from Billa in the hospital. Ranga and Billa gave their wrong addresses. When the Sub-Inspector questioned Ranga, he pretended to be the driver of a Seth and had happened to meet the injured on the road, and had brought to the hospital under the directions of the Seth. Seth was stated to be the owner of one Century Rayon Mills. He had told the Sub-Inspector that he came in car No. Dhi

280. Thereafter they had gone with the Sub-Inspector and the constable to inspect the scene of crime. After showing him the scene of crime they had dropped the Sub-Inspector at the police-station promising to come back at 10 in the morning for further enquiries. On their way home the underwear and brassiere of the girl were thrown away by Billa. One was thrown on a passing vehicle while the other was thrown in a Nullah.

(159) Next day they got the number plates repainted to read Hrf 5411 from a painter at Kingsway Camp. On the night of 27th August they went to a petrol pump, got the car tank filled up and slipped away without making any payment. At that time Billa was wearing a turban.

(160) On 28th August Billa left for Bombay from New Delhi Railway Station at about 4 O'clock. On August 29 and 30 Ranga kept roaming about. He happened to meet one Bhanwra on the road. Bhanwra suggested to him that he should leave Delhi as Manak Shah of the Bombay police Along with his guards had come to Delhi. Thereafter Ranga changed the number plate of the car because he suspected that Bhanwra might not have noted the number. The new number plate read Uhd 8034. That night he took the car to Gali No. 9. There he met two persons and thereafter he asked them where Gali No. 10 was to allay their suspicions. They were also told that he wanted to meet on" Anwar. Then he parked the car in Gali No. 10, Majlis Park.

(161) Next morning, i.e. August 31, 1978, Ranga noticed that the car was surrounded by the police and the public. He, therefore, left his house and came to railway station where Billa was expected. However, he could not meet Billa there but when he came back home he found Billa wailing. Billa was apprised of what had happened. The landlord happened to meet them. He told them that the police had traced the car in which the children had been killed.

(162) After staying for the night they left the place the following morning and came to Gupta Guest House. Here also they gave false names. Thereafter they left the Guest House for Agra in a bus. They carried the smaller kirpan in an attache while the sword was carried wrapped in a mat.

(163) At Agra they stayed at a hotel and thereafter hired a room. They succeeded in buying a pistol. They planned to go to Madras where Billa would loot his erstwhile employer. As they were entering a military compartment of a train they had an altercation with military persons who asked for identity cards. Billa was apprehended. Since the train was slow on the bridge, Ranga got down and after concealing the pistol under a stone came back to the compartment where he was also apprehended. They were tied up and handed over to the police at Delhi Railway Station.

(164) BILLA'S confession is also a detailed one. He broadly corroborates the statement of Ranga about their activities in Delhi. Of course he differs slightly on details and also talks about their effort to loot a shop which did not succeed. He also broadly corroborates Ranga's version of kidnapping Sanjay and Geeta from Gole Dak Khana roundabout, their subsequent struggle, car momentarily stopping at Gole Dak Khana circle, Ranga injuring Sanjay with his kirpan, reaching Budha Jayanti Garden, questioning the children about the business of their father, telling a story about the need of the children for looting a smuggler's vehicle and changing the number plates of the car.

(165) However, he differs in the details about the manner in which the children were murdered by them. According to Billa, it was Ranga who suggested that they should rape the girl. Billa reprimanded him for such a thought since they were to concentrate on getting money. Since Ranga insisted, Billa told him to take away her brother since she should not be raped in the presence of her brother. He broadly corroborates Ranga about buying campa cola and ice-cream and Sanjay taking ice-cream. He also corroborates Ranga about leaving Budha Jayanti Park, moving towards Palam airport and returning back and parking the car on the side of kacha road near Budha Jayanti Park adding that he had given mandrex tablets to Sanjay on the pretext of relieving Sanjay's pain. Billa describes the murders thus :

"RANGAsuggested that we should move from there at the earliest but I was waiting for Sanjay to sleep first. Ranga told me that he would take Sanjay (away) on the pretext of Gorkha. Ranga first opened the dicky of the car, and brought out something which I could not see on account of darkness. After 1/1 1/2 minutes, Ranga came back and after opening the door (of the car) told Sanjay to come and he (Ranga) will leave him (Sanjay) with Gorkha. Ranga took him away. Geeta and myself were left in the car. Geeta enquired of me as to why Sanjay had been sent away. I told Geeta not to be so innocent. I further fold her that she was doubtful about us at the lime when the tablets were given that the same were intoxicant. It will be useless to waste time in such discussions, and that why nothing was done with you in the presence of Sanjay. Geeta told that it was not a good idea. She neither expressed her willingness nor her unwillingness. The clothes were removed and I did my work (committed the rape on her) inside the car. I put on my clothes, and then Ranga came over there. Panga told that he would also follow suit, the actual words being "WOH Bhi Aisey Kare GA", I told him that he himself should talk to her. Ranga first did the job (committed the rape on her) inside the car, and then took out the seat of the car outside and again did the job (committed the rape on her). After the work was done (commission of the rape) I enquired from Ranga the whereabouts of Sanjay. He told me that I should ask this question later on. Thereat Geeta got suspicious. Thereafter, the girl picked up the sword which was lying by the side and attacked me with the same which hit on the left side of my fore-head. I then felt all dark for about 2 seconds. When I was able to see, I noticed that the sword was in the hand of Ranga, and the girl was lying down (on the ground). I saw Ranga giving sword blows. After the above occurrence, I enquired from Ranga as to what he had done. He replied that he would tell the same later on. I told him that I wanted to know immediately. Thereupon Ranga informed me that when he had taken Sanjay away the latter picked up a quarrel, and he (Ranga) had killed Sanjay. He further told me that if I happened to be there in his place, I would also have done the same. The girl was picked up and thrown inside the bush."

(166) Billa also corroborates Ranga about their visit to Willingdon Hospital, meeting with the police-officers taking petrol and slipping away without paying for it, and leaving for Bombay.

(167) Billa reached Bombay on the evening of August 29. He stole taxi No. Mrk 7118 and took the help of Luis to reconnoitre the area around his house. Luis was apprehended by the police waiting for Billa. On seeing

this Billa managed to escape and after abandoning the taxi left Bombay the following day after bribing some policemen on the railway station. On coming, to know from Ranga at Delhi that the police was looking for them, they shifted to Gupta Lodge and then went to Agra. There they stayed at a Lodge and then hired a room. After staying there for some time he purchased a revolver. Then they planned to leave for Madras. While entering a military compartment of the train they were apprehended by the military personnel who handed them to the police at Delhi Railway Station,

(168) A person accused of an offence must in terms admit the commission of the offence before a statement can be termed a confession. Any statement which is wholly exculpatory or only admits a fact which is incriminating would not amount to confession. A confession properly recorded by a Magistrate and duly proved carries great weight and may be used against the maker. However, where a confession is retracted it needs corroboration. But retracted confession cannot be equated with the evidence of an accomplice. Whereas in the case of the former a general corroboration will be sufficient in order to find out whether the confession was voluntary and true, in the case of the latter corroboration in material particulars is required. (Subramania Goundan v. The State of Madras). The confession of an accused cannot be used as substantive evidence against a co-accused but it can be taken into consideration under section 30 of the Evidence Act as an assurance in support of the other evidence on record. (AIR 1964 S.C. 118(5) Haricharan Kurmi v. State of Bihar, -Ram Chandra and another v. State of Uttar Pradesh, and

Nathu v. State of Uttar Pradesh). Before the confession of one accused can be used against the other it is necessary that the confession should implicate the maker substantively to the same extent as the other accused person against whom it is sought to be taken into consideration (Balbair Singh v. State of Punjab).

(169) In Nand Kumar and others v. State of Rajasthan, while dealing with the necessity of corroboration of a retracted confession it was observed thus :

"COURTS ordinarily consider it unsafe to convict any accused person on the basis of his retracted confession except where the truth of such confession is established by corroboration in material particular independent evidence, what is sufficient corroboration for this purpose has to be decided in each case on its own facts and circumstances. It may, however, be generally stated that where the prosecution by the production of reliable evidence which is independent of the confession and which is also not tainted evidence like the evidence of an accomplice or the evidence of a co-accused, establishes the truth of certain parts of the account given in the confession and these parts are so integrally connected with other parts of the accused's confession, that a prudent judge of facts would think it reasonable to believe, in view of the established truth of these parts, that what the accused has stated in the confession as regards his own participation in the crime is also true, that is sufficient corroboration'. More than this is not needed, less than this is ordinarily insufficient."

(170) In Balbir Singh v. The State of Punjab, the

court held that where the confessions of the accused persons are retracted subsequently, the proper approach is "to consider each confession as a whole on its merits and use it against the maker thereof, provided the Court is in a position to come to an unhesitating conclusion that the confession was voluntary and true; and though a retracted confession, if believed to be true and voluntarily made, may form the basis of a conviction, the rule of practice and prudence requires that it should be corroborated by independent evidence." It was further ruled: "The rule of prudence does not require that each and every circumstance mentioned in the confession with regard to the participation of the accused person in the crime must be separately and independently corroborated, nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made."

(171) In Nishi Kant Jha v. State of Bihar, a bench of five judges was called upon to decide the question whether inculpatory portion of a confession can be accepted after rejecting the exculpatory portion. While rejecting the contention that a confession must be considered as a whole and the court was not free to accept

one part while rejecting the rest, it quoted with approval the following passages from Taylor's Law of Evidence, (11th edition) :

"INthe proof of confessions as in the case of admissions in civil causes the whole of what the prisoner said on the subject at the time of making the confession should be taken together.....

But if after the entire statement of the prisoner has been given in evidence, the prosecutor can contradict any part of it, he is at liberty to do so; and then the whole testimony is left to the jury for their consideration, precisely as in other cases where one part of the evidence is contradictory to another. Even without such contradiction it is not to be supposed that all the parts of a confession are entitled to equal credit. The jury may believe that part which charges the prisoner, and reject that which is in his favor, if they see sufficient grounds for so doing. If what he said in his own favor is not contradicted by evidence offered by the prosecutor, nor is improbable in itself, it will be naturally believed by the jury; but they are not bound to give weight to it on that account, being at liberty to judge of it, like other evidence, by all the circumstances of the case." The Court also referred to a case cited in Roscoe's book on Criminal Evidence (16th Edition) : "Where the confession of the prisoner charged with murder that he was present at the murder but that it was committed by another person and that he took no part in it, was left to be considered by the jury with a direction that the jury might, if they thought proper, believe one part of it and disbelieve another." The court also extracted the following passage from Archbold's Criminal Pleading, Evidence and Practice (Thirty-sixth Edition p. 423) : - "In all cases the whole of the confession should be given in evidence, for it is a general rule that the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion' of a fact favorable to him, not merely as evidence that he had made such assertion, but admissible evidence of the matter thus alleged by him in his discharge It has been said that if there be no other evidence in the case, or none which is incompatible with the confession, it must be taken as true ; but the better opinion seems to be that, as in the case of all other evidence, the whole should be left to the jury, to say whether the facts asserted by the prisoner in his favor be true." After applying these tests the court held that "the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."

(172) In Bhagwan Singh Rana v. The State of Haryana , following the case of Nishi Kant Jha (Supra) the court held that it was permissible to believe one part of a confessional statement and to disbelieve another, provided the whole of the confession is tendered in evidence so that it may be open to the court to reject the exculpatory part and to take inculpatory part into consideration if there is other evidence to prove its correctness.

(173) In Shankaria v. State of Rajasthan , the court laid down that when in a capital case the prosecution demands a conviction of the accused primarily on the basis of his confession recorded under S. 164, of the Code of Criminal Procedure, the Court must apply a double test :

(1)Whether the confession was perfectly voluntary ?

(2)If so, whether it is true and trustworthy ?

It is only after the first test is satisfied that the question of applying the second test arises. While ruling that for judging the reliability of such a confession there is no rigid canon of universal application, it was observed : "Even, so. one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court should carefully examine the confession and compare it with the rest of the evidence in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

(174) In State of Uttar Pradesh v. Boo.ta Singh and others, , the court reiterated that it was not necessary that a retracted confession should be corroborated in each material particular, but it was sufficient that there was a general corroboration of the important incidents mentioned in the confession.

(175) We will now examine the confessions of the appellants in the light of the law laid down by the Supreme Court. It may be recalled that we have already found that the appellants had made their confessions voluntarily. We have now to find out if these are true, whether the inculpatory part of the confession can be used against its maker, and to what extent the confession by one can be used against the other.

(176) First contention of the appellants that the confessions are said to be false on the ground that in case Sanjay had shown his bleeding injury to Inderjeet Singh Public Witness , then many other persons must have seen the same since there was a good amount of traffic on the road at that time. As no one from the public has come forward to support this fact, this part of the confession is false. We do not find any force.' in this contention. Simply because no other person had seen the bleeding injury of Sanjay in a moving car, it does not follow that Inderjeet Singh should not be believed. Indeed we have already discussed the evidence of Inderjeet Singh and found it absolutely reliable.

(177) It is contended that the police has invented the story of appellants' buying ice-cream Sanjay after milk products were detected in the viscera of Sanjay. It may at this stage be noticed that the report of the examination of the viscera was prepared on 22nd September which was collected by the investigating officer on 6th October. But Ranga had made his confessional statement on 21st and 22nd September. In other words, Ranga had made his confessional statement about purchasing ice-cream for Sanjay from a vendor at Budha Jayanti garden even before the report of the viscera was prepared. In these circumstances the contention must be rejected. On the other hand, these facts must leave no doubt that Ranga was making a true statement.

(178) It is then contended that the story of rape is false. It is submitted that there is no evidence of any struggle or protest on the part of Geeta, and the doctor is not sure whether she was raped.

(179) It may be repeated that Dr. Bharat Singh (Public Witness 30) has this to say about rape :

"VAGINA was swelling due to decomposition. There was no evidence of injury to vaginal wall. Hymen admitted tips of two fingers. There was no discharge from the vagina. There was no evidence of fallen hair over the public area. No injury to perineum. The body was in a state of decomposition and under such circumstances no definite opinion was possible about the sexual intercourse having been done, but on the examination of private part no injury was noticed and there was also no injury in the surrounding area suggestive, of any violent sexual act. By violent sexual act I mean that when the act is done against the will of the lady and the act is also forceful and full penetration of the male organ was done. Again if the victim is in a helpless condition in that case also there is likelihood of getting injury to the private part if the lady is not used to habitual sexual act, and the penetration is full."

In cross-examination the doctor stated that Geeta Chopra was not used to sexual intercourse.

(180) This doctor does not rule out the possibility of sexual intercourse. It was because of the advanced stage of decomposition that the doctor was not in a position to say definitely whether sexual intercourse was done or not. We cannot lose sight of the fact "that, in the circumstances discussed above, Geeta was not in a position to offer any resistance to the appellants. There was thus no likelihood of any mark of injury on her body. According to Billa he had committed sexual intercourse while she was on the rear seat of the car. The rear seat of the car was taken out to enable Ranga to have the sexual intercourse. Therefore, there was no question of the back of Geeta receiving any marks.

(181) However, there is one glaring fact which leaves no doubt that she had been stripped naked. When she left her house she was wearing her brassiere and underwears. Her father deposes about it and he was not

cross-examined on this aspect. Geeta's dead body did not have these undergarments. Ranga tells us that on that fateful night while they were going to their house after dropping the police sub inspector at Police Station Mandir Marg, Billa suddenly noticed the brassiere and the panties lying on the back of the car. He goes on to say that one of the garments was thrown on a moving truck, while the second was thrown away in the Nullah. There is no reason to disbelieve the confessions on this aspect. Indeed, after the recovery of the dead bodies there was no reason for the police to suspect that Geeta had been raped and, therefore, the routine post-mortem examination was conducted. It was only after the confessions disclosed the rape that the police asked further opinion from Dr. Bharat Singh on the question of rape vide letter Exhibit Public Witness 101/G and 3OB dated October 13, 1978. The relevant part of the letter reads as under : "Kindly refer to the case cited as subject and the post-mortem report No. 1714 dated 29-8-78. The investigation has revealed that Kumari Geeta Chopra was raped before being murdered. The dead body was found in an advanced stage of decomposition. Is it possible to opine in such a case if the sexual acts were committed on her or not." The doctor gave the opinion on the same letter. It is as follows : "Since the body was in a state of advanced decomposition, maggots were crawling on the body. Hair were catching layers of chin have peeled off. Rectum, vagina were swelling and protruding out due to decomposition. It is not possible to give definite opinion whether sexual act was committed on the deceased or not."

(182) In these circumstances we find that confessions about rape are true. On the basis of injuries found on the dead body of Sanjay, it is submitted that Sanjay did not receive any injury on his shoulder in the moving car at the hands of Ranga.

(183) We have already noticed the injuries found on the dead bodies by Dr. Bharat Singh. There were in all 21 injuries. The doctor was of the opinion that injuries Nos. 3,6,7,8 and 18 were possible by kirpan (Exhibit P. 21). The rest of the injuries were opined to be possible by sword (Exhibit P. 22). Now it will be seen that injuries Nos. 7 and 8 are "over the left side lower side of the chest". These were skin deep. These could be the injuries which were received by Sanjay in the car and were shown to Inderjeet Singh Public Witness It cannot, therefore, be held that the confession about injuring Sanjay by Kirpan Exhibit P 21 in the moving car is not true.

(184) It is contended that the appellants would not have taken the children to the car-parking area of Budha Jayanti Park as they were likely to raise an alarm to attract the attention of others and, therefore, the confession about this fact was patently false.

(185) It is a matter of common knowledge that different persons act differently when their safety is imperilled. No reasonable person dare lay down or expect a particular course of action. Persons are known to lose their capacity to reason and think clearly. More often than not, persons act impulsively at crucial moments. A strong man may act as a coward while a weakling may defy the strongest.

(186) We cannot lose sight of the fact that the victims were teenagers leading a shelter life. They were anxious to reach the All India Radio in time to take part in a programme. They had innocently thumbled a lift least knowing that it was to be their last journey. When the gravity of the situation dawned on them they put up a struggle. They also shouted for help but in vain. On the other hand Sanjay received injuries from a knife during the struggle. Having failed to free themselves from the clutches of their kidnappers and having realised that though many persons had seen them struggling none had rescued them, they must have resigned themselves to their fate. In these circumstances their only chance seemed to be to carry out the commands of the kidnappers and hope for the best relying on their premises. They would not have dared to risk their lives after having had the experience of the knife being used by one of the kidnappers.

(187) The desperadoes, who were used to taking risk, could not have any danger in parking the car at that late hour in a parking place where no other car was in sight nor was any normally expected at that time. We cannot overlook the fact that these very persons had succeeded in their nefarious designs in kidnapping the children on the busy roads of New Delhi. Billa on his own showing (statement under section 313, Criminal Procedure

Code) was not only used to picking up cars but was a dare devil ready with his knife. In Bombay he had picked up cars and had whipped out a knife when thwarted in his designs. If one cannot predict the course of conduct of a victim whose life is suddenly imperilled, one cannot also assume that an offender would play safe and not risk going to a deserted parking place.

(188) We see no reason to hold that this part of the confession is false. It may be noticed that it was Ranga who had pointed out the car-park attendant and ice-cream vendor of Budha Jayanti Park; and that milk product was found in the viscera of Sanjay signifying that after taking a milk product the deceased did not have sufficient time to digest it.

(189) Voluntary nature of the confessions is evident not only by the manner in which these were recorded by the Metropolitan Magistrate who gave the appellants more than sufficient time in judicial custody and in the court room, but also by the conduct of Ranga recorded by the Magistrate. When the Magistrate was recording Ranga's confession on 21st September, Ranga started laughing while recalling the incidents of 26th August. The Magistrate has noted this fact at that stage of the statement itself. Ranga again started laughing after having described the ghastly killing of Sanjay and throwing his body in the bushes, and before narrating that he found the girl naked on the rear seat of car with naked Billa committing rape and the girl shouting. This not only shows the depraved character of Ranga who was evidently having a sadistic pleasure while recalling the situation, but also demonstrates that the statement has a ring of truth. Again the words "Mat Maro, Mat Maro. Kayon Martey Ho" uttered by helpless Sanjay asking for mercy, undoubtedly came from the mouth of an innocent teenaged victim. The description of rape by the appellants, attempt of naked Geeta to run away and escape from their clutches, and finally the ineffective use of the sword by Geeta on Billa, leave no room for doubt in our minds that this is true.

(190) The circumstantial evidence discussed earlier fully corroborates the confessions of the appellants about movements in Delhi till the time of actual murder as well as the appellants' conduct soon after the murder till their apprehension by military persons. We need not repeat that again. Ranga's statement about his antecedents is also corroborated by Ranga's statement recorded under section 313 of the Code of Criminal Procedure. He admits working as a driver for a notorious smuggler Yusuf Patel who was detained under Misa ; indulging in transporting illicit liquor; manufacturing illicit liquor; Billa being introduced as Bengali by Sham Singh and the true identity of Billa dawning on him later on ; giving up their residence to escape the police; attempt to hire a flat in Bombay and ultimately, Along with Jugal Kishore, going to Surat, Ahmedabad and coming to Delhi. In his confession Ranga had talked about Billa murdering Arabs, and the incident of kidnapping a child for ransom. The fact that Billa was wanted for the murder of two Arabs, is corroborated by the statement of Inspector Kochhar (Public Witness 101) who accepted the suggestion in cross-examination that Bombay police had given him posters having Billa's photographs as a wanted person for the murder of two Arabs. He had also accepted the suggestion of the appellants that file Bombay police was on the look out for both the appellants whose full description had been given to him, and that Bombay police had come to Delhi in search of appellants.

(191) In the very nature of things there could be no corroboration of the manner in which Sanjay and Geeta had been murdered by the appellants. But even then Billa's injury on his forehead corroborates that Geeta had hit Billa with the sword. Of course, she had evidently hit Billa with the blunt edge of the sword. (We have seen the sword Exhibit P 22. It is a long kirpan but for the purpose of distinguishing it from kirpan Exhibit P 21 we are calling it a sword. The difference between a sword and a kirpan is that whereas a sword is straight, kirpan is bent at the end of its blade. This sword is more than two feet long, rather heavy and has a big handle). The visit of the appellants to the hospital at 10.15 P.M. soon after the murder ; giving false names and addresses, and false version of the circumstances in which Billa came to receive that injury ; and fooling the police-officers further corroborates the confessions of the appellants being the murderers.

(192) Under section 30 of the Evidence Act confession made by an accused can be used against him as well as his co-accused. This is so even if the confession has been retracted later on. What is the value to be attached to

a retracted confession will depend on the facts and circumstances of each case. The relevant facts for consideration of course, amongst others, would be the facts and circumstances in which the confession was made, and the stage at which it was retracted. But once the court is satisfied that a retracted confession was in fact made voluntarily and was trustworthy, it can always be used not only against its maker but also against a co-accused.

(193) As already stated, the confessions of the two appellants differ only in respect of actual killing. Whereas Billa states that the actual killing was done by Ranga, the latter ascribes this role to the former. We have already extracted this part of the confessions in full. According to Ranga, it was Billa who asked him to do away with Sanjay and so he lifted the sword; aimed to hit but since Sanjay was shivering the blow fell on Sanjay's left arm. At this stage, according to Ranga, Billa snatched the sword and started striking the boy wherever he could. Similarly regarding the killing of Geeta, Ranga states that after helping her to wear the pants and jhagula and pretending to take her to her brother, this appellant led her on one side. On receiving a signal from Billa he got a little ahead when Billa hit her with the sword and she collapsed saying 'Hai, Hai'. According to Billa, it was Ranga who had killed Sanjay after taking him away from the car. He also goes on to state that after he had been hit with the sword by Geeta, it was Ranga who had finished her by that sword.

(194) Whether the actual killing was done by one or the other does not really matter in the circumstances of this case. The design of the appellants to kidnap the children for ransom having failed, both apparently decided to do away with them in order to destroy the evidence about appellants' identity. Ranga tells us that a few days earlier Billa was ready to kill Jugal Kishore and Kewal Kumar when he suspected that they might spill the beans. The confessions leave no doubt that each one was plying a part in finishing the victims.

(195) We are conscious of the fact that it is a case of circumstantial evidence. In such a case the chain of evidence should be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. Moreover, every link in the chain of evidence must be individually established, and the complete chain of evidence must rule out a reasonable likelihood of the innocence of the accused. The Supreme Court in Deonandan Mishra v. The State of Bihar, observed :

"IT is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain."

In the instant case the evidence produced by the prosecution, as already discussed, leaves no doubt that the appellants were seen at about 6.40 P.M. with the deceased in the Fiat car at Gole Dak Khana and later on on the road leading to Shankar Road, at about 7.30 P.M. they were with the deceased at Budha Jayanti Park; the deceased breathed their last at about 9.30 P.M., and the appellants came to Willingdon Hospital at 10.15 P.M. The appellants give no explanation as to what did they do to Sanjay and Geeta. On the other hand, they have given false explanations. The circumstantial evidence leaves no room for doubt that the appellants are the murderers.

(196) We may repeat the Billa's plea of alibi is false. In a statement under section 313 of the Code of Criminal Procedure he claims that he went to Bombay on August 25, 1978 and returned to Delhi on September 1, 1978. He also states that while in Bombay he took the help of one Luis in reconnoitring the place where he was living and that Luis was arrested when he approached the house. Billa examined Luis Dass Sabasti in defense as D.W. 6. Luis is a motor mechanic. He deposed that it was on 29th August that Billa came to his house in a taxi in the evening and he accompanied Billa to a Nisar tailor in Shivaji Nagar, Bombay. Billa was at that time

driving taxi Mrk 7118. Luis swears that he was apprehended by the Bombay police as he approached the shop, while Billa managed to escape. The evidence of Luis shows that Billa's plea of alibi is false. However, this evidence corroborates Billa's confession that he had gone to Bombay and was using a stolen taxi Mrk 7118. We may point out that the learned counsel for Billa appellant did not press the plea of Billa's alibi nor did he refer to the witnesses produced in defense.

(197) It is submitted that sentence of death is cruel, barbaric, harsh and unjust, and the society has no right to take away the life of a human being. It is also submitted that since the sentence should be reformatory and not punitive or retributive, sentence of death should not be awarded. In any case, it is contended, recent trends in judicial pronouncements and phonology show that death penalty being on its way out, it should not be awarded to the appellants.

(198) In our democratic set up the will of the people is expressed by their representatives in the Parliament. It is for them to decide what is good for them and lay down the law. Any other method of finding the will of the people will tantamount to negation of democracy. It is beyond the pale of controversy that judges in India are not the representatives of the people. It is the duty of a judge to administer the law as it is and not as he wishes it to be. It is rightly said that if a judge does not approve the law as it is, he owes it to his conscience to give up his job and seek livelihood in other walks of life.

(199) It may be that the death sentence is on its way out, but it has not yet been shown the door. It is very much alive and has not yet . been killed.

(200) We need not join issue on the question whether death sentence is outmoded, unjust, barbaric, etc. Suffice it to say, that one should take a balance view of things and should not show such undue concern for a murderer as if the whole law should be geared to his safety while forgetting what he has done. It is amusing to note that those very persons who wish the provisions of the Indian Penal Code providing for sentence of death to be a dead letter of law, are themselves the greatest protagonists of having persons found guilty of economic crimes hung by the nearest lamp-post.

(201) It need hardly be repeated that punishment should be commensurate to crime. A light sentence as well as a harsh sentence leads to failure of justice. What then is an adequate sentence? The answer is bound to vary from judge to judge. But this is inherent in the very nature of things.

(202) Section 354(3) of the Code of Criminal Procedure, 1973 (No. 2 of 1974) made a vital change affecting the award of sentence of death. Imprisonment for life, where sentence of death is an alternative sentence, has been made a rule. Special reasons are now required for awarding sentence of death. Obviously the nature of sentence will depend on the facts and circumstances of each case. No two cases are alike. It is just not possible to lay down any hard and fast rule to govern all cases.

(203) The Supreme Court, in a number of cases, had occasions to discuss the special reasons. We will now refer to some of them.

(204) In Ediga Anamma v. State of Andhra Pradesh ,

Krishna Iyer, J speaking for the Court, observed:

"Let us crystallise the positive indicators against death sentence under Indian Law/ currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit

excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Section 302 read with section 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the court, may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence."

In Balwant Singh v. State of Punjab, the Court said:

"It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case. But we may indicate just a few, such as, the crime has been committed by a professional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like."

In Rajendra Prasad v. State of Uttar Pradesh,

Krishna Iyer, J., speaking for himself and D.A. Desai, J., (A. P. Sen, J. dissenting) found it "necessary to have a second look at the life versus death question, not for summarizing hitherto decided cases and distilling the common factors but for applying the Constitution to cut Gordian knot." After analysing various facets of the question the learned judge gives the "condensed guidelines" in para 83 of the judgment. These cover about three pages of the reported judgment and we need not reproduce them.

(205) Rajendra Prasad's case was followed in Bishnu Deo Shaw v. State of West Bengal, decided by a Bench consisting of

Krishna Iyer and Chinnappa Reddy, JJ. Reddy, J., speaking for the Court, observed that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. A judge has to balance the personality of the offender with the circumstances, the situations and the reactions and choose the appropriate sentence to be imposed. summarizing the discussion in para 28 of the judgment it is observed:

"28. 'Special reasons', we may therefore say, are reasons which are special with reference to the offender, with reference to the constitutional and legislative directives and with reference to the times, that is, with reference to contemporary ideas in the fields of criminology and connected sciences. Special reasons are those which lead inevitably to the conclusion that the offender is beyond redemption, having due regard to his personality and proclivity, to the legislative policy of reformation of the offender and to the advances made in the methods of treatment etc. I will not attempt to catalogue any 'special reasons'. I have said enough and perhaps more than what I intended, to indicate what according to me should be the approach to the Question. Whatever I have said is but to supplement what my brother Krishna Iyer has already said in Rajendra Prasad v. State of U.P."

(206) Then follows the case of Balbir Singh and others v. State of Punjab. This case came up before a Bench consisting of Krishna Iyer, D. A. Desai and A. P. Sen, JJ. Krishna Iyer, J., speaking for himself and Desai, J., quoted the following from Rajendra Prasad's case :

"It is not the number of deaths caused nor the situs of the stabs that is telling on that decision to validate the nonapplication of its ratio. It is a mechanistic art which counts the cadavers to sharpen the sentence oblivious of other crucial criteria shaping a dynamic, realistic policy of punishment.

Three deaths are regrettable, indeed terrible. But it is no social solution to add one more life lost to the list. In this view, we are satisfied that the appellant has not received reasonable consideration on the question of the appropriate sentence. The criteria we have laid down are clear enough to point to the softening of the sentence to one of life imprisonment. A family feud, an altercation, a sudden passion, although attended with extraordinary cruelty, young and malleable age, reasonable prospect of reformation and absence of any conclusive circumstances that the assailant is a habitual murderer or given to chronic violence these catena of circumstances bearing on the offender call for the lesser sentence. 'Special reasons' necessary for imposing death penalty must relate, not to the crime as such but to the criminal. The crime may be shocking and yet the criminal may not deserve death penalty. The crime may be less shocking than other murders and yet the callous criminal, e.g. a lethal economic offender, may be jeopardizing societal existence by his act of murder. Likewise, a hardened murderer or dacoit or armed robber who kills and relishes killing and raping and murdering to such an extent that he is beyond rehabilitation within a reasonable period according to current psychotherapy or curative techniques may deserve the terminal sentence. Society survives by security for ordinary life. If officers enjoined to defend the peace are treacherously killed to facilitate perpetuation of murderous and often plunderous crimes social justice steps in to demand penalty dependent on the totality of circumstances." Sen, I, again dissented and observed : "With greatest respect, the majority decision in Rajendra Prasad case (supra) does not lay down any legal principle of general applicability. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less law declared' within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. One would find that in the decision in Rajendra Prasad case, there are no rationes decidendi, much less any ratio decidendi."

(207) Case of Dalbir Singh (supra) was decided on May 4, 1979. On the same day the Supreme Court announced its judgment in Bachan Singh v. State of Punjab. It was decided by a Bench

consisting of P. S. Kailasam and R. S. Sarkaria, JJ. Referring to the judgment in Rajendra Prasad's case, Kailasam, J has this to say:

"16.I have read through the judgment of the Court with utmost care. The decision is in many respects contrary to the law laid down by the Constitution Bench of this court in, Jagmohan Singh case. The Court has proceeded to make law as regards the conditions that are necessary for imposition of a sentence of death under Section 302, Indian Penal Code . It has proceeded to canalisation of sentencing discretion and has embarked on evolving working rules on punishment bearing in mind the enlightened flexibility of social sensibility. In doing so I feel the court has exceeded its powers conferred on it by law."

(215)20. It is equally beyond the functions of a court to evolve working roles for imposition of death sentence bearing the markings of enlightened flexibility and social sensibility or to make law by cross-fertilisation from sociology, history, cultural anthropology and current national perils and developmental goals and, above all, constitutional currents, I am of the view that it is the function of the Parliament to frame laws consistent with the needs of the Society. It is for the Parliament to clarify the circumstances in which a sentence of death could be awarded. It is for the court to administer the law as it stands. If in deciding a case on particular facts a principle is stated it may be binding as a precedent. If the courts resort to rule-making, it will not be binding as precedent. If the courts are to embark on rule-making, the question arises whether the responsibility can be undertaken by a bench of three judges with a majority of 2 to 1." Kailasam, J. therefore, directed that the matter be placed before Hon'ble the Chief Justice for constituting a larger Bench to decide the case. Sarkaria, J while reserving his own opinion on the various questions raised in the case, agreed with Kailasam, J., that the case should be decided by a larger Bench.

(208) "THERE now rests the matter. However, we cannot delay our judgment to await the final word from the Supreme Court.

(209) It is true that the appellants are young in age. Billa in his statement under section 313 of the Code of Criminal Procedure gives his age as 22 years. Ranga also gave his age as 22 years, but the trial court noticed that he appeared to be of 24 years of age. Though they are young in age, this was not their first crime. Both have a long' criminal record. Nor was this crime committed in a fit of rage because of some altercation.

(210) Billa on his own showing (statement under section 313, Criminal Procedure Code) is quite an expert in lifting cars, and in case of need to use a knife. He is wanted by the Bombay police for the murder of two Arabs. He is involved in a large number of cases.

(211) In his confessional statement Billa tells us that he and Ranga had to leave Bombay since the police was making frantic efforts to apprehend them. They migrated to Delhi to escape Bombay police and "had come with an intention to commit robberies." Both are expert in committing crimes in the car. They were clever enough to arm themselves with lethal kirpans and fictitious car number plates. Incidentally it may be noticed that both the appellants claim to be Sikhs and thus entitled to keep a kirpan. They even planned to rob the cash from the milk dairy but had to give up the idea because of the presence of a large number of persons there. Then they decided to loot a prominent jeweller and after having a look at the shop of Mehra & Sons they decided that "this job was also not considered worth doing." In addition to the kirpans, which they had purchased and got sharpened, they had also purchased hockey sticks. Some criminals keep hockey sticks which can be kept without transgressing any law and used effectively in case of need. Billa tells uncle all prepared to kill the inmates if necessary.

(212) BILLA'S confessional statement shows that the modus operandi of the appellants was to loosen the inside handles of the doors of a car and after decoying the victim into the car remove those handles to ensure that the victim could not escape. At one stage they decided to even do away with their accomplice Jugal Kishore and his friend Kewal Kumar. Both Ranga and Billa had then removed the inside handles of the doors. The reason for attempt in liquidating Jugal Kishore and his friend was that the appellants suspected Jugal Kishore and were not sure whether he would divulge their plans. They agreed to spare the lives of Jugal Kishore and his friend only on their assurance that they would be willing to do whatever they liked. In order to test their loyalty they were brought to Budha Jayanti Park to commit robbery and murder. Finding a couple in the park Billa brandished a dagger and asked the man to sit quietly. Billa states : "It was not difficult for me to kill that person had I desired so, but did not do that."

(213) Billa tells us that on 26th August while moving in Connaught Place "I had a talk with Ranga and asked him that we will start committing robberies in the houses here as well as in the manner in which it was done at Bombay. I told him that we will now provide a lift to someone In our car and then we would commit robbery."

(214) Ranga in his confessional statement admits that for some years he has been in the smuggling business, dealing in illicit liquor and was distilling the same at this place. After being introduced to Billa, he used to move with him. He had seen Billa changing the number plates of his taxi before committing a crime and when Billa kidnapped a young boy for ransom, Ranga drove them to their hide-out. Billa had told him that in case his parents would not pay the ransom the boy would be murdered. It was Ranga who kept the boy with him for two days while Billa was negotiating the ransom. It was thereafter that 'Ranga decided to leave the boy. Ranga further tells us that Billa had killed two Arabs a few days earlier. After Ranga's servant Shama had been arrested, both the appellants were afraid that Shama may not get them arrested. It was thereafter that they decided to come to Delhi.

(215) We may at this stage also refer to Criminal Miscellaneous Nos. 483 and 484 of 1979 (treated as Criminal Writs No. 32 and 33 of 1979) filed by the appellants Ranga and Billa respectively for prohibiting the State from keeping the appellants in fetters in solitary cells. These had come up for hearing before us. The Superintendent, Central Jail, Tihar, filed his affidavits. It was sworn that "Ranga and Billa were jointly wanted in five cases of Bombay. Three of these cases were under section 302, Indian Penal Code." It was also stated

that Billa had the history of escaping twice from lock-up at Bombay; made an abortive attempt to escape from Central Jail, Tihar, on 11-12-1978 by cutting the grating of the door of the cell in which he was confined ; before his arrest the police had declared him dangerous ; and his arrest carried a reward of Rs. 50,000, Since an objection was raised by the learned counsel for the State for the maintainability of the applications under section 482 of the Code of Criminal Procedure, we had decided to treat them as writ petitions.

(216) We are satisfied that the appellants are desperadoes who have no compunction in killing. Billa had armed himself with a long sharpened kirpan (Exhibit P. 21) and kept the same in the dicky of the car, while Ranga carried a comparatively smaller sharp kirpan on his person. Finding that it was hazardous to loot the kidnapped children's father who was a Navel Officer and might use his revolver effectively, the appellants decided to do away with them in order to escape identification. After having lured them into a false sense of security by assuring them that they were needed only for looting a smuggler moving in a car, they waited for the darkness of the night to descend to cover their misdeeds. They hit upon a most diabolical plan of a cold blooded, ruthless, cruel murders of two young innocent teenagers. Sanjay was hacked to death by both of them as is apparent from the post-mortem examination. He had as many as 21 injuries over various parts of the body, the injuries being the result of the use of the two kirpans carried by the appellants. Immediately after killing Sanjay. the appellants had no compunction in raping Sanjay's helpless sister by stripping her naked. After satisfying their beastly lust, they killed her and throw her body in the bushes. Evidently the appellants had a fiendish sadistic pleasure in committing the crime.

(217) Before parting with this case we are constrained to observe that the lives of the two children could have been saved if the police had acted promptly. Non-cooperation by the public is a standing grievance of the police and public apathy is its routine excuse. But the facts of this case demonstrate that there is no dearth of public spirited persons. Kula Nand, a chowkidar, and Bhagwan Dass had rushed to the aid of the children at Gole Dak Khana while Interject Singh, a Junior Engineer, had chased the car on his scooter. Bhagwan Dass had immediately informed the police control room about the incident. Evidently no importance was given to this information. The control room conveyed the information to Police Station Mandir Marg in routine and washed its hands off. The police has been equipped with wireless. It has vans fitted with wireless known as flying squad vans which are in constant touch with the central control room of the police. These prowl cars are supposed to go into action within minutes of (he crime reports received by the control room. Indeed, we understand, the police has planned various operations to prevent crimes, detect and apprehend the offenders in emergencies. But in the present case not a single flying squad van went into action. Whereas report was received by the control room at 6.44 P.M. Police Station Mandir Marg deputed a police-officer at 7.05 P.M. for investigation. Surely the police did not expect the offenders to stay put in their car at Gole Dak Khana and wait for the police. Had flying squad cars been put into operation immediately there was a good chance for preventing the murders. A general alarm should have been sounded to apprehend the culprits.

(218) "THE folly was compounded by another police-officer working at Police Station Rajinder Nagar. Inderjeet Singh, who had lost sight of the offending car, did not lose heart. He went to this police-statal, reported the matter adding that he was lodging the report "on humanitarian ground". But this did not affect the police. Though the report was recorded at 6.45 P.M. the police refused to take action since the crime had not been committed "in their jurisdiction" an every day excuse of the police for its non-action. The information was conveyed to the control room at 7.40 P.M. practically after an hour's delay. There is nothing to show that the control room took any action. Had a responsible police-officer been sitting in the control room, he could not have any difficulty in co-relating the two informations about the kidnapping of two children in Fiat car Hrk 8930 and organising a hunt near about Shankar Road. Had it been done, a routine check of Upper Ridge Road would have brought them to Budha Jayanti Park and the car in question.

(219) We can only trust and hope that the police of Delhi will take the public reports seriously and act promptly if they want the public to co-operate. The public is likely to refuse co-operation till the apathy of the police lasts.

(220) In this particular case after the recovery of the dead bodies and registration of the case under section 302 Indian Penal Code, the police had, however, shown unusual efficiency in carrying out the investigation. To start with, it was a blind murder, but it succeeded in unravelling the mystery and collected all possible evidence to establish that the appellants were the perpetrators of the crime. All this is commendable.

(221) Whether we look at the crime or at the criminals the conclusion is irresistible that with the elimination of the appellants the society would be much better off and its safety will no longer be endangered. Indeed, to award any other sentence except death sentence will amount to complete failure of justice. We are in complete agreement with the special reasons given by the trial judge for awarding the death sentence.

(222) The result is that all the appeals are hereby dismissed, and the appellants' convictions and sentences awarded to them are upheld. The murder reference is accepted and the death sentence awarded to each appellant is confirmed.