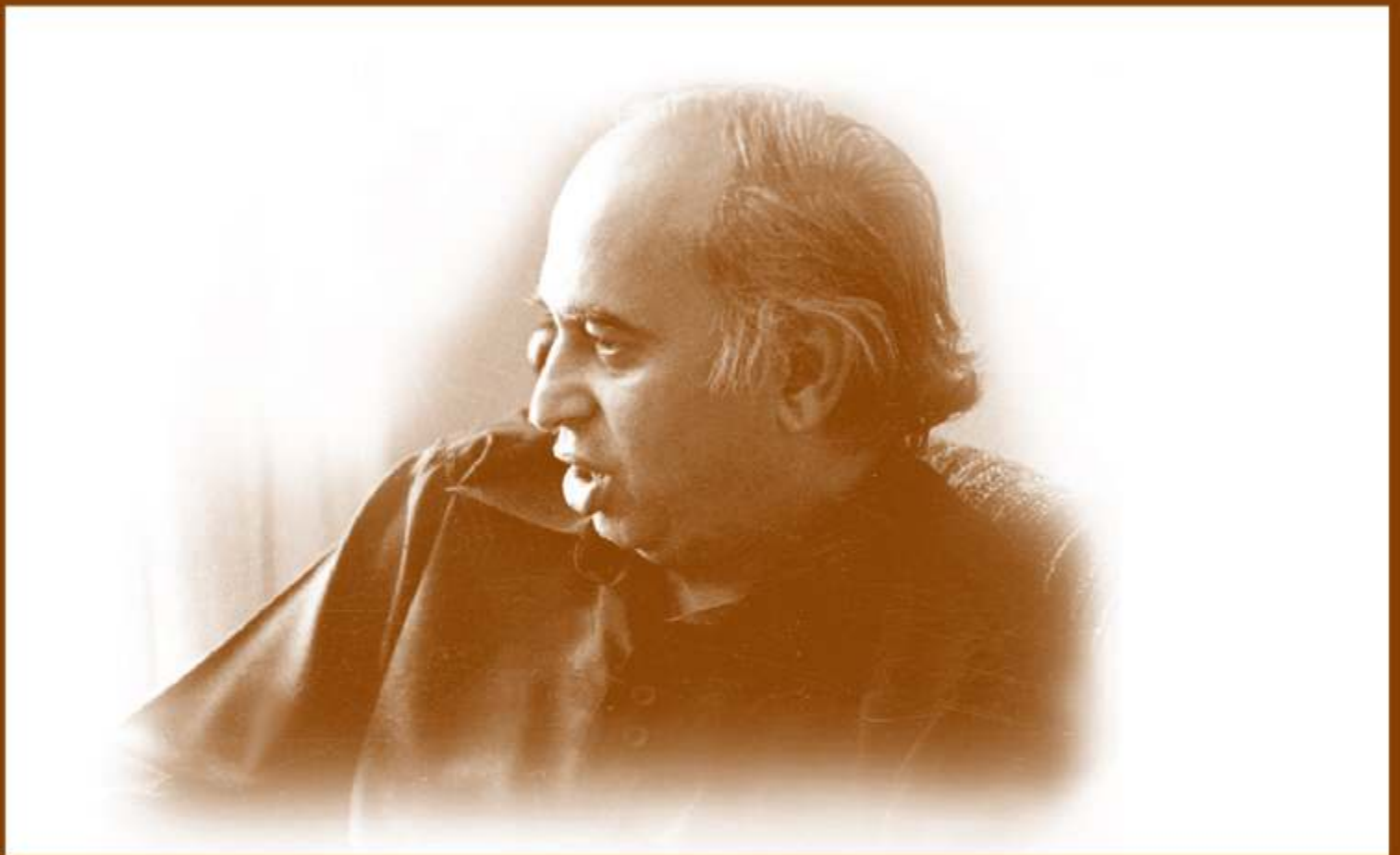


**LAHORE HIGH COURT
JUDGMENT
Z. A .BHUTTO & OTHERS
March 18 1978**



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THE STATE
VS
Z . A . BHUTTO
LAHORE HIGH COURT
JUDGMENT

Reproduced By:
Sani Hussain Panhwar
Member Sindh Council, PPP

IN THE LAHORE HIGH COURT AT LAHORE

JUDICIAL DEPARTMENT

CRIMINAL ORIGINAL NO. 60 of 1977

JUDGMENT

STATE REPRESENTED BY:

Mr. M. A. Rahman and Mr. Ijaz H. Batalvi, Special Public Prosecutors.

Z. A. BHUTTO REPRESENTED BY:

M/s. D. M. Awan, Ahsan Qadir Shah etc. Advocates.

MIAN MUHAMMAD ABBAS REPRESENTED BY:

Mr. Qurban Sadiq Ikram Ali Advocate.

***GHULAM MUSTAFA, ARSHAD IQBAL, RANA IFTIKHAR AHMAD
REPRESENTED BY:***

Irshad Ahmad Advocate.

JUDGMENT

AFTAB HUSSAIN, J. — Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa, have been challaned by the Federal Investigation Agency for trial for offences under Section 120-B, 302 read with Sections 109 and 301 and Section 307 read with Section 109 P.P.C. while Arshad Iqbal and Rana Iftikhar Ahmad have been challaned by the same agency for offences under Sections 120-B, 302 read with Sections 34 and 301 and Section 307 read with Section 34 P.P.C. for conspiracy to assassinate Ahmad Raza Kasuri, Member National Assembly and in pursuance of the aforesaid criminal conspiracy making a murderous assault on him by firing on his car on the night between the 10th and 11th of November, 1974 and as a result of the same causing the murder of his father Nawab Muhammad Ahmad Khan.

2. Zulfikar Ali Bhutto (hereinafter called as “the principal accused”) was holding the office of the Prime Minister of Pakistan on the fateful day and had been holding that office from the month of August, 1973 till the night intervening 4th and 5th July, 1977. Before 14th August, 1973 he held the high office of the President of Pakistan. The other accused were members of the Federal Security Force. Mian Muhammad Abbas was Director Operations and Intelligence in that force while Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad accused were employed in that force as Inspector, Sub Inspector and Assistant Sub Inspector respectively. Two of the accused persons Masood Mehmood and Ghulam Hussain were granted pardon and have been examined as approvers at the trial. They were holding posts of Director General and Inspector respectively in the same force.

3. On the night between the 10th and 11th of November, 1974, at about 12-30 A.M. while Ahmad Raza Kasuri, P.W. 1, a Member of the Opposition in the National Assembly, Pakistan, was returning in his Car No. LEJ-9495, from the wedding of one Bashir Hussain Shah of Shadman Colony, Lahore he was fired at with automatic weapons near Shadman-Shah Jamal Round-about as a result of which his father Nawab Muhammad Ahmad Khan received injuries, which resulted in his death in the United Christian Hospital at about 2-55 a.m. the same night. A statement in writing of this occurrence (Ex. P.W. 1/2) was given by Ahmad Raza Kasuri at about 3-00 a.m. and on its basis an F.I.R. copy of which is Ex. PW 34/1, was recorded at Police Station Ichhra.

4. According to this statement, a murderous attack by firing was made on the complainant on the 17th of January, 1972, at Kasur and a case about that occurrence was registered in Police Station City Kasur. Another attack was launched on the complainant on the 24th August, 1974, in Islamabad by

automatic weapons. A detailed report of this occurrence was given in the Police Station Islamabad. On the 9th of November, 1974, the complainant received information from Muhammad Hanif, Electrician, Tube-well Model Town Society, that a day earlier 4 to 5 persons were in search of him and were making enquiries about the location of his house. At about 12.30 a.m. on the date of occurrence (night between the 10th and 11th of November, 1974), while the complainant was returning in his Car LEJ-9495 after attending the marriage ceremony of Bashir Hussain Shah, whose house is in Shadman Colony, and was going towards Shah Jamal, he was again fired at by automatic weapons from the right-hand side. Since the car of the complainant was a right-hand driven car, he was sitting in it on the right side while his father was sitting on the front seat towards his left. The rear seats were occupied by his mother and maternal aunt. The firing which started from Shadman-Shah Jamal Roundabout continued till the car reached about a distance of 100 yards. Some bullets hit the car while some hit his father on his head. The father started bleeding. He took him to the United Christian Hospital where he succumbed to his injuries.

5. It was further stated that the complainant was sniped at for political reasons since he was a Member of the Opposition in the National Assembly and held the Office of Central Secretary of Tehrik-e-Istiqlal Pakistan. He used to criticise the Government strongly. In June, 1974, the principal accused had said addressing him in the meeting of the National Assembly that he was fed up with him and it was not possible for him (principal accused) to tolerate him (complainant) any more. These words were recorded in the record of the National Assembly and had also been published in the newspapers.

6. The prosecution case is that Ahmad Raza Kasuri who was a founder member of the Pakistan Peoples Party and had been elected on the ticket of that party as Member of the National Assembly in the elections held in December, 1970, developed after the said elections strained relations with the principal accused, who in order to get him assassinated or liquidated entered into a conspiracy with Masood Mehmood approver through the agency of the Federal Security Force. Mian Muhammad Abbas joined this conspiracy on the direction of Masood Mehmood and directed Ghulam Hussain approver, P.W. 31 to organise the murder of Ahmad Raza Kasuri. Mian Muhammad Abbas also arranged for the supply of arms and ammunition from the armoury of the Federal Security Force for the execution of this design. The other three accused and Ghulam Hussain approver also joined the conspiracy. Ghulam Mustafa obtained the requisite arms and ammunition with the help of Mian Muhammad Abbas to execute the conspiracy. On the night between 10th and 11th of November, 1974 after having received arms and ammunition from Ghulam Mustafa accused, Ghulam Hussain approver, Arshad Iqbal accused and Rana Iftikhar Ahmad accused in furtherance of the common intention fired with

automatic weapons at the car of Ahmad Raza Kasuri at the round about of Shadman-Shah Jamal Colony, Lahore. The firing resulted in the death of Nawab Muhammad Ahmad Khan while the complainant Ahmad Raza Kasuri escaped unhurt.

7. As will appear from the evidence, as a result of only nominal investigation the case was filed as untraced in September, 1975.

8. Abdul Khaliq, P.W. 41, Deputy Director, Federal Investigation Agency who investigated the case explained the circumstances leading to the discovery of different links culminating in the said murder. According to him after the promulgation of Martial Law in the country with effect from the 5th of July, 1977 the Central Government directed the Federal Investigation Agency to inquire into the performances of the Federal Security Force and its officers. The inquiries in Lahore Zone were entrusted to the Director, Central Zone, Lahore and the Deputy Director, Lahore Circle. Inquiries were, therefore, conducted into various political murders, kidnapping, abduction and dispersing of political meetings and processions by the Federal Security Force. In this connection the bomb blast case in the premises of the Lahore Railway Station on the visit of Air Marshal (Retired) Asghar Khan in March, 1975 was looked into in which Riaz, a paid agent of the Federal Security Force, was caught red handed at the Railway Station and was later let off on the intervention of the authorities. Various officials of the Federal Security Force were called and interrogated. It came to light that Ghulam Hussain, Inspector, F.S.F. approver in this case along with his colleagues was seen in Lahore in those days. It was apprehended that the Federal Security Force might be involved in the murder of Nawab Muhammad Ahmad Khan. Arshad Iqbal and Rana Iftikhar Ahmad accused were interrogated on 24.7.1977 and 25.7.1977 and as a result of the inquiry were arrested on 25.7.1977. They confessed their participation in the commission of the above; mentioned offences before a Magistrate P.W. 10 on 26.7.1977. Ghulam Mustafa, accused, Ghulam Hussain (approver) P.W. 31, Masood Mehmood (approver) P.W. 2 and Mian Muhammad Abbas accused were also interrogated and arrested. All of them confessed their respective guilt in statements made under Section 164 Cr.P.C. before the Magistrates. Masood Mehmood approver directly involved the principal accused in the commission of the offences. This is the background leading to the latter's arrest and this trial.

9. Coming back to the events of the fateful night it may be seen that Ahmad Raza Kasuri sped in his car, which incidentally was also damaged, to the United Christian Hospital. Nawab Muhammad Ahmad Khan was alive at that time. His outpatient card Ex. P.W. 6/1 was prepared by Dr- Zarrin Faiz. He was admitted in the Emergency Room at 1.00 A.M. on the 11th November, 1974 vide entry Ex. P.W. 6/2-A in the Emergency Room Register Ex.P.W. 6/2. He was attended to by

Dr. Zarrin Faiz. Dr. Bashir Ahmad, Neuro Surgeon of the Mayo Hospital was called. The X-rays of the skull of the injured person (Ex. P.W. 6/3 and Ex.P.W. 6/4) were taken. According to the X-ray report Ex. P.W. 6/5 which was prepared by Dr. Muhammad Asif Choudhry P.W. 6 who had also attended the patient, the patient had a "stellate fracture mainly in the left frontal parietal region of skull. A bullet-like metallic foreign body was seen in the X-ray in mid frontal parietal region of skull cavity. There was found scattered radio opaque debris in the left fronto-parietal region, mainly and in right tempromandibular joint area." The medico-legal report relating to this case Ex.P.W. 6/7, was prepared and signed by Dr. Zarrin Faiz who being somewhere in America could not be produced as a witness.

10. The patient died on the same night at 2.55 A.M. in the hospital. A death certificate P.W. 6/6 was issued by P.W. 6. The cause of death mentioned in this certificate was "bullet injury brain". In the opinion of the Doctor (P.W. 6) the injury was sufficient in the ordinary course of nature to cause death.

11. Dr. Sabir Ali who was working as Deputy Surgeon Medicolegal, Lahore at that time, on receipt of order Ex. P.W. 7/1 performed the post mortem examination of the deceased at 6.15 A.M. the same day. He found the following injuries :

- (1) Lacerated wound with ragged margins, 2 ½ " X 1 ½ ". The brain matter was visible, placed on the top right side of the head, obliquely transversed, the lateral end downwards and the medial end upwards, three vertical lacerations on the anterior margin of the wound and two vertical lacerations on the posterior margin. The size of the laceration ranged from 1/2" to 1/3". This wound was situated 6 ½ " above the tragus of the right ear at 11 O'clock.
- (2) Lacerated wound 1¼" X 1/3" X scalp deep transversely (slightly oblique) placed on the back of the left side of the head 5" above the tragus of the left ear at 2 O'clock. The medial end was slightly downwards than the lateral one.
- (3) An abrasion 113"X14" on the right zygomatic arch.
- (4) Abrasion 1/4" X 1/4" on the outer lower half of the left forearm 2½" above the wrist joint.

12. On the dissection of the cranium he found the whole of the under-scalp ecchymosed. There was eggshell fracture of the parietal bone along with multiple linear and fissured fracture extending in all directions. There was fracture of the

base of the skull in its anterior and middle part (cribriform plat, crista galli etc.) The meninges and the brain (cerebral hemisphere occipital parts) was shattered under injury No. 1. The small pieces of bones were found stuck in. Two thin metallic pieces from the margins of the wound and one bullet from the right cerebral hemisphere in the middle were recovered. The injury No. 2 was only scalp deep.

On opening the chest, both the lungs were found pale. The heart was empty. On opening the abdomen, the stomach was found empty. The small intestines contained chyme and the large one had faeces. The liver, spleen and the kidneys were pale. The bladder contained four ounces of urine.

13. In the opinion of the Doctor Injury No. 1 which was inflicted by some fire arm was sufficient to cause death in the ordinary course of nature. The cause of death was injury to brain and shock, and only few hours had elapsed between the injury and the death and similarly between the death and the post-mortem examination. The post mortem report is Ex. P.W. 7/2.

14. P.W. 7 handed over to the police a bullet and two metallic pieces which were sealed in a tube and the clothes of the deceased, bush-shirt, bunyan, trousers and underwear, all blood-stained (Ex. P. 1 to P. 4). They were taken into possession by Memo Ex. P.W. 7/6

On receipt of the statement Ex.P.W. 1/2 Abdul Hayee Niazi, Station House Officer, Ichhra Police Station, Lahore P.W. 34 recorded the formal F.I.R. copy of which is Ex. P.W. 34/1. He directed A.S.I. Muhammad Sarwar P.W. 17 to reach the hospital along with constables. He also sent another A.S.I. Zakaullah by name (not produced) to the spot along with 4/5 constables with a direction to preserve the spot. He himself first went to the spot and from there proceeded to the hospital, where he found senior officers like the Deputy Commissioner, Sardar Abdul Wakil D.I.G., Khan Asghar Khan S.S.P. and Abdul Ahad D.S.P. He deputed Muhammad Sarwar, A.S.I., PW. 17 to take care of the car- He prepared the inquest report of the deceased P.W. 7/5, obtained death certificate of the deceased P.W. 7/3 and submitted application Ex. P.W. 7/1 for post-mortem examination. He took into possession coat P.6, waist-coat P. 7 and a cap P. 5 bearing bullet marks which belonged to the deceased vide Recovery Memo Ex. P.W. 1/21. The coat and the waist-coat were blood-stained. He also took into possession Car No. LEJ-9495 of Ahmad Raza Kasuri by Memo Ex.P.W. 1/3. Since the glass of the rear right-window of the car had been smashed, he took the broken pieces into possession as also some blood from the car vide Recovery Memo Ex.P.W. 1/6.

15. The S.H.O. (P.W. 34) went to the spot and prepared site plan Ex. P.W. 34/2. He found some bullet marks on the walls of some bungalows. He also found that one bullet had pierced through the door and also four books in the shelf in one of the rooms of a bung-low. He collected 24 empty cartridges from the spot and lead of a bullet from near the bungalow. It is clear from his evidence and the evidence of Mr. Nadir Hussain Abidi, the then Director, Forensic Science Laboratory, Lahore, P.W. 36 that these empty cartridges and the bullet so recovered were not sealed. Its memo was also not prepared in view of a direction given to the official by the Deputy Superintendent of Police namely Abdul Ahad (now deceased).

16. On an application Ex. P.W. 1/4 submitted by Ahmad Raza Kasuri to the District Magistrate in the hospital and in pursuance of the order passed on it by the District Magistrate, P.W. 34 gave custody of the car on Superdari to Ahmad Raza Kasuri. Recovery memo of empty cartridges and bullets P.W. 34/4 and other documents were prepared much later but were ante dated as will be seen from the evidence.

17. The prosecution has produced the evidence to prove the following points :

(1) Strained relations and enmity between the principal accused and Ahmad Raza Kasuri resulting in the threat at the floor of the Parliament on 3.6.1974.

(2) The conspiracy to murder Ahmad Raza Kasuri between the petitioner and Masood Mehmood P.W. 2 and joining of the other accused and Ghulam Hussain approver in that conspiracy.

(3) Attack on Ahmad Raza Kasuri as a part of the same conspiracy firstly at Islamabad and later at Lahore, the last occurrence culminating in the death of the deceased.

(4) The steps taken by the principal accused and his subordinates to channelise the investigation in a manner so as to exclude the possibility of detection of the actual culprits; and interference in the investigation of the Provincial Police by Central Agencies.

(5) Preparation of incorrect record by the police under the direction of the officers of the Central Government with the object of making the detection of the actual offenders extremely difficult.

18. The first three points are proved by the evidence of PWs. 1 to 4 and 31.

19. Ahmad Raza Kasuri P.W. 1 stated that he was a founder member of the Pakistan Peoples Party which was founded on the 1st December, 1967. He was elected to the National Assembly of Pakistan in the 1970 Elections on the ticket of this party. The relations between him and the principal accused cooled down and became strained after he found that the principal accused was power hungry and keen either to share power with Sh. Mujib-ur-Rahman or to attain power in West Pakistan. In this connection he referred to firstly a statement given by the principal accused in Peshawar in February, 1971 making it clear that his party would not be attending the forthcoming session of the National Assembly scheduled to be convened on the 3rd of March, 1971 at Dacca because they would be treated as double hostages and would be going to the slaughter house; secondly a speech made by him (the principal accused) on the 28th of February, 1971 in a public meeting held at Iqbal Park, Lahore threatening that "whosoever would go to Dacca, his legs would be broken, and whosoever would be going to Dacca, would be going on a single fare; and thirdly the speech made by him (the principal accused) on the 14th of March, 1971, in a public meeting held at Nishtar Park, Karachi in which he clarified that since his party was the majority party in West Pakistan and Sh. Mujib-ur-Rahman's party was a majority party in East Pakistan the powers should be transferred not to the party having an overall majority, but separately in each wing to the majority party of that wing. He referred to the words used by the principal accused to convey this meaning "*Idhar ham Udhar turn*". This according to the witness, was the background of the relations between him and the principal accused becoming estranged. He submitted that in fact he developed differences with the said accused on the issue of PPL strike in which he and some other legislators went on hunger strike unto death in order to secure the liberation of the Press in Pakistan and liquidation of the National Press Trust since the said accused was not interested in the liberation of the Press and knew that he would be using this powerful organ to his own advantage once he came into power. He stated that the said accused had to face a mini revolt on this issue. He had to lead a procession from Masjid-e-Shohada in connection with Mian Mahmood Ali Kasuri's election campaign. When he reached there the processionists shouted "first Camp and then Campaign." The said accused had under compulsion to come to Gol Bagh where he (P.W. 1) was "confined in a Military Camp." He requested the strikers to break their fasts but they refused on the ground that liquidation of National Press Trust was one of the commitments of Pakistan Peoples Party in its manifesto. On this the said accused took out his pen and in an angry tone threatened to resign from the Chairmanship of the party in his favour.

19. He further submitted that he was the only member of the Pakistan Peoples Party who went to Dacca to attend the Session of the National Assembly scheduled to be held on the 3rd of March, 1971. He had taken this action in the

interest of integrity and solidarity of the country. On this, serious differences arose between him and the said accused. Later on he did not sign or vote in favour of the Constitution of Pakistan of 1973 since he considered it an instrument of tyranny which could only perpetuate one man rule. He was also one of those persons who did not accept the recognition of Bangladesh which was inter alia a result of the ambition of the principal accused to acquire power. He always expressed an opinion at the floor of the House that 94000 prisoners of war were locked up because of the principal accused's connivance with the Indian Government. He also opposed all black Laws which were introduced at the floor of the House in order to throttle any voice of dissent in Pakistan and particularly the Act pertaining to the Federal Security Force. He was an outspoken critic of the policies of the principal accused, internal as well as external, and this was never appreciated by the accused.

20. Elucidating the history of his differences with the principal accused the witness added that on the 2nd of May, 1971, the said accused came to Kasur where he addressed the Workers of the Pakistan Peoples Party in Habib Mahal Cinema, Kasur. The elements pro to the principal accused resorted to an attack on him within the premises of Habib Mahal Cinema and his hand was fractured in that attack. On the same day, after the attack, the principal accused suspended his primary membership of the Pakistan Peoples Party.

21. On the next day, the witness organised his own group known as Raza Progressive Group in the party. Thereafter, another attack was launched on him on the 17th of January, 1972, in which 3 bullets hit his legs. In this incident, his brother Khizar Hayat, also received injuries. Thereafter, he made a temporary peace with the principal accused, as a matter of political strategy since the latter was the Chief Martial Law Administrator and was with hunting his political opponents under the Martial Law umbrella by securing quick punishment for them from the Military Courts.

22. Immediately after the lifting of the Martial Law, the witness again showed his teeth to the principal accused and revived his old role of criticising him, both outside and inside the National Assembly. He was formally expelled by the principal accused from the Pakistan Peoples Party in October, 1972. He joined the Tehrik-e-Istiqlal in June, 1973.

23. P.W. 1 made reference to an incident which happened in the Parliament on the 3rd of June, 1974 when he contradicted the principal accused who while holding the floor had stated that the Constitution of 1973 was a unanimously passed document. P.W.1 intervened to put the record straight and pointed out that nine persons had not signed it. On this the said accused lost temper and said pointing his fingers towards the witness "I have had enough of you. , Absolute

poison. I cannot tolerate you any further.” There was an exchange of hot words from both sides at that time. On the 4th of June, 1974 the witness filed a privilege motion (P.W. 2213) alleging that some goondas were looking for him and this had happened because of his altercation with the accused at the floor of the House a day earlier.

24. P.W. 1 then narrated the incident dated 24th of August, 1974 at Islamabad in which he was fired at from a blue jeep in broad day light and in regard to which a case was registered at police station Islamabad vide F.I.R. PW.111. No Police Officer, however, contacted him thereafter in this connection and no investigation or inquiry into the incident was at all made.

25. The witness stated that he took up the matter before the Committee of the Full House which was seized of the Qadiani issue, but that Committee did not entertain the motion since it was not functioning as National Assembly. The witness also agitated this matter on the same day i.e. 24th August, 1974 on the floor of the Senate.

26. The witness further stated that he became alert and took all those precautions which a private individual could possibly take. ‘He went to Quetta in September, 1974 ‘to attend the meeting of the Working Committee of Tehrik-e-Istiqlal of which he was a member. He stayed there in the hotel Imdad where other members of the Working Committee including Air Marshal (Retired) Asghar Khan were also staying. They had a few guards. In addition the local party president, Mr. Khudai Noor also arranged a strong contingent of guards. These guards used to search everybody before allowing him to meet the witness and others. A strong contingent of these guards used to stand alert on the staircase of the Hotel and the other set used to watch the rooms where the party of the witness was staying. In spite of this the witness used to slip away at night from the room booked for him since he was aware that he was a marked man.

27. Regarding the incident, P.W.1 stated that he with his parents and maternal aunt went to attend the wedding ceremony of Syed Bashir Shah in Shad-man Colony, Lahore, on the 10th November, 1974, at 8.00 P.M. It was a dinner-cum-Qawali function. Shortly after midnight when the Qawali was over, he with his parents and aunt started towards his own house in his right-hand driven Toyota Mark-II car which he was himself driving. His father Nawabzada Muhammad Ahmad Khan deceased was sitting on the front seat towards his left while his mother was sitting on the rear seat behind him with his aunt towards her left. He reached in a few minutes the Shadman-Shah Jamal Round-about which is about 70 yards from the house of Syed Bashir Shah. He had hardly put his car into the second gear when the first burst of weapons hit the body the car’s lights went off. Then there were repeat-of his car and damaged its dynamo. Immediately ed

bursts with automatic fire-arms. He managed to drive on and when he cleared - the round-about and turned towards F.C., College bridge in Shah Jamal Colony and reached near the house of Muzaffar Ali Khan Qazalbash he looked into the driving mirror. After seeing that there was no car following him he noticed that his father was resting his head on this shoulder. He moved his hand forward towards his father whereby his hands were- soaked with blood. -Realizing that his father had been hit with bullets, he became panicky and was filled with grief. At that stage, his mother consoled him and- told him that "son, you have got to know about your father's injuries now but his blood is already in my feet."

28. The witness managed to drive his car to the United-Christian Hospital. His father was removed there to the operation theatre. After that he rang up at his home and informed his people about the unfortunate incident. The doctors needed blood which he himself gave. After he had given his blood for being transfused in the body of his father, he saw his brothers along with two immediate neighbours and family friends, Mr. Ayyaz and Mr. Javed Zafar Khan.

29. He went on to state that his brother Maj. Ali Raza rang up the SSP Lahore and informed him about the occurrence. Asghar Khan SSP (P.W. 12) arrived in the hospital followed by D.I.G. Mr. Abdul Wakil Khan (P.W. 14). The witness described before the Police Officers the entire incident and told them that this attack had been launched on the instructions of the principal accused. He stated that while his father was still in the operation theatre, the police officials were trying to draft an FIR on the basis of the information supplied by him, but he did not agree to the registration of the case on the basis of the draft prepared by them. They had first mentioned in the draft that this attack might have taken place because of political differences to which he objected that he required precision and the term "political differences" was vague; after which they wrote that this attack might have been arranged by the Government. The witness stated that he took objection to this sentence also because in the set up of the Governmental organization, right from the Tehsildar up to the President of Pakistan, everybody performs Governmental functions. He said that he would like the draft to be more precise and to include the name of the principal accused. The Police Officers persuaded him to drop the name of the principal accused. At about 3 o'clock in the night, a doctor came down from the operation theatre and formally announced the death of his father. He lost his temper and told the police officers with finality that if they had to record an F.I.R., the name of the principal accused must be included in it. Thereupon, they asked him to give his statement in writing promising that the case would be registered on its basis. The witness added that since he was not in a fit state of mind, he dictated his statement Ex.P.W. 1/12 to Javed Zaffar Khan and later signed it and handed it over to Asghar Khan P.W.1/2, who, later handed it over to some police man on duty.

30. The Witness also testified about the postmortem examination, about the taking of possession of the car by the police by. Ex.P.W.13, about the bullet marks on the car, about the application Ex.P.W.1/4, submitted by him in the hospital, to the Deputy Commissioner for return of the car and about the Sapurdari Nama of the return of the car, Ex.P.W.1/5. He went on to state about the taking into possession by the Police (see Memo Ex. P.W.1/6), the clothes of the deceased, bush-shirt P.1, vest P.2, trousers P.3 and underwear P4. He also proved the recovery by the police of cap bearing bullet marks P. 5, bloodstained coat of the deceased P.6 and his waist-coat P.7 vide Memo Ex. P.W. 1/21. Similarly he proved recovery Memo Ex. P.W. 1/6 by which the police took into possession the broken glass and the blood of his father from inside the car.

31. The witness referred to the Privilege Motion moved by him on the 29th November, 1974 (Ex. P.W. 1/7) in the National Assembly which was ruled out of order.

32. As regards the investigation, the witness stated that the police did not contact him or his mother or his aunt in connection with the investigation. He stated that once or twice the police officials did come to his house but they came only for condolence purpose. He appeared before the Tribunal headed by Mr. Justice Shafi-ur-Rahman. He kept an Ex Army Havildar Sherbaz Khan, as his personal guardman who accompanied him on his visits to and return from the National Assembly.

33. The witness stated that theirs was a happy family and the unity in the family was exemplary. There were no disputes over land. He produced official reports of the National Assembly pertaining to 19th February, 1973, 20th February, 1973, 1st June, 1973 and 3rd June, 1974, Exs. P.W.1/8, P.W.1/9, P.W.1/10 and P.W.1/11 to corroborate his statement.

34. The witness recounted the facts leading to his rejoining the Peoples Party. He stated that in September, 1975, Saeed Ahmad Khan P.W.3 and Abdul Hamid Bajwa (now deceased) started visiting his house in Lahore and also his room in the Government Hostel Islamabad. Saeed Ahmad Khan, P.W.3, persuaded him by reminding him that he was a marked man and the danger had not as yet abated. He also said that the witness was a young parliamentarian having a bright future in the politics of Pakistan and by maintaining the present stance; he had not only put his life in jeopardy but had put his entire family at stake. He advised him to patch up with the principal accused. These visits of P.W.3 and Abdul Hamid Bajwa continued for some time. Mr. Abdul Hafeez Pirzada visited his house in October, 1975 and tried to persuade him to compromise with the said accused and to rejoin the Pakistan Peoples Party. The witness stated that he patched up with the principal accused on the 6th of April, 1976.

35. In cross-examination by the learned counsel for the principal accused the witness conceded that he continued to be a Member of the Pakistan Peoples Party up to the 8th of April, 1977, after he had rejoined it on the 6th April, 1976. He explained that he simply maintained a posture of Affiliation with the party as a measure, of expediency and self-preservation. He admitted that he had applied for the Pakistan Peoples Party ticket for election to the National Assembly in 1977, but it was not awarded to him, He denied that he had adopted "present stance against Mr. Bhutto" because the party ticket was not awarded to him. He referred in this connection to his speech in the National Assembly made on the 2nd of December, 1974, (Ex.P.W.1/14) the relevant part of which is Ex.P.W.1/14-A, to which reference will be made later. The witness was a Member of the Parliamentary Delegation sent to Mexico in 1976. After his visit to Mexico and several other countries enroute Pakistan the witness submitted a report Ex.P.W.1120-D. He was confronted in this report with the following portion:

"We found that your image as a 'Scholar Statesman' is emerging and getting wide acceptance."

He admitted to have written this but explained that he was trying to pamper the accused.

36. Much of the cross-examination by the learned counsel for the principal accused was directed towards showing that the witness had great admiration for the leadership of the principal accused and in this connection he was shown his letter Ex. P.W. 1/18-D and his telegram Ex .P.W. 17-D which pertain to the period upto 1970. He denied having admiration but stated that he had been prompted to join the Pakistan Peoples Party, by its Manifesto. He however, admitted his cordial relations with the principal accused up to January, 1971. He described priorities in regard to his loyalties and stated that his first loyalty was to the country and to the nation, second loyalty was to the Party and its Manifesto and the third loyalty was for the leadership. He was cross-examined at length regarding the incident of Habib Mahal Cinema, Kasur, May, 1971, the cross-cases registered in that connection against him, the case registered in his support in this connection and a cross-case registered against him and one Muhammad Ashraf, about another attack launched at his house at Kasur on the night between the 4th and 5th of August, 1971 in which his brother Khizar Hayat received as many as 100 injuries, and about an incident of the 8th of April, 1972, of a firing in a public meeting held at Khudian which he addressed, and the cases registered in this respect. He was also questioned about an assault by Ch. Muhammad Yaqoob Maan with his party on him on the 17th January, 1972, in which he sustained bullet injuries on his legs, with the intention of showing that he had inimical relations with Ch. Muhammad Yaqoob Maan. He was examined

about his relations with one Akbar Toor who had disturbed the meeting at Khudian. The witness stated that his relations with Ch. Muhammad Yaqoob Maan were very cordial with him because he was his benefactor. It was when he got instructions from the principal accused that he started resorting to the strong man tactics on him and his family. He attributed indifference of the Authorities in such matters to the relations between the principal accused and General Yahya Khan. He stated that after the arrest of Sh. Mojeeb-ur-Rahman, General Yahya Khan was entirely banking on the political support particularly of the said accused who was enjoying the position of a private Advisor to General Yahya Khan.

37. Some questions were put to him about an attack made on his house by one Haji Nai in 1952, but he denied this suggestion. He admitted the gifts made by his father to his wife and others but he denied that there was any family dispute on this score.

38. He was questioned whether the strike of PPL had started under the orders of the said accused or the Central Committee the witness replied that it was under the orders of the accused. But he repudiated the suggestion that the strike was started by the strikers including himself without the concurrence of the principal accused.

39. In reply to the questions put by the learned counsel for the other accused the witness admitted that there was no enmity between him, his family and his father on the one hand and Arshad Iqbal, Rana Iftikhar Ahmad and Ghulam Mustafa on the other and that he had no or enmity against Mian Muhammad Abbas. It is unnecessary to deal with the rest of the cross-examination which dealt only with the question of the witness trying to obtain the Pakistan Peoples Party ticket or seek interviews with the principal accused in his capacity as Prime Minister.

40. Masood Mahmood approver (P.W.2) who joined the Police Service of Pakistan in 1948, served as Superintendent of Police, Deputy Inspector General Police, Deputy Secretary in the Provincial as well as Central Government, Deputy Secretary CENTO at Ankara, Joint Secretary in the Defence Department and was later promoted as Additional Secretary in the same Department, explained the background of his appointment as Director General of the Federal Security Force. He stated that before his promotion as Additional Secretary he had been superseded by four juniors and after promotion he was transferred to the post of Managing Director, Board of Trustees of the Group Insurance and Benevolent Funds in the Establishment Division which was a punishment post. He particularly referred to his failure to see Mr. Vaqar Ahmad, Establishment Secretary in spite of his efforts.

41. He stated that Mr. Vaqar Ahmad asked him one day to call on the Prime Minister (the principal accused) in the morning of 12th of April, 1974 and to see him first before going for the interview. In this meeting Mr. Vaqar Ahmad informed him that the Prime Minister was going to make an offer of appointment to him, which he must accept. He also drew his attention to his state of health and the state of health of his wife as well as to the fact that he had small children. He further referred to the recent Rules which provide for retirement at any time of Officers of Grade 21 and above. This talk created an impression on the mind of the witness that his job was at the mercy of the Prime Minister and Mr. Vaqar Ahmad.

42. He stated that during the interview with the principal accused the latter said kind words to him and after reminiscing about on their past- association praised his capacity of hard work and offered to him the post of Director General of the Federal Security Force. He also made a mention of the state of health of his wife and of his (P.W.2) having young children. He asked the witness to be on the right side' of Mr. Vaqar Ahmad since Mr. Vaqar Ahmad did not like him (P.W.2).

43. The witness continued that the principal accused directed him not to seek instructions from Khan Abdul Qayyum Khan, the then Minister of Interior. He asked him to raise the force into a deterrent one because, as spelt out by him, he wanted the people of Pakistan, his Ministers, MNAs and MPAs to fear it. He however advised him not to terminate the services of re-employed officers without his prior permission. In this connection he particularly mentioned Mian Muhammad Abbas accused. He also told him that written directive had been issued to the Force for the setting up of an Intelligence Wing.

44. Between the 12th of April, 1974 when the witness had an interview with the principal accused and the 23rd of April, 1974 the witness was visited several times by Mr. Saeed Ahmad Khan, P.W.3 (who was the then Chief Security Officer to the principal accused and his Assistant, later Abdul Hamid Bajwa. Abdul Hamid Bajwa did not mince matters in making it plain that if the witness did not accept the job offered to him, his wife and children might not be able to see him again. Similar apprehensions were expressed by Saeed Ahmad Khan P.W.3, but in mild and persuasive language.

45. The witness stated that he assumed charge of his new office on the 23rd of April, 1974. The charter of duties of this post was contained in the Federal Security Force, Act, 1973. The principal accused gave to him an oral charter stating that he wanted the Force to be available to him for political purposes, *i.e.* for

a) – Breaking up of political meetings;

- b) –Harassment of personages both in his own party and the opposition, and
- c) –Induction of plain clothed persons in public meetings addressed by him to swell the crowd.

46. One of the functions discharged by the witness was to brief the Prime Minister about the law and order situation in the country, the political situation in the country, and information collected through sources about members of his own party including some of his Ministers and those in the opposition.

47. The principal accused directed the witness to be present in the National Assembly when he was attending the session or was in his own chamber in the National Assembly. He also asked the witness to curtail his social life to the barest minimum and to advise his wife to do accordingly.

48. The witness further stated that in June, 1974 when Ahmad Raza Kasuri P.W. 1 was speaking in the National Assembly the principal accused addressed him directly and not through the Speaker, and asked him to keep quiet. He also stated something to the effect like that he had had enough of him and that he would not tolerate his nuisance any more. A day or two later, the Prime Minister sent for him and said to him that he was fed up with the obnoxious behavior of Ahmad Raza Kasuri and Mian Muhammad Abbas accused knew all about his activities. He also told that Mian Muhammad Abbas had already been given directions through the (witnesses) predecessor to get rid of Ahmad Raza Kasuri. The principal accused went on to instruct the witness that he should ask Mian Muhammad Abbas to get on with the job and to produce the dead body of Ahmad Raza Kasuri or his body bandaged all over. He told him that he would hold him (witness) personally responsible for the execution of this order.

49. The witness protested against this order which according to him was against his conscience and also against the dictates of God, but the principal accused lost his temper and shouted that he would have no non-sense from him or Mian Muhammad Abbas. He further said to him “you don’t want Vaqar chasing you again, do you?”.

50. The witness called Mian Muhammad Abbas to his office and repeated to him the orders of the principal accused. Mian Muhammad Abbas accused was not the least disturbed and told the witness that he need not worry about it and he would see that the orders were duly executed. He also said that he had been reminded of this operation by the (witnesses) predecessor more than once.

51. The witness continued that he was reminded and goaded again and again about the execution of this order. This was done by the principal accused personally, on the green telephone as well as through Saeed Ahmad P.W. 3.

52. The witness referred to the earlier incident of August, 1974 in which Ahmad Raza Kasuri P.W. 1 was sniped at in Islamabad. He said that before this incident the principal accused has asked him to take care of Ahmad Raza Kasuri who was likely to visit Quetta. He accordingly told Welch P.W. 4, the then Director Federal Security Force, Quetta that some anti state elements including Ahmad Raza Kasuri P.W. 1 had to be got rid of. He also told him that Ahmad Raza Kasuri was delivering anti state speeches and was doing damage to the interest of the country. The witness reminded Welch P.W. 4 personally about this on his visit to Quetta.

53. He added that P.W. 4 submitted an intelligence report dated 14.9.1974, Ex.P.W. 2/1. It may be stated that the primary object of the report is to intimate that Ahmad Raza Kasuri P.W. 1 arrived in Quetta on 13.9.1974, and though he had his room reserved in the Imdad Hotel he did not reside in the room. It also includes excerpts from the speech of P.W. 1 against the principal accused made at Quetta containing allegations that the latter was splitting up the country, that he had taken thirty lacs of rupees from Ghulam Ahmad on the Qadiani issue that the Federal Security Force was all over the country and that his favorites Lathi charged and shot the people. He complained that women had been disgraced and the army has been used against the people.

54. The witness admitted having received another report from Welch P.W. 4 a photostat of which was provisionally marked Ex.P.W. 2/Z. A carbon copy was later proved formally as Ex.P.W. 4/1. He also proved documents Ex.P.W. 2/2 and Ex.P.W. 2/3. For the proper appreciation of the facts it will be worthwhile to mention the contents of these documents.

55. Ex.P.W. 4/1 dated 18th September, 1974 reported the departure of Ahmad Raza Kasuri, P.W. 1 from Quetta on the 16th September, 1974 at 11.30 A.M. by PIA. It also reported that throughout their stay at Quetta the party including Ahmad Raza Kasuri were protected by twenty persons and that the party was exceptionally cautious. The persons wishing to see the party were usually searched by the persons who were detailed for their security. It further says that even the times of their (party) movement were not disclosed and they spent little or no time in the hotel room reserved for them. According to the report a source had infiltrated into the ranks of the party claiming to be a relative of Sattar Khan of Mardan, but he was detected when Sattar Khan himself arrived in Quetta. Thereafter he was removed from the inner circle.

56. Ex.P.W. 2/2 is a letter dated 25.9.1974 written by Mian Muhammad Abbas to Welch, P.W. 4 inquiring from him as to where did Ahmad Raza Kasuri, P.W. 1, stay at Quetta if he did not put up at Imdad Hotel where a room was reserved for him. Ex.P.W. 2/3 dated 17th November, 1974 is the reply to the letter Ex. P.W. 21,2 and reports that Ahmad Raza Kasuri seldom stayed in his reserved room during the night, but he occupied some other room reserved for his party in the hotel.

57. The witness stated that he was aware of the inquiry made in Ex.P.W. 212. In fact he had been asking Mian Muhammad Abbas accused to inquire from Welch P.W. 4 as to the steps taken by him regarding the directions given to him about Ahmad Raza Kasuri, P.W. 1. The reference in the document Ex.P.W. 2/3 appeared to be an expression of inability by Welch (P.W. 4) to perform the duty.

58. The witness further stated that on the 11th of November, 1974 the principal accused and he himself were camped at Multan. Very early in the morning of that date the principal accused rang him up and said.

“Mian Muhammad Abbas has made complete balls of the situation. Instead of Ahmad Raza he has got his father killed.”

On being summoned, later to the residence of Sadiq Hussain Qureshi, Multan the witness met the principal accused in the presence of Sadiq Hussain Qureshi. The principal accused most non-calamity informed him of the news about the death of the deceased in this case as if he had not talked to him before. The witness said in reply that he had also heard about this.

On his return to Headquarters (Islamabad) Mian Muhammad Abbas accused reported to him that his operation has been successful, but instead of the intended victim his father Nawab Muhammad Ahmad Khan had been murdered at Lahore.

59. The witness continued that on his return to Rawalpindi the principal accused summoned him. He found him to be peeved and agitated. He said that the actual task had yet to be accomplished. He, however, declined to carry out such orders any more. Even on subsequent occasions the principal accused directed him to get Ahmad Raza Kasuri, P.W. 1 assassinated, but he refused. Thereafter threats were held out to him and attempts were made on his life as well as to kidnap his children from the Aitcheson College, Lahore. Several times his food at Chamba House was poisoned. He discovered that some of his own subordinates seemed to have been bought over or won over since he had seen them lurking round at places where they should not have been when he was around.

60. He further stated that he or his family had no grudge or motive against Nawab Muhammad Ahmad Khan, deceased, or Ahmad Raza Kasuri, P.W. 1, and his father and the deceased had been great friends, since the witness himself hailed from Kasur.

61. He explained the circumstances leading to his confessional statement after he was taken into protective custody in the early hours of 5th July, 1977. He was taken initially to some mess in Rawalpindi and was removed from there that very evening to Abbottabad where he stayed till the early days of August. He addressed a letter to the Chief Martial Law Administrator on the 14th of August, 1977 in which he made a clean breast of the misdeeds of the Federal Security Force conducted by him under the orders of the Principal accused. He was thereafter contacted by the Federal Investigation Agency. He then made a confessional statement (P.W. 2/4) before a Magistrate at Islamabad. He also addressed a letter Ex. P.W. 2/5 to the District Magistrate on the 7th of September, 1977 requesting for grant of pardon, in pursuance of which the pardon was granted to him and he made his statement (P.W. 2/6) in consequence thereof under Section 164 Cr. P.C.

62. The witness also proved his T.A. Bills Ex. P.W. 2/7 pertaining to the period from 1.11.1974 to 11.11.1974 to establish his visit to Multan and his presence at Multan in the morning of 11th of November, 1974 and his departure there from by PAF at 11.30 A.M. He also proved his T.A. Bills Ex. P.W. 2/9 and P.W. 210 pertaining to the period 18th of July, 1974 to 4th of August, 1974 to prove particularly his visit to Quetta.

63. In reply to cross-examination questions of the learned counsel for the confessing accused the witness stated that his predecessor and the first Director of the Federal Security Force was Mr. Haq Nawaz Tiwana. He stated that some of the officers under him had direct contact with the Prime Minister's Secretariat. In some cases those officers had been complying with the orders of the officers of the Prime Minister's Secretariat³ and orders of the principal accused without reference to him. Such orders used to be about 'a secret mission' which term was known to all the officials of the Federal Security Force. He conceded that the orders of the principal accused with regard to the instant case were also of 'secret mission'. In reply to a question whether it was impressed upon the subordinate officials of the Federal Security Force during the period of their training that they would have to obey all orders of their superiors whether legal or illegal, the witness stated that this could not be spelt out from the syllabus of training but an order of a superior in a disciplined force has to be carried out.

The witness further conceded that persons from outside the Force had been employed as 'sources' to gather information and to perform 'secret mission' and

such persons were paid from the Secret Funds of the Federal Security Force. He admitted that Federal Security Force had been used to disperse meetings at Dera Ghazi Khan and Sheikhpura.

64. The learned counsel for the principal accused cross-examined the witness in detail about his assignments prior to his appointment as Director General, Federal Security Force. He was cross-examined about his alleged role during the language riots of 1952 in Dacca in which there were several casualties in police firing. He was also questioned about his alleged unsavory role in an old case against Mrs. Ibrat. It was suggested to him that Mrs. Ibrat was maltreated and rats were left loose in her Shalwar and its ends were tied. It appears that these questions were put to prove that P.V. 2 was well qualified from the point of view of the principal accused to be appointed as Director General of the Federal Security Force. He was also cross examined about his assertion that he was posted to a punishment post when he was transferred as Managing Director, Board of Trustees General Benevolent Fund and Group Insurance. He was asked to explain when he was so appointed. He stated.-

“I had knowledge of the fact that arms and ammunition had been given to Jam Sadiq Ali and late Mr. Abdul Hamid Bajwa, for operation against the Hurs, in Sindh. After this information became available to me, I noticed a certain amount of coolness in the dealings with me by the then Secretary and I think in order to ensure that I did not blurt out the secret, the Prime Minister sent Abdul Hamid Bajwa to me to keep my mouth shut. It was after a short-while that I was transferred as Managing Director, Board of Trustees, Central Benevolent and Group Insurance.”

On receipt of this reply the learned counsel cross-examined the witness at length with a view to justify this supply of arms and ammunition in view of the alleged disturbances in Sanghar District. He was later cross-examined with a view to bring on record that he had imparted some information to Abdul Hafeez Peerzada about the burning of records in the Intelligence Bureau. He conceded having given this information in the national interest. He admitted that the appreciation of this was communicated to him by the Military Secretary to the President (the principal accused). He however denied having asked Abdul Hafiz Peerzada to remember him in future since he had done a valuable job. He denied having sent Qamar-ul-Islam to the principal accused or having requested Abdul Hafiz Peerzada or having sent his wife to Mrs. Nusrat Bhutto to recommend his name for the post of Director General F.S.F.

Several questions were put to him about the disturbances in Baluchistan, occasional bomb blasts there and attack on the principal accused during his visits there. Suggestions were made to him about threats held out to him by the

opposition leaders during the campaign of the election of March, 1977 particularly the threat by Air Martial (Retd) Asghar Khan during his speeches in February, 1977 that he (witness) would be hanged upside down. It is unnecessary to give a resume of the answers given to such and similar questions.

65. The witness was confronted with certain omissions in his earlier statements, but he explained that his statement before the Court was in answer to definite questions put by the learned Special Public Prosecutor. However, none of these omissions amount in my opinion to contradiction within the meaning of Section 145 Evidence Act. To a question whether the conspiracy to murder P.W. 1 had been hatched before he took over as Director General, Federal Security Force, he answered that the principal accused had informed him that direction had been given to Mian Muhammad Abbas through Malik Haq Nawaz Tiwana (former Director General) to get rid of P.W. 1. He stated that he did not give any plan to Mian Muhammad Abbas for committing the murder of P.W. 1 nor had told him how and from where he could arrange arms and ammunition for the purpose. He stated that Mian Abbas accused had assured him about the execution of the orders of the principal accused.

66. Much of the cross-examination was directed towards showing that the post of Director General, Federal Security Force was a prestigious post and conferred considerable advantages upon the witness. He had to tour extensively and thus had opportunity to earn travelling and daily allowances. While on tours he stayed in renowned hotels and in deluxe suites. He toured abroad and enjoyed travels to foreign countries, e.g. Korea and China, West Germany, Belgium, U.S.A., Japan and U.K. and stayed in good hotels.

The witness however stated that during his tenure as Director General, F.S.F. he suffered misery, torture and agony and in their respective spheres Vaqar Ahmad and the principal accused were his enemies. The learned counsel then put numerous questions to him that he was serving with great pomp and show and that he was allowed to take his wife sometimes to foreign countries as an official attendant and a sum of \$ 500/- was sanctioned for her expenses, that he was allowed purchase at State expense spectacles with a hearing aid worth about £482.30 and that the expense of the husband and his wife borne by the State amounted to Rs. 50,000/.

67. Some questions were put to the witness to elicit from him whether he had first directed Welch P.W. 4 to take care of P.W. 1 on telephone or on his tour to Quetta, the witness answered as follows:

“The sequence is not clear from my statement quoted in the question. Now that a specific question has been asked of me, about

which I state that I communicated orders to Mr. Welch after Mr. Z. A. Bhutto had asked me to take care of Mr. Ahmad Raza Kasuri on the 29th of July, 1974. The telephonic conversation followed this event.”

Same sequence was given by P.W. 4. Regarding the events of 3rd June, 1974 he clarified during cross examination that he did not mean that Ahmad Raza Kasuri P.W. 1 was making a formal speech or that he was speaking in his own right. He could not recall whether he was speaking in his own right or not.

68. The witness admitted that he submitted application to the Finance Minister, Government of Pakistan for permission to send his two sons abroad for education. He explained that the reasons for this application were that due to his prolonged tour the supervision of the boy’s education had suffered, the schools had been closed now for three months and one of his wife’s brother who was abroad had been insisting that the children should be sent to U.K.

69. Some questions were put about the state of health of the witness and his collapse at Ziarat. These questions were put to suggest to the witness that because of his ailment and hyper-tension he succumbed to the pressure of the Chief Martial Law Administrator and made this statement. The witness denied this. He replied that he had borne his ailments throughout until his detention on the 5th of July and afterwards. He added that the doctor who visited him in the hospital was of the view that the blood pressure and heart condition of the witness had never been better. This was the result of the peace of mind, despite his detention.

70. Similarly after questioning him at length about his detention, about his relationship with Seth Abid, about his confessions being involuntary and obtained by coercion and undue influence, it was suggested to the witness that he was induced’ and threatened to make a statement against the principal accused in order to justify the overthrow of the “Prime Minister’s Government” by the Chief of Army Staff, that he was promised pardon before he made the confessional statement and that as a reward of the confessional statement, Seth Abid, his relative has been granted the concessions of release of property, immunity from prosecution and permission to establish a bank in the country. The witness repelled all these suggestions.

71. In reply to cross-examination questions by the learned counsel for Mian Muhammad Abbas accused the witness admitted that this accused was a favorite of Haq Nawaz Tiwana who had allowed him unauthorisedly to sign himself as Director although he was a Deputy Director. He denied that Mian Muhammad Abbas presented to him his resignation in June, 1974 and another resignation in

February, 1976 and that he returned the same to him. He denied that the resignations Ex. P.W.2/12-D and P.W.2/13-D which were produced by the learned counsel for Mian Muhammad Abbas from his brief were presented to him. He stated that Mian Muhammad Abbas had fallen ill and he had gone to see him in the hospital.

72. He stated that he did not know Ghulam Hussain, Inspector, Federal Security Force (P.W.31) , the other approver. A question was put to him that on 5.6.1974 Ghulam Hussain, Sub Inspector was awarded a first Gloss certificate and cash prize of Rs. 500-. The witness stated that he did not remember the details but such orders were passed in routine by the Director General on presentation of reward rolls or notes of performance of duty of a nature warranting a reward, without seeing or knowing the person to whom the award is made.

73. Regarding source reports he stated that such reports were sent to him directly by name only in a few exceptional cases and they were kept in his confidential almirah. Most of the reports were kept in the custody of Mian Muhammad Abbas and some were kept in the custody of Abdul Haq, Deputy Director. Even those reports which were kept in the confidential almirah and in custody of Abdul Haq were by and large seen by Mian Abbas accused, who was Director, Intelligence. He denied that he ever complained about non-cooperation by Mian Muhammad Abbas accused.

74. Saeed Ahmad Khan who was appointed as Chief Security Officer to the President on 11.8.1972 and after the election of the principal accused as Prime Minister became Chief Security Officer to the Prime Minister, appeared as P.W.3. He stated that while holding the post of Additional Inspector General of Police, West Pakistan, he was dismissed from service under Martial Law Regulation 58 on 23.5.1970. He then set up two business organizations under the name of Pak Field Corporation Limited with himself as its Managing Director and Saeed Ahmad Associates, his sole Proprietary concern. He stated that he had met the principal accused for the first time at Larkana when he visited it as a Deputy Inspector General of Police in December, 1955. The principal accused had called upon him as a lawyer on behalf of Sultan Chandeo, his client. Thereafter the witness met him twice or thrice at Karachi and once at Quetta when he was a member of the Central Cabinet.

75. The witness furnished details of his appointment as Chief Security Officer of the President. He stated that he happened to go to Rawalpindi on a business trip in August, 1972 and entered his name in the visitor's book on the President's House. He was called by the President and he had an interview with him on the 11th of August, 1972 at 4.00 P.M. In this interview the principal accused persuaded him to work for him and for the country, but the witness pointed out

an impregnable difficulty in this connection that being a dismissed civil servant he could not be re-employed to a post in the Government. A device was found by the principal accused for payment of salary and it was settled that the witness would be a Legal and Administrative Consultant to the All Pakistan Research Organization under the aegis of the Cabinet Division from where he would be getting his emoluments and allowances. Although he never worked for this organization even for a single day, he was paid by the above organization with effect from the 8th of December, 1972 while for services rendered prior to that period he was paid from the "secret fund" of the President through his Additional Secretary Mr. Afzal Saeed Khan. No notification was issued since there was no sanctioned post on which the witness worked.

The witness stated that he was required to advise the President and subsequently the Prime Minister on political issues in the country and to keep him abreast of the political activities of various political parties. Important and daily intelligence reports from the Intelligence Bureau, Inter Services Intelligence Directorate and of the Provincial Special Branches also began to be supplied to him at the end of 1972. After assessing these reports the witness used to send his own appraisal to the principal accused. When in 1973, the work load increased he asked for assistance from the principal accused on which he was instructed to take late Abdul Hamid Bajwa as Officer on Special Duty with him. The principal accused had suggested the name of Abdul Hamid Bajwa on the ground that being a specialist on Punjab affairs he would prove useful. The witness stated that during his absence on tours Abdul Hamid Bajwa looked after his office and even sat in his room where the facilities of the Sacophone were available to him. He found in due course that Abdul Hamid Bajwa had direct access to the principal accused personally as well as on telephone and he was given direct assignments. He would also send reports to the Prime Minister directly.

The witness continued that he was asked by the principal accused to send reports on a number of persons including Ahmad Raza Kasuri and some other renegades of the People's Party. He, therefore, opened files on such persons. The files in respect of Ahmad Raza Kasuri were also opened in the month of December, 1973. These were Ex.P.W.3/1, P.W. 3/2 and P.W. 3/3.

76. He said that since Ahmad Raza Kasuri P.W. 1 had become very bitter and critical, in fact virulent, against the principal accused, the latter issued order for keeping him (P.W. 1) under strict surveillance. This was done by the Provincial Special Branch. The telephone of P.W. 1 was tapped by the Intelligence Bureau.

77. The witness further stated that in the middle of 1974 the principal accused in an interview with him abruptly asked him if he knew Ahmad Raza Kasuri. On his reply that he did not know him personally the principal accused said that he

had assigned some work to Masood Mehmood P.W. 2 about Ahmad Raza Kasuri and that he should remind him. On re-turn to his office he passed this message to Masood Mehmood on the green line and the latter replied "all right".

78. He continued that on the 10th/11th November, 1974 as a result of firing by automatic weapons on the car of Ahmad Raza Kasuri, his father was killed. The First Information Report was registered at Ichhra police station, Lahore by Ahmad Raza Kasuri in which he blamed the principal accused being responsible for the murder. The witness proved a note by Abdul Ahad DSP, Ichhra, Lahore Ex. P.W. 3/2-A dated 22.1.1974 on file Ex. P.W. 3/2 with which he sent a copy of the First Information Report in the above case. He also proved a note dated 23.11.1974 Ex. P.W. 3/2-A/1 by Abdul Hamid Bajwa and another note dated 24.11.1974 Ex. P.W. 312-B written by him. In these notes Abdul Hamid Bajwa had taken exception to the recording of the F.I.R. at the instance of Ahmad Raza Kasuri, P.W. 1 clearly implying that if the First Information Report which was recorded after 2-12 hours had been recorded by the police, suo moto the Prime Minister would not have been named as a suspect in the Information Report and the publicity given to the case would have been avoided. The note by the witness was seen by the principal accused who agreed with it vide Ex. P.W. 3/2-B/1.

79. The witness stated that special inquiry tribunal was set up under the Special Inquiry Tribunal Act. During the proceedings before the Tribunal the name of the principal accused was mentioned. On this the latter rang up the witness either from Larkana or Karachi and inquired from him as to where he was. He replied that he was at Rawalpindi. On that he lost temper and rebuked him (the witness) and said "what the hell are you doing in Rawalpindi when my name is being taken before a Judicial Inquiry being held at Lahore by Justice Shafi-ur-Rehman in the murder case of late Muhammad Ahmad Khan. What kind of Chief Security Officer and Legal Advisor you are." He directed the witness to proceed to Lahore immediately and meet the Advocate General, the Chief Secretary, the I. G. Police and the Investigating Officers and also look into the case himself. The witness stated that on his arrival at Lahore he met with the above mentioned persons on the 4th and 5th January, 1975. To his dismay he found that there was no worth while progress in the investigation, although one and a half month had elapsed since the murder.

80. According to the witness he came to know during the course of his inquiry that the empties of the bullets used at the scene of offence were of 7.62 mm calibre which indicated the use of Chinese weapons in the official use of the Federal Security Force. He also noticed the helplessness of the local police who were deliberately avoiding to make investigation on this line.

81. The witness further said that on his return to Rawalpindi he informed Masood Mehmood P.W. 2 of his impression about the use of weapons which were in the official use of the Federal Security Force, but the latter put him off on the plea that these Chinese arms were also issued to other Army Units and besides were smuggled into the country. Not satisfied with this answer the witness met the principal accused and conveyed his impression, but he found that the answer of the principal accused was similar to the answer given by P.W.

82. He stated that the principal accused snubbed him and said that he should keep out the Federal Security Force. He directed the witness to find out from the Joint Army Detection Organisation (JADO), which is a part of the Inter Services Intelligence Directorate, and whose main task is to find out and control illicit traffic in arms in the country, whether arms of this calibre were available elsewhere. He also directed him to write to the Defence Secretary in order to find out as to which Army units the Chinese weapons were issued officially. He also ordered the witness to make inquiries from Bara, a tribal territory, as to the availability of arms of this calibre. In addition he also talked to the witness about the family disputes of Ahmad Raza Kasuri, P.W. 1, his local political rivalries and the previous litigation in his family and directed him to collect evidence according to the above directions in order to help the Investigating Officers in the investigation of the case and in the production of material before the Tribunal.

83. P.W. 3 said that when he came to Lahore he found that the investigation had been entrusted recently to Malik Waris, DSP, C.I.A. It was decided in the meeting of the officers mentioned above that the new Investigating Officer would come to Rawalpindi and seek instructions from the witness on the subject. Malik Waris and Sheikh Abdul Ahad, DSP therefore saw him on the 14th of January, 1975. He sent Malik Waris to the Officer Incharge of the JADO in order to find out whether the Chinese weapons of 7.62 mm were available elsewhere. He informed the Officer In-charge that he was sending Malik Waris for this purpose. The Investigating Officer brought to him a report Ex. P.W. 3/3-B from the JADO to the effect that a number of service arms including 7.62 mm calibre weapons could be purchased at Darra Adam Khel as well as in settled Districts from underground elements. In view of this report he sent Malik Waris DSP to Bara to find out if such weapons were available there. He also made an inquiry from the Defence Secretary by letter Ex. P.W. 3/3-A dated 17.1.1975. The Defence Secretary pointed out in his reply Ex. P.W. 3/3-C dated 20th of January, 1975 that the Chinese weapons were in official use of the Federal Security Force, Frontier Corp Units and Armed Corps Tank Crews.

84. The witness added that on receipt of the information (vide Ex. P.W. 3/3-C) that the Chinese weapons were also in official use of the Federal Security Force, he was perplexed since he had positive direction from the principal accused to

keep out the Federal Security Force. He met the principal accused and inquired as to whether the letter, Ex. P.W. 3/3-C should be produced before the Tribunal. On this the principal accused was infuriated and asked "have I sent you to safeguard my interest or to incriminate me. This letter will certainly be not produced before the tribunal. You are trying to become over-clever and if you don't behave, you will suffer the consequences which your progeny will not forget." He, therefore, kept the original letter on the file and did not produce it either before the police or the special Tribunal.

85. The witness deposed that he kept visiting Lahore in order to find out the progress of the case before the Tribunal. Meanwhile Malik Waris, DSP had collected some material regarding family disputes, political rivalries of Ahmad Raza Kasuri P.W. 1 and his family and had even arrested a few suspects.

86. The witness stated that he was instructed to publicize the material produced before the Tribunal which was favorable from the point of view of the principal accused. In support of this statement he referred to letter Ex. P.W. 3/3D dated 1.2.1975 by which he instructed the Director General (Information) to arrange publication of portions of the statements of SSP Lahore and Malik Waris DSP before the Tribunal, which were sidelined by him. It may be stated that the signature of the principal accused P.W. 3/3-E on this document proves that it was seen by him and that it had his approval. The witness continued that in pursuance of this direction wide publicity was given by the Ministry of Information and Broadcasting to the above statements through Pakistan Times, Nawa-i-Waqt etc., as is evident from Ex. P.W. 3/3-F which bears the initials of the witness (Ex. P.W. 3/3-G) and the initials of Abdul Hamid Bajwa (Ex. P.W. 3/13-H). The witness also referred to the clippings of the newspaper which appear at pages 99 to 203 in Ex. P.W. 3/3.

87. The witness further deposed that the Tribunal gave its report on the 27th of February, 1975. He put up a note P.W. 3/3-I to the principal accused on the 28th of February, 1975 pointing out that the Tribunal had criticized the lapses in the investigation at the initial stages, but seemed to have felt satisfied with the investigation carried on later by the DSP, C.I.A. He recommended the publication of relevant portions of the report with a view (as is clear from this document) "to clear the position, emanating as a result of this incident", since "various possibilities and probable causes of this murder have been enumerated" in it. This note (Ex. P.W. 3134) came back to the witness with a note (Ex. P.W. 3134) from the principal accused that he would decide this after seeing the report. The matter was therefore kept pending.

88. The witness stated that the Chief Secretary, Punjab sent the copy of the report of the Tribunal to him with D.O. Letter Ex. P.W. 3/3-K. He asked his office

(vide Ex. P.W. 3/3-L) to prepare a brief draft of the report, which could be recommended for publication. In the meeting of the witness with the Prime Minister the latter directed him that the report shall not be published as it was adverse. He further said that he would have nothing to do with this case any more.

89. The witness elaborated this incident by saying that he had been meeting with Hanif Ramay, the Chief Minister of Punjab given up by the prosecution as having been won over, occasionally in connection with this case. He referred to a D.O. letter (later proved as P.W. 3513) written by Hanif Ramay which the principal accused marked to the witness. It may be clarified that with this letter was enclosed the Tribunal's report. It is stated in the letter that the report had been discussed with the witness. The Chief Minister sought guidance in it whether the report should be published. The witness stated that this letter was marked by the principal accused to him with the query "what was the point of discussing it with you?" It also enjoined upon him to discuss with the principal accused. The witness therefore saw the principal accused who pointed out to him that the report shall not be publicized as it was adverse and that he should have nothing to do with the case any more. It may be stated that the above remark attributed to the principal accused is proved by the entry of 19th March, 1975 in the Diary Dispatch Register Ex. P.W. 27/2.

90. The witness also furnished details of the story how Ahmad Raza Kasuri was made to rejoin the Pakistan Peoples Party. He stated that in the middle of 1975 there was a rift growing up between Ahmad Raza Kasuri and the Tehrik-e-Istiqlal Chief, Air Marshal (Retired) Asghar Khan. He was instructed by the principal accused to try to win over Ahmad Raza Kasuri and bring him back to the PPP fold. Since the witness did not know Ahmad Raza Kasuri, he told the principal accused that he would ask Abdul Hamid Bajwa to initiate the matter, but the said accused informed him that Mr. Bajwa had already been given instructions on the subject.

91. Abdul Hamid Bajwa initiated talks with Ahmad Raza Kasuri and persuaded him to see the witness.

92. The witness stated that in his first meeting with Ahmad Raza Kasuri he asked him to consider rejoining the Pakistan Peoples Party, of which he claimed to be a founder member since he had parted company with Air Marshal (Retired) Asghar Khan. On this Ahmad Raza Kasuri retorted how could he rejoin a party headed by the principal accused who had been responsible for the murder of his father and was also after his blood. The witness told him that it was all the more reason that he should make up with the principal accused and not put his life in jeopardy as he knew that he was a marked man. He also told him that if he

rejoined the Peoples Party, he might even be rehabilitated. Ahmad Raza Kasuri P.W. 1 requested for time to think over. Later on he agreed with the soundness of this suggestion and asked the witness to inform the principal accused that he was prepared to join the Pakistan Peoples Party, and he would like to meet him.

The witness proved a number of documents to which detailed reference shall be made later. These documents prove the tapping of the telephone of Ahmad Raza Kasuri P.W. 1 within the knowledge of the principal accused, reports submitted by Abdul Hamid Bajwa about the events soon after murder and reaction of P.W. 1, reports about the break of P.W. 1 with Tehrik-e-Istiqlal, the persuasion of P.W. 1 by the witness and Abdul Hamid Bajwa to rejoin the Peoples Party, the fact that Abdul Hamid Bajwa had direct access to the Prime Minister's Secretariat and the T. A. Bills of Abdul Hamid Bajwa which prove his numerous visits to Lahore from 9th November, 1974, to the month of February, 1975.

93. The learned counsel for the confessing accused asked the witness whether the principal accused was temperamentally opposed to the criticism about himself. He answered that mostly it was so but he could not generalize his answer any further. He stated that he knew Mian Muhammad Abbas accused but he had no knowledge whether he visited the Prime Minister's House.

94. Mr. D. M. Awan, appearing for the principal accused cross-examined him on his previous service, his association as well as the association of his father and brother with the family of the principal accused, about the authenticity of the story about appearance of the principal accused before him in connection with the case of Sultan Chandeo, appointment of his brother and brother-in-law through the good offices of the father of the principal accused, the business started by him after his dismissal from the post of DIG, reports submitted by him on what he called Karachi Affairs, Sind University Affairs, NWFP Affairs, the Language Problem in Sindhu Desh, his requests for interview with the principal accused and his meetings with him and the discussion between him and Vaqar Ahmad, Secretary, Establishment Division, for fixing his designation as Chief Security Officer. The suggestion regarding the reports about the affairs of the Provinces was with a view to show that it was in consequence of these reports that the witness was appointed as a Chief Security Officer. In this connection, he was confronted with Exs. P.W. 3/11-D dated 22.8.1972, P.W. 3/12-D dated 28.8.1972, P.W. 3/13-D dated 30.8.1972 and Ex. P.W. 3/14-D dated 6.9.1972, letters written by the witness to the principal accused although none of these documents establishes that they pertained to the period prior to his appointment. Ex. P.W. 3/11-D on the other hand goes to show that the designation "Chief Security Officer" was under consideration prior to the 22nd of August, 1972 while other letters pertain to subsequent dates, Ex. P.W. 3/13-D and Ex. P.W. 3/14-D establish that a requests for personal interview for conveying vital

information made by the witness. The learned counsel also cross-examined him with a view to establish that Abdul Hamid Bajwa was appointed on his suggestion but he denied it. He was questioned about his meeting with Ahmad Raza Kasuri. He stated that he must have met him first either in the end of June or beginning of July, 1975 after Abdul Hamid Bajwa had a talk with him in connection with the proposal for his rejoining the Pakistan Peoples Party. In order to prove that Ahmad Raza Kasuri was keen to meet the principal accused and the latter was putting him off, document Ex. P.W. 3/16-D was put to the witness. This was a photo-stat and was allowed to be exhibited subject to objection by the learned counsel for the prosecution, as the original was stated not to be traceable. The witness proved his own signature on the note as well as the signature of the said accused on other notes, but when he was questioned about the authenticity of the note of the said accused, he stated that the original of this document was not sent to him but was sent to the Private Secretary to the Prime Minister whose signature the witness also identified. The witness also stated that the two endorsements were in the hand of the principal accused.

95. It may be stated that the note Ex. P.W. 3/16-D is a note reporting to the principal accused the meetings of the witness with Ahmad Raza Kasuri and that he had realized that his future lay with the Peoples Party. It also conveyed his request for "an audience with the Prime Minister at his convenience." It also proves that it travelled to the principal accused through his Secretary. The two endorsements are as follows:-

1. "He must be kept on the rails, he must repent and he must crawl before he meets me. He has been a dirty dog. He has called me a mad man. He has gone to the extent of accusing me of killing his father. He is a lick. He is ungrateful. Let him stew in his juice for some time.

Sd/- Z. A. Bhutto
29.7"

2. "Please file.

Sd/- Z. A. Bhutto
29.7

P.S."

The question of the admissibility and authenticity of these notes shall be considered later.

96. It was suggested to the witness that Ahmad Raza Kasuri himself was keen to see the Prime Minister. The witness denied this and reiterated that he was first

reluctant to join the Pakistan Peoples Party on the plea that it was headed by the principal accused who was responsible for the murder of his father. He was confronted with the portion 'A' to 'A' in his note Ex. P.W. 3/16-D in which, as stated above, he had reported that Ahmad Raza Kasuri (P.W. 1) had realized that his future lay with the Pakistan Peoples Party and he had requested for interview with the Prime Minister. He explained that this document related to the period when ice was broken and P.W. 1 had informed him that the advice given to him by him (witness) was sound.

97. The witness also proved another note submitted by him to the Secretary to the Prime Minister dated 13.11.1975 (Ex. P.W. 3 17-D). He identified the signature of the principal accused as well as the signature of his Secretary, Mr. Afzal Saeed on this document.

98. This document was also put to the witness since it consists of a request to the principal accused for grant of an audience to Ahmad Raza Kasuri. The witness volunteered that in his personal interview with the principal accused regarding the question of grant of interview to Ahmad Raza Kasuri who had been asking for the same after he had been won over, the principal accused had told him that this question should be left to him since he was the master of timings and would call him when he would think best.

99. The witness further proved at the instance of the learned counsel for defence, another note sent by him on the 5th of December, 1975, to the Secretary to the Prime Minister (Ex. P.W. 3118-D) reporting the request of Ahmad Raza Kasuri for an interview and the willingness of Sardar Izzat Hayat of the Tehrik-e-Istiqlal also to join the Party. He also proved on it the endorsement of the principal accused:

“I will see Ahmad Raza Kasuri in Pindi. Please return the file after you have noted.”

marked to the Military Secretary. The witness was confronted with this document to enable him to explain why did he have to write this note again when the principal accused had already consented to grant an interview to Ahmad Raza Kasuri when he considered necessary. He explained that Izzat Hayat also wanted to join the Party and certain other developments had taken place as Ahmad Raza Kasuri was being pressurized by the opposition parties and the old guard of the Tehrik-e-Istiqlal. He further stated that the principal accused granted an interview to Ahmad Raza Kasuri probably in the first half of 1976.

100. He was questioned about certain omissions in his earlier statement regarding his first talk with Ahmad Raza Kasuri and his later consent to rejoin the Party. Some of these omissions were in both the statements made under Section 161 and 164 Cr. P. C. and some in one of either statement. The witness explained these omissions by stating 'the question did not come up' meaning thereby that no question was put to him. At another place he stated that he had so far as he remembered stated the salient features before the Magistrate which he remembered at that time. He recollected the details when specific questions were put to him before the Court.

101. He was questioned at length about the statement made by him regarding association with the investigation and his meetings with different officers. A question was also put to him about the origin of the information that 7.62 mm calibre ammunition was in the official use of the Federal Security Force. He stated that this information was given to him by Abdul Wakil Khan DIG of Police, Lahore P.W. 14, Asghar Khan SSP, Lahore, P.W. 12 and Abdul Ahad, DSP,, Supervising Officer in this case. Further questions on this point did not elicit any answer favorable to the .defence.

102. He was questioned about the files and whether such files were already opened much earlier by the DIG and the Special Branch even before the principal accused took over as President of Pakistan. He denied any knowledge of the matter. He also denied any knowledge whether the files relating to MNAs were opened by the Intelligence Agency. When questioned as to why he wrote to the DIG for the file of Ahmad Raza Kasuri, he stated that he had obtained the personality sheet of Ahmad Raza Kasuri from the DIG under the directions of the principal accused.

103. The witness stated that he acted as Chief Security Officer up to the 15th June, 1976, when he took over as Special Officer, Hyderabad Conspiracy case, under the orders of the Cabinet Secretary. He gave reasons for his appointment as such. He refuted that any inquiry was instituted against him on the request of Khan Abdul Qayyum Khan to the principal accused but stated that he had written a note to the said accused against the directive of Khan Abdul Qayyum Khan but the accused had sent that file to Khan Abdul Qayyum Khan and thus compromised his position.

104. The witness was confronted with his letter of apology to the principal accused (Ex. P.W. 3,15-D) in which he admitted having used his name at times to elicit the required information to which course the accused had taken exception in the presence of the two Intelligence Chiefs. He owned the contents of the documents dated the 6th October, 1972.

104. The learned counsel cross-examined the witness at length about the facts leading to the statements made by him before the FIA and the Magistrate in connection with this case, in order to establish that he was under pressure from the Authorities. He denied this. He also denied that he was ever kept in the Lahore Fort. It was suggested to him that he was threatened with the registration of a number of cases against him and that he had been and was still under detention. For this reason he had made a false statement. In answer, he stated that he had been detained because of the sins of commission and omission of the principal accused. In fact, it was a blessing in disguise for him because he had time to seek mercy of Allah. He himself volunteered to the Chief Martial Law Administrator to make clean breast of what he knew of, his association with the said accused. He forcefully denied that he was under any threat or undue influence and stated that the files maintained in his office were sufficient proof of this.

105. In cross-examination by the learned counsel for Mian Muhammad Abbas, he stated that he did not remember having recommended the case of this accused for his promotion to the rank of Director FSF, nor did he have any idea of any detention camp at-Dalai in Azad Kashmir. In answer to the question whether it was not a fact that the Government servants were living in constant danger of life and threat to their family honour in 1974 and onwards, he stated that this question should be put to the Secretary Establishment. So far as he knew, there was insecurity in service after the retirement of 1400 Government servants without any show cause notice under Martial Law Regulation No. 114.

106. Mervyn Rupert Welch, Director, Federal Security Force, Quetta appeared as P.W. 4. He stated that his duties comprised of maintaining the forces under his command, keeping an eye on the political leaders and their activities as well as keeping watch on anti-Government elements. He was also required to submit intelligence reports on the activities of the aforementioned persons which he typed himself and of which he maintained copies. According to him, the reports were generally sent to the Director General FSF, Rawalpindi by designation, but if they related to very confidential matters, they were sent to the Director General by name.

107. He stated that Masood Mahmud P.W. 2 visited Quetta in the month of July, 1974, in connection with the tour of the principal accused. P.W. 2 was staying at Lourdes Hotel. He sent for him one day and said that the enemies of Pakistan must be eliminated and this was expected from every loyal citizen. He mentioned the name of Ahmad Raza Kasuri P.W. 1 and said that he had been obnoxious in his speeches against the Prime Minister and he should therefore be eliminated.

108. The witness deposed that Ahmad Raza Kasuri P.W. 1 arrived in Quetta on the 13th September, 1974, but a day or two prior to his arrival he received a telephone call late in the evening from P.W. 2 informing him of the impending visit of P.W. 1 to Quetta and also telling him that he (P.W. 1) should be taken care of. The witness explained that in the context the words 'take care of' and 'eliminate' were used by P.W. 2 in the sense that P.W. 1 should be assassinated.

109. The witness further stated that although P.W. 1 had a room reserved in Imdad Hotel, he did not actually reside there. The Party Workers of Tehrik-e-Istiqlal had watched the rooms in Imdad Hotel occupied by the members of the Party. They were cautious regarding the movements of their leaders and did not disclose their movements. They searched the person of any one desirous of meeting the political leaders.

110. The witness further corroborated the statement of P.W. 2 in regard to documents Ex. P.W. 2/1, Ex. P.W. 4/1, Ex. P.W. 2/2 and Ex. P.W. 2/3. He proved the entries of the dispatch of Ex. P.W. 2/1 and Ex. P.W. 4/1 in the Dispatch Register Ex. P.W. 4/2, and the entry of dispatch of letter Ex. P.W. 2/3 in Register P.W. 4/3. He stated that he had no intention of committing this heinous murder and for this reason found a plausible excuse that Ahmad Raza Kasuri was well protected. He stated that after promulgation of Martial Law he appeared in the middle of July, 1977, before the Enquiry Team which was inquiring into the Federal Security Force affairs.

111. The learned counsel for the confessing accused asked the witness whether he had to comply with orders which were not covered by the charter of duties. He admitted this but stated that he did not carry out orders which were criminal.

112. In cross-examination by the learned counsel for the principal accused the witness stated that it was a part of his duty to keep round-the-clock watch on politicians and to find out where they resided and when they were scheduled to move from one place to another. Similarly it was a routine to send reports like Ex.P.W.2/1, Ex.P.W.4/1 and Ex.P.W.2/3 to the higher officers. He conceded that a 'source' had infiltrated in the meeting of the party of which P.W. 1 was a member but was later discovered. He was asked about certain omission in his earlier statement, but he explained that those were brief statements and moreover no question was put to him by the Magistrate or by the F.I.A. implying thereby that the portion of the statement made in Court, missing- from the earlier statements, was made on questions of the learned Special Public Prosecutor and was more elaborate.

113. He was also questioned about the oral and telephonic direction given to him by P.W. 2 but the answers elicited do not differ from the statement in examination in chief.

114. A number of questions were put to the witness about his visit to Lahore in connection with the investigation of this case by the Federal Investigation Agency. The witness stated that he had made a voluntary statement. He denied that it was false or was made under pressure.

115. In reply to question by the learned counsel for Mian Muhammad Abbas the witness stated he did not contradict P.W. 2 but kept quiet on his direction to kill P.W. 1 because if he had acted otherwise he would have dubbed him as an officer disloyal to Pakistan and would have initiated action against him for that reason. He denied the suggestion that while serving under P.W. 2 he was under "a constant danger" to his life and threat to his family honour. He also denied that P.W. 2 was considered in the Federal Security Force as a terror; he was, however, a very efficient officer. He denied that Mian Muhammad Abbas ever reported against him for lack of control in an inquiry against Mustafa Jan, Deputy Director, Federal Security Force for his alleged involvement in smuggling.

116. The witness had stated in his examination in chief that the photo-stat copy Ex. P.W. 2/2 of the original report Ex. P.W. 4/1 was collected by him from Mian Muhammad Abbas accused while he was still working in his office as Director after his appearance before the Inquiry Team. It was suggested to him that it was given to him not by Mian Muhammad Abbas but by Nazir Ahmad, Deputy Director. The witness denied the suggestion. A different suggestion was put to him that Mr. Shikri a member of the Enquiry Team had directed Mian Muhammad Abbas accused on telephone to arrange for the copy. The witness denied this.

117. Ghulam Hussain P.W. 31 stated that after his retirement as Naib Subedar from the Army where he served for 14 years as a commando, he joined the FSF on the 3rd of December, 1973, after an interview with the then Director General of the Force, namely, Malik Haq Nawaz Tawana. He was questioned in this interview about his education, service as commando and Commando Courses. His paper posting was in Battalion No. 5 but an oral order was given by Mian Muhammad Abbas accused that he would work under him at the Headquarters. One or two days after he joined FSF, he was assigned a special duty at Larkana by Mian Muhammad Abbas and after having performed his duty, he was posted back in March, 1974, to Battalion No. 5 which was stationed at Rawalpindi.

118. He continued that Mian Muhammad Abbas summoned him in April, 1974 and handed over to him the Syllabus of the Commando Course and directed him to make necessary preparation for running the course. The witness selected personnel from the 4th and 5th Battalions of FSF for starting the Commando Course and set up his camp near the place where the 4th Battalion had its barracks at Islamabad. He himself was Instructor-in-charge of the Force but his camp was run under the supervision of Mian Muhammad Abbas accused. The trainees used to bring their own weapons from their respective Battalion but the ammunition was drawn from the Armoury at the Headquarters of FSF which was in the charge of Sub Inspector Fazal Ali P.W. 24. He therefore drew the ammunition from the Armoury on the basis of Road Certificate Ex. P.W. 24/7 and took it to the camp. The ammunition thereafter remained in his custody. It may be stated at this stage that the Road Certificate Ex. P.W. 24/7 proves the issue of 1500 cartridges of light machine guns (LMG) /Sub machine guns (SMG), beside other ammunition.

119. In the end of May, 1974, Mian Muhammad Abbas accused summoned the witness to his office and enquired from him about the methods that he would adopt for kidnapping or murdering a person. The witness was asked to reduce his answer into writing. He complied with the orders but Mian Muhammad Abbas accused kept the paper with him.

120. Mian Muhammad Abbas again sent for the witness two or three weeks later and enquired from him whether he knew Ahmed Raza Kasuri P.W. 1. On his answering in the negative Mian Muhammad Abbas ordered him to find him out and for this purpose gave him several addresses where he could possibly contact him (Ahmad Raza Kasuri). Since he made it clear that he would not be able to identify him, Mian Muhammad Abbas deputed Head Constable Zaheer, one of the trainees at the Commando Camp, to accompany him on the quest. Mian Muhammad Abbas placed a jeep and a driver at the disposal of the witness and asked him to use the jeep after changing the number plate.

121. The witness continued the search for P.W. 1 and ultimately not only located and identified him but also found out his residence which was situated behind the house of Field Marshal Muhammad Ayub Khan in Islamabad.

122. Mian Muhammad Abbas again summoned the witness in the beginning of August, 1974, and asked him about the result of his efforts in connection with the search for Ahmad Raza Kasuri P.W. 1. On his informing him that he had located and identified P.W. 1 and found his residence also, he said that it would be his duty to remove P.W. 1 from the path of the principal accused and that it was an order given by Masood Mahmood P.W. 2. The witness stated that by the expression "removal of Mr. Kasuri" Mian Muhammad Abbas accused meant that

he should kill Mr. Kasuri. The witness resisted this order but Mian Muhammad Abbas told him that this murder had to be committed since "Mr. Kasuri was an enemy of Mr. Z. A. Bhutto". He promised full protection to the witness. He emphasised upon him that it was a secret mission and since he had been taken into confidence, he would have to perform it otherwise his service as well as his life would be in danger. It was under this promise of protection, threat of loss of service and life and the pressure brought to bear upon him, that the witness agreed to implement the orders.

123. Mian Muhammad Abbas gave to the witness a chit and directed him to obtain a sten-gun, a pistol, two magazines and ammunition from Fazal Ali P.W. 24. The witness took the chit to Fazal Ali and in accordance with the order of Mian Muhammad Abbas accused asked him not to make an entry of the issue of these arms and ammunition in the register but to issue them on his bare receipt. Since Fazal Ali was not prepared to issue any material without first entering it in the register. Mian Muhammad Abbas directed the witness to fetch Fazal Ali. When the latter went to him, Mian Muhammad Abbas repeated the orders to him and threatened that disobedience of the order would land him in trouble with him and that he would also lose his job. On Fazal Ali's expressing his willingness to comply with the order the witness accompanied him to the Armoury where he (Fazal Ali) handed over to him a sten-gun with two magazines, a pistol with two magazines and ammunition for both. The witness handed over a receipt to him and took these things to the Commando Camp. Fazal Ali did not make any entry in his register.

124. The witness started following Ahmad Raza Kasuri and also detailed H.C. Allah Bukhsh usually known as Bakhshoo and Constable Mulazim Hussain who were both trainees at the camp, to assist him in this campaign.

125. Mian Muhammad Abbas called the witness to his office again on the 20th of August, 1974, and complained to him that he had not performed the task assigned to him although he was getting him promoted as Inspector. He exhorted him to pay attention to the task because Masood Mahmood P.W. 2 was unhappy as the principal accused had started abusing him (P.W. 2) because of this procrastination. He further threatened him that any further inaction on his part might endanger his own life. According to the witness, it came to his notice during those days that Mian Muhammad Abbas accused had also detailed another team who had instructions to do away with the witness in case he failed to perform the task assigned to him and then proceed to perform it.

126. In the morning of 24.8.1974 the witness established telephonic contact with Ahmad Raza Kasuri P.W. 1 at his residence, the telephone number having been supplied to him by Mian Muhammad Abbas accused. He told him that he

was a clerk in the cantonment and wanted to see him so that his grievances might be redressed. P.W. 1 advised him to meet him at 1 O'clock at the gate of M.N.A. Hostel in Islamabad. He promised to be at the gate because otherwise the police posted there would not let him know of his whereabouts.

127. The witness stated that he left Rawalpindi for Islamabad at 12.30 P.M. in his blue jeep with H.C. Allah Bakhsh and F.C. Mulazim Hussain. Mian Khan Driver drove the jeep, the genuine number plate of which had been removed in compliance with the orders of Mian Muhammad Abbas.

128. When the witness reached the M.N.A. Hostel, he found the car of Ahmad Raza Kasuri, P.W. 1 parked at a place between the said hostel and the National Assembly Building. He saw Ahmad Raza Kasuri P.W. 1 sitting in his car and talking to another person who stood outside. The witness proceeded towards the Assembly Building after instructing his companions not to open fire on the car of Ahmad Raza Kasuri P.W. 1 since a stranger was standing near him. He parked the jeep under a tree and kept watch on Ahmad Raza Kasuri. After some time Ahmad Raza Kasuri P.W. 1 proceeded to the M.N.A. Hostel. The witness stated that he was in a fix because on the one hand he found that Ahmad Raza Kasuri had given him so much encouragement on the telephone and had even come to the rendezvous to meet him, while on the other he was supposed to put him to death. He remained absorbed in these thoughts till 3.00 P.M. when he came to a decision not to commit the offence but to save the life of P.W. 1.

129. He then saw the car of Ahmad Raza Kasuri emerging from the M.N.A. Hostel. Allah Bakhsh, Head Constable had gone at that time to take tea. He directed the Driver to drive the jeep. He ordered Mulazim Hussain who was armed with sten-gun and two fully loaded magazines to fire in the air when directed. The witness was himself armed with a pistol.

130. P.W. 1 was heading towards his residence. When he reached near an intersection he switched on the right indicator of his car. When the jeep was about to reach the intersection the witness directed the driver to take the jeep to the left and ordered Mulazim , Hussain to open fire through the rear window of the jeep, the blind of which had already been rolled up, the moment the car reached the intersection.

131. Mulazim Hussain complied with the orders and when he fired the first burst Ahmad Raza Kasuri P.W. 1 glanced towards the left and sped on. The jeep of the witness was then driven through a circuitous route to the FSF Headquarters.

132. When the witness reached the Headquarters Office, he found that the news of this incident had already reached the FSF Headquarters. He was met by Ch. Nazir Ahmad, Assistant Director (Headquarters) outside the office of Mian Muhammad Abbas accused and was taunted by him how he was justified in calling himself a Commando when he had let the target escape in broad day light from a distance of thirty yards, despite his having automatic weapons and a jeep. He informed him that neither Ahmad Raza Kasuri nor his car was hit by any bullet. This convinced the witness that another party had been detailed to watch his movements and that this party had given advance information of what had happened.

133. After his return to the office Mian Muhammad Abbas questioned the witness about the details and after hearing him he reprimanded him and showed his surprise that a commando who had been given automatic weapons and a jeep had allowed the quarry to escape in broad day-light. He said that his failure to complete the mission had exposed the whole thing and this had made the Prime Minister very angry. He then directed him to remain on the job but to be cautious. He ordered him to carry out the task but not to fire in the air. He also admonished him that he was not supposed to give Ahmad Raza Kasuri time to collect his wits and that he should finish him off quickly.

134. The witness rang up the number of P.W. 1 again after a day or two but was informed that the later was not available. On his further query he was informed that he had gone out of Rawalpindi and it was not known when he would return.

135. The witness informed Mian Muhammad Abbas about this on which the latter ordered him to return the weapons to the armoury and to carry out a reconnaissance in order to trace the whereabouts of P.W. 1. He also advised him to obtain arms from the nearest battalion after he was able to locate him.

136. The witness replaced the empties of 7 rounds which had been fired, with live cartridges, from the Commando Camp and returned the sten-gun and the ammunition to Fazal Ali P.W. 24, who returned to him the receipt.

137. Mian Muhammad Abbas accused ordered the witness to depute Head Constables Zaheer and Liaquat from the Commando Camp to go to Lahore and search Ahmad Raza Kasuri. The witness complied with the order. After some time in October, 1974 but before Eid, Mian Muhammad Abbas sent for the witness and informed him that his men had been enjoying holidays at Lahore and had done nothing and that the Prime Minister was abusing him since no progress had been made. The witness replied that he would himself leave immediately after Eid for Lahore. Mian Muhammad Abbas however directed

him to leave for Lahore immediately and to inform him about his arrival there on telephone. He said that the Eid was the best occasion to deal with Ahmad Raza Kasuri since on this occasion he would be meeting his friends and relations. The witness consequently made an entry of his departure (vide entry P.W. 3/11 dated 16.10.1974) in the daily diary of Battalion No. 4 and left for Lahore from where he rang up Mian Muhammad Abbas to inform him about his arrival. Mian Muhammad Abbas rang him back at the FSF Headquarters in Shah Jamal with a view to confirm whether the witness had really given him a ring from Lahore.

138. The witness stayed at Lahore for about ten days and after finding out the whereabouts of Ahmad Raza Kasuri he proceeded back to Rawalpindi where he noted his arrival in the Roznamcha of Battalion No. 4 vide entry Ex. P.W. 3/2 dated 26.10.1974.

139. The witness reported to Mian Muhammad Abbas that he had found the whereabouts of P.W. 1 and that his men were watching him (P.W. 1). He asked for further orders. Mian Muhammad Abbas accused directed him to take the ammunition from the Commando Camp and proceed to Lahore with Rana Iftikhar Ahmad accused who was one of the commandos. He informed him that Soofi Ghulam Mustafa accused would provide him arms and a jeep. He further directed him to try to exchange the ammunition of the Commandos Camp with similar ammunition from some other source so that it could not be discovered that the ammunition had been supplied by the FSF.

140. The witness took the ammunition from the Commando Camp. He also took Rana Iftikhar with him and as instructed by Mian Muhammad Abbas both of them got their departure recorded in the daily diary of Battalion No. 5 (Ex. P.W. 313) without showing their destination. They proceeded to Lahore the same day.

141. On reaching Lahore the witness contacted Soofi Ghulam Mustafa at the FSF Headquarters in Shah Jamal and apprised him that he had been sent by Mian Muhammad Abbas for killing Ahmad Raza Kasuri P.W. 1. Soofi Ghulam Mustafa stated that he had already been informed of his arrival on telephone by Mian Muhammad Abbas accused and that the latter had asked him to help the witness. He further said that he had already been told that the mission was to be accomplished by Iftikhar and Arshad Iqbal and the witness with his help. The witness informed Soofi Ghulam Mustafa about the ammunition and that he was supposed to provide him arms and the jeep.

142. After three or four days, Soofi Ghulam Mustafa apprised the witness of a telephone call received by him from Mian Muhammad Abbas who was annoyed that no positive steps had by that time been taken to accomplish the mission. He

further told him that Mian Muhammad Abbas had asked him to push him (witness) out of the place and ask him to go and live with Ahmad Raza Kasuri if he could not comply with the orders because the principal accused had been grossly insulting him on that account. He also informed him that Mian Muhammad Abbas had threatened to have the witness murdered along with Ahmad Raza Kasuri P.W. 1 if he did not accomplish the mission. Soofi Ghulam Mustafa told the witness that he had informed Mian Muhammad Abbas that the witness was putting in a lot of efforts and that he would be able to report compliance of the order very shortly.

143. Soofi Ghulam Mustafa informed the witness that he had already obtained a sten-gun and that another one would be procured shortly. The following day, he informed him that he had brought another sten-gun from the battalion of Amir Badshah Khan P.W. 20, which was stationed at Walton.

144. At about 7 or 8 P.M. on the 10th of November, 1974, Soofi Ghulam Mustafa, Iftikhar Ahmad and Arshad Iqbal accused accompanied by the witness left in a jeep for Model Town. The jeep was driven by Soofi Ghulam Mustafa. They spotted the car of Ahmad Raza Kasuri at the place where the main road for Model Town branches off from Ferozepur Road. The car was heading towards Ferozepur Road. By the time they brought their jeep to Ferozepur Road they had lost track of Ahmad Raza Kasuri. They, therefore, returned to the FSF Headquarters where-from Soofi Ghulam Mustafa rang up number 353535 which is installed at the residence of Ahmad Raza Kasuri. This was done with a view to finding out the place where Ahmad Raza Kasuri had gone. He was informed from the other end that Ahmad Raza Kasuri had gone to attend some wedding dinner in Shadman. The three above named accused persons and the witness took the jeep and drove towards Shadman to find out the place where the wedding dinner was held. At that time Ameer Driver (P.W. 19) was at the wheel of the jeep. They saw illuminations in a house situated at about 80 to 90 yards from the round-about at the place where Shah Jamal ends and Shadman begins. They also found a number of cars parked there by the side of the road. They saw a car of a colour similar to that of Ahmad Raza Kasuri's car. Suspecting that it was his car the party proceeded about 100 yards ahead of the house and parked their jeep there. The witness asked Soofi Ghulam Mustafa and Arshad Iqbal to go and see the car. They returned in a few minutes and confirmed that it was Ahmad Raza Kasuri's car.

145. They then returned to their office in Shah Jamal after taking tea in Ichhra. They held a conference, settled a plan and the site for firing, and took the weapons. The witness took a pistol with two magazines containing 16 rounds while Arshad Iqbal and Iftikhar Ahmad were given a each fully loaded with two magazines.

146. Arshad Iqbal and Iftikhar Ahmad donned overcoats to keep the sten-guns hidden. They moved towards the chosen spot, that is the round-about of Shah Jamal-Shadman intersection which had a shoulder high hedge around it. The witness posted Arshad Iqbal on the round-about at a place from which Ahmad Raza Kasuri's car was visible and at a distance of about 7-10 feet further posted Rana Iftikhar Ahmad at a place facing the road which branched to- wards the left of a person coming from the house where the wedding was taking place.

147. The witness directed Arshad Iqbal to open fire in the air the moment he saw that Ahmad Raza Kasuri's car was about to pass by him. He ordered Iftikhar Ahmad to open fire at tho; first car which came before him after Arshad Iqbal fired in the air. The witness explained the reason for directing Arshad Iqbal accused to fire in the air. He stated that Arshad Iqbal was facing the Shamianas and if he had fired at the car, people in the Shamianas might be hit. Similarly, there was danger of injuries being caused to other persons going in cars or walking on the road. The final reason was that the fire in the air would be a caution to Iftikhar Ahmad accused since he could not see the car arriving from the side where the wedding was taking place.

148. The witness himself started pacing the road which branches off from the road in front of Iftikhar Ahmad. - This road was not lit. The witness, however, came to the intersection a number of times to keep Arshad Iqbal and Iftikhar on guard and also to find out whether participants had started leaving the place of wedding.

149. The witness heard the sound of firing at about mid-night. The second and third bursts followed after short intervals. He hurriedly reached the intersection from the branch road which he was pacing. He saw shortly thereafter a car without head-light emerging from the road which links the road that he was pacing with the road that came from the house where the wedding was held. The car proceeded - on the way which leads to the canal. The witness realized that this must be the car of P.W. 1 because it was the first car which passed by him after the first burst was fired. He presumed that the car had not been hit and that Ahmad Raza Kasuri had switched off his lights in order to save his life. The witness proceeded to-wards the Tomb of Shah-Jamal Sahib and was soon overtaken by Arshad Iqbal and Rana Iftikhar Ahmad accused. He expressed his apprehension to them that the person driving the car was alright and had not been injured. Arshad Iqbal, however, told him that he had fired in the air after identifying the correct car, while Rana Iftikhar Ahmad informed him that he had fired at the first car which came before him after Arshad Iqbal fired in the air, and that he had correctly aimed at the car before firing.

150. The party reached the F.S.F. Headquarters. They found the gate closed. The witness did not want to be seen by the sentries soon after the firing. All the three scaled the wall one by one. On reaching the place where they were staying they met Soofi Ghulam Mustafa and informed him of the occurrence. They returned the arms to Soofi Ghulam Mustafa. On checking the ammunition it was found that 30 rounds had been fired that day. The witness put the ammunition in his cupboard, and handed over the arms to him with instructions to clean them and return them.

151. Next morning Ghulam Mustafa rang up the Ichhra Police Station and on his inquiry about the firing incident he was informed that it was not a case of dacoity; Ahmad Raza Kasuri had been fired at but his father was hit and as a result of injuries had died. Ghulam Mustafa tried to contact Mian Muhammad Abbas accused on telephone at Rawalpindi, but he was not available there. He rang up at his house and received information from there that Mian Muhammad Abbas had left for Peshawar. Ghulam Mustafa then inquired from the Control Room at Rawalpindi about the whereabouts of Mian Muhammad Abbas and contacted the later on the telephone number given to him. He was also informed that Mian Muhammad Abbas would be coming to his office at 9.00 A.M. Ghulam Mustafa was ultimately able to contact Mian Muhammad Abbas at 9.00 A.M. in the presence of the witness and gave him the news of the death of the deceased. Mian Muhammad Abbas directed him to ask the witness to return to Rawalpindi.

152. The witness allowed the other accused to go to their homes with an instruction that they should return after 8 to 10 days. On the following day *i.e.* the 12th November, 1974, Masood Mahmood's (P.W.2) car arrived at the Headquarters, just as the witness was preparing to leave. He asked Manzoor Hussain, driver of the car (P.W. 21), for lift to Rawalpindi. He travelled in that car and on reaching Rawalpindi he contacted Mian Muhammad Abbas.

153. Mian Muhammad Abbas accused called the witness to his house. The witness went there and narrated to Mian Muhammad Abbas all that had happened. The latter consoled him by saying that if God was saving Ahmad Raza Kasuri they could not kill him. The witness made it clear to him that what he and his companions had done was the result of coercion and undue influence and he was not prepared to repeat it again.

154. On a query from Mian Muhammad Abbas accused if he had left anything incriminating at the spot which might disclose that it was an F.S.F. exploit he told him that the spent ammunition had been left there since it could not be found because of darkness and the grass. He (Mian Muhammad Abbas) asked him not to bother about the empties and that he would take care of them. The said

accused then directed him to go back to the camp to complete the training and disband the camp.

155. After the winding up of the camp, the witness returned to Fazal Ali P.W. 24, the remaining ammunition, live as well as spent, on the basis of a road certificate Ex.P.W. 24/9. Fazal Ali refused to accept the same since the ammunition was short by 51 empties, including the 30 cartridges fired at Lahore and 7 at Islamabad. The rest had been lost during the practice firing by the trainees. Fazal Ali P.W. 24 detected the shortage after physical checking and declined to accept the consignment without 51 spent cartridges being supplied to him. The witness reported the matter to Mian Muhammad Abbas who asked him to report back to him after 3 or 4 days during which period he would be able to make some arrangement. The witness went to Mian Muhammad Abbas after 3 or 4 days. He gave him a Khaki Envelope containing 51 empty cases of sten-gun ammunition, which he returned all the ammunition to Fazal Ali on the basis of road certificate referred to above:

156. The witness did not get the entry of his return incorporated in the Daily Diary for 8 or 10 days since he had been so ordered by Mian Muhammad Abbas.

157. Again under instructions from the latter he had an entry of his departure recorded on 22.11.1974 for Peshawar (Ex.P.W. 31/4). The entry of return from Peshawar was made on 29.11.1974 (Ex.P.W. 31/5). He did not however, go to Peshawar and remained throughout in Rawalpindi.

158. The witness on instruction from Mian Muhammad Abbas claimed his travelling and daily allowance for Karachi for the months of October and November, 1974 and submitted T.A/ D.A. Bills (Ex.P.W. 31/6). This bill was scrutinized by Mian Muhammad Abbas to ensure that the witness had not indicated his presence at Lahore during the days of occurrence, and was after approval passed on to the "Accountant to deal."

159. The witness applied by application Ex. PW. 9/1 to the District Magistrate for pardon, on the 13th August, 1977. He was produced before P.W. 9 on the 13th August, 1977 and after grant of pardon was sent to another Magistrate. At that time, the witness was accompanied by the Assistant Superintendent, Camp Jail, Lahore. Thereafter his statement Ex. P.W. 10/11 was recorded by the Magistrate (P.W. 10). The witness concluded his statement by saying that the firing at Islamabad and at Lahore on Ahmad Raza Kasuri had been made due to pressure and coercion. He himself had no animosity with Ahmad Raza P.W. 1, nor did he know him.

160. In reply to a question by the learned counsel for the confessing accused, he admitted having been awarded a reward of Rs. 500/- but he explained that it was not on account of imparting good training in the Commando Camp but had been given to him for detection of illicit liquor in the Cafeteria of the National Assembly. He stated that he was assigned the duty in the National Assembly by Mian Muhammad Abbas accused. He further stated that though his paper posting was with Battalion No. 5 but Mian Muhammad Abbas had him attached with himself. He denied any knowledge of the relations of Mian Muhammad Abbas and the principal accused since he had never "accompanied him to the Prime Minister." However, he conceded that he received orders only from Mian Muhammad Abbas.

161. Questions were put to him whether it was possible for the empties in the Islamabad incident to fall outside the jeep on the road. He stated that an empty is always ejected from a sten-gun in such a way that it is thrown outside towards the right and in front of the muzzle. He stated that in case a sten-gun is fired from the jeep, the empty would fall within the jeep only if in the course of being ejected it hits some other object and its progress is altered.

162. The witness further stated that two or three days before the occurrence, while they were going to wards Model Town in a jeep without number-plate, they were checked between the Canal Bridge on the Ferozepur Road and near the Atomic Energy Centre, by Sardar Abdul Wakil Khan DIG, Lahore, P.W. 14, at about 10.00 P.M. He objected to their travelling in the jeep without number plate and on inquiry from him the witness told him that he was an Inspector in the Federal Security Force and was preceding to wards Walton to one its units. He explained that the jeep was without number-plate since it had been brought from the workshop that very day. P.W. 14 spoke to somebody on the wireless and then informed him that he had spoken to Mr. Mallhi (Irfan Ahmad Mallhi, Director, Federal Security Force).

163. He stated that Mr. Mallhi summoned him and Ghulam Mustafa to his house and informed them about what had transpired between him and P.W. 14 who had ordered him not to permit his men to roam about in a jeep without number-plate.

164. He stated that Arshad Iqbal was later attacked at Lahore outside his house in Ichhra but in that attack his brother Amjad was murdered. He admitted that Arshad Iqbal told him after the occurrence that he had submitted his resignation more than once but it was not accepted. According to the witness undue influence and coercion for an attempt on Ahmad Raza Kasuri's life was exercised by Mian Muhammad Abbas.

165. In cross-examination by the learned counsel for the principal accused, the witness stated that his statement before the Magistrate made on the 11th August, 1977, was not a detailed statement, At that time he had only given an outline. He was confronted with that statement in which he had stated that he. had been directed by Mian Muhammad Abbas to start the Commando Course in the second or third week of May, 1974, but the witness stated that he did not remember if he said that but the fact' that he started the Course in April, 1974.

166. In his statement Ex. P.W. 101111, the witness stated that the day Mian Muhammad Abbas enquired from him about the methods of kidnapping and murdering any person, he was directed by him to chase and identify Ahmad Raza Kasuri and when he was confronted with that statement the witness stated that between 18th and 19th August when he had already applied for being made an approver, Mian Muhammad Abbas who had come to know about it, sent a message through a convict begging him to save him also in case he was granted pardon. He had made that statement for the reason that Mian Muhammad Abbas may not be implicated to a very large extent. He stated that a similar statement had been made by him on the 11th August, 1977. When confronted with that statement, the witness gave the same explanation that in that statement also he had given an outline.

167. When asked about the delay in locating P.W. 1, he stated that after the jeep had been delivered to him he had been charged with so many duties that it was difficult for him to separate the performance of one from the other, for example, he had to identify the Joint Secretary and pull him up and there were two labour leaders who were also to be similarly pulled up and asked to behave. In relation to certain question put to the witness about his statement dated the 11th August, 1977, the witness pleaded lack of memory. It is not necessary to reproduce those portions from the cross-examination since despite the recall of P.W. 10 for the proof of such statements; the said statement was not proved.

168. On being confronted with the statement that Mian Muhammad Abbas had directed him to obtain two sten-guns and 400 rounds from Fazal Ali Inspector, Armory, P.W. 24, he stated that in spite of this he asked for only one sten-gun with two fully loaded magazines containing 20 rounds each with 60 rounds spare and pistol with its magazines and ammunition since he thought that it was enough for the completion of the mission.

169. He was questioned about the presence of Zaheer in the incident at Islamabad but he stated that he did not remember whether he was there or not at that time. He stated that the other party who had been detailed for killing Ahmad Raza Kasuri as well as the witness in case he failed to execute his mission,

comprised of A. D. Murtaza, Bahadur Khan, a Sub Inspector and probably Iqbal, an A.S.I.

170. Mian Qurban Sadiq Ikram, in the cross-examination on behalf of Mian Muhammad Abbas accused, suggested to the witness that an inquiry was held against him by Rab Nawaz Niazi, Deputy Director, and by Muhammad Nawaz Deputy Director, regarding misappropriation of the funds from the unit in the end of 1975, but the witness denied this suggestion. He repelled this suggestion that any inquiry was at all held or was initiated by Mian Muhammad Abbas. Similarly, he repelled the suggestion that an inquiry was held against him by Mr. Najmi, Assistant Director, on the written order of Mian Muhammad Abbas. It was suggested to him that he was making the statement because of personal animosity with Mian Muhammad Abbas accused under the instructions from Masood Mahmood P.W. 2 and Ch. Muhammad Abdullah, Deputy Director. He stated that the suggestion was totally false. He reiterated that it was Mian Muhammad Abbas only who was instrumental in all his promotions up to the rank of Inspector.

171. He was questioned with a view to show that during his stay in the Camp Jail he was in a position to contact Masood Mahmood or that the officers of the Federal Security Force had been meeting him, but he denied the suggestion. He repudiated the suggestion that his statement was made under pressure from the F.I.A. or that any portion of his statement was false. Certain omissions in his previous statement were pointed out to him but he generally answered that he had made the statement in Court on questions being put to him.

172. He conceded that every battalion had its own armory, but stated that ammunition had not been supplied to the battalions when he drew the arms from the Headquarters. He explained that it was necessary for Mian Muhammad Abbas to give a chit to him to obtain the arms from the Headquarters because the arms could be drawn only in the name of an officer and consequently had to be obtained in the name of Ghulam Hussain Butt, Deputy Director.

173. According to him, the Commando Course was meant for the personnel attached to the 4th and 5th battalions. He repelled the suggestion that Road Certificates Ex. P.W. 24/7 and Ex. P.W. 24/9 were forged. He stated that they could be corroborated by the ledgers of the armory. It was suggested to him that there was no Commando Camp and the Commando Courses were being held in the respective Battalions, but he denied it. He stated that he did not make any entry of 1500 rounds and ammunition in any register. He explained further that he drew the arms and ammunition from the 5th Battalion when he proceeded in uniform to perform the duty, but whenever he proceeded in Mufti on the instructions of Mian Muhammad Abbas to perform any duty he drew arms and ammunition from the armory at the Headquarters.

174. Various questions were put to him to suggest that he must have previously known Ahmad Raza Kasuri who was a prominent man but he repelled this suggestion. Regarding fake numbering of the jeep, he stated that whenever an assigned task was accomplished a new fake number was allocated and painted on the bumper of the jeep.

175. He admitted that he was interviewed on the 20th August, 1974, in connection with his promotion as Inspector. He, however, stated that he was interviewed along with other candidates by the Director General (P.W. 2) and was summoned for the interview by wireless by Mian Muhammad Abbas. He denied having any meeting with the Director General during the month of July or August, 1974 except on the occasion of interview. He stated that he had never met the Director General except at the interview.

176. He was questioned about the Islamabad incident particularly about the location where his jeep was parked. He, however, repelled the suggestion that Ahmad Raza Kasuri did not visit the MNA Hostel that day at all. He denied that Zaheer, Liaquat or himself had ever visited Lahore in connection with Ahmadia agitation which was on in the months of September and October, 1974. Reference was made by the witness in answers to cross-examination questions to other missions for example, the missions for the murder of Muhammad Ali, a film actor, and Retired Justice Jamil Hussain Rizvi, but it will be unnecessary to refer to them.

177. In reply to the questions about the incident at Lahore, he stated that he could not exchange his ammunition since he did not, at that time, have any source in mind and in any case he knew that even if somebody had similar ammunition, it would not be possible to make the exchange, since he would not be in a position to explain to him the reasons for the exchange and thus gratify his inquisitiveness.

178. He did not know whether the ammunition of 7.62 calibre was available elsewhere. He stated that the number of the lot to which certain rounds belong and the year of its manufacture are engraved on the base of the cartridge and since a lot of similar number cannot be issued to anyone else, there are no other markings on the rounds. Regarding message from Mian Muhammad Abbas received through Ghulam Mustafa in which it was said that if the witness was not prepared to perform his duty, he should be turned out and be dealt with along with Ahmad Raza Kasuri, it was suggested to him that in fact Ghulam Mustafa had gone to Rawalpindi and brought this message from there. The witness stated that it might be so but it was his impression that the message was communicated to Ghulam Mustafa on telephone.

179. It is in the confessional statements Ex. P.W. 10/2-1 and P.W. 10/3-1 of Rana Iftikhar Ahmad and Arshad Iqbal that the witness had also fired with his pistol. In an answer to a question whether he had fired the pistol, he stated that he did not remember if he had so fired.

180. It was suggested to him that he had made a false statement at the instance of F.I.A. but the witness repelled this and stated that he had made a true statement voluntarily and without anybody's influence. He repelled the suggestion that he was not in Lahore from 31.10.1974 to 12.11.1974.

181. The witness was confronted with his earlier statements in order to bring out a contradiction that while the earlier statement implied that he had himself reported to Mian Muhammad Abbas about his having identified Ahmad Raza Kasuri, in the statement before the Court he had stated that this information was given by him on an inquiry by Mian Muhammad Abbas. There is in fact no contradiction as the earlier statement cannot be interpreted as meaning that the said information was given by the witness without being asked about it. There are no material contradictions in the statement.

182. P.W. 24 and P.W. 19 corroborate the statement of Ghulam Hussain approver about supply of arms for Islamabad and Lahore incidents under the orders of Mian Muhammad Abbas accused. P.W. 24 relates a circumstance leading to substitution of crime empties by Mian Muhammad Abbas.

Fazal Ali, P.W. 24, in charge of the armory at P.S.F. Headquarters, Rawalpindi, proved the receipt of ammunition in the armory under his charge from the CAD Havelian by ammunition Voucher No. 1451 prepared on the 9th June, 1973 (Ex. P.W. 24/1), Ammunition Voucher No. P-29 dated the 12th February, 1974 (Ex. P.W. 24/3), and Voucher No. P-52 dated 29th May, 1974 (Ex. P.W. 24/5). Entries of this ammunition in the Stock Register are Exs. P.W. 24/2, P.W. 24/4 and P.W. 24/6 dated 13.6.1973, 9.3.1974 and 8.8.1974 respectively. Fazal Ali stated that the details of the ammunition supplied by CAD have been given on the back of each voucher.

183. Fazal Ali explained in his evidence that the numbers on the reverse of the Ammunition Voucher are marked on outer side of the package itself. The last figures against each such number show the number of boxes and the number of rounds contained in each box. The numbers shown on the reverse of this document, after the first set are inscribed on the base of the cartridges cases.

184. He further stated that the ammunitions were issued to the battalion of FSF according to the scale and the unissued arms and ammunitions were kept in the armory in his charge.

185. He deposed that ammunition was issued to Ghulam Hussain P.W. 31 on Road Certificate Ex. P.W. 2417 and its entry was made in the stock register, at Ex. P.W. 24 8 on the 9th May, 1974. This entry is in respect of SMG and LMG ammunition only.

186. The witness further stated that in August. 1974, Ghulam Hussain brought a chit from the Director, Mian Muhammad Abbas accused, ordering him to issue one sten-gun, two magazines, sixty rounds and. one pistol to him (approver Ghulam Hussain). The witness wanted to make necessary entry in the temporary issue ammunition register but Ghulam Hussain P.W. 31 restrained him from doing so on the plea that such was the order of Mian Mohammad Abbas accused and that the weapon and ammunition should be issued on a katcha receipt of Ghulam Hussain which shall be returned to him after the weapons and ammunition were returned. The witness declined to issue these weapons and ammunition in the above manner. Ghulam Hussain later came to him and told him that Mian Muhammad Abbas accused had called him. When the witness entered the office room of Mian Muhammad Abbas accused, he asked him why he did not obey his orders. The witness pleaded that the orders were not according to the standing order. The said accused shouted at him saying that if he did not want to serve any more he would be discharged from service and he would not even reach home. He directed him to issue weapons and ammunition on the basis of a receipt from Ghulam Hussain without making a corresponding entry in the register. The witness complied with the direction.

187. Two days before the end of the same month Ghulam Hussain returned the entire weapons and ammunition and took back the receipt.

188. Two or three days prior to the 25th of November, 1974, Ghulam Hussain came to return the ammunition which had been issued to him on the 9th May. 1974, by road certificate Ex. P.W. 24/7. He found that 50 to 51 SMG empties were short. He consequently refused to accept the ammunition unless the missing empty cases were accounted for. Ghulam Hussain took back the ammunition but he returned the entire ammunition in the form of empty cases on the morning of the 25th November, 1974, by road certificate No. 2, Ex. P.W. 24/9 and an entry Ex. P.W. 24/10 to this effect was made in the stock register.

189. He stated that eight or ten days before the empty cases of 1500 rounds were deposited he was summoned by Mian Muhammad Abbas accused in his office. He enquired from him if he had with him any fired cartridges in the

Armory. On the witness giving a reply in the affirmative Mian Muhammad Abbas ordered him to bring 25/30 fired cartridges SMG/LMG. The witness returned with 30 such empties. The said accused ordered him to place these empties on the table on the pretext that he was busy in the work. He further told him that he would let him know as to when he should collect these cartridges. The witness was summoned again after 2 or 2 ½ hours by the said accused and asked to take away the empties which on physical counting were found to be 30. They were deposited again in the Armory.

It may be stated at this stage that the photostat copy of voucher No. 1451 proved by the witness was exhibited in his statement as P.W. 24/1 but by mistake the office marked this exhibit number on the copy of voucher No. 29 original of which is already marked as Ex. P.W. 24/3. This mistake was noticed during arguments of the learned counsel for Mian Muhammad Abbas. It was corrected after resummoning the original voucher No. 1451, which is now marked as Ex. P.W. 24/1.

190. It may further be stated that Ex. P.W. 24/1 read with Ex. P.W. 39/2 proves the receipt in the armory of 7.62 mm Ball for Chinese SMG/LMG numbering 1247760 rounds most of which bear No. 71-661. Ex. P.W. 24/5 establishes the receipt of similar ammunition of SMG/LMG numbering 60,000 marked as 71-661 and cartridges S.A. 7.62 mm Ball for Chinese rifles bearing mark 71-31. Ex. P.W. 24/3 similarly proves the receipt of 7.62 mm .Ball for Chinese rifles bearing the Marking 71-31.

191. In cross examination the learned counsel for Mian Muhammad Abbas accused confronted the witness with the omission in his statement under Section 161 (Exhibit P.W. 39/9-D) of the story relating to Mian Muhammad Abbas but the witness stated that he had made no improvement in the story and had related the entire story to the Investigation Officer. In reply to a question, that he had made a false statement he stated that he had taken an oath before making the statement and had stated what had actually happened. He stated, in cross-examination of the learned, counsel for Mian Muhammad Abbas that the armory was not attached to any battalion and ammunition could be drawn from it by any battalion. He stated that the Commando Camp had been established at Islamabad.

192. Amir Badshah Khan, P.W. 20, who was Deputy Director, FSF, Battalion No. 3, in October and November, 1974, stated that he received order from Mian Muhammad Abbas accused on telephone a few days after his transfer from Battalion No. 1 to Battalion No. 3 that Ghulam Mustafa S.I. would visit him and he should be supplied whatever weapons he required on a simple receipt without making any entry in the register. Ghulam Mustafa visited him

thereafter .ad asked for two pistols and 16 cartridges. The witness called Muhammad Yousaf Head Constable of the armory and directed him to hand over the requisitioned weapons and rounds, on a receipt. He was directed not to make this entry in the register. He was informed that Ghulam Mustafa accused would return the weapon and ammunition so taken and that this direction had been given by Mian Muhammad Abbas accused. Muhammad Yousaf, therefore, handed over two pistols and 16 cartridges in the presence of the witness to Ghulam Mustafa. These articles were returned after a few days by Ghulam Mustafa who took away his receipt.

193. The witness stated that again he received a telephonic call from Mian Muhammad Abbas accused a week later from Rawalpindi ordering him to hand over one sten-gun, 30 cartridges, two pistols and 16 cartridges to Ghulam Mustafa S.I. Ghulam Mustafa S.I. came to the witness that very day. The witness informed him that he had received a telephonic message in this regard from Mian Muhammad Abbas accused. Muhammad Yousaf Head Constable then handed over the requisitioned weapons and ammunition to Ghulam Mustafa and obtained a receipt from him, but he did not make any entry in any register.

194. Ghulam Mustafa came to the witness after some days. He asked him to deliver to him another sten-gun and 30 cartridges. The witness sought instructions on telephone from Mian Muhammad Abbas accused who directed him to deliver the weapon and ammunition to Ghulam Mustafa on his receipt. On instructions from the witness, Muhammad Yousaf Head Constable handed over a stengun and 30 cartridges to Ghulam Mustafa, in the presence of the witness.

195. The witness further added that after the murder of the father of Ahmad Raza Kasuri, Ghulam Mustafa returned the two sten-guns and 60 cartridges. He retained two pistols and 16 cartridges. These were collected by Muhammad Yousaf H.C. from Shah Jamal on the direction of the witness. The witness could not state the calibre of the weapon but stated that it was made in China.

196. Some insignificant omissions were put to the witness in his earlier statement. It is unnecessary to refer to them. He was cross-examined at length about the procedure of issue of weapons and inspection of armory as well as about the time when arms were given to Ghulam Mustafa.

197. The learned counsel for Mian Muhammad Abbas put to the witness that Mian Muhammad Abbas was responsible for his removal from the post of Deputy Director and had made an inquiry against him. He denied all this. He, however identified the signatures of Mian Muhammad Abbas at the end of

Report Ex. P.W. 20/1-D, but he stated that he received no notice. He admitted that he resigned his post.

198. Mallanunad Amir P.W. 19 corroborated Ghulam Hussain approver on supply of arms by Amir Badshah, the presence of the said approver in Lahore in early November, 1974 and re-connoitering by him and the confessing accused at the site of wedding for the car of Ahmad Raza Kasuri P.W. 1. He stated that he worked as a Driver and was given Jeep No. LEG-7084. He was attached with Inspector Soofi Ghulam Mustafa accused. He drove the jeep whenever he was asked to do so by the said accused. There were several number plates and the number of the jeeps used to be changed by Soofi Ghulam Mustafa accused by replacing the fake number-plates. A log book was maintained in the jeep. Its entries were made by Soofi Ghulam Mustafa accused and in his absence by the M.T.O.

199. The witness stated that once the above named accused took the jeep and parked it at a distance of 50 yards from Walton and he himself went to Amir Badshah, Deputy Director. He brought with him from there something wrapped in a piece of cloth which appeared to be a weapon and placed it in the jeep.

200. After some days Soofi Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar, accused and Ghulam Hussain, P. W. 31 went to Shadman Colony to a place where some marriage ceremony was being held. Several cars were parked there. The witness parked the jeep at a distance of 50 to 60 yards from there. Soofi Ghulam Mustafa and Arshad Iqbal accused got down from the jeep and went towards the place where cars were parked. On their return to the jeep they informed Ghulam Hussain, on his query, that the car of Ahmaid Raza Kasuri was parked there. Thereafter the party went to Ichhra for taking tea. On the following day, he learnt about the murder of the father of Ahmad Raza Kasuri P.W. 1. He was ordered by Soofi Ghulam Mustafa not to take out the jeep for about 3 to 4 days. The jeep was taken into custody by F.I.A. in August, 1977. According to the witness, Ghulam Mustafa accused also used to drive the jeep and used to take it at different places. On cross-examination by the learned counsel for the confessing accused lie stated that whenever they visited Model Town. Ghulam Hussain i P.W. 31) accompanied them.

201. In answer to the questions of the learned counsel for the principal accused he stated that the jeep was placed at the disposal of Ghulam Mustafa accused three to six months before the murder on orders received from Rawalpindi. He further stated that Ghulam Hussain Inspector did use the jeep sometimes. He also used to drive it away unaccompanied but he did not make the entries in the log-book. They were made by Ghulam Mustafa accused. He also stated that about five or six days but less than a week before the occurrence he drove

Ghulam Mustafa accused to Walton. He had taken the jeep to Shadman Colony at 8.00 P.M. on 10.11.1974.

202. He further stated he was not coerced by anybody and was making the statement voluntarily and "Iman Se". He stated that after leaving the jeep on return from Shadman, in the office he was relieved of his duty. He denied that he had stated in his statement under Section 161 Cr. P.C. (Ex.1 P.W. 39/6-D) that he "then returned on foot."

203. In answer to the question by the learned counsel for Mian Muhammad Abbas accused he stated that the Investigating Officer did not take into possession any fake number plate in his presence.

204. Manzoor Hussain Driver, D.W. 21 used to drive the staff car of the Director General, FSF. He supported the statement of Ghulam Hussain approver about his journey from Lahore to Rawalpindi in that staff car. He proved entries in the log book of the car (Ex. P.W. 21/1) from 1st November to 13th November. He stated that he drove the car from Rawalpindi to Multan on the 3rd November. He performed duty at Bahawalpur, and Rahimyar Khan on the 10th and 11th November, 1974. He performed his duty with the Director General in Multan, but after the Director General left Multan for Rawalpindi by air at 11.30 a.m., he returned to the Canal Rest House and after collecting his luggage, left for Lahore the same day at 2-00 p.m. along with the gunman of the Director General. He reached Lahore the same night at 11-30 p.m. spent the night in a hotel in Bakhshi Market and went to the Headquarters of the FSF in Shah Jamal Colony the next morning to get petrol for his car but he could not get it from there. He stated that Inspector Ghulam Hussain Approver, P.W. 31, was present there. On his query, he told him that he was going back to Rawalpindi. Ghulam Hussain P.W. 31 asked him to take him along. Leaving Lahore on 12.11.1974 at about 8-00 a.m. the witness arrived at Rawalpindi with Ghulam Hussain at about 2-00 p.m. The entries in the log book were checked by the Private Secretary to the Director General, namely Ahmad Nawaz Qureshi, P.W. 5.

205. He stated in cross-examination of Mr. D.M. Awan that the FSF Office at Lahore had a contract with a petrol pump situated at Ferozepur Road. He did not go to the petrol pump since he was informed at the FSF Headquarters at Shah Jamal that aviation was not available at the petrol pump. He therefore obtained the petrol from a petrol pump at McLeod Road. He stated that while at Multan the keys of the car remained with him. He drove the car whenever P.W. 2 wanted to go anywhere. So far as he knew, P.W. 2 did not visit any place in Multan in the morning of 11th November, 1974.

206. The learned counsel for Mian Muhammad Abbas cross examined him in regard to the entries in the log book pertaining to the first three days of November, 1974 which are not material and some alleged contradiction with the statement under Section 161 Cr. P.C. It is unnecessary to refer to the latter since the statement made before the Investigating Officer was not proved. As regards entries in the log book the witness stated that he was at Rawalpindi and had driven from there on the 3rd November, 1974.

207. The circumstances in which the FIR was recorded and the evidence and investigation was tempered with is proved by P.W. 11, P.W. 12, P.W. 14, P.W. 15, P.W. 34, P.W. 16, P.W. 17 and P.W. 18 who corroborate Ahmad Raza Kasuri P.W. 1 and Saeed Ahmad Khan P.W. 3. P.W. 14, P.W. 34, P.W. 16, P.W. 17 and P.W. 18 relate the circumstances leading to the substitution of crime empties. Abdul Aziz P.W. 11 was posted as Additional SHO, Police Station Gulberg in November, 1974. He stated that, while on patrol duty with Muhammad Bashir ASI, P.W. 8 in the area of Liberty Market, on the night between 10th and 11th November, 1974, he received information at 12-30 or 1-00 a.m. that Ahmad Raza Kasuri P.W. 1 and his father were fired at and they were in the United Christian Hospital. He reached the hospital. Ahmad Raza Kasuri gave him the version of the incident and also that they were fired at the behest of the principal accused. He asked P.W. 1 to make a statement but he said that his father was being operated upon and he could make a statement after the result of the operation. He came down-stairs and rang up the Control Room of Police Station Civil Lines, and Sh. Abdul Ahad DSP Ichhra. He passed on the information to the DSP about the occurrence. After some time the DSP reached the hospital followed by Khan Muhammad Asghar Khan and some officers including Sardar Abdul Wakil Khan (P.W. 14). The witness narrated the occurrence to Abdul Ahad who contacted Ahmad Raza Kasuri, P.W. 1 and asked him to write the report. Khan Muhammad Asghar Khan SSP (P.W. 12) also reached there. Ahmad Raza Kasuri said that he would name the principal accused in the FIR and stated that since the police would not mention his name he would make a statement only in the presence of some higher police officers. There after, Sardar Abdul Wakil Khan arrived there. He told Ahmad Raza Kasuri to give a statement in writing and stated that a case would be registered accordingly. In the meantime, the father of P.W. 1 succumbed to his injuries. P.W. 1 gave his statement in writing (Ex. P.W. 12) to Khan Muhammad Asghar Khan, who, handed it over to him. The witness stated that he handed over the same to Muhammad Bashir ASI P.W. 8, after putting down his signature underneath the narration of proceedings by the police.

208. Muhammad Bashir P.W. 8, supported this version and stated that he took the statement to Police Station Ichhra and handed it over to Abdul Hayee Niazi.

209. Muhammad Asghar Khan P.W. 12 who was posted as SSP, Lahore in November, 1974 stated that on receiving information about the attack on Ahmad Raza Kasuri and the injury received by his father, he ordered the Police Headquarters to send a reserve on the spot in order to preserve the scene of occurrence. He himself reached the hospital. On his inquiry Ahmad Raza Kasuri related the incident to him and reported that the attack was a result of his political differences with the principal accused and that the latter had declared at the floor of the house that he was fed up with him. The witness instructed the police officers to record the statement of Ahmad Raza Kasuri and register the case accordingly. He thereafter left for the spot. The father of Ahmad Raza Kasuri was still in the operation at that time.

210. After satisfying himself at the spot that the scene of occurrence was being preserved, he went back to the hospital. By that time the injured person had breathed his last. He found Ahmad Raza Kasuri a little excited and on his inquiry whether his statement had been recorded and the case had been registered, he stated that unless the ' name of the principal accused was mentioned in the F.I.R. he would not get the case registered. The witness asked him to give statement in writing promising that the same would be reproduced in the F.I.R. Sardar Abdul Vakil, DIG who had arrived at the hospital agreed with the witness that the case be registered on the statement of Ahmad Raza Kasuri.

211. The witness further stated that Ahmad Raza Kasuri brought the statement Ex. P.W. 12 to him in writing which he handed over to Abdul Aziz, SI for registration of the case. The witness remained in the hospital till the dead body of the deceased was removed by his sons and relations. He also stated having seen the car of P.W:1 and described the bullet marks on it. He also stated that the glass of the right rear door was broken.

212. Continuing his statement he said that a meeting was held in the house of the Inspector General of Police on the evening of 11th of November, 1974. It was attended besides the witness by the Inspector General of Police, the D.I.G. Police (P.W. 14), Abdul Hamid Bajwa, the Commissioner and the Deputy Commissioner. The Inspector General ordered the witness to remove the dead body of the deceased from his house and bury it somewhere during the night. The witness refused to carry out this order on which the Inspector General of Police threatened him that if anything happened the next day he would be taken to task. He referred to another meeting with Abdul Hamid Bajwa in connection with this case. He stated the latter questioned him as to why the name of the Prime Minister was mentioned in the He suggested that the case could be registered on the statement of any other person. In that case the name of the Prime Minister would have been avoided. He referred to another meeting two or

three days later with Abdul Hamid Bajwa in the presence of Sardar Abdul Vakil, D.I.G., P.W. 14. Abdul Hamid Bajwa again told the witness that the name of principal accused could be avoided but both he and the D.I.G. told him that it was not possible. Abdul Hamid Bajwa asked the D.I.G. about the empties, but the D.I.G. told him that those were properly sealed. Abdul Hamid Bajwa remarked against the hurry exhibited in sealing them. The witness could not explain why Abdul Hamid Bajwa had asked about the empties.

213. The witness further stated that besides Abdul Hamid Bajwa Saeed Ahmad Khan P.W.- 3 also: contacted him in connection with this case. He too questioned him about the reason for allowing the name of principal accused to be mentioned in the FIR. and further told him that "Sahib" was annoyed with him (the witness) on this account. A meeting was then held in the office of the Home Secretary which was attended by the I. G. Police, D. I. G. (P.W. 14), Saeed Ahmad Khan P.W. 3, the Home Secretary and the witness. Saeed Ahmad Khan ordered in that meeting that the investigation of the case should be entrusted to Malik Mohammad Waris, D.S.P., P.W. 15 and Mr. Abdul Ahad, D.S.P. and both of them should see him at Rawalpindi for further briefing. Both the D.S.P.s were accordingly informed and they did go to Rawalpindi in pursuance of the directions given to them.

214. The witness stated that he did not have a free hand in the investigation of the case because instructions relating to the investigation were being issued by Abdul Hamid Bajwa and Saeed Ahmad Khan P.W. 3, which he had to obey. These two persons visited Lahore frequently. In fact in the meeting held in the office of the Home Secretary Mr. Saeed Ahmad Khan P.W. 3 had informed the witness that he had been specially sent by the Prime Minister to supervise the investigation of this case and to put the investigation on the "right" lines.

215. Reference has already been made to P.W. 32-A with which Abdul Ahad, D.S.P. had sent a copy of the First Information Report to Abdul Hamid Bajwa. The witness stated that he had seen this document for the first time. He stated that the only channel of communication with outside agencies was through him in his capacity as S.S.P. implying thereby that the copy of the F.I.R. could not have been sent directly to Abdul Hamid Bajwa. He further stated that Abdul Hamid Bajwa had never asked him or any of his subordinates through him to supply to him a copy of the First Information Report.

216. In cross examination by the learned counsel for the principal accused whether he was satisfied with the investigation carried out by Abdul Hayee Niazi and Abdul Ahad, he stated that there was no progress in the investigation and hence question of his satisfaction or otherwise did not arise. He gave a very significant answer to the question whether the statements of the witnesses had

not been recorded. He stated that the investigation a blind murder cases is started on the basis of motive. In the present case the motive was clearly mentioned by Ahmed Raza Kasuri in the First Information Report. The case could consequently be investigated only by interrogating the principal accused who had been named in the F.I.R. but neither he nor his subordinates were in a position to interrogate the then Prime Minister. The question of satisfaction or dissatisfaction was, therefore, irrelevant.

217. Muhammad Abdul Vakil Khan, P.W. 14, was D.I.G., Lahore in the month of November, 1974. He also visited the spot as well as the hospital. He corroborated the statement of Asghar Khan, P.W. J 2 about the manner in which the case was registered at the statement of Ahmad Raza Kasuri about what transpired in the meeting in the police Station Civil Lines, Lahore, between P.W. 12 and himself on the one hand and Abdul Hamid Bajwa on the other about the meeting held in the office of the Home Secretary in the full week of January, 1974 in which Saeed Ahmad Khan directed that Malik Waris P.W. 15 would investigate the case and that the latter and Abdul Ahad D.S.P. should see him at Rawalpindi for being briefed. He stated that though the empties had not been sealed, he informed Abdul Hamid Bajwa that they had been sealed. He had already received information on the 11th November, 1974 that the empties of 7.62 mm calibre had been recovered from the spot. He knew that weapons of this calibre were used by the F.S.F. He put off Abdul Hamid Bajwa by telling him that the empties had been sealed since he knew that Abdul Hamid Bajwa was associated with FSF very closely and he wanted to avoid any suggestion from him to tamper with the empties in order to exonerate the F.S.F. He corroborated P.W. 12 about the reaction of Abdul Hamid Bajwa on the report that the empties had been sealed.

218. The witness further stated that about a fortnight later Mr. Abdul Ahad met him. He enquired from him if any result had been received from the Ballistic Expert to whom the empties were sent. The witness was surprised to hear from him that he (Abdul Ahad) had delayed the sending of the empties because they were taken away by Abdul Hamid Bajwa and when returned to him after 2 to 3 days and that the empties were sent only then for examination. On further questioning why he had handed over the empties to Abdul Hamid Bajwa, Abdul Ahad answered that the empties had to be handed over to Abdul Hamid Bajwa on the latter's threat that the empties were required to be taken to the Prime Minister's House to be shown to the high officers.

219. The document Ex. P.W. 3/2-A was shown to P.W. 14 also. He denied having seen it ever before: He also denied that Abdul Hamid Bajwa ever approached him for the copy of the F.I.R. which an outside agency could get either through him or the S.S.P. or from the Court but certainly not from the D.S.P.

220. The witness stated that Saeed Ahmad Khan P.W. 3, met him in the last week of December, 1974 or 1st week of January, 1975: and enquired from him about the empties recovered from the spot. The witness told him that the empties were of 7.62 - mm calibre. He discussed the case with him early in relation to the empties.

221. He also stated that a few days before the occurrence while on patrol duty, he, came across a jeep without number plate going ahead of him on the Canal Road. He chased, overtook that jeep and stopped it. He questioned the person, who came out of the jeep, about his identity and he told him that he was an Inspector in the F.S.F. He could not give a satisfactory answer to the question as to why he was driving the jeep without number plate. He then contacted Mr. Malhi (Mr. Mohammad Irfan Malhi), Director F.S.F., at Lahore, through Wireless Control who confirmed that the Inspector as well as the jeep belonged to the Federal Security, Force. The witness could not give the name of the Inspector. It was suggested to him in cross examination on behalf of the principal accused that the Martial Law Authorities had prepared a list for screening out certain officers and that his name was included in it. He denied he was at all aware of it. He stated that he did not attend the meeting held at the residence of the Inspector General of Police on 11th November, 1974 in spite of being contacted for attending the same. He however agreed with Asghar Khan, P.W. 12 when he informed him about his refusal to remove forcibly and himself supervise the burial of the dead body of the deceased. Certain portions, of his earlier statements were put to him but he emphasised and explained that they were not contradictory to what he stated in Court. He stated that Asghar Khan met him daily and complained that he did not have a free hand in the investigation.

222. Malik Muhammad Waris, P.W. 15 stated that he was posted in the C.I.A. on 2nd of January, 1975 at Lahore and took charge on the 10th of January, 1975. A month before he took charge investigation of this case had been transferred to the C.I.A. He took the file of this case to Muhammad Asghar Khan who directed him to take it to Saeed Ahmad Khan P.W. 3 to Rawalpindi and to seek instructions from him with regard to the investigation as the investigation had to be carried out in accordance' with his instructions.

223. On 12th January, 1975 Abdul Vakil Khan, F.W. 14 also ordered him to go the next day, to Rawalpindi and meet Saeed Ahmad Khan for the same purpose. He could not, however, leave for Rawalpindi that day due to preoccupations. The D.I.G. and the S.S.P. (P.W. 14 and P.W. 12) got annoyed with him on this account and the D.I.G. wrote D.O. 113 dated 13th January, 1975 to the I.G. Police against him. His explanation was called for non-compliance with the order of the D.I.G.

224. He stated that he proceeded to Rawalpindi on 13.1.1975. Sh. Abdul Ahad D.S.P. also reached there. Both of them went to the Prime Minister's Secretariat and appeared before Saeed Ahmad Khan P.W. 3 and Abdul Hamid Bajwa who were together. They instructed him to proceed with wisdom and caution since the name of the Prime Minister had appeared in the First Information Report. They further told him that Ahmad Raza Kasuri had named the Prime Minister dishonestly

235. P.W. 3 directed the witness and Sh. Abdul Ahad to go to Bara in order to find out if the weapons and ammunition of the calibre used in the occurrence were available there. He further directed them to contact JADO at the G.H.Q. and find out if weapons and ammunition of this calibre were available in the region of Lahore or near about illegally. P.W. 3 further ordered that neither his name nor the fact that he had contacted him in the Prime Minister's Secretariat should appear in the police diary or the correspondence.

236. The witness and Abdul Ahad visited JADO as per instructions of P.W. 3 and met the colonel incharge whose name had been given to them by P.W. 3. The colonel gave a report Ex. P.W. 15/1 to them. It may be stated that the report confirmed the availability of the arms in Darra Adam Khel and with the underground elements in settled districts. The witness added that they then visited Bara. Since the market was closed that day, they came back but left Muhammad Sharif, Sub Inspector to seek necessary information. Two, three days later Muhammad Sharif met them and informed them that the weapons and the ammunition of the calibre used in this case were available at Bara.

237. He stated that Saeed Ahmaci Khan P.W. 3 and Abdul Hamid Bajwa also ordered the witness to find out disputes over the division of land in Kasuri family and also the disputes of the deceased with the local persons, but these investigations conducted by him regarding these matters led to no worthwhile results. Only minor differences were discovered which in his opinion could not form the motive for the 4-fence.

238. The witness deposed that Saeed Ahmad Khan, P.W. 3 held meetings in the office of the Advocate General, Punjab, Office of the Home Secretary, Punjab and once in the Chief Minister's House and in these meetings the investigation of the case was brought under discussion and P.W. 3 used to give him instructions. He complained that his officers namely S.S.P., D.I.G. and I.G. had left him at the mercy of P.W. 3 who controlled the entire investigation and did not allow a free hand to the witness to conduct the same. He had to concentrate all his efforts in conducting the investigation on the lines on which Saeed Ahmad Khan, P.W. 3, gave directions.

239. In cross-examination by Mr. Irahad Ahmad Qureshi the witness stated that he was not satisfied with the investigation since every Investigating Officer has his own angle of vision about it. He found that the efforts which should have gone into tracing the culprits had not been used in this particular case despite its importance. He admitted that he did not join any employee of the Federal Security Force in the investigation since he was directed to carry on the investigation on wrong lines.

240. In reply to a question by the learned counsel for the principal accused the witness stated that as a result of his investigation he had found that the dispute amongst Yaqub Mann's party and Ahmad Raza Kasuri had come to an end and the cases had therefore, been closed. It was suggested to him that consequent upon the gift of land made by the deceased, his children were split into two factions; one comprising of Major Ali Raza, Sikandar Hayat and Khizar Hayat, and the other comprising of the three brothers, the deceased and his wife. He replied that this information was proved incorrect during investigation. It was also suggested to him that the inheriting of her legal share in her paternal estate by the wife of Major Ali Raza sparked dispute between her paternal family and that of Ahmad Raza Kasuri. The witness admitted that he had received this information, but it was found to be incorrect on investigation.

241. Abdul Hayee Niazi F.W. 34 stated that he reached the spot after recording the formal F.I.R. a copy of which is Ex.P.W. 34/1. He then proceeded to the hospital where he found the D.I.G., the S.S.P., his D.S.P. and Ahmad Raza Kasuri and his relatives. After he was free from the hospital, he left for the spot. Abdul Ahad told him at that time that he would also reach there after visiting Model Town and directed him not to prepare any recovery memo at the spot as the name of the Prime Minister had been mentioned in the F.I.R.

242. He stated that he recovered 24 empty cartridges and lead of a bullet but he did not prepare the recovery memo. On his examination he found that at the base of each of the 24 cartridges were inscribed figures 661/71. Abdul Ahad D.S.P. directed him to show the empty cartridges and the car to the Ballistic Expert so that it could be ascertained what type of arms had been used. He accordingly went to the Civil Secretariat and he took Nazir Hussain Abidi P.W. 36 with him to then hospital. He was accompanied by officers of his staff. P.W. 36 inspected the car and took its photographs (later proved by P.W. 36 as Ex. P.W. 36/1, P.W. 36/2, P.W. 36/3 and P.W. 36/4). He showed the empty cartridges and lead-bullet to P.W. 36, at the police station, but he was unable to give any opinion unless the cartridges were sent to him and they were minutely examined in the laboratory.

243. At 9-10 P.M. on the 11th November, 1974, Abdul Ahad D.S.P., asked the witness to accompany him to Rao Abdul Rashid, I.G. of Police. He also informed him that the I.G. of Police had ordered the production before him of the 24 empty cartridges, lead bullet and cap of the deceased. The cartridges and lead bullet were put by the D.S.P. into a service-envelope. Both of them went to the residence of the Inspector General of Police. Abdul Ahad went in while the witness kept sitting in the jeep. The D.S.P. returned after about half an hour and informed the witness that the Inspector General had kept the 24 empties and lead bullet with him and had returned the cap. He further informed him that the Inspector General had told him that he would pass further orders later and that the investigation should be conducted according to his orders.

244. He added that on the 12th December, 1974, Abdul Ahad folded and sealed the original F.I.R. (Ex. P.W. 34/3) in his presence and in the presence of Abdul Ikram. He showed the original F.I.R. and stated that it bears marks of stitching and seal. He added that Abdul Ahad left for Rawalpindi on 13.11.1974 and took along with him the site plan Ex. P.W. 34/2. He returned after two or three days and asked the witness to prepare the recovery memo Ex.P.W. 34/4, as per draft which according to the D.S.P. had been given to him from the Prime Minister's House. He copied P.W. 34/4 from the said draft and returned the same to the D.S.P. He asked the D.S.P. for the empty cartridges, but he informed him that they would not be returned. He advised him that the order should be complied with, otherwise both of them would find themselves in trouble and not only the services would be terminated but they would also be involved in some case.

245. He stated that on looking at the draft, he found that the number of the empty cartridges recorded there were different. 22 empty cartridges were stated to contain No. BBI/71 while two were stated to contain No. 31/71.

246. He continued that Muhammad Bashir A.S.I., P.W. 16, who was posted as Moharrir Malkhana, was on leave at that time. He returned on the 17th November, 1974. The witness gave the recovery memo to him with a direction that he should enter the articles mentioned in the recovery memo, in the relevant register against the date, 11.11.1974. Since Muhammad Bashir was not on duty on 11.11.1974, he (the witness) directed him to have these entries made by Abdul Ikram. It was in these circumstances that the entry about the recovery of the empties and the lead bullet extracted from the head of the deceased were made although none of the former were available at that time.

247. The witness deposed further that the D.S.P. gave 24 empty cartridges to the witness on the 23rd November, 1974, and ordered him to seal them and send the same to the Inspectorate of Armament G.H.Q. Rawalpindi. He complied with the order, prepared a sealed parcel of those empty cartridges, and deputed

Muhammad Sarwar A.S.I., P.W. 16, to prepare the docket in order to take the parcel to its destination. The result of the inspection was communicated by the Inspectorate of Armaments on the 27th December, 1974 vide Ex. P.W. 32/1. It may be noted at this stage that this report confirms the use of 7.62X38 M.M service bore weapons (Rifle, LMG and SMG) of Chinese origin.

248. The witness added that the lead bullets and two metallic pieces were later sent to the Inspectorate of Armament through Muhammad Sarwar, P.W. 17, on the 24th December, 1974, under the direction of the D.S.P.

249. In cross-examination by Mr. Qurban Sadiq Ikram the witness stated that he had been transferred six or seven months ago to the police lines but he had not been assigned any duty. He was confronted with the statements made by him on 16.12.1974, 17.12.1974 and 23.12.1974 before the Tribunal. He stated that he could not make the present statement at the time because of circumstances then prevailing. He stated that he did not record the diary, about the visit of P.W.36 or that he was shown empties recovered from the spot. He however admitted having stated before the Tribunal when confronted with the statement of P.W. 36, "It is also incorrect in the statement of the Director (P.W. 36) that the empties were shown to him there and they had not been sealed at the spot." He admitted that the draftsman had prepared site plan Ex. P.W. 34/5-D but the spot from which the empties were recovered was wrongly indicated. He stated that 11 empties were recovered from two places from the round-about, five from one place and six from the other at a distance of ten paces from one another, while thirteen cartridges were outside the round-about seven at one place and six at other, there being a distance of 35 Karams between the two places by the outer circumference of the round-about.

248. Muhammad Bashir P.W. 16, Abdul Ikram P.W. 18 and Mohammad Sarwar P.W. 17 supported this version in so far as the part attributed to them was concerned. Muhammad Bashir P.W. 16 proved the entry Ex. P.W. 16/1-1 in register No. 19, Ex. P.W. 16/1 about the recovery of empties and the bullet made by Abdul Ikram P.W. 18 under instructions from P.W. 34.

249. Muhammad Sarwar A.S.I. P.W. 17 stated about taking away sealed parcels to the Inspectorate of Armaments on 23.11.1974 and 24.12.1974. He stated that all the seals were intact. The first parcel contained empty cartridges and the second contained lead bullet and two metallic pieces.

250. Abdul Ikram P.W. 18, corroborated the statements of P.W. 16 and P.W. 17. He also stated that Sh. Abdul Ahad DSP and SHO Abdul Hayee Niazi had taken at about 9.00 or 10.00 p.m. on the 11th November, 1974, the empty cartridges to the Inspector General, Police, at his residence, in an open service envelope.

251. P.W. 32, P.W. 33, P.W. 36 prove the calibre of empties. P.W. 36 is also a witness of a circumstance proving substitution of empties. These three witness and P.W. 40, P.W. 39 and P.W. 36 establish that empties P. 8 to P. 31 have been kept intact since they were first sealed by P.W. 34.

Lt.-Col. Zawar Hussain, Chief Inspector of Armament in the Inspectorate of Armaments at Rawalpindi appeared as P.W. 32 and stated that the Inspectorate had received 24 empty cartridges by S.S.P. Letter No. 57941-C dated 23rd November, 1974. These cartridges were examined and report was sent by Letter Ex. P.W. 3211 dated the 27th November, 1974. Another letter from the SSP, Memo No. 717521C dated the 24th December, 1974, accompanying a parcel containing the core of bullet and two small metallic pieces was received in the office and its detailed report was sent vide letter Ex. P.W. 32/2 dated the 7th January, 1975. He stated that the 24 empties were kept in the ammunition store and were returned to the representative of FIA on the 25th August, 1977.

252. Major Muhammad Sarfraz Naeem P.W. 33 stated that Mr. Aslam Sahi Inspector FIA approached him in order to collect the 24 empty cartridges and the core of the bullet and two small metallic pieces which he collected from him. He wrote a letter Ex. P.W. 33/1 dated 25.8.1977 to the Deputy Director FIA, Lahore Camp. It may be stated at this stage that according to this letter 24 fired cases were empties of 7.62 mm Round of Chinese origin fired from rifles SMG and LMG. This letter also referred to the return of the empties and the blood-stained bullet core with two metallic pieces alleged to have been recovered from the body of the deceased. Similarly Report Ex. P.W. 32/1 proves the bore (7.62 mm X38 mm) of the 24 empties while para 2 of letter Ex.P.W. 32/2 proves the core of these bullet to be from a round of the same calibre and its shape was similar to that of bullets from Russian, Chinese and other Communist countries. The witness proved the recovery memo of these articles prepared by Mr. Aslam Sahi (Ex. P.W. 33/2).

253. Aslam Sahi P.W.40 stated that after taking the two sealed parcels into possession, he handed them over intact to Muhammad Boota, Inspector F.I.A. P.W. 39 for delivering the same to the Director, Technical F.I.A., Islamabad. H further stated that he received two parcels from the said Director on the 22nd October, 1977. These parcels were sealed and he deposited them in the High Court, Malkhana intact.

254. Muhammad Boota Inspector F.S.F., P.W. 39 said that he deposited two parcels received by him from Mr. Aslam Sahi, with Abdul Rauf Moharrir, Police Station Islamabad, as the docket could not be issued due to the closure of the office. He obtained the said sealed parcels on the 27th August, 1977, got their

docket prepared after which he delivered them in the office of the Director, Technical F.I.A., Islamabad. He explained that he could not deliver the parcels on the 26th August, 1977, since it was Friday. The parcels were not tampered with and were delivered intact.

255. Abdul Rauf P.W. 37 supported the above statement and proved the reports of receipt and return of the parcels Ex. P.W. 37/1 and Ex. P.W. 37/2.

256. Nadir Hussain Abidi, P.W. 36, now Deputy Director F.I.A. (Technical Wing), Rawalpindi stated that he was posted as Director, Forensic Science Laboratory, Lahore, in November, 1974. On the 11th November, 1974, Abdul Hayee Niazi S.H.O. Ichhra, P.W. 34 visited him in connection with a firing case and sought his assistance. He also desired that the witness should inspect a car which had been fired at and get it photographed. He, therefore, visited the United Christian Hospital, along with Abdul Hayee Niazi, Ghulam Muhammad Photographer and one Qurban Raza, Fire Arms Expert. The photographer photographed the car vide photographs Exs. P.W. 36/1, P.W. 36/2, P.W. 36/3 and P.W. 36/4. The witness found that the right rear window of the car was damaged. He also saw that there were broken glass pieces inside the car and there was blood on its front seat. The metallic portion of the window had one or two holes and there was also a mark on the bonnet. He filed the photo before the Tribunal when he was summoned in December, 1974 since no police officer collected them.

257. He further stated that he was taken to the round-about near Shah Jamal which was the scene of occurrence. Abdul Hayee Niazi P.W. 34 showed him three or four places there from where he had recovered the fired shells. He also showed the portion on the wall facing the round-about which bore a mark of having been hit by some object. Abdul Hayee Niazi P.W. 24 told him that he had recovered a piece of bullet from there.

258. The witness said that he was then taken by Abdul Hayee Niazi P.W. 34 to the Police Station. Ichhra saying that he wanted to show to him the fired shells recovered by him from the scene of crime and to get some technical advice. He showed 24 shells and a mutilated metal which he said was a bullet recovered by him from near the wall at the scene of crime. These articles were not sealed and they were shown to him in an open condition. He examined each one of the articles and advised P.W. 34 that they were not fired from G-3 Rifles. He told him that he could not give any opinion about any other type of automatic weapons without a detailed examination of the empties with reference to the concerned literature at the Laboratory. He stated that the calibre of G-3 rifle is also 7.62 mm. He further stated that he could not give any opinion about the metallic piece also.

He left the police station but by that time the empties and the metallic pieces had not been sealed.

259. The witness further stated that he appeared before the Tribunal to make his statement. He was recalled on the 6th January, 1975, when he was confronted with the statement of Mr. Niazi.

260. The witness further deposed that on the 27th August, 1977, Muhammad Boota, Inspector F.I.A., delivered two sealed parcels, one containing 24 crime empties and the other containing a core of a bullet and two metallic pieces, in the Technical Branch at Islamabad. These parcels were sealed with the seal of the Chief Inspector of Armament and related to the present case. They were opened and then were re-sealed for return to Mr. Aslam Sahi, Inspector F.I.A., Lahore Circle to whom they were delivered on the 22nd October, 1977.

261. The seals on these parcels were found intact and were opened by the witness in the Court. He stated that on the bases of 22 empties is engraved 661; 71 though this number can also be read as BB1/71. The other two bores differed batch marks. The empty cartridges were marked P. 8 to P.31. The sealed tube containing core of the bullet and two metallic pieces was marked as Ex. P.32.

It was suggested to him in cross-examination that he never visited the place of occurrence or the police station and did not see the empty shells and the metallic bullet but he denied it.

262. Nasir Nawaz Inspector Police P.W. 23 who was posted as S.H.O. Police Station, Islamabad, on the 24th August, 1974, corroborates Ghulam Hussain approver and Ahmad Raza Kasuri about the Islamabad incident. He proved the statement of Ahmad Raza Kasuri Ex.P.W. 23/1 on the basis of which F.I.R. Ex. P.W. 1/1 was registered in respect of the incident of 24th August, 1974, at Islamabad. He stated that a case under section 307 PPC was registered on the basis of this statement and investigated by him. He prepared site plan Ex. P.W. 23/2 and a recovery memo o the empties recovered from the spot, Ex. P.W. 23/3. He stated that he sent the sealed parcel of the empties to the Expert Armament, GHQ, Rawalpindi from where he received report, Ex. P.W. 23/4. On 5.16.1974 the witness sent a report that the case be filed as untraced.

263. It may be stated that by Ex. P.W. 23/3 the witness recovered from the spot five shells, each bearing No. 66/71 which are proved by report, Ex. P.W. 23/4 to have been fired by SMG/LMG of 7.62 bore.

264. There is oral and documentary evidence that Abdul Harnid Bajwa continued to probe into the security measures of Ahmad Raza Kasuri. The oral

evidence is furnished by Ashiq Muhammad Lodhi, P.W. 28 who was acting as Assistant Director in Headquarters F.S.F. in January, 1973. He stated that in the year 1975 his duty was to give reports of the proceedings of the National Assembly and the Senate. Besides this he used to compile the incoming reports and place the same before the officers. He used to incorporate the utterances in the National Assembly, the Cafeteria and the Lobby. In January, 1975, Abdul Hamid Bajwa asked him to meet him in the Prime Minister's Secretariat. He met him with the permission of Mian Muhammad Abbas. Abdul Hamid Bajwa directed him to secure the description of the gunman of Ahmad Raza Kasuri who accompanied him to the National Assembly Cafeteria and the gallery. The witness complied with the order and sent a report, Ex. P.W. 28/1 to that effect along with covering letter Ex. P.W. 31/2-T. He sent this report directly to Abdul Hamid Bajwa since such a practice of sending reports directly to him, had developed under orders of Mian Muhammad Abbas accused.

265. It is unnecessary to refer to the cross-examination of any of the learned counsel except Mian Qurban Sadiq Ikram who appeared on behalf of Mian Muhammad Abbas. In cross-examination by him, the witness first tried to prove that Mian Muhammad Abbas was opposed to him. He stated that he was promoted Assistant Director in the Federal Security Force on the 1st April, 1974, on the recommendation of Haq Nawaz Tawana, the then Director General, and that Mian Muhammad Abbas had opposed his posting at that time. He, however, later made certain concessions to favour him. He stated that Ghulam Hussain Approver P.W. 31 was given a special award of Rs. 500/- for good work in the National Assembly in June, 1974, where he was posted during Ahmadia agitation. He further stated that Mian Muhammad Abbas told him in June, 1975, and again in February, 1976, that he had tendered his resignation which was not accepted, that P.W. 2 would give instruction to him (witness) directly when he visited the National Assembly, that he sent for Ghulam Hussain P.W. 31 through him once or twice during those days, and that in the end of July, 1974, he sent for Ghulam Hussain through him and remained closeted with him in the room while the red light on the door continued glowing throughout that period. He further said that Rana Iftikhar Ahmad was one of the gunman attached to the Director General in those days.

266. Zawar Hussain P.W. 13 who was posted as Incharge (Records), F.S.F. Headquarters has proved the service record of Ghulam Hussain and the three confessing accused. He stated that Ghulam Hussain joined as A.S.I. on 3rd of December, 1973, and he was promoted as Sub Inspector on 15th January, 1974, and as Inspector on 20th of August, 1974. Ghulam Mustafa accused was appointed as A.S.I., F.S.F. on 1.6.1973. He was promoted as Sub Inspector on 15th of December, 1973, and as Inspector on 1st of December, 1973. Arshad Iqbal joined as Foot Constable on 19.3.1973. He was promoted as Head Constable on

19.9.1973, as A.S.I. on 10.10.1974 and as Sub Inspector on 2.8.1976. Rana Iftikhar Ahmad accused joined F.S.F. as Foot Constable on 21st of May, 1914, was promoted as Head Constable on 1st February, 1975, and as A.S.I. on 2.3.1976. He further stated that in November, 1974, Ghulam Hussain, approver and Rana Iftikhar Ahmad accused were posted in Rawalpindi, Islamabad area while Ghulam Mustafa and Arshad Iqbal were posted in Lahore area.

267. It is necessary to refer to some formal evidence in order to point out the manner in which some documentary evidence is admitted.

P.W. 5 Ahmad Nawaz Qureshi proved the itinerary of the Director General's tour to Multan, in early November, 1974 (Ex. P.W. 2/8) and the details of his Quetta tour in the end of July and the beginning of August (Ex. P.W. 51). He also stated that Mian Muhammad Abbas had served as Director Operation and Intelligence till the time of his detention in August, 1974. He threw some light on the office procedure and said that letters addressed to the Director General by name were forwarded to him unopened while other letters were opened by him and presented to the Director General. Some of the letters were returned by the Director General while others were not. He was asked by the F.T.A. to search the Intelligence Report dated the 18th November, 1974, presumably to prove the Director General's endorsement dated the 21st September, 1974, on the original of the document marked P.W. 2Z. He was also directed to search some other documents from Quetta Office. He could not trace out any of them.

268. P.W. 25, Ijazul Hasan, another Assistant Director, Federal Security Force was also asked to trace these documents. He stated that he could not trace them in spite of search with the help of Sana Ullah, Reader to Mian Muhammad Abbas. It may be recalled that the office copy of the report Ex. P.W. 21Z which was sent to P.W. 2 by him was proved by P.W. 4. In view of the original copy being untraceable P.W. 4 further proved the endorsement of Ex. P.W. 2/Z which according to him was a photo-stat copy of the original report which he had obtained from Mian Muhammad Abbas for production before the team appointed to enquire into the affairs of F.S.F. in July, 1977. It appears from the cross-examination of the learned counsel for Mian Muhammad Abbas that he did not attack its genuineness since he suggested to the witness that the copy was not handed over to him by Mian Muhammad Abbas but was given to him by Nazir Ahmad, Deputy Director.

269. P.W. 35 Private Secretary to the Home Secretary Punjab proved.

- (1) Ex. P.W. 351, covering letter of the report by the Tribunal to the Chief Secretary, Punjab;

- (2) Ex. P.W. 35;1-A an endorsement on it bearing a direction of the Chief Secretary to the Secretary to the Chief Minister to bring the matter to the notice of the Chief Minister.
- (3) Note Ex. P.W. 35.2 by the Chief Secretary and Note Ex. P.W. 35;2-A by the Secretary to the Chief Minister with noting part of the file relating to the Tribunal's inquiry;
- (4) Ex. P. 353, office carbon copy of D.O. No. 178 CM (PM) 75 dated the 7th March, 1975, by the Chief Minister, Punjab, to the Prime Minister (the principal accused) enclosing the report of the Tribunal and informing the addressee that the report had already been discussed with his Chief Security Officer and that he had asked the Chief Secretary to send to him (Chief Security Officer, P.W. 3) a copy and seeking guidance from the addressee whether the report should be made public; and
- (5) Ex. P.W. 35 4, a letter by the Inspector General of Police to the Home Secretary, Punjab, dated the 27th September, 1975 soliciting orders from him that this case should be filed as untraced in view of the report of the Deputy Inspector of Police about the impossibility of tracing any culprit.

270. The witness also identified signature of the Chief Secretary on document Ex. P.W. 33-K, a letter sent by the Chief Secretary to the Chief Security Officer to the Prime Minister enclosing for his perusal the report of the Tribunal to him as desired by the Chief Minister.

271. Muhammad Yousaf P.W. 27. Superintendent in the Prime Minister's Secretariat (Punjab), Special Cell, proved Ex. P.W. 27/2 *i.e.* entry No. 803 dated the 19th March, 1975, in the Diary maintained in the Secret Section of the Prime Minister's Secretariat. This entry pertains to the receipt of D.O. letter No. 178/CM (PM)/75 Ex. P.W. 35/3 which was sent along with the report of the Tribunal by the Chief Minister Punjab to the Prime Minister and also the remarks of the latter on it after it was seen by him. The entry is reproduced as under:-

S. No.	Number and date of document No.	Date	From whom Received	Brief subject	File No	Date	Record of movement
1	2	3	4	5	6	7	8
803	D.O No 178-CM, (PM)-75 (2654)	7/4/1975	Chief Minister Punjab	Endorsed a report Tribunal set up to enquire into the incident which took place on the night between 10th & 11th November, 1974 at Shah Jamal Round-about Lahore leading to the death of Nawabzada Muhammad Ahmad Khan.			What was the point of discussing it with you? Please discuss. Sd/- P.M. 18.3. Mr. Saeed Ahmad Khan CSO P.M. 1 folder of 3 pages with a report.

The witness while proving the document made a reference to all the above columns and their entries and stated with reference to the remarks of the principal accused in the last column that it was marked to Saeed Ahmad Khan CSO, PM, P.W. 3. He also explained that the last column mentioned number of pages of the letter dispatched. He explained that this was done in order to obviate the possibility of the recipient denying the receipt of the article dispatched. He further stated that what was mentioned in the last column was duly dispatched.

272. This document has been proved to corroborate the testimony of Saeed Ahmad Khan that it was in view of this order of the Prime Minister (as given in the last column of Ex. P.W. 27/2 referred to above) that he had a meeting with the principal accused and that the latter told him in that meeting the report should not be publicized as it was adverse. This entry was proved since the original document bearing this note could not be traced.

The witness further explained reference to No. 80375 in entry Ex. P.W. 3/4-A in Peon Book Ex. P.W. 34. He stated that the number indicates the serial number of the letter in the dispatch register of the Prime Minister's Secretariat. He stated that Peon Book was taken into possession vide Memo Ex. P.W. 26/1.

273. The witness also proved challan sheet Ex. P.W. 27/1. He stated that this challan sheet was prepared in duplicate in the Prime Minister's Secretariat and contained a list of documents received from the Secretary to the Prime Minister and marked to the latter. Serial No. 9 of this document is the entry about sending letter No. 788/28/CSO(PM) dated the 24th November, 1974 (Ex. P.W. 3/2-B) on which appears the endorsement Ex. P.W. 3/2-B/1 to the following effect.

"I agree with you.
Sd/-
P.M."

274. The witness stated that this letter never came back to him though he tried to trace it out in the entries of diaries of the dispatch register.

275. This evidence was produced since the document: in question could not be traced. The chailan sheet Ex. P.W. 27/1 was proved to establish that the letter Ex. P.W. 3/2-B must have reached the Prime Minister and seen by him.

276. Muhammad Younis Qazi, P.W. 26 also made a similar statement in regard to the entry Ex. P.W. 34/A in the Peon Book Ex. P.W. 3/4. He identified the signature of Abdul Hamid Bajwa on this entry. He stated that he searched the letter from the diary and the dispatch register but he could not find it.

277. P.W. 29, Khizar Hayat proved the recovery by the F.I.A. of the files Exs. P.W. 3/1, P.W. 3/2 and P.W. 3/3. He stated that he handed over these files to the Deputy Director, Agha Habib, for sending the same to F.I.A. Lahore.

278. Haroon Ahmad P.W. 30, Section Officer in the Establishment Division, Rawalpindi, proved the T.A. Bills of Abdul Hamid Bajwa Exs. P.W. 3/5 to Ex. P.W. 3/10 which were taken into possession vide recovery Memo Ex. P.W. 30/1. He stated that these bills were passed and their payments made.

Two witnesses, P.W. 9 and P.W. 10 have been produced to prove pardon to accomplices, their statements, and the confessions of four accused, statements of P.W. 38 and P.W. 40 also throw light on this matter. Iqbal Nadeem, P.W. 9 made a statement only about grant of pardon to the two approvers P.W. 2 and P.W. 31. After grant of pardon he sent each approver to Mr. Zulfiqar Ali Toor P.W. 10 for the recording of his statement under section 164 Cr. P.C. as a witness.

280. Mr. Zulfiqar Ali Toor Magistrate 1st Class, Lahore P.W. 10 stated that he recorded the confessional statements of Iftikhar Ahmad, Arshad Iqbal and Ghulam Mustafa Exhibits P.W. 10/2, P.W. 10/3-1 and P.W. 10/6-1 respectively. Each of the accused was sent to the judicial lock up soon after the statement. He also recorded the statements of Masood Mahmood P.W. 2 (P.W. 2/6) and Ghulam Hussain P.W. 31 (PAV. 10/11-1). The statements according to him were voluntary and he had taken all precautions to ensure that they were voluntarily made.

281. This witness recorded the statement of Mian Muhammad Abbas accused on the 18th of August, 1977. On application Ex. P.W. 10/8 submitted by Ahmad Saeed Khan, Assistant Director, F.I.A. P.W. 38, the Magistrate passed order Ex. P.W. 10 8-1 on it. He stated that he observed all the formalities enumerated in the form Ex. P.W. 10/9, prescribed under Section 164 Cr. P.C. He gave time to Mian Muhammad Abbas, accused to think over and informed him that he was not

obliged to make a confessional statement. He also warned him that in case he made a confessional statement, it might be used against him.

282. He stated that after he was satisfied that the accused was making a voluntary statement; he proceeded to record his statement Ex. P.W. 10/9-1. The statement was read out to him and he admitted it to be correct and put down his signature on it. The witness then filled in and signed the certificate Ex. P.W. 10/9-2. The witness stated in cross-examination that he had not asked any confessing accused whether any pressure or threat or inducement was given to them because he was of the view that there was an implied reference to these matters in the first question on the prescribed form. He also did not ask any question whether the confessing accused had been promised pardon in case they made a confession nor did he ask them where they were kept. Although he had not given any note in Ex. P.W. 10/9 about sending the police officers out of the Court room, he stated that they were so sent. The time given to Mian Muhammad Abbas accused to think over the matter before the statement was recorded is not given in the note. The witness, however, stated that it was 30 minutes. He further stated that the custody of Mian Muhammad Abbas was given back to Ahmad Saeed, Assistant Director P.W. 38 for being taken to the judicial lock up vide order Ex. P.W. 10/14.

283. Ahmad Saeed P.W 38, Assistant Director, F.I.A. who had produced Mian Muhammad Abbas before P.W. 10 stated that Mian Muhammad Abbas was sent to Camp Jail from the Court through Muhammad Aslam Sahi (P.W. 40) under order of the Magistrate. The witness also stated that he brought a report Ex. P.W. 381 from Central Ammunition Depot, Havelian along with two vouchers Ex. P.W. 38/2 and P.W. 38/3. It may be stated that letter Ex. 38/1 signed by Colonel. Commandant of the Central Ammunition Depot Havelian confirms that quantity 75000 and 60000 of 7.62 mm ball ammunition were issued by the Depot to Director General, F.S.F. vide Voucher No. AMMO/P-29 dated 7.2.1974 (Ex. P.W. 38/2) and AMMO/P-52 dated 25th May, 1974 (Ex. P.W. 38/3). Same two vouchers had been proved by Fazal Ahmad P.W. 24 as Exhibits P.W. 24/3 and P.W. 24/5 respectively.

284. Muhammad Aslam Sahi, Inspector, F.I.A. P.W. 40 stated that on 18.8.1977 Ahmad Saeed P.W. 38 handed over the accused Mian Muhammad Abbas to him and he took him to the Camp Jail, the same day. This witness had partly investigated the case and questioned Arshad Iqbal accused on 24.7.1977. The said accused was arrested formally by the Deputy Director, F.I.A. on 25.7.1977. He also produced Rana Iftikhar Ahmad and Arshad Iqbal accused on 26.7.1977 the Court of P.W.10.

285. He stated that he went to the Inspectorate of Armaments G.H.Q., Rawalpindi where Major Sarfraz Naeem, P.W. 33 gave him a letter Ex. P.W. 33/1 addressed to the Deputy Director, F.I.A. Reference to his statement about delivery to him of parcels containing empties etc. has already been made.

286. In cross-examination by the learned counsel for Mian Muhammad Abbas he stated that he had riot interrogated Mian Muhammad Abbas. He stated that he had taken Mian Muhammad Abbas from the Court of P.W. 10 to Naz-Nageena Cinemas since Mian Muhammad Abbas accused had told him that he had to get some clothes from there from his relatives. He took these clothes from the relatives, took his meals and offered his prayer and thereafter he was taken straight from the Cinema to the Camp Jail. He denied having taken to him to the police station F.I.A.

287. Muhammad Boota P.W. 39, Investigating Officer -interrogated Ghulam Hussain, approver as wt11 as Ghulam Mustafa and got their statements recorded by a Magistrate. He submitted application Ex. P.W. 391 dated 11.8.1977 before P.W. 10 for remand of Ghulam Hussain to judicial custody. He stated that he visited Central Ammunition Depot, Havelian and secured from there, report Ex. P.W. 392 dated 28.8.1977 addressed to the Deputy Director F.I.A. He formally proved the documents. It may be noticed that Ex. P.W. 392 is confirmation of the fact that by issue voucher No. AMMO~1451 dated 9th of June, 1973, ammunition of 7.62 mm ball for SMG/LMG numbering 1274760 rounds was issued to Director General, Federal Security Force. It also proves that lot Nos. 71-661 were sent, but no lot of ammunition in question bore marking BB1-71. According to the letter the marking presumably is 66171. It further clarifies that out of the digits 71-661 stamped on the base of each case. 71 indicates the year of manufacture while 661 indicates the factory code.

288. The witness further said that he also took into possession jeep LEJ-7084 by recovery Memo Ex. P.W. 3913 and gave it on Sapurdari to Muhammad Yayoob, Inspector vide Superdarinama Ex. P.W. 39/4 dated 31.8.1977. In cross-examination he proved the statement of Ahmad Raza Kasuri, P.W. 1 (Ex. P.W. 39/5-D), Muhammad Amir P.W. 19 (Ex. P.W. 39/6-D). Abdul Ikram P.W. 18 (Ex. P.W. 39/7-D), Ahmad Nawaz Qureshi, P.W. 5 (Ex. P.W. 39/8-D) Fazal Ahmad P.W. 24, (Ex. P.W. 39/9-D) under section 161 Cr. P.C. He stated that he had taken 25 SMG from the Headquarter of the F.S.F., Rawalpindi.

289. Abdul Khaliq P.W. 4, Investigating Officer is the Deputy Director, F.I.A. who had mainly investigated the case. His statement about how he found a clue of this offence and arrested all the accused, has already been reproduced.

290. In cross-examination he proved the statements of Saeed Ahmad P.W. 3 (Ex. P.W. 41/3-D), Marwyn Rupert Welch P.W. 4 (Ex. P.W. 4/41-D), Muhammad Asghar Khan P.W. 12 (Ex.P.W. 41/5-D), Sardar Abdul Vakil P.W. 14 (Ex. P.W. 41/6-D) and Malik Muhammad Waris P.W. 15 (Ex. P.W. 41/7-D).

291. Before the start of trial the principal accused had challenged the constitution of the Court on the ground *inter alia*, that by his appointment as Chief Election Commissioner the Acting Chief Justice had ceased to hold the later office. He had also raised some allegations of bias against the Acting Chief Justice. The Supreme Court directed him to raise all these before this Court. In view of this direction the principal accused submitted two petitions Criminal Misc. No. 932/M and 933/M of 1977; one challenging the Constitution of the High Court and the other showing apprehension that he would not get a fair trial in view of the allegations of bias against the Acting Chief Justice (as His Lordship the Chief Justice then was). These petitions were dismissed in *limine* by this Bench on 9.10.1977. Besides strongly refuting the allegations of bias it was pointed out in the order that the matter was being heard not by the Acting Chief Justice alone but by a large Bench of Five Judges each of whom had to act independently and was under oath to act justly without fear or favour. Tito accused submitted two petitions for Special Leave to Appeal against the order before the Supreme Court. He, however, withdrew the petition filed by him to challenge the order passed on the petition raising question of bias against the Chief Justice. Thereafter he submitted several incompetent petitions and information, repeating the same allegations, despite the fact that the matter had attained finality. In some petitions there was a prayer for transfer of the case to some other bench or to the Sessions Court. All these petitions were dismissed. It was repeated that the apprehension of the principal accused was altogether unreasonable.

292. In his last petition for transfer which was submitted on 18.1.1978 the accused repeated all the earlier allegations of bias and supplemented them with a number of scandalous, scurrilous and baseless allegations. He also took such objections to the Court's rulings or procedure adopted by it, which can be taken only before a Court of Appeal. Since the practice of this Court is to hear motion cases in Chambers and the Bench trying the case was of the view that the petition was submitted only to scandalize the Court and to give publicity to these baseless allegations with a view to shake public confidence in the Court, it was considered proper to hear this transfer case in motion in Chambers. The accused was called to the Chambers alone to argue the matter since he had submitted the petition in person and not through counsel. On entering the Chamber the principal accused showed surprise that the matter was not being heard in Court and requested that it should be heard there. This made it obvious that he was more interested in publicizing his baseless and scandalous allegations in the petition and his arguments on it. He was informed that motion cases are

generally heard by the Court in Chambers. The principal accused then submitted that his counsel would argue the case. He named Mr. D. M. Awan and Mr. Ehsan Qadir as his counsel. Both the counsels were, therefore, called.

293. Mr. D. M. Awan addressed arguments on the question of maintainability of the petition. He did not argue the points which had already been decided. He also did not address on matters on which rulings had been given after giving full hearing and which could only be urged in appeal. The other new points were sheer calumnies which he made no effort to justify. During the course of hearing the principal accused tried to interrupt and interfere in the proceedings, but he was informed that he would be given an opportunity to supplement the arguments of his counsel on merits. After finishing his arguments Mr. D. M. Awan requested to be allowed to withdraw from the case. This request was not granted since there appeared to be no ground for allowing him to withdraw from the prosecution of the defence. He then prayed that the accused might also be given a chance to make some submissions on merits. The accused allowed arguing on merits although he had no right to address the Court in person when he was represented and his counsel had already been given full hearing. Instead of making any contribution towards the merits of his petition he started a political speech which was absolutely irrelevant. He was warned several times and asked to be relevant in his submissions but he finished his submissions by saying that if he was not allowed to say what he wanted to say he would not address the Court any further. The petition for transfer was then dismissed.

294. When the Bench assembled in the Court room for recording the evidence of Ghulam Hussain, approver (P.W. 31) who had already been cross-examined at length by Mr. Ehsan Qadir on behalf of the principal accused, the learned counsel stated that he had no more question to ask since his client had instructed him to do so.

295. Later Mr. D. M. Awan stated at the Bar that his client had withdrawn the powers of attorney of all his counsel. He also placed on record writing by the principal accused that he did not wait to defend in view of what had happened that day. The reference was obviously to the hearing of his petition for transfer in Chamber, its dismissal and the fact that the said accused had to be ordered to take a seat since the Court was not inclined to hear irrelevant arguments or a political speech in a trial which is to be conducted under the provisions of the Evidence Act.

296. Mr. Ehsan Qadir and Mr. D. M. Awan were directed to conduct the defence at State expenses. Mr. Ehsan Qadir appeared before the Bench after the Court rose for the day and requested to be relieved since he had other professional business to attend at Sargodha where he usually practices. Next day

Mr. D.M. Awan also requested to be relieved on the ground that the above mentioned accused refused to give him any instructions.

297. The High Court Rules make provisions for arranging a Counsel in a Sessions Court for an unrepresented person accused of an offence punishable with capital sentence in case he is indigent. Where the case is tried by the High Court on its original side Rule 2 Chapter 4-E of Volume V of the High Court Rules and Orders vests the Court with discretion to arrange representation even for the defence of an accused who is not a pauper and can afford to engage a counsel. It was in exercise of this discretion in favour of the accused that the Court had asked the counsel who had defended him so long, to continue defending him at State expense. Since the accused appeared bent upon thwarting this attempt to arrange for his defence at State expense and refused to co-operate with the counsel the Court relieved Mr. D. M. Awan and directed the accused to conduct the case himself.

298. This was the only course open to the Court since it has no authority under the above Rule to force upon the accused the services of a counsel if he is unwilling to accept them. As observed by a Division Bench of the Lahore High Court in PLD 1954 Lahore 547 (*Iftikhar-ud-Din v. State*) if the accused contumaciously refuses to accept the offer of legal advice made to him and is not willing to accept the representation arranged by the Court he must be left to conduct his case himself.

299. The accused refused to cross-examine other witnesses who were formal. Mr. Qurban Sadiq Ikram, learned counsel for Mian Muhammad Abbas, accused, however, cross-examined them in detail on all relevant points. He brought on record and proved through the prosecution witness most of these statements under sections 161 and 164 Cr. P.C. made by witnesses for the prosecution with which the counsel for the principal accused had tried to confront them. This was done presumably because the defence of the two accused appears to be identical.

300. When the first question was put to the said accused in his examination under section 342 Cr. P.C. he stated that since he was boycotting the proceedings he would not be offering any defence. He would, however, make a statement only about the reasons why the present case was fabricated against him and why he apprehended that he would not get fair trial and justice in this Court.

301. A reference to the last point was entirely uncalled for since the accused had already submitted a number of petitions making false, baseless and scandalous allegations against the Court which had been disposed of. These allegations were not at all relevant to the statement under section 342 Cr. P.C. Yet if the accused considered it necessary to harp on the same tune it must be only

with the intention that his ca luminous and slanderous statement may receive publicity in open Court as well as in press. This was the object with which he wanted the last petition for transfer to be heard in Court.

Now no Court much less a superior Court can allow litigant to challenge before it its fairness, integrity and impartiality, or to scandalize it and to go on repeating with impunity, scandalous and libelous attacks on Judges which are calculated to lower the authority of the Judges and to malign them, if this is allowed it would shake the public confidence in the administration of justice. In exercise of the discretion vested in the Courts by the proviso to Section 352 Cr. P.C. the proceedings were therefore directed to be held in Camera.

302. Next day when the Court assembled the principal accused showed surprise that the press and the public had been excluded from the Court. He emphasised that it should be an open trial. His attention was drawn to section 352 of the Criminal Procedure Code which confers a discretion upon the Court to order at any stage of any particular case it may thinks fit that the public generally or any particular person shall not have access to or be or remain in the room or building used by it. The accused stated that he would consult his lawyers on the question whether the proceedings can be held in camera. It was pointed out to him that he had already given up his lawyers. The next question under section 342 Cr. P.C. (Question No. 54) was then put to him. Instead of answering the question he dictated a statement covering more than 9 pages in which he amongst other things attacked the Courts' impartiality and the legality of the order holding the trial in camera.

303. At the end of this irrelevant address the Chief Justice advised him to answer the questions since it was in his own interest to do so and assured him that in case he agreed to make a statement all questions would be put to him again. He requested for time to consult Mr. Yahya Bakhtiar and Mr. D. M. Awan. The case was, therefore, adjourned to the 28th of January, 1978 to enable the accused to seek legal advice.

304. The accused met his counsel Mr. Yahya Bakhtiar for 3½ hours on 25th January, 1978. He again met his counsel in jail on the next two days. However, he submitted an application for copy of the order for holding the proceedings in camera and copies of his statements recorded on 24th and 25th of January, 1978. The copies of the order as well as his statement made on 24th January, 1978 were supplied to him on the 28th January, 1978. The copy of the statement made on 25th January, 1978 could not, however, be supplied to him since it contained scandalous and scurrilous remarks against the Court. On 28th January, 1978 the accused again requested for further time to consult his counsel on the question whether the proceedings could be held in Camera. It was pointed out to him that

he was given an opportunity to see his counsel only on the question whether he would like to make statement under section 342 Cr. P.C. The Court, however, agreed to give him five minutes for this purpose.

306. The Court re-assembled after about half an hour. The accused stated that his counsel had by then hardly read a few questions out of the statement made on the 24th January, 1978, and the time given to him was insufficient for advice. The Court did not agree to any further adjournment since the reading of his earlier statement under section 342 Cr. P.C. was not material for tendering advice on the question whether he should answer questions particularly when My Lord the Chief Justice had assured him that all the questions will be put to him again in case he agreed to answer them. When the next question was put to the witness he again dictated a statement almost repeating what he had already stated on the 25th January, 1978. This statement covers more than eleven pages. Thereafter he did not answer any question put to him.

307. After his statement was recorded, the said accused was asked to sign it, but he refused to do so. He was asked to read the statement. On his inquiry whether he could correct the typographical or grammatical errors, he was told to make any correction for so long as the substance of the statement was not changed. He wrote certain uncalled for and incorrect remarks that the statement might not have been complete.

308. Thereafter the accused sent an application through the Superintendent Jail, in which he alleged that his statement was not correctly and completely recorded. This application was dismissed since the statement had been typed on the dictation of the accused himself, and the allegations leveled in the petition were absolutely false.

309. On the 25th of January, 1978, a few supporters of the principal accused demonstrated against the holding of the Court in camera and created disturbance outside the Chambers of My Lord the Chief Justice. In view of the possibility of such disturbances occurring in future, it was ordered that the proceedings of the trial shall be held in camera.

310. On 7.2.1978 after the defence evidence had been recorded, the accused was asked whether he would like to cross-examine D.W. 4 who had been produced on behalf of the three confessing accused. The accused stated that he would not cross-examine him but make a statement on his statement. He was allowed to do so although he had no right to make such statement after the close of his statement under Section 342 Cr. P.C. He dictated more than eleven pages to the typist and repeated all that had been said by him on the 25th and 28th of

January, 1975 and also attacked the order to continue all further proceedings in camera. Thereafter he refused to even read or sign the statement.

311. The statement of the principal accused under Section 342 Cr. P.C. was recorded on three dates *i.e.* 24.1.1978, 25.1.1978 and 28.1.197. The accused did not answer the first question whether Ahmad Raza Kasuri, P.W. 1 was a founder member of the Pakistan Peoples Party and was elected to the National Assembly in the Elections of 1970 on the ticket of that party. He stated that he would not be offering any defence since he was boycotting the proceedings of the trial and had already withdrawn the *Wakalarnamas* of his counsel after his applications dated the 18th December, 1977 (for transfer of the case) and 22nd December, 1977 (requesting for hearing of the application dated the 18th December, 1978) were dismissed by this Bench in Chambers. He further stated that he would confine his statement mainly to two issues *i.e.* the reason for his lack of confidence in the fairness of the trial and the reason why this case had been fabricated against him. He answered the question whether Ahmad Raza Kasuri had advocated on the floor of the House that 94000 P.O.W.s were locked up because of his (accused's) connivance with the Indian Government. He stated that it was preposterous for any Pakistani to think that he would connive with India, a country against which he had mobilized the people of Pakistan to wage a thousand years' war. Similarly when he was asked about what had happened on the 3rd June, 1974, on the floor of the National Assembly, the accused stated that by his assertion about the unanimous approval of the Constitution by a democratically elected Parliament, he did not mean that all the members must have voted for it. It only meant that all the parties and their leaders had not only approved it but had also sighed it. It was in this sense that the 1973 Constitution was a unanimous and a democratic Constitution. He cited examples of some Prime Ministers of England losing temper and said that even Abdul Wali Khan had shouted in the Parliament at Abdul Hafeez Pirzada that he would wring his neck and would shoot the Prime Minister or the President, but the Speaker expunged the words 'I will shoot you' from the Assembly proceedings. He denied that he did not appreciate criticism and stated that he would not have risen to political heights if he had not been tolerant. He added that he had heard disagreements in the Central Committee of his Cabinets which some times went on nonstop for 24 hours. Regarding the statement of Saeed Ahmad Khan P.W. 3 that he was paid from the secret fund or that a devise was found out to pay him from the funds of the All Pakistan Research Organization in his capacity as their Legal and Administrative Consultant, the accused replied that the said Organization was basically an Intelligence agency.

312. He further stated that he did not take political advice from bureaucrats and that the dismissed officers were being re-instated even by the present Government. He stated that he did not know Abdul Hamid Bajwa nor needed

the services of any unknown individual to guide him on Punjab affairs. He did not deny that he did call officers over the heads of officers superior to them. He stated that a Prime Minister or a President has every right to call any officer in the Establishment of the Government or in the Administration of the Government.

313. In regard to the preparation of Exs. P.W. 31, P.W. 32 and P.W. 33 he stated that so far as he remembered the D.I.B. and the D.G.I.S.I. special branches of the Provincial Government and the District Magistrates kept copious files of prominent individuals during the British rule, and "this practice has continued from those days to our times".

314. Regarding Mian Muhammad Abbas also he stated that he did not know him till 1976 and never spoke to him either directly or on telephone. He came to know him only in the late 1976 when Masood Mahmood (P.W. 2) told him that a very competent officer of his had suffered heart attack and was hospitalized and as such the burden of his own work had increased.

315. He stated that the objectives of the Federal Security Force, as brought on record, were completely false and concocted. His impression was that this Force was established in almost all Federations in the world.

316. He denied that Masood Mahmood P.W. 2 used to be present in the Assembly when he attended the Session because he did not need "such Rustam-i-Zaman" for his defence. He stated in answer to Question No. 34, that he had seen the other accused and approver Ghulam Hussain for the first time during the trial. To the question whether after Masood Mahmood (F.W. 2) refused to comply with his orders regarding the murder of Ahmad Raza Kasuri (P.W. 1), attempts were made on his life and threats were held out and attempts were made to kidnap his children, the accused stated that the contradiction was self-evident.

317. As already stated the accused did not answer any question on the 25th and 28th January but proceeded to make either irrelevant or scandalous statements.

318. Mian Muhammad Abbas accused had already retracted his confession before the opening of the trial. He stated that his statement under Section 164 Cr. P.C. was obtained under duress as well as promises. He denied the charge in every respect he stated that he did not have good relations with Masood Mahmood P.W. 2 in fact Masood Mahmood did not have good relations even with his predecessor since the latter had been given an ad hoc promotion to the rank of D.I.G. of Police whereas Masood Mahmood was ignored.

319. He stated that he himself was recommended by Malik Had Nawaz Tawana. In fact Masood Mahmood cherished against him since 1961 for the reason that he wanted him to involve Mr. Moghis A. Sheikh of the Colony Textile Mills, in a false case under the Food Stuffs Control Order but he refused to be a party to it. Masood Mahmood P.W. 2 later had a talk with the then Deputy Commissioner, Malik Karam Dad, who got the matter checked up from his own sources and upheld the view point of the accused.

He said that another reason for this was that Nawab Iftikhar Hussain, one of the leading landlords of Multan was accused of the offence of murder. The police was after him. P.W. 2 who had a soft corner for him and wanted to help him, but he (the accused) repulsed his attempt. The third reason was that some Ulema led a deputation to the Nawab of Kalabagh, Governor of the Punjab and represented that they had not been given proper protection by P.W. 2 (as D.I.G.) whom they had met. The Governor of the Punjab (it should be West Pakistan) asked the accused regarding the truthfulness or otherwise of the allegation made. The matter was fully verified and was known to the gentry of Multan. He referred to the callous attitude of P.W. 2 and stated that the papers relating to the complaint lodged by Azmat Ullah Khan Deputy Commissioner, Multan, might be brought on the file.

320. The accused admitted the writing of Ex. P.W. 2/2 and receipt of reply Ex. P.W. 2/3 from Mervyn Rupert Welch P.W. 4 but stated that this correspondence was exchanged in routine. He denied having assigned to Ghulam Hussain the task of Organization of and running of a Commando Course on the ground that during the time of P.W. 2, even a constable could not be transferred without his oral orders regarding the supply of arms, he stated that it was under the charge of the Deputy Director (Equipment and Stores). Accordingly if any arms and ammunition were issued, they must have issued under the orders of the Deputy Director Incharge of the Deputy Director General.

321. He denied having sent for Ghulam Hussain and having asked him about Ahmad Raza Kasuri or having placed a jeep at his disposal or having supplied to him the addresses of Ahmad Raza Kasuri. He said that he was sick during those days and had himself examined by a heart specialist. He stated that he submitted his resignation Ex. P.W. 2/13-D and then another resignation Exs. P.W. 2/12-D but they were returned to him because Masood Mahmood P.W. 2 did not agree to his quitting the Department and Saeed Ahmad Khan P.W. 3 also tried to persuade, him to continue service.

322. Regarding the transport he stated that it was in the charge of the Deputy Director (E. & S.). He stated that Inspector Ghulam Hussain had direct contact

with Masood Mahmood P.W. 2 who had not only rewarded him but also promoted him as Inspector. He denied having given any threat to Fazal Ali or detailed another team to do away with Ghulam Hussain if he failed to perform the task and then itself to proceed to perform the task. He denied having talked with Masood Mahmood about this mission or being reminded by him. Regarding Amir Badshah he stated that he had ill-will against him, because he gave adverse views against him in an inquiry. He denied that Amir Badshah ever telephoned to him. He denied any knowledge of the calibre and nature of the weapons with FSF. Regarding issue of arms, he stated that they were entered in the daily diary including the diary taken over in possession by the F.I.A. He denied that Ghulam Hussain Inspector met him at 3-00 P.M. on the 12th November, 1974, at Rawalpindi since he was at Peshawar at that time and had left for Rawalpindi by P.I.A at 5-15 P.M. Regarding Inspector Fazal Ali he stated that he had made statement under some influence. Regarding the T.A. Bill Ex. P.W. 316 of Ghulam Hussain he stated that it is the personal responsibility of the individual performing certain journey to bill out the same. It was not his duty to scrutinize or wet the bill. His job was only to mark it to the Accounts Branch. To a question whether he had resiled from the statement as he had made unsuccessful efforts to be made an approver, he stated he was asked to approver but he did not opt to become one since he did not agree to act according to the dictates of the prosecution. In reply to Question No. 4, regarding the statements of Ghulam Hussain and Masood Mahmood he made several other allegations against Masood Mahmood to the following effect:

- a) He pointed out once that the wireless equipments which were worth crores of rupees were not being properly surveyed or inspected and it was imperative for the Command to go to the highest in order to get an inspection team through the good offices of the G.H.Q. but the fact remains that very poor staff had been taken for this purpose,
- b) Some cloth was being purchased for the preparation of uniforms. He suggested that the matter may be brought to the notice of the Directorate General IP&S, Karachi but P.W. 2 asked him to keep off and the cloth was accepted piecemeal by another Director, Ch. Muhammad Ramzan,
- c) P.W. 12 did not express good views in regard to Mr. Asghar Khan to which he (the accused) objected and this led to an exchange of hot words.

323. Regarding Ghulam Hussain he stated that he had deputed A. D. Najmi to conduct the inquiry against him into some alleged malpractices and corruption

prevailing in the Line at Recruits Training Centre, Pehur. Ghulam Hussain was Inspector and Ch. Abdullah Khan was Deputy Director.

324. The accused filed a written statement in which he added that during the period of Anti-Qadiani movement in the year 1974, P.W. 2 had verbally ordered plain clothes men to stand guard at the house of Mr. N. A. Farooqi, his relative, and this guard remained posted at his house for a period of one year. P.W. 2 got annoyed because of the objection taken by the accused to this illegality. He further felt annoyed after the promulgation of Martial Law, on seeing a statement of the accused alleging that he had taken more than Rs. 95,000/- out of the F.S.F. Secret Fund. The accused also made a statement before the Inquiry Committee, implicating P.W. 2. He further stated that he had held an inquiry against Amir Badshah P.W. 20 also and submitted his report Ex. P.W. 201-D. In paragraph No. 8 of the written statement he stated that the armory at the Headquarters was meant only for the supply of arms and ammunition in bulk to various battalions and not for individuals. He added that he had made adverse observations against P.W. 4 also during an inquiry against one Mustafa Khan of Quetta.

325. All the confessing accused, namely Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad admitted having made voluntary statements under Section 164 Cr. P.C. and confessed the role played by them in the incident of the night between the 10th and 11th November, 1974. Ghulam Mustafa admitted that he had been given a jeep under the orders of Mian Muhammad Abbas and the latter had supplied to him fake number-plates with instructions that none of the number-plates should be displayed on the jeep for a long time. He admitted having obtained, at different times pistols, sten-guns and their ammunition from Amir Badshah Khan as stated by the prosecution witnesses of the prosecution. According to him, the first sten-gun with 30 cartridges and two pistols with 16 cartridges were obtained by him for the mission to assassinate the Retired Justice Jamil Hussain Rizvi under the orders of Mian Muhammad Abbas who informed him that such were the orders of P.W. 2 and the principal accused. He was, however, deterred from carrying out the mission in view of the old age of Syed Jamil Hussain Rizvi despite threat of his extermination and annihilation of his family and children given by Ghulam Muhammad Abbas. He referred to similar threats given at different stages (as stated by Ghulam Hussain) by Mian Muhammad Abbas to him and the other two confessing accused as well as Approver Ghulam Hussain. He supported the statement of Amir Badshah Khan also in every respect in so far as it concerned the supply of arms and ammunition to him under the orders of Mian Muhammad Abbas. He also stated that on his visit to the spot on the 11th November, 1974, he had seen the marks of bullet on the wall and had also passed on the information to the Control Room as well as to Mian Muhammad Abbas as instructed by him.

326. He stated that he was an ex-service man and was promoted after 30 years' service as Naib Subedar with exemplary character. His father had also been an ex-service man and a Member of Quaid-e- Azam's Body-guards. According to him, he was administered an oath in 1973 when he was inducted into the F.S.F. and in this oath he undertook to abide by the orders of his superior, to be loyal to Pakistan and to the principal accused personally and obey all the orders even if they entailed any danger to his life.

327. He produced his pass bearing No. 5807 for the National Assembly to show that he had been on duty in the National Assembly where he used to gather intelligence report from the cafeteria and then pass it on to Mian Muhammad Abbas. Twenty to twenty-five jeeps of the F.S.F., according to him, used to patrol around the building with weapons like sten-guns and rifles with the object of preventing any demonstration against the Government and also to overawe the Members of the Opposition. He stated that he had seen Masood Mahmood P.W. 2 for the first time in the High Court and his contact was directly with Mian Muhammad Abbas. The F.S.F., according to his statement, had been set up for terrorizing people, for dispersing public meetings and processions of the Opposition Leaders and for suppressing any sort of opposition to the Government and also for making the Peoples Party meetings successful. He referred to certain other secret missions which had to be performed by the F.S.F. including an attack on Muhammad Ali Actor under orders by Mian Muhammad Abbas.

328. At the end he stated that he had acted in accordance with law and had made true statement regarding all the facts of the case before the Court. He had not committed any offence and instead of being arraigned as an accused in the case he should have been produced as a witness. He summed up by saying that this offence had been committed under the orders, pressure and intimidation of Mian Muhammad Abbas and on being told that it was his duty to perform the act provided by the F.S.F. Act and the Rules, and also the oath administered to him, which he should perform.

329. He filed a written statement in which he repeated what had already been said. He added in this statement that once he received a telephone call from Mian Muhammad Abbas to ask Ghulam Hussain to finish as soon as possible a traitor to the Nation. He also said that the principal accused and P.W. 2 had disgraced him on account of the delay and if Ghulam Hussain did not execute the mission he should be thrown out of the office. He threatened that another party was being detailed which will carry out the secret mission and will deal with the confessing accused as well as Ghulam Hussain. The accused referred to a

murderous attack in which Amjad Iqbal brother of Arshad Iqbal received fatal injuries.

330. Arshad Iqbal, as stated above, confessed the role said to have been played by him. He referred to the telephone call by Ghulam Mustafa to Mian Muhammad Abbas in which he informed the latter about the refusal of Arshad Iqbal to perform the mission. Soofi Ghulam Mustafa then informed him of the threatening words used by Mian Muhammad Abbas on the telephone. He received a telephonic call after one hour from Ch. Nazir Ahmad, Deputy Director (Intelligence and Operations), Rawalpindi, who threatened him with murder if he failed to perform the duty assigned to him. He stated that he had to abide by the orders because he and his other co-accused were afraid of their lives. Soon after the occurrence he tendered his resignation to Ghulam Mustafa who forwarded it to Mian Muhammad Abbas but the latter rejected it and held out threats to him. He submitted other resignation also which were similarly turned down. He stated that when P.V. 2, than Muhammad Abbas and Ch. Nazir Ahmad were fed up with his resignations, they planned his murder but in the murderous assault carried on him in 1975, his elder brother Amjad Iqbal received grievous injuries as a result of which he died. He gave instances where direct instructions were given to him by Mian Muhammad Abbas. He referred to various misdeeds of the F.S.F. and the secret missions which he was asked to perform, but it is unnecessary to describe the same in detail.

331. He filed a written statement in which he reiterated what he had already stated under Section 342 Cr. P.C.

332. Rana Iftikhar Ahmad, the last confessing accused also gave the details of the occurrence. He also relied upon the form of oath, which according to him, bound him to remain loyal even to the principal accused. He stated that the persons enrolled in the F.S.F. were brain-washed so as to abide by their oath and obey all orders issued by the Headquarters. He also referred to several other missions in which he participated as a Member of the F.S.F. under order of Mian Muhammad Abbas and said that Mian Muhammad Abbas used to be the in-charge of all such missions. He reiterated almost all these points in his written statement.

333. No evidence was led by the principal accused in his defence.

334. Mian Muhammad Abbas accused summoned three defence witnesses, namely, Safdar Shah, Bahadur Ali and Azmat Ullah but gave them up on the 7th February, 1978. He examined three formal witnesses, Muhammad Amin D.W. 1, Abdul Majid, D.W. 2 and Abdul Khaliq, Deputy Director, FIA, D.W. 3 who were summoned for the production of some record. D.W. 1 Muhammad Amin

produced a copy of the statement of Mian Muhammad Abbas dated the 21st July, 1977, pertaining to the affairs of F.S.F. (Ex. D.W. Abdul Majid D.S.P., Special Cell, Ministry of Interior Government of Pakistan, D.W. 2 was produced to prove an order alleged to have been passed by Mian Muhammad Abbas directing an inquiry to be held against Ghulam Hussain P.W. 31, and Anwar Anjum Accountant. The witness, however, denied the existence of such an order on the record. He stated that the document on the record only showed that an inquiry was ordered by Sardar Tahir Ali Kheli, Director Training, F.S.F., who had sent the papers to Mian Muhammad Abbas for appointment of a particular person as an Inquiry Officer from his Cell but Mian Muhammad Abbas regretted his inability to do so and suggested that one Mr. Najmi along with an Inspector of the Accounts Branch may be asked to do so.

335. D.W. 3, Abdul Khaliq, who had also appeared as P.W. 41, produced attested copies of Report No. 2 dated the 26th October, 1974, and report No. 5 dated the 7th November, 1974 from the Daily Diary of Batallion No. 3. F.S.F. Walton Camp, Lahore, which were taken into possession by Recovery Memo Ex. D.W. 3;j1 by Inspector Muhammad Boota P.W. 39. He also produced the office copy of the T.A. Bill of Mian Muhammad Abbas for the month of November, 1974 to prove the presence of Mian Muhammad Abbas in Peshawar till the afternoon of the 12th of November, 1974. H-1 produced letter dated the 10th January, 1973 purporting to have been initialled by late Haq Nawaz Tawana, former Director General of the Federal Security Force.

336. The three confessing accused produced Abdul Majid who had already appeared on behalf of Mian Muhammad Abbas, as D.W. 4. He produced Annual Confidential Reports of Mian Muhammad Abbas, Exs. D.W. 4/1 pertaining to the period from 1.1.1974 to 31.12.1974, Ex. D.W. 4/2 for the calendar year 1975 and Ex. D.W. 4/3 for the calendar year 1976. He produced the order Ex. D.W. 4/4 dated the 15th January, 1974, passed by Mian Muhammad Abbas, Acting Director, F.S.F., promoting Ghulam Hussain P.W. 31, as Sub Inspector and another order Ex.P.W. 4/5 dated the 16th July, 1974, passed by Mian Muhammad Abbas awarding Ghulam Hussain, Inspector Rs. 75/- with a recommendation certificate for running a Commando Course painstakingly and efficiently. He also proved documents Ex. D.W. 4/6, a recommendation by P.W. 2 to process the case of promotion of Mian Muhammad Abbas to the post of Director, F.S.F. in Grade 19; D.W. 4/9, an order of P.W. 2 dated 15th June, 1976 according sanction of honoraria to Officers of the F.S.F. including Mian Muhammad Abbas for the performance of works of special merit; Ex. D.W. 4/7 notifying grant of two months leave by P.W. 2 to Mian Muhammad Abbas from 15th March, 1975, and Ex. D.W. 4/8, a certificate of no objection to the grant of loan to the said accused. This witness was directed to bring the oath taken at the time of their induction in the F.S.F. by Ghulam Mustafa and Arshad Iqbal, but he

could not find such oath on the record. The only oath of Ghulam Mustafa discovered on the file is dated 5.12.1974 although Ghulam Mustafa was recruited on 1.7.1973. Similarly, Arshad Iqbal's oath is dated 9.11.1973 although he was recruited on 1.6.1973. In cross-examination he proved Ex. P.W. 4/10, T.A. Bill of Mian Muhammad Abbas which as stated above was produced by the same witness as P.W. 2 to prove the stay of Mian Muhammad Abbas in Peshawar till the afternoon of 12th November, 1974.

337. After the production of this evidence Mian Muhammad Abbas filed a supplementary written statement making reference to his statement Ex. D.W. 1~1 made before the F.S.F. Inquiry Committee, identifying the original entries in the Roznamcha Register taken into possession by Memo Ex. D.W. 31 to be in the handwriting of Muhammad Yousaf, Head Constable. He stated in the statement that the Annual Confidential Reports were given by the Deputy Director General (0) who was the reporting officer and P.W. 2 had given his remarks on those reports in routine which in fact indicated that he was not prepared to say anything in his favour. He admitted that he had obtained loan from the Agricultural Development Bank on a No Objection Certificate, but he stated that P.W. 2 had no hand in the matter. He admitted that he was given an honorarium of Rs. 700.00 but he added that this was given to him by the Director. Regarding the award of Rs. 75/- to Ghulam Hussain, he stated that it was given on the recommendation of the Director General. He stressed, however, that there was no separate Commando Course at Islamabad.

338. After the defence evidence was closed Mian Qurban Sadiq Ikram argued that the Public Prosecutor should be called upon to sum up his case and the accused should be allowed to sum up his reply later. This submission ignored Section 265-G Cr. P.C. which provides in its sub-section (2) that:

“In cases where the accused or any one of the several accused examines evidence in his defence, the Court shall, on the close of the defence case, call upon the accused to sum up the case where after the prosecutor shall make a reply.”

This is a mandatory provision which clearly envisages the summing up of their case first by the accused persons where even one accused examines evidence in his defence. If no defence evidence had been led the matter would have been governed by sub-section (1) of this Section and in that case the defence would have had the opportunity to sum up its case after the arguments by the prosecution. The contention was consequently repelled. The principal accused also raised the same contention when he was asked on 22.2.1978 to be ready to argue his case after the arguments of Mian Muhammad Abbas but the Court did not find it possible to agree to this. He then refused to argue his case.

339. Before dealing with the evidence it would be necessary to dispose of certain objections by the learned counsel.

Before the charges were read out to the accused, Mr. D. M. Awan, appearing for accused No. 1 raised some preliminary objections against the competence of the trial. He argued that the Federal Investigation Agency Act, 1971 (Act VIII of 1975) allowed the Federal Investigating Agency constituted under the Act to inquire into and investigate offences specified in the Schedule and no other offence. He argued that sections 302 and 307 P.P.C. were not included in the Schedule to the Act and consequently could not be investigated by the Agency. He further urged that though the Federal Government has the power under Section 6 of the Act to amend the Schedule by notification in the official Gazette so as to add any entry thereto or modify or omit any of its entry, yet it did not make any amendment in the Schedule incorporating either of these sections.

340. This argument is without merit since Section 302 P.P.C. is one of the sections added to the Schedule by Notification No. SRO-405(I)/75 published in the Gazette of Pakistan, Extraordinary, Part II, dated the 9th April, 1975. Section 307 deals with offence of attempt to murder which can be investigated by the Agency under Section 3 of the Act which empowers the Agency not only to investigate offences specified in the Schedule but also "an attempt or conspiracy to commit, and abetment of any such offence."

341. The second objection of Mr. D. M. Awan is that the final report was not submitted by a Police Officer in-charge of any Police Station as required by Section 173 Cr. P.C. but was submitted by Mr. Abdul Khaliq, Deputy Director, F.I.A. The cognizance of the case could not, therefore, be taken by the Magistrate and the trial of the accused on such challan would be illegal. He argued that Section 190 Cr. P.C. allows a Magistrate to take cognizance of the offence either upon a report in writing of facts constituting the offence made by any police officer, or upon receiving a complaint or upon information from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed. Where the cognizance is taken upon a report it must be on the report of a police officer described in Section 173 Cr. P.C. *i.e.* an officer in-charge of a police station. Since in the instant case there is no report of an officer in-charge of the police station, the Magistrate had no jurisdiction to take cognizance of this case or to send it to the Court of Session.

342. In reply Mr. M. Anwar produced Notification No. 10/1/75-FIA-II dated the 12th of January, 1976, by which the Government, in exercise of the powers conferred by Sub-section (4) of section 5 of the Federal Investigation Agency Act,

1974, declared inter alia offices of the Deputy Director and the Assistant Director, Federal Investigation Agency, Lahore as Police Stations for the purpose of the Code of Criminal Procedure on and from the 13th of January, 1975. Sub-section (2) of Section 5 of the Act provides that any member of the Agency not below the rank of a Sub Inspector may, for the purposes of any inquiry or investigation under the Act, exercise any of the powers of an officer in-charge of a police station in an area in which he is for the time being and, when so exercising such powers, shall be deemed to be an officer in-charge of a police station discharging his functions as such within the limits of a station. The Deputy Director or the Assistant Director, as the case may be, whose offices were notified as police station must therefore be held to be the officer in-charge of the police stations. This objection also is without force.

343. The third objection is that on 11th of September, 1977, when the Magistrate took cognizance of this case and sent it under Section 193 Cr. P.C. to the Court of Sessions, only an incomplete challan had been presented. It was urged that the Magistrate had no authority to take cognizance of the matter unless a complete challan was presented to him. He urged that only such a challan could be said to be a final report as required by Section 173 Cr. P.C.

344. This objection is equally without merit since the law does not recognize the distinction between an incomplete challan and a complete challan. As observed in *Wazir v. The State* I PLD 1962 (W.P.) Lahore 405, trial can be started on an incomplete challan. In *Zafar Sarwar v. The State* (1969 S.C.-M.R. 59) it was held that there is no provision for submission of any interim or incomplete report under Section 173 Cr. P.C. In that case the investigation was complete in all other respects except that the report of the Ballistic Expert had not been received by the 27th of December, 1967. It was held that it could not, therefore, be said that the report dated the 27th December, 1967, did not satisfy the requirement of Section 173 or that the Magistrate was precluded from taking cognizance until the final challan was submitted. In *Ata Muhammad v. Inspector General of Police West Pakistan* (PLD 1965 (W.P.) Lahore 734) and *Muhammad. Akbar v. State* (1972 S.C.M.R. 335) it was held there is no statutory prohibition for the police not to embark on a fresh investigation of the case even after the submission of the final report and to remove defects in the first investigation detected subsequently.

345. Mr. D. M. Awan conceded that this was the law but he submitted that it became inapplicable after the amendment of the Code of Criminal Procedure by the Law Reforms Ordinance and addition of Section 265-C which makes it incumbent upon the Court to supply to the accused copies of the statements of witnesses under Section 161 and 164 Cr. P.C. 7 days before the start of trial. He submitted that an investigation continued after the start of trial may render

nugatory the provisions of the above section.

346. This argument is misconceived. There is no justification for reading into the language of Section 265-C such an interpretation of Section 173 or 190 Cr. P.C. Section 265-C only means that after the submission of challan and before the start of trial the statements of those witnesses who have been named in the calendar must be supplied to the accused persons. It does not take away the power of the Investigating Officer to make a fresh investigation or to correct errors in the earlier investigation by submission of a fresh report. If new witnesses are added, the Court can substantially comply with the provisions of Section 265-C by affording opportunity to the defence to meet the additional evidence by adjourning the trial for a reasonable time not exceeding a week.

347. What is requisite before a Magistrate takes cognizance is that the report submitted to him, even though incomplete, should make out an offence. In the present case the incomplete challan dated the 11th of September, 1977, included the names of all the accused, the evidence collected by that time, as also the facts *prima facie* connecting the accused with the offence. In these circumstances, nothing more was required for the learned Magistrate to enable him to take cognizance or for the trial Court to start trial.

Moreover the mere fact that a police officer not competent to investigate has carried out the investigation is not a defect which may vitiate the trial, (*Walizar v. State* PLD 1960 Karachi 204) and *Manzoor Elahi v. State* (PLD 1960 Karachi 607) nor is a complete challan a *sine qua non* of the trial.

348. It was also argued that the High Court could have transferred the case to its own file after the same was taken cognizance of by the Magistrate and was sent by him to the Court of Session. This argument would be without force if once it is held that the Magistrate can take cognizance of an incomplete challan and transmit the case on its basis to the Court of Session Under Section 193 Cr. P.C.

349. After the start of trial both the prosecution and the defence wished the report of Mr. Justice Shaf-ur-Rahman to be admitted in evidence, Mr. Justice Shafi-ur-Rahman was appointed as a Tribunal under the provisions of West Pakistan Tribunals u Inquiry Ordinance 2 of 1969, to inquire into the causes of the death of the deceased.

350. The object of the prosecution was to prove from this report that the Tribunal had specified certain guiding principles for investigation, but the Investigating Officer while conducting the investigation, purposely did not keep those principles in view. Mr. D. M. Awan, the learned counsel for the principal

accused wished to rely upon certain portion of the report which according to his contention was favorable to his client. He also wanted to rely upon it to prove his assertion that Ahmad Raza, P.W. 1 had in a statement made before the Tribunal referred to more than one person entertaining a motive to kill him. He also complained that contrary to the provisions Section 965-C the copy of that statement had not been supplied to the defence.

351. In reply to this last contention the learned Special Public Prosecutor made a categorical statement that only one statement was made by Ahmad Raza Khan Kasuri before the Tribunal and the copy of that statement had been supplied to the learned counsel for the defence. Ahmad Raza Khan Kasuri also denied having made any other statement before the Tribunal.

351. Mr. D. M. Awan relied upon *Malik Din v. Muhammad Aslam* (PLD 1969 S.C. 136) in which it was held that judgments whether *inter partes* or not, are conclusive evidence for and against all persons whether parties, privies, or strangers, of its own existence, date and legal effect, as distinguished from the accuracy of the: decision, rendered. In other words, the law attributes unerring verity to the substantive as opposed to the judicial portions of the record. It was also held in that case that where the judgment is *inter partes*, even recitals in such a judgment are admissible to prove a statement or admission or an acknowledgement made by a party or his predecessor in-interest in his pleadings in a previous litigation. Mr. D. M. Awan also relied upon the provisions of Section 4 of the West Pakistan Tribunals of Inquiry Ordinance, 1969 which confers upon the Tribunal powers of a Civil Court for certain specified purposes. He argued on this basis that the report of the Tribunal is a judgment to which the authority of the Supreme Court would apply.

352. None of the argument have any force. The authority relied upon by Mr. D. M. Awan is distinguishable for several reasons. The Evidence Act does not make findings arrived at on the evidence before the Court in one case evidence of that fact in another case. Each case is to be judgement upon its own facts established by the evidence led therein. *Muhammad Khurshid Vs. State* (PLD 1963 S.C. 157). *Malik Din v. Muhammad Aslam Supra* does not depart from this principle. It only lays down the principle that a judgment is evidence of its own existence (2) of the date on which it purports to have been delivered and (3) of its effect as provided by law, as distinguished from the accuracy of the decision rendered. A judgment which decides disputes between two parties is admissible even to prove recitals of pleadings, admission, or acknowledgements made during the course of litigation provided that the same parties are ranged as litigants and disputants in the case in which the earlier judgment is admitted in evidence.

354. Now the Tribunal constituted under the above Ordinance is not a Court and is not competent to render any judgment. The Tribunal is appointed under Section 3 of the above Ordinance by the Government for the purpose of making an inquiry into any definite matter of public importance. Section 4 confers power of a Civil Court upon the trial in order to enable it to perform its functions of enforcing attendance of persons for their examination on oath, for discover and production of documents, for receiving evidence on affidavits or through Commissions. Analogous powers are conferred by sub-section (6) of Section 5 for the limited purpose of requisitioning any record or copy thereof from any Court or office.

355. The Ordinance does not envisage the adjudication of any controversy between two contending parties or trial of any offence. These provisions neither confer upon the Tribunal the status of a Court (except for the limited purpose expressed in the above two sections) nor render its report effective or executable in any manner, or even binding upon the Government. The report cannot be held to be a judgment.

356. It was held in *Mohammad Saeed v. Election Tribunal West Pakistan etc.* (PL1) 1957 S.C. 91 (98) that generally a person performs judicial functions if he is confined by the law to adjudicate upon and determine, as between the parties some controversy relating to the existence or non-existence of a right or liability, whether such right or liability be the creation of common law or Statute, provided the right or liability is actionable under the general law or special law, and the duty to determine the controversy is derived from the State and rests on the ascertainment, with notice and of opportunity to parties of the facts and the law applicable to them and not on policy expediency or some other extraneous considerations for reasons given in the foregoing para, many of the criteria laid down in this case would not apply to the Tribunal under the Ordinance aforementioned. The report of the Tribunal is not therefore a judgment.

357. In this view of the matter the authority of the Supreme Court which deals with settlement of disputes *inter partes* by a judgment of the Court is clearly distinguishable.

358. The report being merely an opinion of a Tribunal based upon the evidence recorded by it is not relevant under any section of the Evidence Act nor reference to any such section was made by the learned counsel during arguments. The contents of the report and the reference in it to any statement made before the Tribunal is not therefore relevant.

359. The relevant portions of the report which were relied upon by Mr. D. M. Awan were read before us. I do not find those extracts susceptible of any

interpretation in favour of the existence of a supplementary statement of Ahmad Raza Kasuri in the record of the Tribunal. Mr. D. M. Awan during the course of trial had been referring again and again to a similar statement which Ahmad Raza Kasuri is alleged to have made before a Deputy Superintendent Police under Section 161 Cr. P.C. during the investigation of the incident of firing on Ahmad Raza Kasuri at Islamabad. It is quite possible that the Tribunal might have referred to some statement alleged to have been made by Ahmad Raza Kasuri before that police officer. Even if it is assumed that such a statement under Section 161 Cr. P.C. was made by Ahmad Raza Kasuri P.W. 1 (although this is denied and no such statement has been proved) it would not be relevant except for the purpose of contradicting the witness (P.W. 1). It is, therefore, difficult to hold that the Tribunal's report, if it refers to this statement can be relevant for any other purpose or in the absence of independent proof of the existence of such a statement can be used even for the purpose envisaged in Section 162 Cr. P.C. I am, therefore, of the view that the report of the Tribunal is inadmissible in evidence.

360. Some statements are attributed to the persons who are now dead. They were Abdul Ahad DSP, Ichhra, an Investigating Officer in this case, Abdul Hameed Bajwa, an Officer on Special Duty in the Prime Minister's Secretariat who assisted P.W. 3, and Haq Nawaz Tiwana, prior Director General F.S.F.

361. The evidence about Abdul Ahad is that he prohibited Abdul Hayee Niazi, S.H.O., Ichhra, P.W. 34 from preparing the recovery memo of articles on 11.11.1974 until he reached the place of occurrence, on the ground that the name of the Prime Minister was mentioned in the First Information Report, that he asked P.W. 34 to show the empties to the Ballistic Expert before they were sealed, that he sealed the F.I.R., P.W. 34:3, that on 11.11.1974 he took the empties and bullet in loose condition in a service envelope to the residence of the Inspector General of Police, and on return from there informed P.W. 34 that the Inspector General had kept the above articles and said that he would pass further orders and investigation should be conducted according to his orders, that after his return from Rawalpindi, two or three days after the 13th November, 1974, he showed to P.W. 34 a draft for preparation of recovery memo of empties and bullet which, he said, had been given to him from the Prime Minister's House and which he took back after the necessary memo was prepared, that at the time of preparation of the recovery memo the empty cartridges were not present but the D.S.P. told him that the same would be returned later, that P.W. 34 found the number of the empties on the draft recovery memo different from the empties actually recovered and when he questioned the D.S.P. about the empty cartridges he intimated to him that it was an order which must be complied with "otherwise both of us would find ourselves in trouble and not only our services would be terminated but we would also be involved" (in criminal cases), that the

D.S.P. gave empty cartridges still unsealed on 23rd of November, 1974 (*i.e.* 12 days after their recovery), and ordered P.W. 34 to seal them and send them to the Inspectorate of Armaments and that the lead bullet and two metallic pieces recovered from the spot were given much later and sent to the Inspectorate of Armaments on 24.11.1974 under orders of D.S.P.

362. Similarly, there is evidence in regard to certain statements made at different times, orally as well as in writing by Abdul Hamid Bajwa. It is in the evidence of Muhammad Asghar P.W. 12, Sardar Abdul Wakil Khan P.W. 14, Muhammad Waris P.W. 15 and Abdul Hayee Niazi P.W. 34 that Abdul Hameed Bajwa on different occasions showed his resentment that the F.I.R. was recorded on the statement of Ahmad Raza Kasuri, P.W. 1. His view was that this report ought to have been recorded on the statement of some other complainant in which case Ahmad Raza Kasuri could be examined under Section 161 Cr. P.C. as a witness only and in such a case the name of the Prime Minister would not have been recorded in the F.I.R. and received publicity. To the same effect is a note Ex. P.W. 312-A11 dated 20th November, 1974, by Abdul Hamid Bajwa. There is also evidence that Abdul Hameed Bajwa made inquiries about the empty cartridges recovered from the place of occurrence but Sardar Abdul Wakil Khan P.W. 14 tried to put him off by saying that they had already been sealed. Abdul Hamid Bajwa was very much upset and remarked "What was the hurry when the name of the Prime Minister was involved in it." Sardar Abdul Wakil Khan also stated that he enquired about a fortnight later from Abdul Ahad (D.S.P.) whether the result from the Ballistic Expert to whom the empties were sent, had been received. He was surprised to hear that the sending of the empties had been delayed because they had been taken by Abdul Hamid Bajwa and returned to him after 2 or 3 days.

363. Similarly there is evidence of Masood Mahmood, P.W. 2 to the effect that before he accepted the post of Director General, Federal Security Force. Abdul Hamid Bajwa impressed upon him the fact that if he did not accept the job offered to him, his wife and children might not be able to see him again. He reminded him several times about the mission to liquidate Ahmad Raza Kasuri P.W. 1. He communicated to him an order of the principal accused to keep his mouth shut when it was discovered that P.W. 2 knew about the delivery of arms and ammunitions to Jam Sadiq Ali in the office of the Defence Secretary.

364. There is evidence that secure reports were sent by Abdul Hamid Bajwa to the Prime Minister vide covering letters Exs. P.W. 3/1-A, P.W. 3/4-B and P.W. 3/11-C. There is not only evidence that Abdul Hamid Bajwa made efforts to bring Ahmad Raza Kasuri to the fold of the People's Party but there are also reports sent to the then Prime Minister (the principal accused) regarding Ahmad Raza Kasuri's activities in this regard. These are Exs. P.W. 3/2-C, P.W. 3/2-F P.W.

3/2-J, P.W. 3/2-K, P.W. 3/2-L, P.W. 3/2-N, P.W. 3/2-O, P.W. 3/2-Q, P.W. 3/2-R, and P.W. 3/2-S. Some other documents bear the signature of Abdul Hamid Bajwa e.g. Ex. P.W. 3/2-H, P.W. 3/2-G, P.W. 3/2-P, and P.W. 3/4-A. There are T.A. Bills of Abdul Hameed Bajwa bearing signature Exs. P.W. 3/5, P.W. 3/6, P.W. 3 7, P.W. 38, P.W. 3,9, P.W. 31110. There is evidence that Abdul Hamid Bajwa directed Ashiq Muhammad Lodhi P.W. 28 to report to him the description of the gunman of Ahmad Raza Kasuri who accompanies him to the National Assembly.

365. Mr. D. M. Awan some times raised specific objections in regard to such and similar statements, oral or written, that they do not fall under any of the clauses of section 32 of the Evidence Act and as such are inadmissible. This objection was not taken specifically in regard to some documents emanating from or signed by Abdul Hamid Bajwa and some oral statements ascribed to him. It was, however, understood that the objection under Section 32 of the Evidence Act would relate to each statement document attributed to Abdul Hamid Bajwa or Abdul Ahad.

366. Section 32 of the Evidence Act provides that a statement, written or verbal, of relevant facts made by a person who is dead are themselves relevant facts in the following cases:

- 1)
- 2) When the statement was made by such person in the ordinary course of business, or in the discharge of professional duty.
- 3) When the statement if true, it would expose him to a criminal prosecution
- 4)
- 5)
- 6)
- 7)
- 8)

The evidence objected to either consist of threats to witnesses or efforts to tamper with evidence clearly with a view to save the actual offenders from legal punishment or statements and reports in writing sent to the Prime Minister or other officers. The evidence of P.W. 28 relates to something done in furtherance of the conspiracy.

367. The provisions in Chapter XIV of the Code of Criminal Procedure particularly sections 154, 157, leave no manner of doubt that it is incumbent upon the officer in-charge of the police station to record the first information report,

(See *Sawant v. S.H.O. Police Station Saddar Kasur and another* (PLD 1975 Lahore 733) , *Ch. Shah Muhammad v. S.H.O. Police Station Rahim Yar Khan and two others* (PLD 1976 Lahore 1412), and *Haji Muhammad Khan v. Ch. Khizar Hayat and 3 others* (PLD 1977 Lahore 424) as well as to start investigation on receipt of such information to apprehend the real culprit and to bring him to book. Similar is the provision of Section 23 of the Police Act. It provides that it shall be the duty of every police officer to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient grounds exist. A police officer no doubt acts subject to supervision by higher officers in the same hierarchy as is clearly laid down in Paragraph No. 25.17 of the Police Rules, 1934, but he cannot act arbitrarily, capriciously and whimsically since he is as much bound by law as any other person and may for violation of duty or willful breach or neglect of any rule or regulation, be liable to penalty under Section 29 of the Police Act. All this presupposes that he must be left free, no doubt subject to lawful orders made by any competent authority or supervision by higher officers, to investigate the matter without interference from any other agency.

368. In the case of *Emperor v. Khawaja Nazir Ahmad* (AIR 1945 P.C. 18(22) ILR 1945 Lahore 1) the following observations were made by their Lordships of the Privy Council deprecating interference even by the judiciary although honest investigation of a case is necessary for correct administration of justice :-

“In their Lordships’ opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an

appropriate case when moved under Section 491, Criminal P.C. to give directions in the nature of habeas corpus.”

In the case of *Shahnaz Begum v. Hon’ble Judges of the High Court of Sindh and Baluchistan* (PLD 1971 S.C. 677), it was held that the High Court has no power of supervision or control over Investigation Agencies under the Letters Patent. In *Wali Muhammad v. Haq Nawaz* (1971 S.C.N.R. 717) the High Court suggested to the Inspector General of Police to transfer investigation and it was accordingly transferred from the local police to the Crime Branch. The order was held to be without jurisdiction.

369. If therefore, the investigation which is a step towards administration of justice is outside the purview of the Court it cannot obviously brook any interference from any other quarter much less from persons who have the least connection with any police agency. Moreover, the investigation in this case was carried on by the Punjab Police. The Constitution does not permit any interference by the Central Executive in matters within the sphere of the Provincial Government.

370. It is obvious from the evidence that illegal interference in the investigation of the case by Abdul Hamid Bajwa etc. was plainly with a view to harbour the real offenders and to make it impossible for the officer investigating the case of detect the persons who had committed the offence.

371. It was the duty of Abdul Ahad to investigate the case or supervise its investigation according to law in order to detect and bring the offenders to justice. In order to preserve the evidence, it was his duty to see that the empties were sealed and a recovery memo prepared immediately after the recovery. He delivered the empties to Abdul Hamid Bajwa and subjected himself to his influence in the investigation of the case. The directions given by him to Y.W. 34 in this connection would have exposed him to the prosecution under Sections 217 and 218 of the Pakistan Penal Code since what he did amounted to disobedience of a direction of law as to the way in which he was required to conduct himself as such public servant and charged with the preparation of any record, as he was, he prepared that record in a manner which he knew to be incorrect. These illegal acts and omissions were clearly with a view to save the actual offenders from legal punishment. The threats would have exposed him to prosecution under Section 506 Penal Code.

372. Abdul Hamid Bajwa would have been exposed equally to prosecution for abetting those offences. In these circumstances, I have no doubt in my mind that the statements attributed to these dead persons regarding threats and

interference with the course of investigation would be admissible under clause (3) of Section 32 of the Evidence Act.

373. The order to P.W. 28 to report to him the description of the gunman of Ahmad Raza Kasuri would have exposed Abdul Hamid Bajwa to prosecution for the offence of conspiracy in this case. It would also be covered by Section 32(3) Evidence Act. Mr. Qurban Sadiq Ikram did not argue in favour of interference by Abdul Hamid Bajwa etc. in the investigation of the case. He argued that the Investigating Officer was only brought on the right lines so that P.W. 1 may not exploit the situation. I do not feel impressed by this argument. This argument ignores that the superior authority of Abdul Hamid Bajwa and Saeed Ahmad Khan in that regime gave an advantage to them over the entire police organization including the Inspector General of the Police. Their orders or directions could not be disobeyed by any of them. This was not, therefore, only an interference but a case of directing the investigation according to the whims of those officers.

374. The evidence about the report is admissible and relevant under clause 2 of section 32 as a statement made in due course of business or in discharge of professional duty. Saeed Ahmad Khan P.W. 3 specifically stated about file Ex. P.W. 3/2 that it was being maintained in the ordinary course of business. The documents bearing the signature of Abdul Hamid Bajwa proved from that file would fall under this provision. This principle will apply to the documents also from files Ex. P.W. 311 and Ex. P.W. 3;3 and the remarks or entries in the Peon Book since these are all official documents maintained presumably in the ordinary course of business and in discharge of duties.

375. This fact is virtually admitted by the principal accused in his statement under Section 342 Cr. P.C. While on the one hand refusing to answer questions about the above mentioned files he added that so far as he remembered from British times, the D.I.B., the D.G.I.S.I. special Branches of the Provincial Government and the District Magistrates kept copious files of prominent individuals. This practice has continued from time to time. In view of his refusal to answer the question it would be necessary to refer to Section 342 Cr. P.C., which, in case of refusal of an accused examined under that Section to answer any question, allows the Court to draw such inference from such a refusal as it thinks just. The Court would be justified in drawing an inference of admission about the maintenance of these files, from the analogy drawn in his answer by the said accused from the working of the Intelligence Branches in the British period and subsequently.

376. Similar objection was raised by Mr. D. M. Awan to the questions put by Haq Nawaz Tiwana (now dead) former Director General of the F.S.F. to Ghulam

Hussain P.W. 31 at the time of his interview for appointment, regarding his qualifications. The statement attributed to Haq Nawaz Tiwana must have been made by him clearly in the discharge of his duties and in due course of business. The objections raised under Section 32 Evidence Act are therefore repelled.

377. During the course of cross-examination the learned counsel for the defence, in order to make out a case of improvements made by witnesses in their examination-in-chief before this Court, drew the attention of the witnesses to certain omissions in their earlier statements made before the police under Section 161 Cr. P.C. and sometimes also made before a Magistrate under Section 164 Cr.P.C. The witnesses explained the omission and sometimes pleaded want of memory in case where the witness pleaded lack of memory the learned counsel invariably requested the Court to make a note in bracket that the statement put to the witness from his examination in Court was not recorded in some or all of earlier statement. The Court did not consider it necessary to make such a note which does not have any legal sanction. It was pointed out that an earlier statement would be relevant under section 145 of the Evidence Act if it is intended to contradict the witness. The questions put to the witness only pertained to omissions which may or may- not amount to contradiction. The defence would therefore be allowed to provisionally prove the earlier statements formally and the question whether in the circumstances of the case an omission is a contradiction would be decided after hearing the final arguments. It is in view of this undertaking that the defence was allowed to prove statements Ex. P.W. 39/5-D, Ex. P.W. 30/6-D, Ex. P.W. 39/7-D, Ex. P.W. 39/8-D, Ex. P.W. 39/9-D, Ex. P.W. 41/3-D, Ex. P.W. 41/4-D, Ex. P.W. 41/5-D, Ex. P.W. 41/6-D and Ex. P.W. 41/7-D made by the witnesses before P.Ws. 39 and 41 under section 161 Cr. P.C. and statements Exs. P.W. 10/15-D, Ex. P.W. 10/16-D, Ex. P.W. 10/17-D, Ex. P.W. 10/18-D, Ex. P.W. 10/19-D, Ex. P.W. 10/20-D and Ex. P.W. 10/21-D made under section 164 Cr. P.C. before P.W. 10.

Mr. D. M. Awan argued that the answer 'I do not remember,' itself amounts to a contradiction within the meaning of section 145 Evidence Act. He relied upon *Mohinder Sing v Emperor* (AIR 1932 Lahore 103) and *Gopi Chand v. Emperor*, (AIR 1930 Lahore 491).

These authorities deal with the manner in which the provisions of Section 145 Evidence Act should be used by counsel and Courts while confronting a witness with his statement made before the police under Section 161 Cr. P.C. After reproducing the provisions of Section 145, Evidence Act, it was laid down in the case of *Gopi Chand* that: -

The proper procedure would, therefore, be to ask a witness first whether he made such and such statement before the police officer.

If the witness returns the answer in the affirmative, the previous statement in writing need not be proved and the cross-examiner may, if he so chooses, leave it to the party who called the witness to have the discrepancy, if any, explained in the course of reexamination. If, on the other hand, the witness denies having made the previous statement attributed to him or states that he does not remember having made any such statement and it is desired to contradict him by the record of the previous statement, the cross-examiner must read out to the witness the relevant portion or portions of the record which are alleged to be contradictory to his statement in Court and give him an opportunity to reconcile the same, if he can. It is only when the cross-examiner has done so, that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner permitted by law."

This statement of law was relied upon with the approval in the other case.

378. These authorities are distinguishable since the dictum laid down therein would apply only to a case where a witness has specifically made a statement in his earlier statement which is said to be contradictory to the statement made during his examination at the trial. It cannot be applied to a case where the statement made at the trial was not made at the earlier stages and is a mere omission as distinguished from a contradiction.

379. Strictly speaking, the words "I do not remember" cannot be interpreted as either an affirmation or a denial of the query put to the witness. These words can make out a contradiction only, if in the previous statement the witness admits remembering something which in the statement at the trial he denies re-calling. It cannot, therefore, be laid down as a rule of law that a statement of a witness that he does not remember should always be treated as akin to a denial of having made the earlier statement. It may be treated as a denial only in case the previous statement is clearly contradictory to the statement made at the trial. But this principle would not apply to a mere omission. Where an omission in the earlier statement is put to the witness the words "I do not remember" will only mean that he is not in a position to state whether he made such a statement or not. A specific contradiction becomes admissible when the witness does not distinctly admit having made the statement. An example of it is furnished where the witness does not remember if he made a statement. But the converse cannot be true because the principle "does not distinctly admit having made the statement" cannot be stretched to include "does not distinctly admit having omitted to make the statement."

380. It is true that sometime an omission may have the force of an inconsistent or contradictory statement and may be used for the purpose of impeaching the credit of the witness but such cases are rare. A witness may omit to furnish details in his previous statement or the previous statement may be absolutely devoid of details. The omissions of details do not amount to contradiction. They may have the force of contradiction only if the witness omits to refer to anything in the previous statement which he must have mentioned in it in the circumstances of a particular case.

381. The question whether an omission amounts to contradiction was considered in *Ponnuswami v. Emperor* (AIR 1933 Madras 372). It was pointed out in that case that whilst the bare omission can never be a contradiction a so-called omission in a statement may sometimes amount to a contradiction, for example, when to the police three persons are stated to have been criminals and later at the trial four are mentioned. This statement of law by Burn J., is clearly based upon the principle that in order to amount to inconsistency the omission must be of such material fact which the witness would not have omitted to state.

382. Generally the witness is confronted with his statement made either before the police under Section 161 Cr. P.C. or made before a Magistrate under Section 164 of the same Code. As regards the statement under Section 162 Cr. P.C. it was pointed out in *Queen Empress v. Nazir-ud-Din* (ILR 16 Allahabad 207) that such statements are recorded by the police officers in a most haphazard manner. The officer conducting investigation not unnaturally records what seems in their opinion material to the case at that stage and omit many matters equally material, and, it may be of supreme importance as the case develops. Besides that, in most cases they are not experts of what is and what is not evidence. The statements are recorded hurriedly in the midst of crowd and confusion subject to frequent interruption and suggestion from by-standers. Over and above all they cannot be in any sense termed "deposition" they have not been prepared in the way of deposition, they are not read over to, nor are they signed by, the deponent. There is no guarantee that they do not contain much more or much less than what the witness has said. In *Deo Lal Mahton and others v. Emperor* (AIR 1933 Patna 440) it was observed that such statements are notoriously very condensed and the omission of some detail in the note of a statement is not always a sure indication that such detail was absent from the statement. What was observed in the Allahabad case is borne out by the statement of the Investigating Officer Abdul Khaliq P.W.41 who made it clear that while interrogating the witnesses whose statements have been proved by the defence as Exs. P.W. 41/3-D, P.W.41/4, P.W. 41/5-D, Ex. P.W. 41/6-D and P.W. 41/7-D, he had merely kept note on the basis of which he subsequently reduced the statement to writing. In these circumstances, it is not safe to rely upon the statement under Section 161 Cr. P.C.

made before P.W. 41 as depositions of thy, witnesses before the Investigating Officer.

383. It may happen some times that the witness himself may not consider a fact as material, and that fact may be brought on the record on specific questions by the prosecution. Such are the questions which the Prosecutor might have considered to be material in the light of the law governing the matter or after he has gone through the police record or after the case for the prosecution has developed. The omissions of such fact cannot be considered to verge on inconsistency. There are numerous examples on the present record of such matters.

384. The only example of such omissions which on the present record would have been considered equivalent to contradiction was the statement made about the role of Mian Muhammad Abbas made at the trial, by P.W. 24. But in view of the clarification made by Muhammad Boota P.W. 39 that he had recorded another statement of that witness under section 161 Cr. P.C. pertaining to Islamabad incident I am of the view that the omission of that role in the statement under section 161 Cr. P.C. recorded about the Lahore incident cannot be considered as amounting to an inconsistency. The learned counsel for the non-confessing accused did apply for copy of the earlier statement alleged to have been made by Ahmad Raza Kasuri in the Islamabad incident. He could have also applied for the copy of such statement made by P.W. 24. It can, therefore, be assumed that his statement to the police during that investigation was in accord with the evidence he gave at the trial. In my view the omissions put to the witnesses in the present case do not amount to contradictions and are not sufficient to discredit them.

385. During the course of the statement of Raja Nasir Nawaz P.W. 23 who appeared before the Court to prove the F.I.R. dated 24th August, 1974, Ex .P.W. 23/1, which pertained to the earlier occurrence at Islamabad. Mr. D. M. Awan made an effort to get the writing of the Deputy Superintendent of Police of the same circle identified on which was stated to be a photostat copy of a copy of statement alleged to have been made by Ahmad Raza Kasuri P.W. 1 before the said Deputy Superintendent of Police under Section 161 Cr. P.C. He was not allowed to prove this document through P.W. 23 for two reasons. Firstly, Ahmad Raza Kasuri denied having made such a statement. In such circumstances, even if the identity of the hand-writing of the Deputy Superintendent of Police was established, it would not have proved that the statement was really made by Ahmad Raza Kasuri. It would be necessary for the principal accused to prove by legal evidence, the fact that the statement was made by P.W. 1, the factum of the making of the statement cannot be proved by the writing being in the hand of the officer, who purports to have recorded it. The second ground was that the

witness did not have before him the original signature. No justification was made for proving the photostat copy of the original statement. The D.S.P. could be produced as a defence witness but this course was not adopted.

386. When Muhammad Yousaf Qazi, P.W. 26 proved the writing of Abdul Hamid Bajwa in Ex. P.W. 32-B (which had already been proved by P.W. 3 Mr. Saeed Ahmad Khan), Mr. D. M. Awan raised an objection that it would not be permissible to let the same document be proved by two witnesses. In support of this objection he submitted that he was not allowed by the Court to prove the copy of the statement of Ahmad Raza Kasuri made by him under Section 161 Cr. P.C. before the Deputy Superintendent of Police Islamabad, through P.W. 23 who had worked with the Deputy Superintendent of Police. This point has already been dealt with in some detail. However, there is no analogy between the objection raised and the order passed earlier. In fact the reference to the earlier order was absolutely irrelevant. The only objection taken to the statement of P.W. 26 was that he could not prove what had already been proved by another witness. To say the least the objection is absurd because it would amount to suggesting that a matter can be proved only by the evidence of a single witness and the evidence of another witness to corroborate or support the testimony would be inadmissible. This objection was, therefore, overruled.

387. The argument in support of this last objection and the irrelevant reference to the earlier ruling brings in bold relief uncounsel-like arrogance of Mr. D. M. Awan which has been discussed in detail while disposing of the petition of the principal accused dated 18.1.1978 for transfer of the case.

388. At this stage an objection by Mr. Ijaz Hussain Batalvi, the learned Special Public Prosecutor may be considered. He argued that a statement recorded under Section 161 Cr. P.C. during the investigation of the occurrence at Islamabad cannot be used in this case. This objection was held to be without substance, since Section 162 bars the use of a statement made under Section 161 Cr. P.C. during the course of the investigation of the same case which is being tried except for the purpose of contradicting him in the manner provided by Section 145 Evidence Act. There is no such bar regarding the statements made before a police officer by the same witness in the investigation of any other case which is not before the Court. Such a statement can, therefore, be used for the purpose of contradicting a witness under Section 145 Cr. P.C. as well as for other purposes admissible in law.

389. P.W. 28, Ashiq Muhammad Lodhi stated that in January, 1975, Abdul Hamid Bajwa called him and ordered him to give the description of the gunman of Ahmad Raza Kasuri, who accompanied him to the National Assembly Cafeteria and the Gallery, Mr. D. M. Awan raised an objection to the

admissibility of this evidence on the ground that this was a matter subsequent to the occurrence in which a murderous attack was made on Ahmad Raza Kasuri resulting in the murder of his father. Mr. Ijaz Hussain Batalvi stated that this matter fell within the four-corners of Section 7 of the Evidence Act. The matter was adjourned to enable the learned counsel to address arguments on the question.

390. Since there is a charge of conspiracy to murder Ahmad Raza. Kasuri Mr. D. M. Awan argued that the said conspiracy culminated in the murder of Nawab Muhammad Ahmad Khan and as such any evidence relating to the period after the said murder was not relevant. He, however, conceded that if the charge had related to the second part of section 120-B P.P.C. or if the challan had been of conspiracy simplicitor the evidence would have been relevant. Mr. Ijaz Hussain Batalvi drew our attention to charge No. 1, which relates to a conspiracy to commit murder of a particular person, namely Ahmad Raza Kasuri and not only to commit the murder of "a person". He argued that there was no culmination of the conspiracy. He referred to Sections 5, 6 and 10 of the Evidence Act in support of the arguments. In reply, Mr. D. M. Awan submitted that the charge was about a conspiracy between the principal accused and Masood Mahmood P.W. 2, and not between the principal accused and Abdul Hamid Bajwa.

391. It is clear from the record that the conspiracy to which charge No. 1, relates, did not culminate with the death of Nawab Muhammad Ahmad Khan since it was a conspiracy to murder Ahmad Raza Kasuri. Any event subsequent to the murder in furtherance of the conspiracy would be relevant both under Section 6 as well as Section 10 of the Evidence Act. The facts sought to be proved are so connected with the charge of conspiracy (fact in issue) as to form part of the same transaction though the persons other than the actual conspirators may have participated in it. Such persons might have acted on the directions and orders of the actual conspirators. Moreover conspiracy may be proved by the surrounding circumstances or by the antecedent or subsequent conduct of the accused. (*Bhola Nath and others v. Emperor* AIR 1939 All. 567).

392. The prosecution case is that Ahmad Raza Kasuri had adopted certain measures for his safety. The evidence of P.W. 28 related to a survey of those measures obviously with the object of achieving the successful culmination of the conspiracy. Such acts cannot be held to be isolated acts or acts unconnected with the conspiracy.

393. Mr. D. M. Awan conceded that if the matter was covered by the second part of Section 120-B.P.P.C. with which it is undoubtedly covered, the evidence would not be irrelevant. This is sufficient answer to his objection.

394. The learned Special Public Prosecutor wished to prove, on the 15th of December, 1977, the diaries in which the departure and arrival of P.W. 31, Ghulam Hussain, was recorded in the month of October, 1974. Mr. D. M. Awan objected to this evidence on the ground that these diaries were not produced with the challan and as such their copies could not be supplied to the defence. Mr. M. A. Rahman, the learned Public Prosecutor, argued that this record was summoned by the defence itself. Moreover, it was filed with an application for necessary permission to prove it. In reply, Mr. D. M. Awan submitted that a document summoned by the defence can be used by it for the purpose of cross-examination of the witness but it cannot be availed of by the prosecution. When he was asked to show the legal bar and to distinguish between evidentiary value and admissibility of the document, he submitted that he had no objection to its admissibility. 394-A After considering the arguments, particularly the provisions of Sections 265-C and Section 265-F on which reliance was placed by Mr. D. M. Awan, we found that neither these sections nor any other law preclude the production of additional evidence or the proof of the prosecution of documents summoned by the defence. Such evidence can be allowed to be produced under Section 540 Cr. P.C. It appears that for this reason Mr. Qurban Sadiq Ikram made it clear that he had no objection to the admission of these documents in evidence.

395. The reliance on Sections 265-C and 265-F was misconceived. Section 265-F is not at all relevant while Section 265-C provides only for providing to the defence copies of certain documents a week prior to the commencement of the trial. This section neither provides for a copy of the documents in question to be supplied to the defence nor places any limitation on the powers conferred upon the Court under Section 540 Cr. P.C. to allow additional evidence. The objection was, therefore, over-ruled.

396. Mr. D. M. Awan objected to the admissibility in evidence of a document which apparently was a carbon copy of the original and bore the initials of one of the accused, namely Iftikhar. This objection was over-ruled and the document was exhibited as P.W. 31/3 and P.W. 31/4 on the evidence of P.W. 31 who proved that it was a carbon copy of the original and that the same was initialled in his presence by Iftikhar accused. The objection had to be over-ruled in view of the clear provisions of Section 62 of the Evidence Act, the first portion of Explanation-2 of which clearly provides that where a number of documents are all made by one uniform process as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest. Clearly, where several copies are prepared by inserting carbon papers between different leaves, each copy is as much primary evidence as the first copy.

397. Some times a witness had to be allowed to make a statement about the contents of the documents either for clarification of ambiguities, if any, or for

proper appreciation of the oral evidence. On such occasions Mr. D. M. Awan invariably objected to any reference to the contents of documents in view of the provisions of Section 92 Evidence Act. This objection is without force since Section 92 forbids evidence of oral agreement or statement for the purpose of contradicting, varying, adding to or subtracting from the terms of the document. This is subject to some provisos with which I am not concerned. There is, however, no bar to the recording of contents of proved documents in the statement of a witness. The Court can allow the contents of a proved document to be brought on the record for the sake of convenience.

398. Moreover, section 92 of the Evidence Act deals with a specific category of documents *i.e.* contract, grant or other disposition of property or any letter required by law to be reduced to the form of a document. The rule embodied in the Section cannot be applied to documents not included in this category. The objection is not tenable in law.

399. An objection was taken to the proof of unsigned reports enclosed with a signed covering letter. His objection cannot be sustained. There is evidence on the record that many a documents *e.g.* secure reports were never signed. There is no law making it obligatory for each document to be signed before it is admitted in evidence. It is a different matter that the factum of a document being unsigned may affect its reliability but it cannot affect its admissibility in evidence. Moreover, the enclosures to signed documents were not produced to prove the correctness of what was contained therein. They were produced to prove the conduct or reaction of the witness or the accused. This objection is unsustainable.

400. Strangely enough an objection was taken even to the refreshing of memory by P.W. 3, although there are clear provisions in Section 159 of the Evidence Act permitting a witness to refresh his memory.

401. An objection was also taken to a reference to a letter written by P.W. to the Chief Martial Law Administrator in which the witness "made a clean breast of the misdeeds of F.S.F. conducted" by him "under the orders of Mr. Zulfikar Ali Bhutto". Mr. D. M. Awan raised an objection that these are contents of a document which cannot be proved except by the production of that document. This objection could have force if the contents of the document had been material. It is not the object of the prosecution to prove the correctness of this assertion. Reference was made to the document to bring on record the circumstances which led to the confession of the witness with regard to the murder of the deceased. Attempt was made by Mr. D. M. Awan to prove a photostat copy but he was not allowed to do in the absence of proof of any circumstance laid down in Section 65 of the Evidence Act prior to leading secondary evidence.

402. The learned Public Prosecutor objected to the admission in evidence of a photostat copy as Ex P.W. 3/16-D. The document was admitted in evidence subject to this objection since it was stated at that time that the original was not forthcoming. This objection must be upheld since no attempt was made by the principal accused to probe the loss of the original nor did he summon the original.

403. The fatal injuries received by Nawab Muhammad Ahmad Khan and his death as a consequence thereof is established by the evidence of his son Ahmad Raza Kasuri, P.W. 1, Dr. Muhammad Asif Chaudhry P.W. 6 and Dr. Sabir Ali P.W. 7. This evidence is supported by the out-patient card Ex. P.W. 6/1, Entry No. 24 (Ex. P.W. 6/2-A) at page 2 of the Emergency Room Register, Ex. P.W. 6/2, X-Rays Ex. P.W. 6/5 and Ex. P.W. 6/4, X-ray Report Ex. P.W. 6/5, Death Certificate Ex. P.W. 6/6, Medico Legal Report Ex. P.W. 6/7 and Postmortem Examination Report Ex. P.W. 7/2. Nawab Muhammad Ahmad Khan was brought to the emergency room at 12-30 A.M. on the 11th November, 1974, was admitted there at 1-00 A.M. and expired at 2-55 A.M. the same day of bullet injury to the brain. One bullet and two thin metallic pieces were recovered by P.W. 7 during the postmortem examination. P.W. 7 recovered the bullet from the right cerebral hemisphere in the middle and two thin metallic pieces from the margin of the wound which were handed over to the police vide Memo Ex. P.W. 7/6. According to the both Medical Experts, the injuries which were the result of the fire-arm were sufficient to cause death in the ordinary course of nature.

404. Some other witnesses, namely, Abdul Aziz P.W. 11, Asghar Khan P.W. 12, Abdul Wakil Khan P.W. 14 and Abdul Hayee Niazi P.W. 34 have also, in their depositions, referred to the injuries and death of Muhammad Ahmad Khan.

405. It is proved by the evidence of Ahmad Raza Kasuri P.W. 1, that while he, accompanied by his parents and aunt, was returning from a wedding in his self-driven car, after mid-night on the night between 10th and 11th of November, 1974, he was fired at by automatic weapons near Shadman-Shah Jamal Round About, Lahore. As a result of this attack his father received fatal injuries. This finds support from the evidence of Ghulam Hussain Approver P.W. 31 who described the details of the time, place and the manner of that attack. It is proved that the shots by sten-gun were fired by Arshad Iqbal and Rana Iftikhar Ahmad accused both of whom have confessed their role in this attack in their statements under Section 164 Cr. P.C. Ex. P.W. 10/3-1 and Ex. P.W. 10/2-1 as well as their statements under Section 342 Cr. P.C. The evidence of Ghulam Hussain approver in regard to the details about the time, place and the manner of attack is corroborated fully by the evidence of P.W. 1, the bullet marks on the car (vide photographs K. P.W. 36/1, Ex. P.W. 36/2, Ex. P.W. 36/3 and Fix. P.W. 36/4), the recovery of broken pieces of glass and blood of Nawab Muhammad Ahmad

Khan from it (vide Memo Ex. P.W. 1/6), the recovery by P.W. 34 of 24 empties bearing No. 661171 which have been proved (vide Ex. P.W. 24/1, Ex. P.W. 24/3, Ex. P.W. 24/5 as well as Ex. P.W. 39/1, Ex. P.W. 39/2 and Ex. P.W. 39/3) to have been supplied by the Central Ammunition Depot, Havelian, to the Headquarters of the Federal Security Force. The version about the place of occurrence given by the aforementioned approver is also corroborated by the site plan Ex. P.W. 34/2.

406. The statement of Ghulam Hussain approver that he made a reconnaissance of the locality (Shad-man Colony) at about 8-00 A.M. on the 10th November, 1974, prior to the attack, to trace out the car of Ahmad Raza Kasuri near the place where the wedding was being held, is corroborated by the statement of Muhammad Amir Driver P.W. 19. All the three confessing accused who had taken part in this reconnaissance admitted their presence in it.

407. It is further established by the evidence of Abdul Wakil Khan P.W. 14, Saeed Ahmad Khan P.W. 3, and Fazal Ali P.W. 24, that the ammunition and weapons of this calibre 7.62 mm were in the use and possession of the Federal Security Force.

408. The supply of weapons (Chinese sten-guns of 7.62 mm bore used in this attack) to Ghulam Mustafa accused is corroborated by the statement of Amir Badshah Khan P.W. 20 who made the supply on the specific order of Mian Muhammad Abbas accused. It is further corroborated by Muhammad Amir Driver who took Ghulam Mustafa accused in his jeep to the office of Amir Badshah P.W. 20 and saw him bringing something wrapped in a cloth which appeared to be a weapon.

409. It is, therefore, proved that Nawab Muhammad Ahmad Khan died as a result of the murderous attack by Arshad Iqbal and Rana Iftikhar Ahmad accused made under the supervision of Ghulam Hussain P.W. 31 near the Shah Jamal-Shadman Round About, Lahore on the night between the 10th and 11th of November, 1974, with weapons of 7.62 mm bore obtained by Ghulam Mustafa confessing accused from Amir Badshah Khan P.W. 20 for that purpose under orders of Mian Muhammad Abbas accused.

410. Mian Muhammad Abbas has denied the presence of Ghulam Hussain at Lahore during the period from 31st October, 1974, to the 12th of November, 1974. His learned counsel relied upon the T.A. Bill of Ghulam Hussain Ex. P.W. 316 by which the travelling allowance was claimed by him for his visit to Karachi during this period as also for his visit to Peshawar from the 21st November, 1974 to the 28th November, 1974. Ghulam Hussain P.W. 31, in his evidence has categorically stated that this document was fabricated under the orders of Mian Muhammad Abbas accused and he neither visited Karachi nor Peshawar during

the period referred to in this document. Similarly, he deposed that the entries Ex. P.W. 31/4 and Ex. P.W. 31/5 about his departure from Peshawar and return from there on the dates mentioned in the T.A. Bill (Ex. P.W. 31/6) were also fabricated. He referred to the entry Ex. P.W. 313 in the *Roznamcha* of Battalion No. 4 of the Federal Security Force. This entry proves departure of Iftikhar Ahmad accused and P.W. 31 on 31.10.1976 for an undisclosed destination on special duty. P.W. 31 explained that this destination was not disclosed since he had to perform the secret mission of the murder of Ahmad Raza Kasuri at Lahore. He further stated that he left Lahore on the morning of the 12th November, 1974, in the car of the Director General (P.W. 2).

411. The statement that P.W. 31 travelled in the car of the Director General from Lahore to Rawalpindi on the morning of the 12th of November, 1974, is corroborated by the Driver of the car, namely, Manzoor Ahmad P.W. 21, who had arrived from Multan a day before after the conclusion of the tour of P.W. 2. He stated that Ghulam Hussain travelled with him to Rawalpindi where they reached at about 2.00 P.M. on the 12th of November, 1974. The statement of Ghulam Hussain about his presence at Lahore on the 10th November, 1974, finds corroboration from the statement of Muhammad Amir P.W. 19 who had driven him in a jeep LEJ-7084, when he (P.W. 31) reconnoitered the place where the car of Ahmad Raza Kasuri was parked near the house where the marriage ceremony was going on.

412. In his cross-examination by Mr. Irshad Ahntad Qureshi, Ghulam Hussain stated that 2 or 3 days before the occurrence while he and his party were going towards Model Town in a jeep without number-plate he was checked by Abdul Wakil Khan D.I.G. who on being informed by him about his designation of Inspector of F.S.F. had allowed him to proceed only after checking the information from Mr. Muhammad Irfan Malli, Director, F.S.F., Lahore. Abdul Wakil Khan P.W. 14 has corroborated this statement though he could not state the name of the person who had informed him that he was an Inspector in the F.S.F.

413. It appears that Mian Muhammad Abbas too is not serious about thin objection since in his second written statement filed after the close of the defence evidence, he referred to the *Roznamcha* of Muhammad Yousaf, Head Constable in the Federal Security Force, brought by Abdul Khaliq D.W. 3 and the copies of two entries dated 25.10.74 7.11.74 made in it in order to show that P.W. 31 had obtained weapons directly from Muhammad Yousaf, Head Constable of F.S.F., Battalion No. 3 posted at Lahore inter alia on the 7th of November, 1974. The entries have not been proved on record, but it is clear from this written statement that on the one hand the plea of Mian Muhammad Abbas is that Ghulam Hussain was not in Lahore from the 31st October, 1974, to the 12th November,

1974 and on the other hand he pleads that he had obtained weapons at Lahore from Muhammad Yousaf, Head Constable on the 7th of November, 1974. There is no doubt left in my mind that Ghulam Hussain was not at Karachi during this period but was at Lahore.

414. The statement of Ghulam Hussain that the entries Ex. P.W. 31/4 and Ex. P.W. 31/5 in the *Roznamcha* about his visit to Peshawar and the T.A. Bill P.W. 31/6 were all fabricated is borne out and corroborated further by both the oral and the documentary evidence. Ghulam Hussain stated that empties of 1500 cartridges received by him (vide road certificate Ex. P.W. 24/7) from Fazal Ali P.W. 24, were returned by him to the same witness on the 25th November, 1974. (vide road certificate Ex. P.W. 31/9). He also stated that he had gone to return the empties in the Armory of F.S.F. Headquarters, Rawalpindi, three or four days earlier but Fazal Ali P.W. 24 refused to receive them since they were short by 51 empties including 30 rounds fired at Lahore and 7 rounds fired at Islamabad. He reported the matter to Mian Muhammad Abbas who asked him to return the same three or four days later. On the next meeting after 3 or 4 days, Mian Muhammad Abbas gave to him 51 empty cases of sten-gun ammunition. The deficiency having thus been made good he returned all the 1500 empty cases to Fazal Ali, P.W. 24 on the basis of road certificate Ex. P.W. 24/9 dated 25.11.1974. Fazal Ali corroborated P.W. 31 about his visit to him two or three days prior to 25th November, 1974 with spent ammunition and empties which were found short by 50 to 51 SMG empties, about his refusal to accept it and about the return of the entire spent ammunition in the morning of the 25th November, 1974. It is, therefore, proved from this evidence which is supported by documentary evidence Ex. P.W. 24/9 dated the 25th November, 1974, that Ghulam Hussain P.W. 31, was at Rawalpindi on the above date when according to the record Ex. P.W. 31/4, P.W. 31/5 and P.W. 31/6 he should have been at Peshawar. The oral evidence proves that even two or three days prior to this date Ghulam Hussain was at Rawalpindi. This evidence oral and documentary — establishes the contention of Ghulam Hussain that the entries in the *Roznamcha* Ex. P.W. 31/4 and Ex. P.W. 31/5 were fabricated and so were the corresponding entries in the T.A. Bill Ex. P.W. 31/6. The T.A. Bill Ex. P.W. 31/6 was fabricated with the active connivance of Mian Muhammad Abbas who had signed this document presumably in token of its correctness. The argument of the learned counsel for Mian Muhammad Abbas based on these fabricated documents is, therefore, without merit.

415. The murderous attack on Ahmad Raza Kasuri in Lahore which resulted in the death of his father was preceded by an incident of firing at Islamabad which is proved by Ahmad Raza Kasuri P.W. 1 and Ghulam Hussain approver P.W. 31, who had supervised the firing. Under instructions from Ghulam Hussain, Mulazim Hussain who was armed with a sten-gun had fired in the air whereas

he was supposed to fire at Ahmad Raza Kasuri who was then driving his car at an intersection while coming from the MNA Hostel and going towards his residence at Islamabad. This statement is further corroborated by Nasir Nawaz, S.H.O., Police Station. Islamabad P.W. 23, who recorded the statement of Ahmad Raza Kasuri Ex. P.W. 23/1 and registered FIR No. 346 under Section 307 P.P.C. on the basis of this statement on the 24th August, 1974. He also recovered five empties from the spot vide copy of the recovery Memo Ex. P.W. 23/3 prepared a site-plan, copy of which is Ex. P.W. 23/2, and sent the empties in a sealed parcel to the Inspectorate of Armament, General Headquarters. Rawalpindi, from where he obtained report Ex. P.W. 23/4 which proved the above mentioned empties to have been fired from Chinese weapons of 7.62 mm calibre.

416. P.W. 31 obtained the sten-gun used in the firing from Fazal Ali P.W. 24 under orders of Mian Muhammad Abbas accused. This is fully corroborated by Fazal Ali.

417. It is proved from Ex. P.W. 23/4 that the ammunition used in the Islamabad incident was of 7.62 mm bore of Chinese weapon of the same calibre. Ex. P.W. 23/3, the recovery memo of the empties, establishes that these empties were engraved at their base with No. 66171. According to the evidence of Abdul Hayee Niazi P.W. 34, the 24 empties recovered by him from the spot in the Lahore incident were also engraved with similar numbers at their base. It is further proved by his evidence which is corroborated by Abdul Ikram P.W. 18 and Nadir Hussain Abidi, Ballistic Expert P.W. 36, that the 24 empties and a piece of metallic metal recovered by P.W. 34 were not sealed on the 11th November, 1974.

Nadir Hussain Abidi P.W. 36 gave an opinion that they were not fired from a G-3 rifle the calibre of which is also 7.62 mm. but he could not say what type of automatic weapon was used without detailed inspection and study of the relevant literature. It is clear from this evidence that the empties recovered by P.W. 34 were of the cartridges fired from automatic weapons. It is further implied in the statement particularly in his reference to G-3 rifle of 7.62 mm calibre that he was convinced that the empties were of ammunition of the same calibre.

418. The Ballistic Expert P.W. 36 found the empties unsealed in the morning of 11th November, 1974. There is evidence that they were not sealed till 23rd of November, 1974.

419. P.W. 34 stated that Abdul Ahad, DSP of Circle Ichhra, Lahore took these unsealed empties and lead bullet during the night of the 11th November, 1974, to the residence of the Inspector General of Police on the latter's instructions, in a

service envelope. The same is the statement of Abdul Ikram P.W. 18, who corroborates P.W. 34 in this point.

420. Abdul Hayee Niazi further stated that Abdul Ahad did not bring the empties with him when he returned from the residence of the inspector General of Police in the night of 11th November, 1974, and on his inquiry Abdul Ahad informed him that they had been kept by the Inspector General of Police with him and that he would return them later. P.W. 34 further stated that Abdul Ahad left for Rawalpindi on the 13th November, 1974 and took the site plan Ex. P.W. 34/2 with him. He returned two or three days later and directed him to prepare the recovery memo of the empty cartridges and the lead bullet from a draft which he (Abdul Ahad) showed to him. The draft was taken away after the witness had prepared the recovery memo Ex. P.W. 34/4. At that time P.W. 34 raised an objection before Abdul Ahad that the memo (Ex. P.W. 34/4) did not make any mention of the lead bullet and that the number of 24 empty cartridges given on this memo was also different, in so far as 22 empties bore number B13/71 while 2 contained No. 31/71. He also asked Abdul Ahad to give back to him the 24 empty cartridges but he put him off by promising to return them later. On further questioning Abdul Ahad informed him that it was an order which had to be complied with otherwise both of them would be in trouble. He also stated that the entry P.W. 16/1-1 about the recovery memo Ex. P.W. 34/4 which purports to be dated 11th November, 1974 was made in Register No. 19 (Ex. P.W. 16/1) on the 17th November, 1977, after the return of Muhammad Bashir, A.S.I., Moharrir Malkhana P.W. 16 from leave. He directed P.W. 16 that entry should be made in the handwriting of Abdul Ikram, Head Constable. On inquiry from Muhammad Bashir P.W. 16 about the parcel of the empty cartridges, which was not in the Malkhana, he promised that it would be given to him later. Abdul Ahad gave the 24 empty cartridges on the 23rd November, 1974, on which date they were sent to the Inspectorate of Armament.

421. This evidence finds support from the statement of Muhammad Bashir P.W. 16 who gave the same circumstances leading to the entry Ex. P.W. 16/1-1 in register No. 19. This was corroborated by Abdul Ikram P.W. 18. Muhammad Bashir P.W. 16 corroborated P.W. 34 that Muhammad Sarwar ASI received the parcel of empties directly from P.W. 34. It is clear from his statement that Muhammad Sarwar asked Abdul Ikram, P.W. 18 to issue a road certificate for taking the parcel containing the empties to Rawalpindi. The fact that Abdul Hayee Niazi had given the parcel of empties directly to Muhammad Sarwar P.W. 17 on the 23rd November, 1974, is further corroborated by the latter's own evidence as well as the evidence of Abdul Ikram P.W. 18.

422. The parcels containing the blood and lead bullets with two metallic pieces were however with Muhammad Bashir P.W. 16. Their entry was also made on

the 17th November, 1974 in the portion encircled as Ex. P.W. 16/1-1. P.W. 16 gave this parcel to Abdul Ikram on the 24th December, 1974, for issuing the road certificate. The parcel containing the lead bullet and 2 metallic pieces was taken by P.W. 17, who took it to the Inspectorate of Armament on the 24th of December, 1974, on the basis of a road certificate entered in P.W. 16;1-2.

423. The fact that the empties remained unsealed is also corroborated by the evidence of Abdul Wakil Khan P.W. 14 who stated that he gave incorrect information to Abdul Harnid Bajwa about the sealing of the empties in order to avoid any suggestion from him to tamper with them in order to exonerate the Federal Security Force. He later enquired from Abdul Ahad D.S.P. if any result had been received from the Ballistic Expert to whom the empties were sent but he was surprised to hear from him that the empties had been taken away by Abdul Hamid Bajwa on the ground that the empties were required to be taken to the Prime Minister's House to be shown to the high officers and returned after two or three days.

424. From this evidence it is clearly established that the crime empties were not sealed up to the 23rd November, 1974, nor their recovery memo was prepared at the time of the recovery nor were they ever deposited in the Malkhana. It is further clear that the crime empties which were engraved clearly with No. 661/71 were changed with 22 empties on which the number could be read as BB171 and on the rest two the number was 31/71. It is true that Nadir Hussain Abidi P.W. 38 had read the number on the 22 empties as 66/71 but the change of the empties is established by the fact that while Abdul Hayee Niazi P.W. 34 had read this number on the bases of the crime empties as 66/71, the number of the empties as given in the recovery memo Ex. P.W. 34/4 is BB1/71 which implies that the person who prepared the draft of the recovery of empties read the number as such. The number on the bases of the present empties is not, therefore, easily readable. This finds support from the evidence of P.W. 36. He stated that what is inscribed on the bases of 22 empties is No. 661/71 but this number can be read as BB1/71 by a person who has weak eyesight and who does not examine them closely. Then two of the empties bear an absolutely different number 31/71 which itself is a proof of the substitution of the crime empties by the empties P. 8 to P. 31.

425. Mian Qurban Sadiq Ikram criticized the statement of P.W. 34 on the ground that the statement made by him now was not made before the Tribunal. This argument overlooks the explanation given by the witness about the circumstances in which he made the statement before the Tribunal. There is no reason to disbelieve Abdul Hayee Niazi or any of the above mentioned witnesses since they have no animus against the accused nor any reason to favour the

prosecution. The evidence of Abdul Hayee Niazi is corroborated almost on each point either by one or several witnesses from amongst P.W.s 14, 16, 17, 18 and 36.

426. P.W. 36 very clearly stated that at the time of his examination of the empties in the police station on the 11th November, 1974, he found them unsealed. The same statement appears to have been made by him before the Tribunal and it is for this reason that Abdul Hayee Niazi P.W. 34 was confronted there with this statement of P.W. 36. This is clear from the following question put by the defence counsel and the answer given by P.W. 34:-

Q. I put it to you that in this Court you stated that under the direction of the DSP empty cartridges were shown to Mr. Abidi at the police station while you stated before Mr. Justice Shafi-ur-Rahman on 25.12.1974 that it is also incorrect in the statement of the Director that the empties were shown to him there and they had not been sealed at the spot?

A. I made a statement to that effect but it had been made under some compulsion.

This question and answer proves that P.W. 36 had made a similar statement before the Tribunal and that this was the correct statement.

427. Faced with this situation Mian Qurban Sadiq Ikram argued that it is quite possible that the empties might have been sealed the same day. This argument is just conjectural and ignores the evidence of P.W.s 14, 16, 17 and 18. In view of the considerable corroboration there appears to be no reason to doubt the correctness of the statement of Abdul Hayee Niazi P.W. 34.

428. It is established by the evidence of Fazal Ali P.W. 24 and the documents Ex. P.W. 34/1 read with Ex. P.W. 39/2 and Ex. P.W. 24/3 and Ex. P.W. 24/5 (which are the same as Ex. P.W. 38/3 and Ex. P.W. 38/2 respectively), that the cartridges of SMG/LMG of 7.62 mm calibre bearing number 66/71 and cartridges of rifle bearing No. 31/71 were supplied by the Central Ammunition Depot, Havelian to the Head-quarters of the Federal Security Force.

429. This evidence corroborates the statement of Ghulam Hussain P.W. 31 that the 24 empties recovered by P.W. 34 in the Lahore incident and the 5 empties recovered by P.W. 23 in the Islamabad incident vide Memo No. P.W. 23/3 were part of the 1500 rounds issued by Fazal Ali P.W. 24 to Ghulam Hussain (P.W. 31) by Road Certificate Ex. P.W. 24/7. It does not require much imagination to safely conclude that the 22 empties bearing No. 66/71 and 2 bearing No. 31/71 which

have now been proved as Exhibits P. 8 to P. 31 also come from the consignment sent by C.A.D. Havelian to the Headquarters, F.S.F.

430. It is in the evidence of Fazal Ali P.W. 24 that the empties of the used cartridges are kept in the armory and after 40 to 50 boxes of the empties are collected there, they are sent to the Wah Factory. He stated that 8 to 10 days before Ghulam Hussain deposited 1500 fired rounds (this approximately comes to 15th of November, 974) Mian Muhammad Abbas accused enquired from him if he had fired cartridges in the armory. On his answer being in the affirmative, Mian Muhammad Abbas accused asked him to bring 25-30 fired cartridges of SMGLMG. He re-turned to the armory and took 30 such empties to the said accused who ordered him to place them on the table saying that he would let him know when he was required to collect them. The accused sent for him again after 2-12 hours and directed him to take away the empties which on physical checking were found to be correct.

431. This evidence accords with the statement of Abdul Ahad, D.S.P. made to Abdul Wakil Khan P.W. 14 about the taking away of empties by Abdul Hamid Bajwa and their return two or three days later. This evidence, the circumstance of letting the crime empties remain unsealed and finally the statement of Abdul Hayee Niazi P.W. 34 about the difference in the number engraved on the bases of empties recovered by him and the number of the empties recorded on the belatedly prepared recovery memo Ex. P.W. 34/4 prove beyond a shadow of doubt that the crime empties recovered from the spot were substituted with empties Ex. P. 8 to P. 31 and this substitution was effected by Mian Muhammad Abbas accused.

132. It has already been seen that Amir Badshah Khan P.W. 20 supplied the sten-guns which were used in the Lahore incident under the direction of Mian Muhammad Abbas only on a chit which was given back to Ghulam Mustafa accused on the return of the weapons. Similarly Fazal Ali gave to Ghulam Hussain the sten-guns used in the Islamabad incident on the direction of and threat from Mian Muhammad Abbas, on a chit which was given back to Ghulam Hussain on the return of the weapons. P.W. 20 and P.W. 24 both were directed by Mian Muhammad Abbas not to make entries of the issue of these weapons in their registers. Thus both these witnesses corroborate the evidence of Ghulam Hussain P.W. 31 in material particulars regarding the supply of arms for launching an attack on Ahmad Raza Kasuri under the specific orders of Mian Muhammad Abbas.

433. Mian Qurban Sadiq Ikram argued that P.W. 20 has made the statement on account of his enmity with Mian Muhammad Abbas. He referred in support of the argument to inquiry report Ex. P.W. 201 and the admission by this witness

that he had filed Service Writ Petition. He further argued that the statement of P.W. 24 regarding the delivery of arms to Ghulam Hussain P.W. 31 and the involvement of Mian Muhammad Abbas is an improvement on the statement made by him under Section 161 Cr. P.C. (Ex. P.W. 30/9-D) and should not be given any credence.

434. Mr. Ijaz Hussain Batalvi, learned Special Public Prosecutor on the other hand argued that the report is really against Abdul Hamid, Deputy Director in which Amir Badshah Khan P.W. 20 appeared as a witness only. He referred to the statement of P.W. 20, who said that he was never given a copy of the report Ex. P.W. 3011) nor was he served with a charge-sheet, rather he had tendered his resignation and had obtained his discharge in 1975 on account of ill health. P.W. 20 admitted that he had filed a writ petition but he explained that it was filed on a claim of the salary for the post of Deputy Director since he had been paid his salary only for the post of Assistant Director.

435. It appears from Ex. P.W. 20/1-D that Mian Muhammad Abbas had visited Mandi Bahauddin under a directive of the Director General (P.W. 2) that the "atmosphere prevailing in Mandi Bahauddin Camp warrants pulling out the Deputy Director in charge of Battalion No. 3 and the Acting Deputy Director Battalion No. 15". The report showed that at the end a recommendation was made against Amir Badshah Khan also. There is, however, no evidence that any action was taken on the basis of this report or it had ever come to the knowledge of P.W. 20. Amir Badshah Khan P.W. 20 stated in his cross-examination that he retired from the service on the 16th October, 1975. He denied that he was removed from the job by Mian Muhammad Abbas or that in his place Zulfiqar was appointed or that Mian Muhammad Abbas made any observation against him. He stated that he had resigned from the job and presented his resignation to M. M. Hassan, Additional Director General. Despite this line of cross-examination, Mian Qurban Sadiq Ikram's only suggestion to P.W. 20 was that he had made the statement against the accused because he was threatened by the F.I.A. that he would be involved in this case as an accused person. P.W. 20, no doubt, denied this. A similar suggestion was put by Mr. D. M. Awan in his cross-examination that the witness had made a false statement because of the fear of Martial Law. But he replied that he was afraid only of God and had never been to the Martial Law Authorities.

436. A question was also put to P.W. 2 that Amir Badshah Khan had to quit the force on the report of Mian Muhammad Abbas accused but his answer was that his services were terminated since the Officer had outlived his utility.

437. It was suggested to P.W. 20 that the writ petition was filed since he was only an Assistant Director but he had started writing his designation as Acting

Deputy Director to which Mian Muhammad Abbas had taken an objection. He denied this allegation and stated that he had filed a writ petition since he was not being paid the salary of the Deputy Director.

438. The suggestion that Mian Muhammad Abbas objected to the writing by the witness of his designation as Acting Deputy Director is proved incorrect by Ex. P.W. 20/1-D in which he is referred to by the same designation. There is no evidence that the witness ever had any notice or knowledge of this report or any action was taken against him on its basis. On the other hand he is proved to have resigned his job.

439. There is, therefore, no justification for holding that the relations between Mian Muhammad Abbas and Amir Badshah Khan P.W. 20 were ever strained and that he had any motive to involve him in this case. He appeared to be a truthful witness whose testimony is corroborated to a certain extent by the statement of Muhammad Amir Driver P.W. 19 and finds further support in the confessional statement of Ghulam Mustafa accused.

440. As regards Fazal Ali, P.W. 24, the learned Special Public Prosecutor referred to the statement of Muhammad Boota P.W. 39 that he recorded two statements of P.W. 24 under Section 307 in regard to the Islamabad incident. He also made reference to the persistence with which P.W. 24 repeated that he had stated in his police statement what he had stated in Court. He therefore, argued that the other statement recorded by Muhammad Boota P.W. 39 about the occurrence at Islamabad definitely contained what has been said in the statement in Court.

441. It is true that the statement made in Court regarding the directions of Mian Muhammad Abbas to give the required weapons to Ghulam Hussain P.W. 1 on a chit without recording the same in his register and the threats given by him in this connection do not find any mention in the statement under Section 161 Cr. P.C., Ex. P.W. 39/9-D); but P.W. 24 positively stated that he had given all the details of facts to the Investigating Officer though he had not read his statement nor had he signed it. In answer to a question that he had made improvement upon his statement under Section 131 Cr. P.C. to bring the present statement in line with the prosecution version and that he had done this dishonestly, he stated that he had already taken an oath before he started making a statement and had stated what had really happened. The statement of Muhammad Boota P.W. 39 is clearly explanatory of the omissions in Ex. P.W. 39/9-D which were put to P.W. 24. While proving the statement Ex. P.W. 39/9-D he stated that so far as Fazal Ali's stand is concerned, I would like to point out that his statement was also recorded in a case under Section 307 P.P.C. which was being investigated contemporaneously with the present case and a few

things deposited by him which are incorporated in his statement in the other case were not reduced to writing in the present case307 P.P.C. case related to the attack on Ahmad Raza Kasuri at Islamabad”.

442. This statement explains the above omissions. According to the evidence of P.W. 24 and the Approver P.W. 31, the weapons were taken from P.W. 24 for being used in the Islamabad incident. It is, therefore, clear that the portion of the statement of Fazal Ali put to him as an omission was relevant for the case registered under Section 307 P.P.C. as a consequence of murderous attack on Ahmad Raza Kasuri at Islamabad. The witness should have been confronted with that statement in order to prove so omission or improvement. There is, therefore, no reason to disbelieve the evidence of Fazal Ali.

443. Reference may also be made to the statement of Mian Muhammad Abbas that Ghulam Hussain as in direct contact with Masood Mahmood P.W. 2 and that he had been rewarded by him and also promoted as Inspector. This statement was made clearly to exonerate himself from the criminal liability and further to show that Ghulam Hussain was in direct contact with Masood Mahmood who must have directly assigned to him the task of murdering Ahmad Raza Kasuri. The learned counsel for Mian Muhammad Abbas placed great reliance for this proposition upon the statement made by Ashiq Muhammad Lodhi P.W.

444. The evidence on the record does not justify this conclusion. It appears clear from the statement of Ghulam Hussain P.W. 31, Amir Badshah Khan P.W. 20, Fazal Ali P.W. 24 that Mian Muhammad Abbas was supervising the operation against Ahmad Raza Kasuri and these witnesses were directly in contact with him. It is further clear from the evidence of Masood Mahmood that he did not even know Ghulam Hussain P.W. 31. Ghulam Hussain also stated clearly that he had appeared before Masood Mahmood along with other candidates on the 20th August, 1974 only at the time of his interview for promotion to the post of Inspector.

445. A suggestion was put to P.W. 2 that Ghulam Hussain was one of his favorite officers but he denied the suggestion. A question was put to him that under his orders the Deputy Director had awarded to Ghulam Hussain a first class certificate and Rs. 500/- as cash prize for efficient performance of his duties in the National Assembly. P.W. 2, however, stated that as a Director-General he had to act on the notes put up before him but he did not have to see or know the person to whom the award or certificate was given nor did he remember whether any such award was given on 5.6.1974. On the other hand, Ex. D.W. 44 proves that Ghulam Hussain was promoted as Sub Inspector on 15.1.1974 by Mian Muhammad Abbas and was also given by him an award and of Rs 75/-

with Commendation Certificate for running a Commando Course with great pain and efficiency (Vide order Ex. D.W. 4/5). In this state of evidence it is not possible to hold that Ghulam Hussain obtained orders directly about the mission to kill Ahmad Raza Kasuri from P.W. 2.

446. Ashiq Muhammad Lodhi P.W. 28 was produced by the prosecution to prove the report Ex. P.W. 22/1 submitted by him along with the covering letter Ex. P.W. 32-T to Abdul Hamid Bajwa on the latter's orders regarding the description of the gunman of Ahmad Raza Kasuri who accompanied him to the National Assembly Cafeteria and the gallery. In cross-examination by Mian Qurban Sadiq Ikram he stated that he was promoted by Haq Nawaz Tiwana as Assistant Director, Federal Security Force, on the 1st of April, 1974: and that this promotion was opposed by Mian Muhammad Abbas. He then stated that Ghulam Hussain Approver was posted on duty during the Ahmadiya agitation outside the National Assembly. He was given a special award of Rs. 500/- by the Director-General (P.W. 2) for his good work in June, 1974, in the National Assembly. Mr. Masood Mahmood did send for Ghulam Hussain through him once or twice and it was correct that at the end of July, 1974 he sent for Ghulam Hussain through him and the two were closetted together while the red light remained glowing. He also stated that Rana Iftikhar Ahmad accused was one of the gunman attached to the Director-General in those days. He stated that Mian Muhammad Abbas had told him in June, 1974, that he tendered his resignation which had not been accepted and this information was repeated by him in February, 1976.

447. The learned Special Public Prosecutor argued that this witness had made some uncalled for concessions which the Court can disbelieve. He cited *Bagu v. The State* (PLD) 1972 S.C. 77) and *Sikandar Shah v. The State* (PLD 1965 Peshawar 134). In *Sikandar Shah v. The State* (Supra) it was held that:-

“It is well settled that when such like formal witnesses make certain concessions in tour of the accused in their cross-examination, their statements cannot be considered to be of my credence, no matter, if they had been produced by the prosecution.”

This was approved by their Lordships of the Supreme Court in *Bagu v. The State* (Supra) and it was observed that “the obliging concessions made by formal witnesses in cross-examination cannot be considered to be of any value.”

448. I agree with the argument of the learned Special Public Prosecutor that the concessions made by P.W. 28 fall under this category. He was produced to prove only his report Ex. P.W. 28/1. By admitting that Mian Muhammad Abbas accused had opposed his promotion he plainly attempted to prove that he had

no reason for having any soft corner for hi: a. He thus laid the foundation for his concessions to be taken as true and then agreed with the suggestion of the learned counsel for Mian Muhammad Abbas that Ghulam Hussain was sent for by P.W. 2 through him once or twice in the end of July, 1974, and that he remained closetted with him in his room while the red light was glowing on the door.

449. Ghulam Hussain, as stated above, admitted having an interview with P.W. 2 on the 20th July, 1974. Mian Qurban Sadiq Ikram also argued that obviously Ghulam Hussain was sent for through Ashiq Muhammad Lodhi P.W. 28 and remained closetted with P.W. 2 on this very date. But it is clearly established in the evidence of P.W. 31 that was the date on which he was promoted as Inspector. He stated that other candidates were also interviewed along with him. If the interview was for the purpose of promoting him, it is not conceivable that he would be sent for through P.W. 28. No suggestion was made to Masood Mahmud about the exclusive interview or about the glowing of the red light on the door during the interview nor was Ghulam Hussain cross-examined about having been called for the interview through P.W. 28. It was suggested to him that he was summoned for interview through a letter but he stated that he had appeared in response to a wireless message by Mian Muhammad Abbas. I cannot prefer the evidence of P.W. 28 over the natural statement of P.W. 31.

450. Even otherwise this evidence is not sufficient to impeach the credit of Ghulam Hussain in regard to his evidence about the role played by Mian Muhammad Abbas which in its material particulars has been corroborated by the independent witnesses like P.W. 20 and P.W. 24.

451. It is clear from the record that Mian Muhammad Abbas who instigated and goaded Ghulam Hussain to kill Ahmad Raza Kasuri and helped him in obtaining the arms both for the attack in Islamabad as well as in Lahore had no motive of his own to commit the offence. P.W. 31 and the three confessing accused either had no such motive. The evidence establishes that this motive was on the part of the principal accused.

452. The evidence of motive is furnished by the testimony of P.W. 1, P.W. 2 and P.W. 3 and the same is corroborated by the documentary evidence produced by P.W. 1 and P.W. 22.

453. It is established from the evidence that relations between Ahmad Raza Kasuri P.W. 1 and the principal accused though cordial before 1970, became strained from the beginning of 1971 on account of acute difference of views on political matters and the former's opinion about the latter being power hungry and ambitious. In fact Ahmad Raza Kasuri held the view that the ambition of the

principal accused was to attain power even if the country was broken and its East Wing was lost to it. In his statement he made a pointed reference to the failure of the principal accused to secure an agreement with Sh. Mujib-ur-Rehman on the point of sharing power and the threats given by him that his party would not participate in the National Assembly meeting at Dacca scheduled to be held in March 1971, that the legs of any person going to Dacca would be broken and that such a person would be going on a single fare. He referred to a demand made by the said accused at a public meeting held at Nishtar Park, Karachi for separate transfer of power in each Wing of Pakistan to the majority party of that Wing by saying "*Idhar ham lidhar Turn*".

It is proved by this evidence that Ahmad Raza Kasuri became a strong and virulent critic of the principal accused and offered provocation to him day in and day out. This is corroborated by documentary evidence.

454. Ex. P.W. 19, is the official report of the debates, held in the National Assembly on the draft of the Constitution of 1973. It reproduces the speech made on that occasion by Ahmad Raza Kasuri P.W. 1 as a Member of the Opposition. He deplored that the Parliament of half of Pakistan was meeting in the absence of 167 members from East Pakistan. He queried why the Members from East Pakistan were not present and then furnished the answer that they were not present here because the leader of the minority party had decided to overthrow the majority party. He used such epithets about the principal accused as a leader obsessed with power, a leader who "destroyed this country for the sake of power". He said that "it was that leader who on the 14th February, 1971, in Peshawar said that the PPP would not be attending the forthcoming sessions of the National Assembly" because they would be treated as "double hostages". He continued that "again, the same leader on the 28th of February, 1971, in Lahore said that whosoever would go to Dacca, his 'legs would be broken' and whosoever would be going to Dacca, he would be going on a 'single fare'."

455. He also referred to the speech of 14th March, 1971, made in Karachi in which the principal accused is said to have uttered the formula "*Idhar Ham Udhar Turn*" and thus demanded separate transfer of power in West Pakistan, when he failed to secure an agreement with Sh. Mujib-ur-Rehman, on the point of sharing power, and said:

"It was not my fault if the majority party leader was not prepared to share power. It was not the fault of the people of Punjab if the majority party leader was not prepared to share power. It was not the fault of the toiling teeming millions of Pakistan if the majority leader was not prepared to share power, but then why my country suffered, why my country was made to face the humiliation? It was done by no other man except one who

was obsessed with power, and the history will catch that man, history will bring him to the bar of public opinion and that man will have to answer. He will not go scot free."

456. He also criticized the concept of equating the stability of the country with a strong centre and defined "strong centre" as meaning "self-centre". He referred to Machiavelli and how Hitler became a dictator through a "terrorized Parliament" and compared the conditions of the country to the conditions in Hitler's Germany. He said that witch-hunting was going on in Pakistan similar to the witch-hunting which took place after the burning of the German Parliament of which victims were Ch. Zahur Elahi and Maulana Tufail Muhammad who had already been detained. He warned that anybody who wants to follow Hitler, must read the Rise and the Fall of the Third Reich because the fall was terrible. He referred to the detention of General Agha Muhammad Yahya Khan, who had been declared as a usurper in Asma Jilani's case and said is it a house arrest or is it a protection to the traitor from the people of Pakistan? He criticized the elimination of the word "East Pakistan" from the definition of Pakistan. This, according to him, was an indirect way to try to give recognition to Bangla Desh. Referring to the coining of the phrase 'New Pakistan' he said

"I don't believe in the term 'New Pakistan'. I only believe in Quaid-e-Azam's Pakistan. For me there is only one Pakistan and that is Quaid-e-Azam's Pakistan, what 'New Pakistan'? Because you should be the Quaid-i-Awam of a new Pakistan. This is not good. Don't think that only you are the oracle of the wisdom. Don't think that only you know the politics. There are much brighter people on the other side of the fence also who can understand every gesture of yours, who can give meaning to your every antics. Now it is being said that Himalaya will weep. If the Pakistan Army is purposely to be defeated by the Indian Army, then of course Himalaya will weep."

This speech continued on the 20th February 1973 as is clear from the official report of the debates of the National Assembly Ex. P.W. 1/8. While dealing with the fundamental rights guaranteeing protection and privacy of home, he stated that:-

"..... our telephones are being taped. Our talk is being checked. We are being chased by the C.I.D. agencies, and in this particular Assembly you will find in the lobbies and in the Cafeteria less visitors, more C.I.D. people. Now is this right of privacy being given to us. There are particular gadgets which are being fixed on our telephones through which, even if the telephone is just lying, they can hear our talks in their cozy intelligence headquarters."

He said that the regime was talking of *Roti, Kapra and Makan* and although the Country's economy is virtually "in shambles and the country is dying of poverty, Jashans were being held in Larkana and Bahawalpur. After citing Lord Acton "that power corrupts and absolute power corrupts absolutely" he stated "if a dishonest man becomes a Prime Minister in this country, surely under these powers he can ruin the country and can become virtually the 'civilian dictator'. He hit mercilessly at the provisions in the draft Constitution for vote of no confidence on the Prime Minister by 2/3rd majority and said:

"He wants this particular Article to be inserted in the body of the Constitution for fifteen years in order to continue in office. This is their argument, a very convenient argument, a very excellent argument. This is an argument for their own personal interests. A man invariably cannot go beyond 15 years in power. So this particular argument is not for the stability of the man because he can expect to be in power for 15 years. If the country's stability is needed, then we must create stable institutions. You cannot give stability to a country by giving protection to the personalities."

At another place he said that the principal accused had become the strongest Dictator in the world and will be so powerful that he will not go out of the House as a living person. He opposed the provision about giving commission in the Armed Forces of Pakistan in the name of the Prime Minister (and not in the name of the Head of the State). He said that this was being done to make it the Army of the Prime Minister. Regarding Chief Election Commissioner he said that he should be appointed on the recommendation of the Chief Justice of Pakistan because in this Country there had been the traditions of rigged elections.

457. Ex. P.W. 110 contains the speech of Ahmed Raza Kasuri P.W. 1 on the draft bill of the F.S.F. He stated that:-

"For instance, if I spell out, one of the charges of duty of this special force is to quell disturbances. Sir, to check the smuggling, to stop the highway robbery. But, Sir, the people of Pakistan feel that the charter of duty which is assigned to them by the special law is to disturb the public meetings, to commit the political murders, to plant bombs into the places of the political leaders, to fire at their houses, to abduct their children. These are the duties which have been assigned to this force. This force has been established to create terror in the minds of the opponents of the regime. This force has been created to check the process of democracy in Pakistan. This process has been created to dislodge the opponents of the Government."

458. That such speeches had immediate reaction is proved by Ex.P.W. 22/2, on official report of the Assembly dated 26th May, 1973 which contains the Privilege Motion moved by P.W.1 in regard to a telephonic call received by him on the 7th March, 1973 from Iftikhar Ahmad Tari, Minister of Works and Communications, Government of the Punjab, in which he used threatening language that he would be meeting the same fate as that of late Ch. Mohammad Rafique, if he did not stop criticizing their regime and its policies forthwith. The witness recounted in this Privilege Motion, the history of at least 9 earlier attacks made upon him by the PPP workers from 2nd May, 1971 to the 20th December, 1972. The document also proves that this Privilege Motion was ruled out of order with the observation by the Speaker that the purpose of the mover (P.W. 1) was served by the Motion being placed on the record.

459. The episode of the 3rd June, 1971, deposed to by Ahmad Raza Kasuri, is corroborated by the official reports of the National Assembly dated the 3rd June, 1974. It proves that on the pointing out of P.W. 1 that nine persons had not signed the Constitution, the principal accused said:

"You keep quiet. I have had enough of you; absolute poison. I will not tolerate your nuisance."

Then followed an exchange of hot words, the principal accused once again said:

"I have had enough of this man. Who does he think of himself?"

460. A Privilege Motion (Ex.P.W. 22/3) was moved by P.W. 1, on the 4th June, 1974, in order to bring forth the reaction of this altercation with the principal accused. He stated in the Motion that he had been receiving threatening calls of dire consequences on this altercation and some goondas had also visited the Government Hostel and tried to find out his whereabouts. This, according to the Privilege Motion, was a gross breach of Privilege of Freedom of Expression of Members of the elected bodies.

461. It appears clear from the Official Report of the Debates of National Assembly dated the 4th June 1974, that this Privilege Motion was to be taken at No. 2 in the Agenda regarding Privilege Motions. The Speaker, however, announced in the presence and despite the protest of P.W. 1, that it would be taken up later on. It was taken last on that date and was ordered to be filed on account of his absence.

462. It is proved by the evidence of P.W. 3 that a file in respect of Ahmad Raza Kasuri was opened by him in the month of December, 1973 under the orders of the principal accused since he had become very bitter and critical and, in fact,

virulent against the said accused. Orders were, therefore, issued that he should be kept under strict surveillance. As a result of this directive, his telephone was taped by the Intelligence Bureau and his movements were checked by the Provincial Special Branches.

463. This evidence of P.W. 3 finds corroboration from Ex. P.W. 3/1-A, with which was enclosed a secure report about a telephone talk of P.W. 1 with a lady and the note Ex. P.W. 3/1-A given by the principal accused on it on the 13th December, 1973. This note reads as follows:

"This is very interesting but who is the 'lady'. Surely, if we were efficient, we would know by now. What is the use of half-baked information coming to us with the taping of telephone which requires no effort? It is effort we want."

Similar are the secure reports about the taping of telephone Exs. P.W. 3/1-B, P.W. 3/1-C and P.W. 3 /1-D. Ex.P.W. 3/1-C bears a remark by the principal accused (Ex. P.W. 3/1-C/1)

"How stupid can you get?"

Similarly, Ex. P.W. 3/1-D bears the signature of the principal accused (Ex. P.W. 3/1-D/1) in token of his having seen it.

464. This evidence, oral as well as documentary, proves the parliamentary but strong attacks by Ahmad Raza Kasuri, P.W.1 on the principal accused and his reaction as well as the reaction of his followers. It appears from the statement of Masood Mahmud that orders had already been passed by the principal accused and communicated by him to Mian Muhammad Abbas through Haq Nawaz Tiwana. After the altercation in the Nation Assembly on the 3rd of June, 1974, he made Masood Mahmud (P.W. 2) responsible for execution of the order already given to Mian Muhammad Abbas and to direct the latter to produce the dead body of Ahmad Raza Kasuri or his body bandaged all over. The motive to kill Ahmad Raza Kasuri is proved to be on the part of the principal accused.

465. Mian Qurban Sadiq Ikram argued that in order to prove the motive it was necessary for the prosecution to establish by evidence the truthfulness of the allegation leveled by P.W. 1 against the principal accused in his speeches before the National Assembly as well as in his statement in Court. He particularly referred to the two speeches made in the month of February and March 1971 and on statement given in February of the same year from which Ahmad Raza Kasuri concluded that the principal accused was power-hungry and was after securing power even at the cost of dismemberment of Pakistan.

466. I do not agree with this argument. The proof of the allegations is not relevant to this case. What is relevant is the virulence and poignancy of the criticism of Ahmad Raza Kasuri. If the allegations are incorrect they would give much more provocation to the accused than would accrue to him if they be correct. Even if they were correct, the principal accused would not have liked this chapter of his politics to be revealed to the public at large and to be called a person responsible for the dismemberment of the country. The argument is thus repelled.

467. According to P.W. 2 he protested against this order but the principal accused said that he would have no nonsense from him or from Mian Muhammad Abbas and said to him:

"You don't want Vaqar chasing you again"

The witness further continued that he repeated the orders of the principal accused to Mian Muhammad Abbas accused who was the least disturbed and he asked him not to worry about it. The said accused promised that the orders of the Prime Minister would be duly executed because he had already been reminded of this operation by his predecessor more than once.

468. This statement is corroborated by Saeed Ahmad Khan P.W. 3, who stated that in the middle of 1974, in one of his usual interviews with the principal accused, after all subjects had been discussed, he (the said accused) abruptly asked him whether he knew Ahmad Raza. He replied that he did not know him personally. On this the principal accused said that he had given some assignment to Masood Mahmud P.W. 2 about Ahmad Raza Kasuri and asked him to remind him. On his return to his office he (P.W. 3) passed the message to P.W. 2 on the green telephone in the same words. P.W. 2 said in answer "alright". This evidence of P.W. 3 also corroborates the evidence of P.W. 2 that the principal accused kept on reminding and goading him through Saeed Ahmad Khan (P.W. 3) and Bajwa for the execution of the order.

469. The evidence of Masood Mahmud P.W. 2 which is corroborated by independent evidence of P.W. 3 is sufficient proof of the directive of the principal accused to Masood Mahmud P.W. 2 to get executed the order of assassination of Ahmad Raza Kasuri through Mian Muhammad Abbas. It also proves that Masood Mahmud after a mild protest which was followed by threats from the principal accused agreed to the execution of the order.

470. Mian Qurban Sadiq Ikram argued that this evidence falls short of the proof of agreement as envisaged in the definition of "conspiracy" in Section 120-A P.P.C. He argued that the emphasis in this definition is on an agreement, but

the same is not proved in this case. He relied upon paragraphs Nos. 58 and 60, Volume 11, of the Haisbury's Laws of Eng-land, (Fourth Edition.).

471. The relevant portion in para 58 is:

"The essence of the offence of conspiracy is the fact of combination by agreement, express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct not the execution of it. It is not enough that two or more persons pursue the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to affect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

Paragraph No. 60 says that *mens rea* is an essential ingredient of conspiracy.

472. Clearly, therefore, the agreement is a consensus to do that which is illegal. It can be express or implied, or in part express and in part implied and can be proved from facts and circumstances which taken together apparently indicate that they are part of some complete whole. It is an offence which is complete as soon as an agreement is made and it is immaterial whether an agreement was ever carried out.

473. Conspiracy is an offence in which *actus reus* (guilty act) is complete the moment there is an agreement. It is not essential that the agreement should have been reached in one or several sittings or that an express agreement should be proved. The agreement can be implied by subsequent conduct, by acts done, by anything said and or written by any one of such persons. In *Punjab Singh Ujagar Singh v. Emperor* (AIR 1933 Lahore 977) it was held that though the essence of the offence of criminal conspiracy is agreement between two or more persons to commit an offence or do any of the acts mentioned in Section 162, 120-A in the matters described therein, the finding of criminality in such cases is a matter of inference deduced from the acts of persons done in pursuance of an apparent criminal purpose in common between them. Same is the *ratio decidendi* in *Benoyendra Chandra Pandey v. Emperor* (AIR 1936 Cal. 73), *Golake Behan Takol and others v. Emperor* (AIR 1938 Cal. 51) and *Keshabdeo Bagat v. Emperor* (AIR 1945 Cal. 93).

474. It was held in *Amir-ud-Din v. State* (PLD 1967 Lahore 1190) that an agreement as referred to in section 120-A, P.P.C. is to be inferred from the facts and circumstances of each case. The offence of conspiracy by its very nature is secretive and surreptitious, and if a rule of evidence is laid down to the effect that an agreement, as referred to in Section 120-A P.P.C. is to be positively proved, the proof of conspiracy would become impossible. It is very seldom that there is direct evidence available with regard to conspiracy. It is a matter of inference from the sequence of circumstances and if an inference from circumstances can legitimately be drawn that privity between the persons concerned existed to commit an offence or to achieve an object by unlawful means, the offence of conspiracy will be said to have been proved.

475. The principle relied upon by Mian Qurban Sadiq Ikram does not at all help the principal accused or Mian Muhammad Abbas. The protest made by P.W. 2 in regard to the execution of the illegal order is immaterial in the face of the evidence that P.W. 2 communicated the order to Mian Muhammad Abbas. He also indicated his assent to P.W. 3 on his communicating to him the pressing demand of the principal accused for the execution of the offence. There is considerable evidence of subsequent facts which proves that Masood Mahmud was a party to the completion of the agreement to commit the illegal act. The argument is without force.

476. The conspiracy in the present case became complete as soon as Masood Mahmud P.W. 2 agreed to and did convey the unlawful order of the principal accused to Mian Muhammad Abbas. The next significant development of this conspiracy was the order of the principal accused to P.W. 2 to take care of Ahmad Raza Kasuri P.W. 1 on his visit to Quetta. P.W. 2 gave directions to M. R. Welch P.W. 4 to get rid of Ahmad Raza Kasuri P.W. 1. This part of the statement of P.W. 2 is not only corroborated by M. R. Welch P.W. 4 in his testimony before the Court but it finds further corroboration from the documentary evidence on the record.

477. On the 14th September, 1974, P.W. 4 submitted a secure report Ex. P.W. 21 to P.W. 2 by his designation, in which he informed him about the arrival of Ahmad Raza Kasuri and others at Quetta by PTA, on the 13th September, 1974. There is a reference in this report to Retired Air Marshal Asghar Khan of Tehrik-e-Istiqal and several others and the speeches made by Ahmad Raza Kasuri and Retired Air Marshal Asghar Khan. What is important to note in this document is the information which pertained to Ahmad Raza Kasuri only (out of the whole of the party) that he was not residing in the room reserved for him in Imdad Hotel. This document does not contain such information about any other person.

478. Another report (vide office copy Ex. P.W. 41) bearing No. 9681 was sent by P.W. 4 to P.W. 2 by name on the 18th September, 1974, in which the departure of Ahmad Raza Kasuri and one Feroze Islam from Quetta for Lahore on the 18th September, 1974, at 11.30 A.M. by P.T.A. was reported. The departure of Retired Air Marshal Asghar Khan and some others for Rawalpindi on the 17th Sept, 1974, was also reported. It was stated that throughout his stay at Quetta the party was protected by at least 20 persons. These persons were exceptionally cautious and the persons wishing to see the visitors were usually searched by the persons detailed for their security. The time of their movements was never disclosed and they spent little or no time in the hotel rooms reserved for them. It is also stated that a source who had infiltrated into their ranks on a false claim of being a relative of Sattar Khan of Mardan was detected when Sattar Khan himself arrived at Quetta and was removed from the inner circle. A photo-stat copy of the original re-port document (Ex. P.W. 2Z) bears an endorsement dated the 21st September, 1974, by P.W. 2 to Mian Muhammad Abbas to discuss and return this document after seeing it.

479. Mian Muhammad Abbas wrote a letter Ex. P.W. 2/2 on 25th September, 1974 to M. R. Welch P.W. 4 with reference to the intelligence report dated the 14th September, 1974 (Ex. P.W. 2/1) enquiring from him:-

"If Ahmad Raza Kasuri did not stay at Imdad Hotel which was reserved for him, where else did he stay during his sojourn at Quetta?"

This query was answered by M. R. Welch P.W. 4 on the 17th November, 1974 by letter Ex. P.W. 2/3 which states that the gentleman in question had reserved a particular room in the Imdad Hotel but seldom stayed in that room during the night. He occupied some other room reserved for members of the party in the hotel.

480. The documentary evidence therefore shows that although there was evidence of the stay of several persons belonging to the party of Ahmad Raza Kasuri P.W. 1 in Imdad Hotel, but the report Ex. P.W. 2/1 and the query of Mian Muhammad Abbas accused (Ex. P.W. 2/2) were confined to the dwelling place of Ahmad Raza Kasuri P.W. 1. It is clear in this context that report Ex. P.W. 4/1 about the arrangements of the security of the party of Ahmad Raza Kasuri is a device to submit a report that he was well protected. This was explained by M. R. Welch P.W. 4 who stated that since he had no intention of committing the heinous murder he had to find a plausible excuse for not executing the order of P.W. 2 and he took refuge in the fact that Ahmad Raza Kasuri was well protected.

481. The learned counsel for Mian Muhammad Abbas argued that the words "Ahmad Raza Kasuri should be taken care of" used by Welch P.W. 4 in his

statement, are not borne out by the evidence of Masood Mahmud. This is not correct because Masood Mahmud used the expressions “to be got rid of” or “to take care of”.

482. Alternatively, the learned counsel argued that the words “to take care of” could not necessarily mean “assassination.” It might be a case of looking after the security of Ahmad Raza Kasuri, a MNA, since there were disturbances in Baluchistan in those days and there were bomb-blast there on the visit of the principal accused.

483. This argument is without force in view of the explanation by Welch P.W. 4 that “get rid of” meant elimination or assassination. This argument cannot also be reconciled with the subsequent perturbed state in which P.W. 2 and Mian Muhammad Abbas accused found themselves on the receipt of intelligence report Ex. P.W. 2/1 and Ex. P.W. 2/Z (which is the same as Ex. P.W. 4/1) and the inquiry made by Mian Muhammad Abbas accused by Ex. P.W. 22 about the stay of Ahmad Raza P.W. 1 at a place other than the one re-served for him. In fact, the query Ex. P. 2/2 appears clearly to have been put with the object of making a probe why Welch P.W. 4 could not execute the order at Quetta. It is proof of the collaboration of Mian Muhammad Abbas in the conspiracy.

484. The incident at Islamabad also lends full support to the evidence of conspiracy. This incident was in aid of the execution of the unlawful act for which the conspiracy was hatched. The statement of P.W. 31 about this incident has been corroborated by Fazal Ali P.W. 24 who supplied the weapons used in this incident under orders of and threats by Mian Muhammad Abbas, the site plan of the occurrence Ex. P.W. 23/2, the recovery of five empties from the spot bearing No. 66171 by Recovery Memo Ex. P.W. 23/3 and the report of the Ballistic Expert Ex. P.W. 23/4 that the empties were of 7.62 mm calibre originating from China. P.W. 31 has stated clearly that the rounds fired in the Islamabad incident were a part of the cartridges issued to him on the road certificate Ex. P.W. 24/7. The statement of Fazal Ali and the documents Ex. P.W. 24/1 read with Ex. P.W. 39/2 connects these empties with the rounds supplied by the CAD Havelian to the Armory at the Headquarters of the Federal Security Force.

485. The learned counsel for Mian Muhammad Abbas urged in his argument that there is no evidence that the Islamabad incident was engineered by the Federal Security Force. This argument is without merit in view of the evidence referred to above.

486. He also argued that in case the shots were fired by Mulazim Hussain from the back window of the jeep, the empties could not have been ejected on the road.

This argument ignores the statement of P.W. 31 in cross-examination of Mr. Irshad Ahrnad Qureshi, Advocate that an "empty is always ejected from a sten-gun in such a way that it is thrown out-side towards road and in front of the muzzle. Normally an empty would fall in the jeep when a sten-gun is fired from a jeep if in the course of being ejected it hits some other object and its progress is thus altered." It is clear from this statement that the possibility of these empties falling inside the jeep could arise only if in the course of being ejected they had hit some other object and their course had thus been altered.

487. It is in the evidence of P.W. 31 that he was reprimanded by Mian Muhammad Abbas accused for his failure in carrying out the mission of assassination of Ahmad Raza Kasuri P.W. 1 despite his being a Commando having jeep and automatic weapons at his disposal and despite the attack having been launched from a distance of 30 yards only in broad day light. Mian Muhammad Abbas told him that the principal accused was very angry and directed him to remain on the job and give no time to Ahmad Raza Kasuri to collect his wits. He also directed him to return the weapons to Fazal Ali. He advised him to obtain arms from the nearest battalion as and when he was able to locate P.W. 1. Under orders of Mian Muhammad Abbas he sent Zaheer and Liaquat to go to Lahore in search of Ahmad Raza Kasuri. He was himself sent for by Mian Muhammad Abbas a day before Eid in October 1974 and admonished that he was staying at Rawalpindi while his men (Zaheer and Liaquat) were enjoying holidays. He also warned him that the principal accused was abusing him.

Under the directions of Mian Muhammad Abbas, P.W. 31 left immediately for Lahore where he stayed for ten days and thereafter returned to Rawalpindi after finding out the whereabouts of Ahmad Raza Kasuri.

488. The evidence of P.W. 31 regarding the return of the weapons issued to him for the Islamabad incident under orders of Mian Muhammad Abbas accused is corroborated by P.W. 24. Similarly his visit to Lahore is supported by the entries of departure for Lahore on the 16th of October, 1974, and his arrival at Rawalpindi on the 26th of October, 1974, Ex. P.W. 31/1 and Ex. P.W. 31/2 respectively. It is clear from these documents that he had come to Lahore on a special duty.

489. The evidence of P.W. 331 about the Lahore occurrence is supported in material particulars, (i) about the supply of arms under the orders of Mian Muhammad Abbas by Amir Badshah Khan, P.W. 20, (ii) about his being checked while going in a jeep without number-plate by Sardar Muhammad Abdul Wakil Khan, P.W. 14, (iii) about reconnaissance of the wedding place in Shadman Colony to find out the car of Ahmad Raza P.W. 1 by P.W. 19, (iv) about his

departure on the 12th November, 1974 for Rawalpindi by Manzoor Hussain P.W. 21 and (v) about his absence from Rawalpindi from the 31st October, 1971 onwards, by Ex. P.W. 31/6. The story about attack on the car of Ahmad Raza Kasuri on the night between 10th and 11th of November, 1974, by automatic weapons belonging to the Federal Security Force is corroborated by the site plan Ex. P.W. 34/2, the recovery of empties bearing the same number as the empties of the Islamabad incident, *i.e.* 66171, by P.W. 34, the finding implied in the evidence of Nadir Hussain Abidi P.W. 3 about their calibre being 7.62 mm and the evidence a P.W. 14 and P.W. 3 about the knowledge that the weapons of this calibre were in the use of the Federal Security Force.

490. The substitution of the crime empties so recovered by empties P. 8 to P. 31 is proved conclusively by the evidence of Abdul Hayee Niazi P.W. 34, Abdu1 Ikram P.W. 18, Muhammad Bashir P.W. 16 and Fazal Ali P.W. 24, 22 of these empties which have now been proved bear No. 661/71 and 2 bear No. 31171. It is established by Ex. P.W. 24/1 read with Ex. P.W. 39/2 and the document Ex. P.W. 24/3 read with Ex. P.W. 38/1 and Ex. P.W. 38/3, that these empties also emanate from the stock of the Armory at the Headquarters of the Federal Security Force and are part of the ammunition supplied by the CAD Havelian to this Armory.

491. The prosecution has led considerable evidence to prove the subsequent conduct of the principal accused and his officers in the uncalled for and illegal tampering with the evidence and investigation of the case. The fact that the empties were not sealed initially, were not kept in the *Malkhana* of the police station and were allowed to be substituted is covered beyond any shadow of doubt by the evidence of P.W. 34, P.W. 36, P.W. 14, P.W. 16, P.W. 18 and P.W. 24. This story proves the tampering of evidence by Abdul Hamid Bajwa and Mian Muhammad Abbas.

492. It is in the evidence of Asghar Khai P.W. 12 that Abdul Hamid Bajwa was at Lahore on the 11th November, 1974 and he participated in the meeting held that day at the residence of the Inspector Central of Police. He also held meetings later with P.Ws. 12 and 14. The presence of Abdul Hamid Bajwa at Lahore is corroborated by his T.A. Bill Ex. P.W. 3/5 which proves that he remained at Lahore from 8th November, 1974 to the 13th November, 1974 and during this period he made only a few hours visit to Samundari on the 12th November, 1974. He was again in Lahore from the 16th November, 1974 to 20th November, 1974. In fact his T.A. Bill Ex. P.W. 3/5, Ex. P.W. 3/6, Ex. P.W. 3/7, Ex. P.W. 3/8, Ex. P.W. 3/9 and Ex. P.W. 3/10 prove his frequent visits to Lahore during the months of November and December, 1974 and January and February, 1975. This is corroborative of his unusual and illegal interest in the investigation of this case.

493. I have already referred to the evidence that P.W. 34 did not seal the empties recovered from the spot on a specific direction by Abdul Ahad, DSP. Abdul Ahad had given this direction on the ground that the name of the Prime Minister had been mentioned in the F.I.R. There is documentary evidence of direct liaison between Abdul Ahad and Abdul Hamid Bajwa. Ex. P.W. 3/2-A is a note of Abdul Ahad dated 22nd November, 1974, with which was enclosed the copy of the F.I.R. It bears the comments Ex. P.W. 3/2-A/1 of Abdul Hamid Bajwa which means that the note of Abdul Ahad was meant for him. Abdul Hamid Bajwa in his comments referred to the desire of the Chief Security Officer of the Prime Minister (P.W. 3) to see the F.I.R. After referring to the time of recurrence (12.30 A.M.) and the time of the registration of the case on the statement of Ahmad Raza Kasuri after 3.00 A.M.), he wrote

"What prevented them to register case immediately it was known that attempt to murder was made"

This statement would have formed part of the case diary in that case and not the F.I.R."

This note is followed by the note Ex. P.W. 32-B written by Saeed Ahmad Khan on the 24th November, 1974, and sent to the Secretary to the Prime Minister. The note records that the F.I.R. had been sealed yet a good deal of publicity had been given to it. He concluded by saying that such an incident involving firing in the heart of the town, not far away from the police station could have been detected immediately, by the police, and the case registered *suo motu* by it. This note bears an endorsement of the principal accused (Ex. P.W. 3/2-B/1).

"I agree with you."

493. These two documents prove that Abdul Hamid Bajwa was perturbed over the registration of the case on a first information report given by Ahmad Raza Kasuri since it named the principal accused. He suggested in his note that this could have been obviated by registration of the case by the police *suo motu* and by making the statement of Ahmad Raza Kasuri P.W. 1 as a part of the case diary. The same suggestion was given by Abdul Hamid Bajwa to P.W. 12 and P.W. 14 also. These documents corroborate the evidence of these witnesses on this point. These documents further show that the principal accused as well as the P.W. 3 agreed to this suggestion.

494. It is in evidence of P.W. 3 that the principal accused took serious exception to his remaining at Rawalpindi when his name was being taken before a judicial inquiry being held at Lahore by my learned brother Shafi-ur-Rahman, J. in the murder case of Muhammad Ahmad Khan and he directed him to proceed to

Lahore immediately and meet the Advocate General, the Chief Secretary, the I.G. of Police and the investigating officers and look into the case. P.W. 3 arrived in Lahore and had a meeting with the above mentioned officers. He found that nothing worthwhile had been done in the investigation of the case. He also came to know about the calibre of the bullets used for the offence which indicated the use of Chinese weapons which were in the official use of the Federal Security Force. He, however, noticed the helplessness of the local police who were deliberately avoiding making the investigation on this line.

495. It was decided in the meeting that Malik Muhammad Waris of the CIA who had been entrusted with the investigation, should go to Rawalpindi and seek further instructions from him. Malik Muhammad Waris P.W. 15 and Abdul Ahad, therefore, saw him at Rawalpindi on the 14th January, 1975. The principal accused had already laid down the guiding principles for the investigation and had directed him to find out from the Joint Army Detection Organization about the availability of such arms in the country and also to write to the Defence Secretary to find out which Army Units were using the Chinese weapon officially. He had also directed him to make inquiries from Bara, regarding availability of these arms. These directions were given because the principal accused was keeping the FSF out of the investigation. The principal accused had further talked to him about the family disputes of Ahmad Raza Kasuri, P.W. 1, the local political rivalries and previous litigation in the family and directed him to help the investigating officers in collecting all the evidence on these lines and to see that this material was produced before the Tribunal.

496. P.W. 3 stated that on the visit of Malik Muhammad Waris P.W. 15 and Sh. Abdul Ahad to him on the 14th January, 1975, he rang up the Officer in charge of JADO and informed him that he was sending Malik Muhammad Waris to him in order to find out whether the Chinese weapons in question were available elsewhere. He asked him to give his report in writing. It was in these circumstances that the re-report Ex. P.W. 3/3-B was brought to him.

497. He directed Malik Muhammad Waris P.W. 15 to find out if such weapons were available at Bara, and further directed him to collect material regarding the family disputes, political rivalries with Ahmad Raza Kasuri and his family.

498. This evidence is corroborated not only by Malik Muhammad Waris P.W. 15 but also, though partly, by the report of the JADO (Ex. P.W. 3/3-B) which refers to the visit by the investigating officer to the Directorate General ISI, in connection with this case and states that such arms and ammunition were available in Darrah Adam Khel as well as from the underground elements in the settled districts. Ex. P.W. 3/3-A, a letter dated 17th January, 1975, written by P.W. 3 to the Defence Secretary, proves that the report of JADO Ex. P.W. 3/3-B was

already with him (P.W. 3) because he sent a copy of this report to the Defence Secretary. In this letter P.W. 3 requested the Defence Secretary to clarify which Army Units used this calibre of weapons. The Defence Secretary answered by letter Ex. P.W. 3/3-C that the Chinese arms of this calibre which were issued to Army Units in West Pakistan had almost been withdrawn from all units and were being held only by the Federal Security Force, Frontier Corps Units and the Army Corps Tank Crews.

499. P.W. 3 further stated on receiving the above report of the Defence Secretary, he was perplexed because it was mentioned that the Chinese arms were in the use of the Federal Security Force while he had been given positive instructions by the principal accused to keep the Federal Security Force out. He, therefore, had no other alternative but to go back to the principal accused. In his meeting with him he showed the said letter of the Defence Secretary and enquired as to whether it should be produced before the Tribunal. On this, the principal accused got infuriated and asked him whether he had been sent to safeguard his interest or to incriminate him. He also said that this letter would not be produced before the Tribunal.

500. This portion of the statement has been corroborated by the fact that the original D.O. Letter Ex. P.W. 3/3-C has remained throughout in the file Ex. P.W. 3/3 and has been proved on this record from that file.

501. According to the evidence of P.W. 3, the Investigating Officer, Malik Muhammad Waris, carried on the investigation in accordance with the directions given to him and collected some material regarding the family disputes, political rivalries etc. of Ahmad Raza Kasuri and his family. Malik Muhammad Waris as P.W. 15 supported him in the respect.

502. Although this exercise in fishing for local disputes and political rivalries was to change the venue of investigation in order to exonerate the real culprits, yet it is important to note that despite concentrating all his efforts in conducting the investigation on the lines directed by Saeed Ahmad Khan, P.W. 3, Malik Muhammad Waris completely failed to make any headway. The investigation about the alleged disputes with the local persons and about the distribution of family property led to no worthwhile results. He found that the disputes of Ahmad Raza Kasuri with Yaqoob Maan's party had already come to close.

503. The learned counsel for Mian Muhammad Abbas accused argued vehemently that the evidence of Ahmad Raza Kasuri P.W. 1 itself reveals that he was attacked by Yaqoob Maan's and Toor's party several times. This evidence, therefore, is compatible with the possibility of P.W. 1 having been attacked by the same party.

504. This argument is without force for the simple reason that if such was the case there was no reason why P.W. 15 might not have brought those culprits to book in order to free the principal accused from the blame of this attack. It is, therefore, proved beyond any shadow of doubt that the guidelines given by the principal accused to Saeed Ahmad Khan and communicated by him to P.W. 15 were not correct and were not given for the purpose of helping the discovery of the actual culprits. The purpose of these guidelines and direction was only to lead the investigating officer astray.

505. This conclusion is supported by the helplessness pleaded by P.W. 15 as well as P.W. 12 in carrying on investigation according to their own views. P.W. 12 stated in answer to a cross-examination question by Mr. D. M. Awan that investigation of blind murder cases was always started on the basis of motive but the present case could not be investigated on those lines despite the fact that the motive in the FIR was clearly mentioned by P.W. 1 since he or his subordinates were not in a position to interrogate the Prime Minister (the principal accused). He also made a statement about the pressure brought upon him in connection with the investigation of the case by Saeed Ahmad Khan, P.W. 3, Abdul Hamid Bajwa and Rao Abdul Rashid. He stated that even Mr. D. M. Awan, learned counsel for the defence joined these persons in this connection. Malik Muhammad Waris complained that he was not allowed to conduct the investigation freely and he did not join any employee of the Federal Security Force in the investigation of this case.

506. I am in complete agreement with the statement of Asghar Khan P.W. 12 that to start with, the investigating officer should have had access to the principal accused in order to interrogate him since his name was recorded in the F.I.R. In view of the evidence about the use of Chinese weapons of 7.62 mm calibre which were in the use of the Federal Security Force, the investigating officer ought to have taken his investigation into the ranks of that force but the efforts of the principal accused and his officers, namely, Abdul Hamid Bajwa and Saeed Ahmad Khan P.W. 3, were to keep the Federal Security Force as well as the principal accused out of the reach of the investigating officer. This nominal investigation ultimately ended in a report Ex. P.W. 354, a memo dated 27th September, 1975, by the Inspector General of Police to the Home Secretary recommending the filing of this case as untraced.

507. Ex.P.W. 3/3-D is a note by Saeed Ahmad Khan, to the Director General of Information and Broadcasting Division, proposing that publicity might be given to the statements of SSP, Lahore (P.W. 3) and Malik Muhammad Waris, DSP (P.W. 15) made by them before the Inquiry Tribunal on the 29th January, 1975, in the inquiry into the murder case of Nawab Muhammad Ahmad Khan. The

portions to be given publicity were side-lined. It is proved from the signature of the principal accused, Ex. P.W. 3/3-E on this note that he approved the suggestion. These statements were given publicity in the newspapers on the 30th February, 1975 (vide Ex. P.W. 3/3-F which is initialled by P.W. 3 at Ex. P.W. 3/3-G and by Abdul Hamid Bajwa at Ex. P.W. 3/3-H). Despite the publicity given to a portion of the inquiry proceedings, the principal accused did not agree to the publication of the inquiry report of the Tribunal.

508. This inquiry report was sent by the Tribunal by covering letter Ex.P.W. 35/1 dated the 26th February, 1975, on which there is an endorsement (Ex. P.W. 35/1-A) by the Chief Secretary Punjab that:

"Secy. to the C.M. may kindly see and bring the matter to C.M's notice."

The Chief Secretary wrote a separate note Ex. P.W. 35/2 on the noting part of the file that he had discussed the report with Saeed Ahmad Khan P.W. 3 and the latter had suggested that the report may be sent for information to the Prime Minister (the principal accused) and a copy of it may be sent to him. He also suggested that a copy may be sent to the Inspector General of Police for taking necessary action, for obtaining explanation from the Investigating Officers against whom aspersions had been made and for implementing the directions of the Tribunal. Lastly, it was suggested by him that

"C.M. may kindly consider asking for P.M's advice whether this document is to be made public." Then follows the note of Shahid Hameed, Secretary to the Chief Minister, Punjab, (Ex.P.W. 35/2-A) dated the 7th March, 1975, that the Chief Minister had seen the above note and had written a letter to the Prime Minister. He had also desired that another copy may be sent to Saeed Ahmad Khan P.W. 3 and yet another copy to the Inspector General of Police. The Chief Minister had sought advice whether or not the report of the Tribunal should be made public.

509. According to the statement of P.W. 3, he put up a note Ex. P.W. 3/3-I to the effect that the Tribunal had criticized the lapses in the investigation at the initial stages but seemed to have been satisfied with the investigation carried on later by the DSP, C.I.A. Lahore. He recommended publication of the relevant portion of the report. The document fully supports his statement. The principal accused made a note (Ex. P.W. 3/3-J) on this document that he would decide after seeing the report. This matter was, therefore, kept pending. Later he received letter Ex. P.W. 3/3-K, dated the 8th March, 1975, from the Chief Secretary, Punjab, with which was enclosed a copy of the Tribunal's report "as desired by the Chief Minister." This letter also referred to the discussion with P.W.3 on this case on

his last visit to Lahore. P.W. 3 wrote a note Ex. P.W. 3/3-L, on the body of this letter on the 14th March, 1975, directing for preparation of a draft which could be recommended for publication. P.W. 3 stated that on receipt of the D.O. letter from Mr. Muhammad Haneef Ramay, Chief Minister (copy of which has been proved as Ex. P.W. 353), the principal accused marked it to him (P.W. 3) with the remarks:

*"What was the point of discussing it with you?
Please discuss."*

He met the Prime Minister who told him that the report should not be publicized as it was adverse and that he should have nothing to do with the case any more. Since the original D.O. letter of Mr. Muhammad Haneef Ramay to the principal accused is not available, the prosecution proved the latter's aforesaid remarks by an entry made in the challan form Ex. P.W. 27/2. In order to prove that these remarks were communicated to and received by P.W. 3 the Peon Book Ex. P.W. 3/4 containing entry of dispatch of the letter containing the remarks (Ex. P.W. 3/4) has been proved.

510. These documents further corroborate the evidence about the undue interference in the investigation of the case and the interest of the principal accused in publicizing what he considered to be in his interest and to withhold the publication of what he considered to be against him. It throws lurid light on the interest of the principal accused in misdirecting the investigation as well as in directing the publicity pertaining to the case.

511. Reports Exs. P.W. 3/2-K, P.W. 3/2-L, P.W. 3/2-N, P.W. 3/2-O, P.W. 3/2-Q are the intelligence reports of Abdul Hamid Bajwa while Ex. P.W. 3/2-M is an intelligence report of Saeed Ahmad Khan which prove the surveillance by Abdul Hamid Bajwa as well as P.W. 3 on the activities of Ahmad Raza Kasuri which were continued even after the death of his father.

512. Ex. P.W. 3/2-K dated the 28th November, 1975, states that Ahmad Raza Kasuri was trying to win sympathies of the police by saying that the Government had more no arrangement for providing them the food while on duty. It further states that Ahmad Raza Kasuri claimed that four persons had been deputed to kill him that they had fired with automatic weapons while hiding near Shadman Round-about, that his friends had collected some empties from the spot, and that a message was passed from Lahore to Rawalpindi after "the mission was complete." The report also refers to the condolence by Lt.-General Niazi and the opinion of Senior Army Officers that the assailants were armed with heavy calibre automatic weapons not available with private persons. It further states that Ahmad Raza Kasuri who had 40 relatives in the Army would not sit idle till

they traced out and dealt with the culprits. It further refers to the threat by Lt.-Gen. Niazi that the murder would be avenged. It concludes by the remarks that Ahmad Raza Kasuri was harsh to Muhammad Haneef Ramay for the latter's statement that the murder was due to his enmity in Kasur and party faction in Tehrik-e-Istiqlal.

513. On the 29th November, 1974, Ahmad Raza Kasuri P.W. 1 filed a Privilege Motion Ex. P.W. 1/7 in which he made reference to numerous attacks on him by the PPP Workers, the threat by the principal accused in the Assembly on the 3rd June, 1974, the attack on him on the 24th August, 1974 to eliminate an "absolute poison", the incident at Lahore resulting in the death of his old father and that no investigation had been made in the case despite the recovery of bullet empties. He made a demand that the principal accused should resign and submit himself to the process of law since he had been mentioned in the F.I.R.

514. Another Privilege Motion Ex. P.W. 22/6 was tabled a day earlier on the 28th November, 1974, by another Member of the National Assembly, namely, Ch. Zahoor Elahi.

515. Both the Privilege Motions were considered together on the 2nd December, 1974, vide proceedings of the National Assembly of that day Ex. P.W. 22/7, and were ruled out of order by the Speaker on the 3rd December, 1974. This ruling is printed on pages 135 to 137 of the Official Reports of the Debates of the National Assembly of Pakistan Ex. P.W. 22/8.

516. Saeed Ahmad Khan, P.W. 3 attached a copy of the Privilege Motion Ex. P.W. 1/7 to his note Ex. P.W. 3/2-M which bears the signature of the principal accused in token of his having seen it. It appears from the note that the Privilege Motion was not brought on the record of the proceedings of the National Assembly. P.W. 3 commented in the note that the Privilege Motion contained a pack of lies and remarked that its copies had been distributed by Ahmad Raza Kasuri and his henchmen to foreign embassies and to foreign journalists including Chinese News Agency. It concludes with the report that Ahmad Raza Kasuri was in a desperate state and had been heard saying that he will take revenge of the murder of his fathers personally.

517. It appears from the ruling of the Speaker on the Privilege Motions of Ahmad Raza Kasuri and Ch. Zahur Elahi Ex. P.W. 1/7 and Ex. P.W. 22/6 that the Speaker had expunged certain remarks of Ahmad Raza Kasuri from the record. In his report Ex. P.W. 3/2-N dated the 8th December, 1974, which bears the signature of the principal accused, Abdul Hamid Bajwa reproduced a talk between Ahmad Raza Kasuri and a friend in which Ahmad Raza Kasuri had stated that:

"He had said at the Floor of the House that Mr. Bhutto is the murderer of his father and he should be brought before the Court of law", but "it was expunged by that bloody dishonest man -Speaker....."

He also complained that the statement of Ch. Zahoor Elahi and Mian Mahmood Ali Kasuri who had spoken on this issue, were not published in the newspapers.

518. The report Ex. P.W. 3/2-L submitted on the 29th November, 1975, the date on which the Privilege Motion Ex. P.W. 1/7 was moved is a revealing document. It states that Ahmad Raza Kasuri had employed some persons from N.W.F.P. as his personal gunman and as guards at his residence and he would request for the favour of police guard if asked by the Speaker or some other Cabinet Minister for any help. He would also request that Army Intelligence should investigate into the murder case of his father and he might project this demand through Party or some MNA in the National Assembly. The report continues that the father of Ahmad Raza Kasuri was a holder of fire-arms license for a gun and for a prohibited bore revolver, Ahmad Raza Kasuri was thinking of depositing these weapons with the Speaker and requesting him to help him in getting a license for himself so that he could retain those weapons as souvenir. The report concludes with the following sentence:

"He is being conveyed through a contact that such arms have to be deposited with police or Arms Dealers, under the orders of the District Magistrate."

519. It is clear from this document that special emphasis was laid in the report on the ways in which Ahmad Raza Kasuri had taken steps for his security by keeping personal gunmen as well as guards at his residence, and by requesting the Speaker to help him in securing the license for the arms left by his deceased father, but Abdul Hamid Bajwa had engaged the services of some 'contact' to advise Ahmad Raza Kasuri to deposit these arms with the police or Arms Dealers.

520. Ex. P.W. 3/2-Q is the report dated the 9th December, 1974, by Abdul Hamid Bajwa (and signed by the principal accused), conveying the satisfaction of Ahmad Raza Kasuri on the appointment of the Tribunal to inquire into this case. It is a reproduction of the talk between him and his brother Sher Ali regarding a scheme for violating section 144 Cr. P.C. by collecting 300 to 400 guns for confrontation with F.S.F. and the Police. The report makes a particular reference to an advice of Sher Ali to Ahmad Raza Kasuri P.W. 1 to get license for a carbine from Mr. Qayyum and the promise made by Ahmad Raza Kasuri to abide by this.

521. There is the evidence of Ashiq Muhammad Lodhi, P.W. 28 about report Ex. P.W. 28/1 which he with submitted to Abdul Hamid Bajwa with covering letter Ex. P.W. 3/2-T dated 10.1.1975 conveying to him on his demand, the description of the gunman of Ahmad Raza Kasuri who accompanied him to the National Assembly.

522. These documents particularly Ex. P.W.3/2-L. Ex. P.W. 3/2-Q and secure report Ex. P.W. 28/1 prove that Abdul Hamid Bajwa continued, with the consent of the principal accused, his witch-hunting against Ahmad Raza Kasuri even after the Lahore occurrence and left no stone unturned to drive a wedge in the security measures taken by the latter to effect a break- through obviously in order to facilitate the completion of the performance of the conspiracy. There could be no other object of collecting information about the security measures taken by Ahmed Raza Kasuri and about the description of his gunman. Similarly there could be no other motivation for gathering information about his intention to obtain arms license or for dissuading him through a contact from keeping the weapons of his father.

522. Mr. Qurban Sadiq Ikram urged that such reports are usually collected by the Intelligence about persons pursuing a political career. But he could not give any motive for collecting reports about measures of security adopted by Ahmad Raza Kasuri and the description of his gunman or for infiltrating contacts to dissuade him from keeping the arms of his father. The argument is not sound.

523. It appears from the evidence that after experiencing frustration upon frustration in the performance of the conspiracy efforts started for bringing Ahmad Raza Kasuri to the fold of the Peoples Party, P.W. 3 gave the background of how he was made to re-join the PPP. He stated that somewhere in the middle of 1975 when there was rift growing between Ahmad Raza Kasuri and Retired Air Marshal Asghar Khan, he was instructed by the principal accused to win over Ahmad Raza Kasuri and bring him back to the Pakistan Peoples Party's fold. He told him that he did not know Ahmad Raza Kasuri but he would ask Abdul Hamid Bajwa to initiate the matter. The principal accused, however, told him that Abdul Hamid Bajwa had already been instructed in this matter.

524. P.W. 3 had meetings with Ahmad Raza Kasuri. In the first meeting he advised him to consider rejoining the Peoples Party as he claimed to be a founder Member. On this Ahmad Raza Kasuri blurted out how he could rejoin the Party of which the Chairman was the principal accused that was responsible for the murder of his father and was after his life. The witness prevailed upon him by resort to threat as well as persuasion that being a marked man it was in his own interest to rejoin the Party. Ahmad Raza Kasuri took time to think over and ultimately consented to the course proposed to him.

525. Ex. P.W. 3/2-C is a report by Abdul Hamid Bajwa bearing the signature of the principal accused about Ahmad Raza Kasuri's intention to establish a forward block in Tehrik-e-Istaqlal. It shows he was thinking of forming an independent political party at that time.

536. Ex. P.W. 3/2-D dated the 4th June, 1975, is a report by Saeed Ahmad Khan about the criticism by Ahmad Raza Kasuri of Air Marshal Asghar Khan. It states that arrangements were in hand to widen the gulf between Air Marshal Asghar Khan and Ahmad Raza Kasuri through other sources also.

537. Ex. P.W. 3/2-E is another report of Saeed Ahmad Khan P.W. 3 about his meetings with Ahmad Raza Kasuri, about his views that he had realized that his future lay with the Pakistan Peoples Party of which he claimed to be a founder Member and about his request for audience with the Prime Minister (accused) at his convenience.

538. Ex. P.W. 3/2-F, Ex. P.W. 3/2-H, Ex. P.W. 3/2-1 and Ex. P.W. 3/2-J are reports which prove the process how by holding various sufficient meeting with Ahmad Raza Kasuri, Saeed Ahmad Khan P.W. 3 and Abdul Hamid Bajwa chiseled "his rough edges" and sobered him.

539. The statement of P.W. 3 about how and in what circumstances Ahmad Raza Kasuri was made to rejoin the Peoples Party is corroborated by the documents which show inter alia that the officers of the Prime Minister's staff attempted to widen the gulf between Ahmad Raza Kasuri and Air Marshal Asghar Khan and they held a number of meetings with him to achieve the object of bringing him back to the party. The evidence of P.W. 3 read along with these documents would show that when Ahmad Raza Kasuri was compelled to feel that all avenues of help, the police and the assembly combined, had been foreclosed to him and he was in constant danger to his life, attempts were initiated for making him to rejoin the Pakistan Peoples Party "in his own interest" and these efforts ultimately succeeded. The evidence is fully supported by the statement of Ahmad Raza Kasuri himself. The defence is not benefitted by P.W. 1 rejoining PPP.

540. The conspiracy to murder Ahmad Raza Kasuri is thus further proved not only by what transpired at Quetta as well the incidents at Islamabad and Lahore but also by the subsequent conduct of the principal accused, P.W. 3 and Abdul Hamid Bajwa in misdirecting the investigation thus rendering it impossible for the actual culprits to be detected, in continuing the witch-hunting against Ahmad Raza Kasuri by taking special precautions and steps that he should be kept unarmed and unprotected and ultimately after being frustrated in achieving

the object of conspiracy, in prevailing upon him to let bygones be bygones, condone what had happened and join the Pakistan Peoples Party.

541. The learned counsel for Mian Muhammad Abbas criticized the evidence of Masood Mahmud and Saeed Ahmad Khan only on the ground that they had made some improvements in their earlier statements. He pointed out certain omissions. I have already dealt with this question and found that these omissions are more or less omissions of details or omissions of matters which have been brought on record by the Public Prosecutor by putting specific questions. There are no inconsistencies or contradictions between their earlier statements and the statements before the Court.

542. It is clear from the record that neither Masood Mahmud P.W. 2 nor Saeed Ahmad Khan P.W. 3 have any motive to involve any of the accused falsely. Masood Mahmud could not have any motive since his father and the deceased were great friends. Moreover it is the principal accused's own case as brought out by suggestions in cross-examination that he had been given a post of utmost importance and was given concessions which are not afforded to other Government servants similarly placed. He was allowed to stay in Delux Hotels during his tours. He was sent to visit foreign countries and enjoyed such visits by staying in costly hotels. His wife was also allowed to visit foreign countries at Government expense and the Government bore considerable expenses on his medical treatment outside the country and even on his purchase of spectacles fitted with a hearing aid. These questions were put to him when he dubbed the principal accused and Waqar Ahmad, Establishment Secretary as his enemies in the sense that he was used for illegal purposes. The reason suggested to P.W. 2 by the learned counsel for the principal accused and to P.W. 3 by both the counsel was that false statements were made by them on being pressurized from the Martial Law Authorities. But they denied this. It is, therefore, established that they have no motive of their own to involve the principal accused falsely. There is similarly no personal motive on the part of Mian Muhammad Abbas and the confessing accused to commit the offence.

543. The suggestion about the pressure from Martial Law Authorities has been put to most of the witnesses but I am convinced that no such pressure was brought. On the other hand most of the witnesses have been corroborated in what they stated, by documentary evidence and sometimes by oral evidence.

544. The learned counsel for Mian Muhammad Abbas argued that the relations between Masood Mahmud and Mian Muhammad Abbas have been strained. Nothing is farther from the truth. There is no evidence about this except bare suggestions in cross-examination. The said accused summoned three witnesses to prove this, but ultimately gave them up.

545. It is on the other hand clear from the documentary evidence that during the years 1974, 1975 and 1976 Masood Mahmud had been giving extremely good Confidential Annual Reports in favour of Mian Muhammad Abbas (Ex. D.W. 4/1, Ex. D.W. 4/2 and Ex. D.W. 4/3). Mian Muhammad Abbas was only an Acting Director when Masood Mahmud took over, but it was on his recommendation that he was promoted to the post of Director in Grade 19 (Ex. D.W. 4/6). He was also awarded honorarium amounting to Rs. 700/- for the performance of work of special merit vide D.W. 4/9, which proves that he was held in great esteem by P.W. 2. P.W. 2 also went to see him in the hospital when he was ill. All these documents prove that the relations between Mian Muhammad Abbas and the P.W. 2 had throughout been cordial.

546. It was urged that Mian Muhammad Abbas had twice tendered his resignation, but the same was not accepted by P.W. 2. This is denied by the P.W. 2. It is strange to note that these resignations Ex. P.W. 2/12-D and P.W. 2/13-D have been produced by the accused from his own custody. They bear no indication that they were ever submitted to the Director General or any Officer in the office. No reliance can, therefore, be placed upon these documents. Even if it is conceded that these resignations were not accepted by Masood Mahmud, it will only prove that Masood Mahmud did not want to lose the service of Mian Muhammad Abbas, accused, for whom he had the highest regard.

547. The learned counsel ultimately referred to a statement of Mian Muhammad Abbas accused (Ex. D.W. 1/1) made by him on the 21st of July, 1977 before some inquiry Committee appointed by the Martial Law Authorities. In this statement the said accused has only thrown light on the misdeeds of the Federal Security Force and has corroborated the statement of P.W. 1 and P.W. 2 about the manner in which this force was used by the principal accused. It, however, proves that P.W. 2 had always been taking Mian Muhammad Abbas in confidence. Though the statement is mostly self-exculpatory and incriminating against P.W. 2 but it does not prove that the relations between the two were in any manner strained. It rather proves otherwise.

548. It was suggested that it was on account of this statement that Masood Mahmud has involved Mian Muhammad Abbas. There is no justification for these arguments since there is no proof that this statement had ever been brought to the knowledge of P.W. 2.

549. A suggestion was put to Welch P.W. 4 that in an inquiry against Mustafa Jan, Deputy Director, Mian Muhammad Abbas had made a report attributing lack of control to him (P.W. 4). This apparently surprised the witness and he stated that it was the first time he was hearing about such a report. P.W. 4 is an

independent witness. There is nothing on the record to show that what he was stating was not truthful.

550. Some exception was taken during cross-examination to his statement that the photo-stat copy of Ex. P.W. 2Z was given to him by Mian Muhammad Abbas. It was suggested that this copy was given to him by Nazir Ahmad, Deputy Director and not Man Muhammad Abbas. This was denied. The suggestion proves Ex. P.W. 2/Z to be a genuine document since it was not denied that this copy was given by the F.S.F., Rawalpindi.

551. Mian Qurban Sadiq Ikram criticized that material witnesses were withheld thus causing prejudice to the offence. These are Muhammad Yousaf, H.C., Col. Wazir Muhammad Khan of C.A.D. Havelian, and the recovery witness in the Lahore incident. Muhammad Yousaf, Head Constable, Walton, Lahore had given the weapons and ammunition to Ghulam Mustufa accused under orders of Amir Badshah Khan, P.W.20. It was urged during arguments that the intervention of Mian Muhammad Abbas for ensuring the supply of weapons to Ghulam Hussain at Lahore was unnecessary since the latter had obtained weapons directly from Muhammad Yousaf on the 25th of October, 1974 and 7th of November, 1974. Reference was made to the *Roznamcha* of Muhammad Yousaf But. Neither the *Roznamcha* nor its relevant entries were proved.

552. This argument firstly falsifies the plea of Mian Muhammad Abbas that Ghulam Hussain was not in Lahore between 31st of November, 1974 to the 12th of November, 1974. Secondly it is not understandable why the said accused did not produced Muhammad Yousaf as a defence witness to prove the *Roznamcha* entries when he had summoned Abdul Khaliq, D.W. 3 for proving Ex. D.W. 3/1, recovery memo of that *Roznamcha*.

553. An application was submitted by the prosecution to summon Col. Wazir Ahmad Khan, Colonel In-charge of C.A. Havelian, but it was disallowed by the Court as no case was made out for permission to examine him. No protest was made at that time by any of the counsel for the defence.

This argument is, therefore, absolutely without merit.

554. The learned counsel urged that if Col. Wazir Ahmad Khan had been produced it could have been proved in cross-examination that C.A.D. Havelian did not supply the entire lot bearing No. 66171 of 7.62 calibre ammunition SMG, LMG to the Federal Security Force Headquarters. Thus a case could be made that no adverse inference should be drawn from the row-very of the empties engraved with this number in the two incidents at Islamabad and at Lahore. This is no ground for permitting the prosecution to produce the witness since Mian

Muhammad Abbas could have produced him in his defence; in the manner he has produced other defence evidence.

555. There is no reason why he should have with-held this record. On the other hand it appears clear from the statement of Ghulam Hussain made in answer to a cross-examination question of Mian Qurban Sadiq Ikram that the lot bearing a particular number and manufactured in any particular year cannot be issued to anybody else.

556. In view of this answer which excludes the possibility of lots bearing the same number and year of manufacture to be issued to two different organizations it can safely be presumed under Section 114 Evidence Act that if Col. Wazir Muhammad Khan had been summoned as a defence witness, he would not have supported Mian Muhammad Abbas.

557. Objection was also raised about non-production of the report of the Fire Arms Expert which admittedly was a negative report and was not therefore relevant in view of the non-recovery of the weapons used in the attack.

558. Mian Qurban Sadiq Ikram further argued that two witnesses of recovery of 24 crime empties were not produced. I do not think that the evidence of these witnesses would have made any difference, in view of the independent evidence of P.W. 36 Nadir Hussain Abidi that the recovered empties were not sealed.

559. The learned Public Prosecutor argued that it is not necessary under the law that all the witnesses cited in the calendar should be produced by the prosecution. He referred to *Shaukat Ali v. The State* (1976 P.Cr. L.J. 214), *Nazir Jat and others v. The State* why the said accused did not produce Muhammad (PLD 1961 Lahore 585 (594) and *Malak Khan v. Emperor* (AIR 1946 P.C. 16) which support his contention. I agree that in the circumstances of this case no adverse inference can be drawn by the non-production of any particular witness since the prosecution has produced sufficient evidence not only to corroborate the approvers in material particulars but even other witnesses.

560. Mian Qurban Sadiq Ikram took objection to the mode of proof of Ex. P.W. 1/2, Ex. P.W. 3/3-I, Ex. P.W. 36/1, Ex. P.W. 36/2, Ex. P.W. 36/3, Ex. P.W. 36/4, Ex. P.W. 35/1, Ex. P.W. 35/2, Ex. P.W. 35/3, Ex. P.W. 35/4, Ex. P.W. 35/5, Ex. P.W. 38/2 and Ex. P.W. 38/3. This objection is also without force. The first six and the last two documents were admitted without any objection by any counsel. Objection was taken to the proof of other document, without the production of the writer thereof, by the evidence of a witness identifying the handwriting. This objection was held to be unsustainable in view of the provisions of Section 67 Evidence Act.

561. It was argued that document Ex. P.W. 3/3/-I reproduces the report of the Tribunal which has not been allowed to be proved. As such this document should not have been admitted in evidence. It is true that document P.W. 3/3-I refers to some recommendation of the Tribunal, but this reference has been made only for the purpose of deciding whether the report should be given publicity or not. It does not prove the Tribunal's report as such and no objection can be taken to its being brought on record.

562. An objection was also raised that Mr. Irshid Ahmad Qureshi should not have been allowed to cross-examine the witness on behalf of the confessing accused after the cross-examination by the counsel of the principal accused since his role was that of a prosecutor. I do not agree with this argument. The order in which the cross-examination was conducted by different counsel was not regulated by the Court, but was left to the counsel themselves to determine. Mr. Irshad Ahmad Qureshi has done what he considered best for the technical defence of acting under superior order which his clients have taken. It would be a travesty to line him up with the prosecution.

563. It was urged that there was no motive either on the part of Mian Muhammad Abbas or on the part of the principal accused to conspire to kill Ahmad Raza Kasuri I have already dealt with this question. I agree that Mian Muhammad Abbas had no motive of his own but the principal accused had a motive on account of the venom in his criticism by Ahmad Raza Kasuri.

564. Reliance was placed upon Ex. P.W. 3/16-D for this argument. This is the report of Saeed Ahmad Khan dated 29.7.1975, that Ahmad Raza Kasuri had a number of meetings with him and he had requested for his audience with the principal accused. The note of Saeed Ahmad Khan has already been proved as Ex. P.W. 3/2-E. Ex. P.W. 3/16-D was put in cross-examination for proof of the following endorsement on it:

"He must be kept on the rails, he must repent and he must crawl before he meets me. He has been a dirty dog. He has called me a mad man. He has gone to the extent of accusing me of killing his father. He is a lick. He is ungrateful. Let him stew in his juice for sometime."

There is another endorsement of the same date signed by the principal accused reading "Please file", and addressed to the Private Secretary.

565. This document was exhibited subject to objection by the learned Special Public Prosecutor because it was urged by the learned Defence Counsel that its original was not forthcoming. I agree with the arguments of the learned Special

Public Prosecutor that since the conditions of Section 65 of the Evidence Act for leading secondary evidence, have not been proved, this document is inadmissible in evidence. I also agree that the first endorsement is clearly a forgery. There is no indication that the first endorsement was addressed to or was required to be seen by anybody. It is not possible to reconcile it with the second endorsement "Please file".

566. The learned counsel also argued that the document Ex. P.W. 2/2 does not incriminate Mian Muhammad Abbas. This argument is without substance since in the circumstances discussed above the query about the residence of Ahmad Raza Kasuri, P.W. 1 at Quetta after he had left that place could be made only to find out why he was not attacked and this document is clearly incriminating in the context of the evidence on record.

567. Similarly it was urged that the reports of Abdul Hamid Bajwa about the surveillance of Ahmad Raza Kasuri did not incriminate the principal accused. It is true that some of the documents taken simply may not be incriminating but they become relevant and clearly prove the charge against him if they are read with documents about the probe by Abdul Hamid Bajwa in the arrangements for his personal security made by Ahmad Raza Kasuri and the reaction of 'the former to the desire of the latter to secure licence for arms.

568. The learned counsel criticized Masood Mahmud in regard to his statement that the post which he was holding before being appointed as Director General, Federal Security Force was a punishment post. This part of the statement of the witnesses is not material except for showing that he was not in the good books of Waqar, Establishment Secretary. It is not, therefore, necessary to comment upon it.

569. The learned counsel argued that the F.I.R. P.W. 1/2 of the Lahore incident does not say that attack was made at the behest of the principal accused. This argument is preposterous in view of the explanation given by P.W. 1, the evidence about the delay in the recording of the F.I.R. given by P.W. 8, 12 and 14, the documents Exhibits P.W. 3/2-K, P.W. 3/2-M, P.W. 3/2-N and the privilege motion Ex. F.W. 1/7. It is clear from these documents that P.W. 1 had throughout been accusing the principal accused as being responsible for the murder of his father.

570. The learned counsel also argued that there was no interference with the investigation. What was done by Saeed Ahmad Khan and Abdul Hamid Bajwa was only to put the officers on "right lines". I have already dealt at length with this question on the legal plane and held that the law does not permit any inference, it is however proved that in the present case this interference was mala

fide and was clearly with a view to make the detection of the actual culprits impossible.

571. Detailed arguments were addressed on the question that the story about the attack by Ghulam Hussain and the two confessing accused at the Shadman Shah Jamal Roundabout, Lahore was absolutely incorrect and unbelievable since there were no blood-stained earth, no foot marks and there was delay in the F.I.R. It is strange that such arguments should have been put in the face of the confessional statements of those accused persons who were directly responsible for the firing.

572. The learned counsel argued that there was conflict between the statement of Ghulam Hussain and the confessions of all the three confessing accused. He pointed out that Ghulam Hussain did not say in his examination-in-chief that he fired his pistol, while Iftikhar and Arshad Iqbal said in their confessional statement that the pistol was fired by him. The argument clearly ignores the statement of Ghulam Hussain in cross-examination that he did not remember whether he fired the pistol. This statement does not exclude the possibility of his having fired it.

573. Certain omissions were also pointed in the confessional statements, but I do not understand how those omissions could help any of the accused persons. When the three confessing accused have all along stick to their confession and accepted all the prosecution evidence produced against them as true, some slight discrepancy was pointed out in the statement of Ghulam Mustafa and P.W. 2 about the ammunition supplied to him but it is not material in view of the above.

574. It was argued that these statements were not voluntarily given, but were given on promise of pardon. This argument is without force after the grant of pardon to P.W. 2 and P.W. 31 and the confessional statements made by the same accused in their statements under Section 342 Cr. P.C. It was suggested that they might have been promised remission of sentence after conviction. This argument is merely conjectural and no such suggestion was ever put to any witness.

575. It was argued that the confession of Mian Muhammad Abbas at least was not voluntary. In support of this it was urged that he was not directly taken to the judicial lock up, but was taken to the Directorate of F.I.A. at Temple Road, Lahore and kept there for several hours.

576. This argument is without force since P.W. 38 has explained that Mian Muhammad Abbas was taken from the Magistrate's Court to his own relations in Naz-Nagina Cinemas since he wished to collect some clothes. He not only collected his clothes but also took meals and offered his prayer. From the place of

his relative he was taken directly to the judicial lock up. There is no reason why this statement should be disbelieved. There is no justification for such an argument. I feel convinced by the evidence of P.W. 10 that Mian Muhammad Abbas had made a voluntary statement under Section 164 Cr. P.C. before him.

577. It may be stated that the statement of Mian Muhammad Abbas Ex. P.W. 10/9-1 is partly self-exculpatory. He, however, confessed in that statement having talked to Ghulam Hussain on the subject that the mission about Ahmad Raza Kasuri should be executed with all haste since he was informed by P.W. 2 that the principal accused was angry. On another occasion he admitted having asked Ch. Abdullah, Deputy Director to bring round Ghulam Hussain with the same end in view. The exculpatory part of the statement is clearly proved to be incorrect by the prosecution evidence. There is no reason to take it into consideration.

578. It is proved that after the commission of the offence at Lahore, Ghulam Hussain reached Rawalpindi at about 2.30 P.M. on the 12th November, 1974. The same day Mian Muhammad Abbas returned from Peshawar at 6.00 P.M. (Ex. D.W. 4/10). The learned counsel argued that the statement of Ghulam Hussain that immediately on his arrival at Rawalpindi he contacted Mian Muhammad Abbas is false and for this reason Ghulam Hussain should not be believed. He argued that from the evidence of Ghulam Hussain that on reaching Rawalpindi he contacted the said accused, it should be inferred that after reaching Rawalpindi he must have contacted him by about 3-00 P.M. which is an impossibility since the accused was at Peshawar at that time. This argument is without merit since no time was fixed by Ghulam Hussain. The words "on reaching Rawalpindi" cannot be interpreted to mean that he contacted Mian Muhammad Abbas immediately and without any delay. He might have contacted him after four or five hours after resting for a while.

579. The learned counsel argued that if the principal accused had any motive to commit the offence of murder he could have brought some persons from Larkana to commit it instead of involving the Federal Security Force. In the same strain he submitted that if he had any intention to cause the murder of P.W. 1 he would not have given vent to his fury in the National Assembly. He also submitted that Mian Muhammad Abbas had admittedly not much trust in Ghulam Hussain. It is not believable that he would ask him to go on the mission to Lahore. Similarly it was unnecessary to obtain the weapons from the armory at Headquarter when each battalion had an armory of its own..

580. These arguments presume that a criminal must act in a particular manner in the given circumstances. The reaction may differ from man to man. The planning may also differ. These arguments cannot create any doubt regarding

the correctness of the evidence. As far as the distrust of Mian Muhammad Abbas is concerned, it is the distrust common to any efficient man, who knows his job and has to drive men otherwise honest, to commit a heinous crime and to degrade themselves as criminals. Ghulam Hussain, P.W. 31 has given reasons why the weapons were obtained from Fazal Ali P.W. 24 who is an absolutely independent witness.

581. The learned counsel pointed out that the two approvers have not been corroborated in certain particulars and their evidence is not, therefore, sufficient for the conviction of the accused. He argued that the corroboration must be on each point. He further submitted that the motive is no corroboration of evidence of approvers nor can one approver corroborate another approver.

582. There is no doubt that the uncorroborated testimony of an accomplice is admissible in law. it is a rule of prudence, which has virtually become equivalent to a rule of law and recognised by illustration (b) of section 114 of the Evidence Act which lays down that an accomplice is unworthy of credit, unless he is corroborated in material particulars. It is now well established that the particulars in which the corroboration by independent testimony is sought must be those which affect the accused by connecting or tending to connect him with the offence. In *King v. Baskervine* (1916) 2 K.B. 658 (667) the expression "corroborative evidence" is explained as "evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused." It is not necessary to corroborate by independent evidence each part of the statement of the accomplice since if this had been the requirement, his testimony would be unnecessary. The corroboration must, therefore, be of material particulars implicating the accused in the commission of the offence. The other rules laid down in the same case are that the corroboration need not be by direct evidence that the accused committed the crime. Circumstantial evidence is also sufficient, if it confirms the connection of the crime with the accused. The evidence of an accomplice cannot, however, be corroborated by the testimony of another accomplice. (*Abdul Majid v. State*) (PLD 1973 S.C. 595), *Muhammad Bashir v. State* (PLD 1971 S.C. 447), *Abdul Khaliq v. State* (PLD 1970 S.C. 166), *Muzaffar v. Crown* (PLD 1956 F.C. 140) and *Bhuboni Sahu v. The King* (AIR 1949 P.C. 257).

583. The argument that each particular given by the two approvers has not been confirmed is not relevant once it is proved that every material particular connecting the two contending accused has been corroborated by oral as well as documentary evidence. The participation of Mian Muhammad Abbas in the conspiracy and the role played by him in its execution is corroborated by direct testimony of P.W.s 20 and 24 and the other circumstantial evidence. Similarly,

the evidence of charges against the principal accused has been corroborated not only by the independent evidence of Saeed Ahmad Khan P.W. 3, but also by considerable circumstantial evidence of Saeed Ahmad Khan P.W. 3, but also by considerable circumstantial evidence motive as well as the conduct before and after the matter.

584. The argument of Mian Qurban Sadiq Ikram that the motive cannot corroborate the evidence of the approver is based upon Qabil Shah v. State (PLD 1960 Karachi 697). It was observed in that case that the motive, however strong it may, cannot afford necessary corroboration of the testimony of an approver. The principle laid down cannot be stretched to mean that the motive is absolutely irrelevant for confirming the evidence of an accomplice. The principle laid down is not so wide but it only means that evidence of motive only may not furnish the necessary corroboration for conviction of the accused. It cannot be denied that motive like other evidence, circumstantial or direct, does play a part in the administration of criminal justice and if it is one of the links in the chain of evidence, however weak that link may be, it cannot be discarded as useless evidence. This proposition finds support from Muhammad Bashir v. State (Supra). It was observed in that case that

“Piece of evidence, which is weak enough by its own force to sustain a particular charge, may yet provide a link in the chain of evidence that may be available on the other charge or charges. So long as the links hold the chain, its weakness notwithstanding, it cannot be totally discarded as a useless evidence. What support it can impart to the whole chain will, of course, depend on its own inherent strength.”

585. The rule of corroboration about the testimony of an approver is based upon the principle that it is dangerous to act on his uncorroborated testimony because he is a self-confessed criminal having betrayed his former associates under temptation of saving his own skin and as such his evidence cannot be viewed except with natural reaction of distrust and incredulity. What is, therefore, required is some additional evidence rendering it probable that the story of the accomplice is true and that is reasonably safe to act upon it.

586. But as pointed out in Kamal Khan v. Emperor (AIR 1935 Bombay 230) an accomplice is sometimes “not a willing participant in the offence, but victim to it.” It was in view of this proposition that it was observed in Brinivas Mall v. Emperor (AIR 1947 P.C. 135) by the Judicial Committee that —

“No doubt the evidence of accomplice ought as a rule to be regarded with suspicion. The degree of suspicion which will attach to it must, however, vary according to the extent and nature of the complicity; sometimes the

accomplice is not a willing participant in the offence but a victim of it. When the accomplices act under a form of pressure which it would require some firmness to resist, reliance can be placed on their uncorroborated evidence.”

I have already held that there is sufficient corroboration of the testimony of each approver which not only tends to connect but actually connects the two contending accused in this case with the crime charged against them. This is, however, a case in which it appears clear that both Masood Mahmood and Ghulam Hussain must have acted under pressure and their evidence to that effect is correct. The pressure on both of them was not only of superior orders but also threats. Even if there had not been such a strong corroboration, the conviction could have been based upon the evidence of these accomplices because in so far as the principal accused is concerned the motive was exclusively his. So far as Mian Muhammad Abbas is concerned, it may be worthwhile noting, and it was conceded by his learned counsel during the arguments, that all the charges could have been proved against the principal accused and the three confessing accused without involving him. His involvement by Masood Mahmood and Ghulam Hussain who have no score to settle with him is evidence of his connection with the offence. In these circumstances, the matter would have been governed by the principle laid down in *Brinivas Mall v. Emperor* (Supra).

587. Under section 30 of the Evidence Act it is open to the Court to take into consideration the confession made by Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad accused, at least against Mian Muhammad Abbas. The learned counsel argued that these confessions, though admissible, were practically not of much value. It is, however, conceded by him that the conviction of the three accused could be based on these confessions provided they are found to be voluntary. It was pointed out in *Joygan Bibi v. State* (PLD 1960 S.C. 313) that in case there is only the confession of a co-accused, the conviction of the non-confessing accused could not be sustained on it since confession of a co-accused is a matter which merits “to be taken into consideration” and does not have the quality of evidence as defined in section 3 of the Evidence Act. Similar view was taken in *Magbool Hussain v. The State* (PLD 1960 S.C. 382). It was held in *Bluboni Sahu v. The King* (Supra) that “section 30 applies to confession, and not to statements which do not admit the guilt of the confessing party. Section 30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of “evidence” contained in section 3. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross, examination. It is a

much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case; it can be put into the scale and weighed with the other evidence. The confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction”.

588. The rule is, therefore, established that an accused cannot be convicted solely on the confession of a co-accused unless it is corroborated by independent evidence. It is also established that it cannot sufficiently corroborate the evidence of an accomplice. But this rule has been made subject to an exception in *Itaiiq Ahmad v. The State* (PLD 1958 S.C. 317) . It was held in that case that the view that the confession of an accomplice does not in any circumstances furnish sufficient corroboration of the testimony of an approver overlooks the provision in section 114 of the Evidence Act that while presuming that an accomplice is unworthy of credit unless he is corroborated in material particulars the Court shall have regard to facts to be found in the illustration appended to illus. (b) in considering whether the above maxim does or does not apply to the particular case before it, The illustration, reads: ‘A crime is committed by several persons. A, B and C, three of the criminals are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D and the accounts corroborate each other in such a manner as to render previous concert highly improbable’. From this it follows that there are cases in which an account of crime given by an accused person implicating his co-accused can be taken into consideration as corroborating the approver.

589. In the present case, this principle could have been safely applied even if there had been no corroboration in view of the manner in which this offence was detected by the interrogation and arrest of different persons at different times obviously arrest of one leading to the next higher in the scale. But in view of the immensity of the corroborative evidence, direct as well as circumstantial, oral as well as documentary, it is unnecessary to rely upon the principle. However, this is a fit case in which the confession can be taken into consideration to give strength to the evidence of Amir Badshah Khan P.W. 20 and Fazal Ali P.W. 24.

590. This is not only the confession which can be pressed into service for the above purpose. There are also confessional statements made under section 342 Cr.P.C. Mian Qurban Sadiq Ikram, however, argued that only the statement under section 164 Cr.P.C. made by the co-accused can be availed of under section

30 but that section does not apply to statements made before the Court during the trial. He relied upon, AIR 1923 All. 322 and AIR 1931 Madras 820.

591. Section 30 as stated above provides that if confession of co-accused is proved the Court may take into consideration such confession as against such other persons as well as against the person who makes it. The ratio of Mahadeo Prasad v. The King Emperor (AIR 1923 All. 322) is that what is contemplated by section 30, is formal proof by the prosecution of a confession previously made. When you prove a confession made by a person, you tender evidence at the trial that on some previous occasion he did, in fact, make a confession and that is the only thing which was contemplated by the section.

592. In some other cases also the same view was taken. I may, however, take note of Dial Singh v. Emperor (AIR 1936 Lahore 33). After considering the established principles of administration of justice it was held that section 30 was a departure from those principles and the word “proved” should be interpreted according to the definition of that word given in section 3 of the Evidence Act and confessional statement of an accused made on question put to him under section 342 Cr. P.C. is, therefore, covered by section 30 of the Evidence Act. The definition of the word “proved” in section 3 of the Evidence Act is as follows :-

“A fact is said to be proved when, after considering the matter before it, the Court either believes it to exist, or considers ‘its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.’”

It was, therefore, observed in the Lahore case —

*“If a confession is made before the Court itself it ‘is a matter before it’ and the Court must believe it to exist. It must, therefore, be said to be ‘proved’. A fact can be proved not only by ‘evidence’ as defined in S. 3, Evidence Act, but also by other matters before the Court. A confession recorded by the Court itself would not be ‘evidence’, but would be a ‘matter before the Court.’ * * * the language of S. 30, Evidence Act, does not justify a distinction between a confession made by an accused person before the trial and in the course of the trial. A confession made before the Court even at the close of the case for prosecution can, therefore, be said to be a confession ‘proved’ within the meaning of S. 30, Evidence Act.”*

I am in complete agreement with this reasoning which is based on meaning given by the Evidence Act to the word ‘proved’.

593. The statements under section 342 can also therefore, be taken into consideration. They confer added strength to the corroboration furnished by the

witnesses to the statement of Ghulam Hussain approver against Mian Muhammad Abbas.

594. The next question is whether any and what offence has been committed by each of the accused. The cases of the three confessing accused may be taken up together. They confessed all the facts on which the charges under different sections of the Pakistan Penal Code are based but they raised a plea of not guilty on the doctrine of duress, superior order, and loss of will as a result of brain washing.

595. Ghulam Hussain P.W. 1 has made reference to threats administered by Mian Muhammad Abbas accused to exterminate him through another party deputed as an alternative to complete the mission. The same threat was transmitted by Ghulam Hussain to Arshad Iqbal and Iftikhar Ahmad. Ghulam Mustafa stated in his statement under section 342 Cr.P.C. that he was also intimidated by Mian Muhammad Abbas. All the three accused plead that they were not free agents and were compelled to act in the prosecution and execution of the conspiracy.

596. They also pleaded that they belonged to a disciplined force and were under oath to be loyal to the Government of Pakistan. They were bound to obey all orders whether lawful or unlawful. Their learned counsel referred to section 3 (f) of the Federal Security Force Act which compels a new entrant to the force to subscribe to an oath prescribed in the Second Schedule but the oath administered to the accused was a different oath. The accused summoned Abdul Majid D.S.P. (D.W. 4) to produce their oaths subscribed to by them at the time of their entry into the force. But no such document was available on the record. The only oath of Ghulam Mustafa which was on his personal file was dated the 31st December, 1974, when he was actually recruited to the force on the 1st June, 1973. Similarly the oath of Arshad Iqbal on his personal file was made on the 9th November, 1973, though he was recruited as Foot Constable on the 19th March, 1973.

597. The learned counsel inferred from this that the oath which must have been signed at the time of the initiation of the accused in the F.S.F. has been removed from the file. He further argued that even the oath on record is not an oath in accordance with the Second Schedule, the distinction being that the oath provided by law is of loyalty to Pakistan (as a State) while the oath in Urdu claimed loyalty to the Government of Pakistan and bound the person signing the oath to obey all orders of the superiors or orders emanating from the Government through their superiors, whether lawful or unlawful.

598. I do not agree that the Act compelled the accused to obey even unlawful orders. Section 9 and 12 of the Act make particular reference to lawful orders.

The oath signed by the accused must be interpreted in the context of the above provisions of law.

599. These pleas cannot, therefore, absolve these accused of their liability in the crime. The plea of superior orders does not help the accused in view of the language of the Federal Security Force Act which makes it their duty to obey and carry out only lawful orders. Para. 27 of Halsbury's Law of England, Volume II (Fourth Edition) deals with this question and states the law as follows :

"The fact that a criminal act is done in obedience to the order of a duly constituted superior, whether civil or military, does not of itself excuse the doer of the act. A person, acting under superior orders which he carries out in good faith may, however, lack the element required for criminal liability."

600. A. V. Dicey writes at page 303 in 'An introduction to the study of the Law of the Constitution' (Tenth Edition)

"A soldier is bound to obey any lawful order which he receives from his military superior. But a soldier cannot any more than a civilian avoid responsibility for breach of the law by pleading that he broke the law in bona fide obedience to the orders (say of the Commander-in-Chief."

L.C. Greene in his book 'Law and Society' has discussed case law of various countries including the United States and then summed up at page 426 that "most systems of Criminal Law rejected the idea that an accused can avoid liability by pleading ignorance of the law or that he was complying with the order of an hierarchic superior who, he had presumed, knew what the law is." The Army Act in Pakistan in its section 32 enforces obedience of lawful orders only.

601. The question whether the defence of duress is open to a person who is accused as a principal in the second degree (aider and abetter) was considered by the House of Lords in *Lynch v. Director of Public Prosecution for Northern Ireland* (1975) 1 All E. R. 913). It was held by a majority of the noble Lords (Lord Simon of Glaisdale and Lord Killarandon dissenting) that such defence could be taken by the accused i.e. that he had carried out the acts constituting the alleged offence under the threat of death or serious bodily injury, as a defence to the charge. Although the matter was left open but observations were made in favour of denial of such a defence to the actual killer. It is stated in the speech of Lord Morris of Borth-Y-Gest that "writers on criminal law have generally recorded that whatever may be the extent to which the law has recognised duress as a defence it has not been recognised as a defence to a charge of murder". The reason, as Hale said (see *Pleading of the Crown* 1800, Volume I, page 51) is that a

person "ought rather to die himself, than kill an innocent" or as stated in Attorney General v. Whelan (1934) I.R. 518), "the commission of murder is a crime so heinous that murder should not be committed even for the price of life." 602. The judgment in Lynch's case came up for consideration before the Privy Council on an appeal from Trinidad in Abbot v. The Queen (1976) 3 All E.R. 140) on the question of relevancy of duress as a defence in case of a principal in the first degree. The defence was rejected (Lord Wilberforce and Lord Edmund Davies dissenting) and Lynch's case distinguished. Lord Salmon observed

"It seems incredible to their Lordships that in any civilized society, acts such as the appellant's whatever threats may have been made to him, could be regarded as excusable or within the law. We are not living in a dream world in which the mounting wave of violence and terrorism can be contained by strict logic and intellectual niceties alone."

His Lordship also made observations about the unsatisfactory state of law relating to duress and the view that on a plea of duress succeeding, the offence of murder is reduced to man-slaughter. This will appear from the following

"There is much to be said for the view that on a charge of murder, duress, like provocation, should not entitle the accused to a clean acquittal but should reduce murder to manslaughter and thus give the Court power to pass whatever sentence might be appropriate in all the circumstances of the case."

603. The same is the purport of section 94 of the Pakistan Penal Code which excepts murder from the category of offences to which duress can be pleaded successfully as a defence. It cannot, therefore, be accepted that the confessing accused have committed no offence. All the offences with which they are charged are proved against them. They have acted like hired assassins. No case is made out by them for award of lesser sentence.

604. Mian Qurban Sadiq Ikram argued that since the conspiracy was only to kill Ahmad Raza Kasuri but he had escaped, the two contesting accused could at most be convicted under section 120-B and section 307 read with section 109 PPC. Only the actual killers can be convicted under section 301 PPC.

605. The argument is without force. The offence of criminal conspiracy is itself a substantive offence which is committed as soon as the agreement to do an unlawful act is made. It is immaterial whether the *actus reus* is executed. The offence committed in the course of performance of the unlawful act becomes the responsibility of the initial conspirators on the principle of their being abettors, since abetment though a separate offence is also one of the ingredients of

criminal conspiracy in section 120-A and will attract the provisions of section 111 PPC which provides :-

"When an act is abetted and different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment."

606. Just as an actual killer is liable under section 301 PPC by killing another person instead of the one intended to be killed, so a person abetting the murder of the person intended to be murdered will be liable for offence under section 301 read with section 111 and 109 PPC. There is no substance in the argument.

607. The learned counsel lastly pleaded for the lesser sentence of Mian Muhammad Abbas on the grounds of sickness, old age and service under a hard task master like Masood Mahmud. Reference in support of this last proposition that Masood Mahmud was a hard task master was made to the evidence of, Welch P.W. 4.

608. This submission is not tenable. He is the person who supervised the entire operation, selected the assassins and supplied arms to them for the commission of the heinous offence. It would amount to miscarriage of justice if the normal sentence of death is not imposed upon him.

609. The principal accused is the arch culprit having a motive in the matter. He has used the members of the Federal Security Force for personal vendetta and for satisfaction of an urge in him to avenge himself upon a person whom considered his enemy. For his own personal ends he has turned those persons into criminals and hired assassins and thus corrupted them.

610. Indeed it is paradoxical that the ruler of a country with Islam Constitutionally declared as its State religion enabling the Muslims to order their lives in the individual and collective spheres in accordance with the teaching of Islam as set out in the Holy Quran and the Sunnah as its declared objective, and guaranteeing to the citizens their life and liberty should play with the valuable life of a citizen so whimsically and tyrannically. The constitutional provisions presuppose that before a person ventures to seek election to the office of the Chief Executive of the Federation he would order his own life in accordance with the injunctions and teachings of Holy Quran and Sunnah. Before undertaking to observe the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam he should inculcate these qualities in himself. Before a person embarks upon swearing to strive to preserve the Islamic

ideology he would bring himself to believe in that ideology and test his firmness in that belief. Before presuming his ability to guarantee to the citizens the enjoyment of the protection of law and their treatment in accordance with law he would be a believer and a true adherent of law. He would consider himself to be as much subject to law as he would wish others to be. A person who considers the Constitution and the law as the handmaid of his polity is neither qualified to be elected to the high office of the Prime Minister nor can ever be true to his Oath.

611. It is, as is clear from the oath of the Prime Minister as prescribed in the Constitution, a constitutional requirement that the Prime Minister of Pakistan must be a Muslim and a believer *inter alia* in the total requirements and teachings of the Holy Quran and the Sunnah. He should not be a Muslim only in name who may flout with impunity his oath without caring for its ugly consequences and terrible results, and treat the Constitution and the law as a source of unlimited power for himself which may satisfy his own inane craving for self aggrandizement and perpetuation of his rule. Such a person, in all probabilities, would destroy the very oasis of the Constitution and the law which he is sworn to uphold.

612. Islam does not believe in the creation of privileged classes. It believes in the equality before law of all-ruler and governed alike. It is opposed to all types of class distinction. Even the Caliph, the king, the Prime Minister or the President, by whatever name the ruler may be called, is as much subject to the law of the land as any ordinary citizen. Islam is opposed to the establishment of church or priesthood. It does not recognize any distinction between divine laws governed by priests and secular law administered by a secular Government. In this context the proclamation of the Holy Prophet *ana basharummislokum* is not only a refutation of divinity of any man but also acknowledgement of his subjection to all laws. By acknowledging himself to be a man like others he has preached the equality of all mankind as well as their equality before divine law. An apt illustration of equality before law in Islam is furnished by the oration of the first Caliph on his election to the Caliphate. He said that though appointed ruler of the people, he was no better than his people. The people ought to assist him in the just and upright performance of his duties but they should criticise him for his wrong actions. He directed them to obey him only for so long as he himself obeyed (the laws laid down by) Allah and the Prophet. They were free not to obey him if he himself was found to disobey Allah and his Prophet.

613. There can be no better illustration of equality before law. Equality before law and justice are corner-stones of Islamic polity and they were emphasised by the first Caliph who was one of the first believers and was distinguished not only for his piety and close intimacy with the Holy Prophet but also his

understanding of the true letter and spirit of the religion. No constitution of the world in this era of material progress and unprecedented advancement of knowledge and democratic ideas can provide such example of liberty to disobey the illegal orders of a ruler without any fear of reprisal and of the right to impeach and depose a ruler for his disobedience of law. Freedom from obedience of a sinful order is approved by Sunnah also. (Muslim 341, 342, 343) .

614. There are definite legislative injunctions in the Holy Quran against slaying save in the course of justice (vi: 152, xvii: 33 also see iv: 29, 93 and v: 32). The words “save in the course of justice” definitely point out the prohibition against slaying being equally applicable to persons whose duty is to administer justice or to arrange for administration of justice.

615. According to tradition *amarat* (Government) is a trust. The correct rule of law in Islam is much more progressive than the same concept in the modern world. There is however similarity to the extent that all governmental authorities are bound by law and are required to act according to law. This principle is the sheet anchor of our Constitution which specifically provides in its fourth Article that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen and in particular no action detrimental to the life of a person shall be taken except in accordance with law. The Constitution does not grant immunity from law to anyone in the country however high his rank or status may be, nor does it declare any one to be above law and yet the principal accused has acted as if either there is no law in the country relating to homicide or that he enjoyed complete immunity from law. His function as head of the executive was to eliminate law breaking tendencies but he has tried to inculcate in his subordinates such tendencies and used them for eliminating a person whom he considered his enemy. There is no rule under which he can escape the extreme penalty.

616. It was observed in *Muhammad Sharif v. Muhammad*. (PLD 1976 S.C. 452)

“No doubt having regard to the sanctity of human life and liberty the law has taken all conceivable precautions to safeguard it. The Law of Evidence and in particular the rules of admissibility including confessions made before a person or an authority, the rule of placing the onus on the prosecution, conceding to the accused the liberty of a privileged liar the Court’s responsibility to spell out reasonable existence of an un-repealed defence, if warranted by the facts and circumstances of the case and above all the golden rule of giving the benefit of doubt to the accused are measures aimed at the protection of human life against false implication and undeserved punishment. The matter does not end with the finality of judicial proceedings as the executive has also been invested with the power to meet the failures of legal justice and undo the mischief found to have

been done by it. As equally important aspect of this sanctity of human life often lost sight of is that once conviction is finally upheld the deliberate extinction of life is visited with the normal penalty of death which is not confined to the actual killer but is also extended to the other co-accused sharing the community of intention as the case may be and found to be constructively liable. The principal object behind this obviously is to avoid repetition of violent loss of life by award of deterrent punishment."

617. The principal accused is thus liable to deterrent punishment.

618. All the offences with which the accused are charged are thus proved to the hilt. It is also proved that the conspiracy to murder Ahmad Raza Kasuri did not end with the death of Nawab Muhammad Ahmad Khan but continued even thereafter. Since the object to assassinate Ahmad Raza Kasuri was not fulfilled, the case of punishment of conspiracy is governed by section 120-B read with the first part of section 115 PPC.

619. I convict Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa accused under section 120-B PPC, 302 PPC read with section 301 PPC and sections 109 and 111 PPC and section 307 PPC read with section 109 PPC. I further convict Arshad Iqbal and Rana Iftikhar Ahmad accused under section 120-B PPC, section 302 PPC read with section 301 PPC and section 34 PPC and section 307 PPC read with section 34 PPC.

620. I sentence all the five accused persons under section 120-B PPC read with section 115 PPC to rigorous imprisonment for a period of 5 years each. I sentence Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa accused under section 302 PPC read with sections 301, 109 and 111 PPC to death. I also sentence Arshad Iqbal and Rana Iftikhar Ahmad accused under section 302 PPC read with section 301 PPC and section 34 PPC to death. All these five accused shall be hanged by the neck till they are dead. I further sentence Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa accused under section 307 PPC read with section 109 PPC to rigorous imprisonment for 7 years each. I sentence Arshad Iqbal and Rana Iftikhar Ahmad under section 307 PPC read with section 34 PPC to rigorous imprisonment for a period of 7 years each. Zulfikar Ali Bhutto shall also pay a sum of Rs. 25,000/- as compensation under section 544-A Cr. P.C. or in default undergo rigorous imprisonment for a period of 6 months. The compensation amount if recovered shall be paid to the heirs of Nawab Muhammad Ahmad Khan deceased. The sentences of imprisonment under each head shall be concurrent, and these sentences as also the sentence to be undergone in default shall be effective in case the sentence of death is commuted.

621. I have ordered only Zulfikar Ali Bhutto to pay the compensation because the offence was committed on his order.

622. Each accused has been furnished with a copy of the judgment and has been informed that as per Article 150 of the Limitation Act he can file an appeal to the Supreme Court within 7 days from today.

623. Before closing this case I would like to thank Mr. M. A. Rahman and Mr. Ejaz Hussain Batalvi, learned Special Public Prosecutors and Mr. Qurban Sadiq Ikram and Mr. Irshad Ahmad Qureshi for the assistance rendered by them to us in this trial. I wish I could have said the same thing about the learned counsel who appeared for the principal accused. I entertain great respect for the members of the Bar but it is unfortunate that the behavior of a certain member of the Bar has throughout the period he conducted this case, been arrogant and insulting to the Court despite all indulgence shown to him. The Court started the case in the morning according to his convenience and rose before time when he gave the slightest hint of inconvenience to himself. Copies of documents which were not required by law to be supplied to him were given to him whenever demanded. The Special Public Prosecutors were requested by the Court to cooperate with him and give him advance information about the name of the witness or witnesses to be examined on a particular day. He was thus fully accommodated.

624. No doubt the counsel has to discharge his duty towards his client but he has also some duties towards the Court, which he cannot perform by aligning himself with his client. Yet this was done by the counsel. He aligned himself with his client completely and adopted his attitude. I hope that the learned counsel might be having second thoughts and mentally reviewing his conduct and regretting it.

625. The conduct of the principal accused has already been reviewed briefly. He had been hurling threats as well as insults on us and at times had been unruly. In addition, he has proved himself to be a compulsive liar. He was allowed thrice to dictate his statement directly to the typist and he dictated 9 pages on the 25th January, 1978, more than 11 pages on the 28th January, 1978, and about 11 pages again on 7th February, 1978 without the least interference by the Court. All the three statements are full of repetition of false and scurrilous allegations against the Court. The first two statements were made, although they were absolutely irrelevant, in answer to questions under section 342 and the last statement was allowed to be dictated after the close of the defence evidence when all legal avenues for the making of such statement before Court were legally closed and yet he came out with allegations that the statements were not fully recorded.

626. Out of the five accused he is the only person who has been leveling all sorts of imaginary and false allegations against the Court. Mr. Qurban Sadiq Ikram on the other hand thanked the Court profusely on his own behalf as well as on behalf of his client for the patient hearing and fair and full opportunity given to his client for his defence. He also thanked the learned Special Public Prosecutors for their cooperation in this respect.

627. This trial has revealed the flaws in our law to deal with a recalcitrant party like the principal accused. The Law of Contempt which empowers the Court to sentence the contemner to simple imprisonment is of little value in a case where the contemner is an under trial prisoner in a murder case. It is time that necessary legislation be passed to remove this flaw.

(Sd/-) Aftab Hussain
JUDGE

Announced.

(Sd/-) Mushtaq Hussain
18.3.78

I agree (Sd/-) M. S. Qureshi
I agree (Sd/-) Gulbaz Khan
I agree (Sd/-) Zakiuddin Pal
I agree (Sd/-) Mushtaq Hussain