

## APPELLATE CRIMINAL

*Before Bhopinder Singh Dhillon and Sukhdev Singh Sidhu, JJ*

THE STATE OF PUNJAB,—Appellant.

*versus*

AJIT SINGH ETC.,—Respondents.

Criminal Appeal No. 405 of 1972.

April 10, 1975.

*The Indian Evidence Act (I of 1872)—Section 32—Statement of a deceased made before his death regarding motive of his murder—Whether admissible in evidence.*

*Held*, that it is difficult to hold that a statement of a deceased person made by him regarding the motive which ultimately led to his murder cannot be held to be admissible under the provisions of section 32 of the Indian Evidence Act, 1872. It may well be, that on the facts of a given case, a particular statement may be held to be admissible and another statement on the facts of that case, may be held to be inadmissible in evidence. When a statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of the dead persons's death comes into question, such statements become relevant and admissible whether the person who made them was or was not at the time when they were made under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question. The words "*as to any of the circumstances of the transaction which resulted in his death*" are wide enough to include the motive of the alleged crime which must have proximity to the alleged crime. The motive in a given case may be one of the circumstances of the transaction which resulted in the death of the person who made the statement. The circumstances must have some proximate relation to the actual occurrence and must be of the transaction which resulted in the death of the declarant. It is incorrect that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the "Circumstances" can only include the acts done when the death was caused and then alone the provisions of section 32 of the Act will be attracted. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. In nutshell, the circumstances must have some proximate relation to the actual occurrence

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though in some cases they may be related to dates at a considerable distance from the date of the actual killing. Thus it is wrong to say that the statement regarding the motive made by a deceased person cannot in any circumstances be held to be admissible under the provisions of section 32 of the Act.

(Paras 33 and 34)

*Appeal from the order of Shri Avtar Singh Gill, Additional Sessions Judge, Amritsar, dated 11th November, 1971, acquitting the respondents.*

*Charge* : Under sections 302/120B and 109, I.P.C. and 364, I.P.C.

*Order* : Acquittal.

D. S. Boparai, Assistant Advocate-General, Punjab, for the Appellant.

J. N. Kaushal, Advocate, with D. S. Chahal, and Shri Nath Singh, Advocates, for the Respondents.

#### JUDGMENT

Dhillon, J.—(1) In this appeal against acquittal, the State of Punjab has sought the reversal of the judgment of acquittal passed by Shri Avtar Singh Gill, Additional Sessions Judge, Amritsar, on November 11, 1971. In this case, three persons, namely, Shingara Singh, Kartar Singh and Hardip Singh were alleged to have been abducted by the accused persons from the busy locality known as Crystal Chowk, Amritsar, and are later alleged to have been murdered at the Indo-Pak. Border within the jurisdiction of Police Station, Gharinda, District Amritsar. In addition to the 15 accused persons, who were tried in this trial out of which this appeal has arisen, the other accused, who are alleged to have participated in the occurrence, are Jasbir Singh, Sitara, Satnam Singh alias Pammi and Darbara Singh, who absconded and were declared proclaimed offenders and consequently they could not be prosecuted along with the 15 accused prosecuted in this case. Trial against them is still pending. The other six persons, namely, Karnail Singh, Jai Gopal, Surjit Singh, Shabad Singh, Ram Dass and Om Parkash, all constables of the Border Security Force, were also sought to be prosecuted but all these six persons were discharged and, therefore, were not tried along with these 15 accused persons.

(2) The accused in this case are Ajit Singh and his two sons, namely, Satbir Singh and Paramjit Singh. The third son of Ajit

Singh, namely, Jasbir Singh, as I have already pointed out, was also named as an accused person in this case, but since he has absconded, therefore, his trial along with the other three absconders, is still pending before the Court below. Ajit Singh and his sons belong to village Burj. The other accused persons, namely, Baghel Singh and Tara Singh of village Burj, Darshan Singh alias Darshoo, Arjan Singh, Pritam Singh alias Pritu, and Bachan Singh of village Rattan Khurd, Mehar Singh alias Mehroo and his son Dial Singh of Jandiala Guru, and Malook Singh alias Malooka of village Sultanwind, are alleged to be the partymen of Ajit Singh, who is alleged to be a big smuggler indulging in smuggling at the Indo-Pakistan Border. The other three accused persons are M. P. Singh, Inspector, Shiv Narain, Sub-Inspector, and Harbhajan Singh, Constable, all of the Border Security Force, who are alleged to have connived with Ajit Singh and his sons referred to above and with their other co-accused in the murder of the three deceased persons.

(3) Briefly stated, the prosecution case is that Ajit Singh and his sons Satbir Singh, Paramjit Singh and Jasbir Singh, are notorious smugglers indulging in smuggling at the Indo-Pak Border and their village Burj is situate within 3 or 4 miles of the Indo-Pak Border and the other accused persons other than the Border Security Force Officials, are also their co-smugglers and belong to their party. M. P. Singh, Inspector of the Border Security Force, and his subordinate officials of the Border Security Force, who are prosecuted, are alleged to have active association and collaboration with Ajit Singh and his sons in the matter of smuggling and were taking their share in the booty and thus were helpful to Ajit Singh and his sons in carrying out their nefarious designs.

(4) Puran Singh (P.W. 3) is alleged to be a member of the gang of smugglers led by Ajit Singh accused and he actively participated in the smuggling with Ajit Singh and his party at the Indo-Pak Border. Puran Singh P.W. is son of Shingara Singh deceased and is brother of Hardip Singh deceased whereas Kartar Singh deceased was uncle of Puran Singh P.W. Puran Singh indulged in smuggling with Ajit Singh and his party for quite a few years and according to the prosecution case, his share in the booty to the extent of Rs. 15,000 was not paid to him by Ajit Singh and his party and, therefore, on this account, he felt aggrieved. The present occurrence took place on July 6, 1970. Few months before this, at one

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occasion, when Satbir Singh, Jasbir Singh accused and 10 or 12 labourers along with Puran Singh smuggled 15 jackets of gold each weighing 1,000 Tolas from Pakistan into Indian territory with the connivance of Inspector M. P. Singh, S. I. Shiv Narain respondents, Puran Singh P. W. succeeded in slipping away under the cover of darkness with two packets of gold. The estimated value of the gold, which Puran Singh succeeded in taking away on that day, was calculated to be between five or six lacs of rupees in those days. The prosecution case is that since Puran Singh P.W. had slipped away with huge quantity of gold valuing about rupees five to six lacs, Ajit Singh, his sons and other members of his party were after Puran Singh P.W. and in fact they succeeded in getting hold of Puran Singh, P.W. in the month of May, 1970 and subsequently, they put him to torture with a view to interrogate him about the whereabouts of the gold and pressurised him to return 2,000 tolas of gold which he had succeeded in taking away. It may be pointed out at this stage that Shingara Singh deceased father of Puran Singh P.W. lodged first information report No. 100/70 of 1970, copy of which is marked as Exhibit PPY, at Police Station, Gharinda, on May 20, 1970, at 10.30 A.M. *inter alia* stating that Puran Singh was his eldest son from his previous wife and was residing separately from him. He claimed that Puran Singh was not obedient to him and he along with the sons of Ajit Singh of village Burj was indulging in smuggling. On May 6, 1970, in the evening at about sunset, when he and his brother Kabal Singh, his son Hardip Singh were present in their fields, Satbir Singh and Jasbir Singh accused accompanied by Makhan Singh and Rajinder Singh came in a car and all the four then took Puran Singh P.W. in the car. Subsequently, another man came to enquire about Puran Singh P.W. when Shingara Singh deceased told him that Puran Singh P.W. had been taken away by Satbir Singh and others. On the third day, Ajit Singh accused came along with Kirpal Singh and enquired about the whereabouts of Puran Singh P.W. Shingara Singh deceased expressed his inability to disclose the whereabouts of Puran Singh P.W. Ajit Singh accused then told Shingara Singh deceased that Puran Singh P.W. had fled away with gold worth rupees five lacs and threatened Shingara Singh deceased that he should search for Puran Singh P.W. and produce him. Shingara Singh deceased then searched for Puran Singh P.W. by visiting the houses of his relations but could not find him. On the third day of the departure of Puran Singh, P.W., Ajit Singh and his party, abducted Shabeg

Singh, brother-in-law of Puran Singh of village Chhidon, Police Station, Lopoke. On these facts, Shingara Singh alleged in the said First Information Report that he had firm suspicion that Satbir Singh, Jasbir Singh and Paramjit Singh, sons of Ajit Singh of Burj, Rajinder Singh son of Kirpal Singh of Ramgarh, Makhan Singh son of Kartar Singh of village Malluwal had abducted Puran Singh intentionally because of a dispute over the big quantity of smuggled gold and that they had kept him concealed at some unknown place with an intention to kill him. This first information report was recorded at Police Station, Ghiranda, by S.I. Baldev Sharma (P.W. 63) who has proved this document.

(5) The prosecution case further is that Puran Singh, P.W. after having been taken away from his village by the above mentioned accused, was taken to the Haveli of Ajit Singh accused of village Burj where it was enquired from him as to where he had concealed the gold which he had taken away and Puran Singh P.W. informed the accused that he had delivered the gold to Hardip Singh his brother. Satbir Singh, Jasbir Singh and Satara P. O. then took Puran Singh in a car to the Border Security Force Picket Rattan Khurd where M. P. Singh Inspector and Shiv Narain S.I. were also present to whom Puran Singh P.W. was entrusted by them, and they returned. M. P. Singh and Shiv Narain accused then made over Puran Singh P.W. to Shaffi and Yakub, Pakistani smugglers at the Indo-Pak, Border. Shaffi and Yakub belong to village Dial (Pakistan) and they took Puran Singh P.W. to village Dial (Pakistan) and kept him in a locked room for about 10 or 12 days. About 10 days after, Shabeg Singh brother-in-law of Puran Singh was also brought to village Dial (Pakistan) and was locked in the same room. Shabeg Singh remained with Puran Singh, P.W. at village Dial (Pakistan) in the same room for some days. During this period, Shaffi and Yakub made enquiries about the whereabouts of the gold. Shabeg Singh and Puran Singh were then taken to Karewala picket in Pakistan where Satbir Singh, Paramjit Singh, M. P. Singh, Shiv Narain, Bhajan Singh and one Didar Singh driver were present. Satbir Singh accused had a talk with Shaffi and Yakub that Shabeg Singh was innocent. They then brought Shabeg Singh with them to India leaving Puran Singh P.W. in the custody of Shiv Narain, M. P. Singh, Bhajan Singh accused and one Didar Singh driver. Puran Singh P.W. was interrogated by Shiv Narain accused about the gold who told him that the gold was with his brother Hardip Singh. Two or

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three days later, he was again taken and made over to Shaffi and Yakub smugglers in village Dial (Pakistan) where he remained for some days. Puran Singh P.W. was then brought to Indian side of the border on the fateful night, i.e., on the night intervening 6th and 7th of July, 1970.

(6) On July 6, 1970, Shingara Singh, Hardip Singh and Kartar Singh, deceased persons, along with Harnam Singh P.W., travelled together by a bus from village Ranike to Amritsar. Shingara Singh was to attend the Court of a Magistrate at Amritsar in connection with the challan in which the date of hearing was fixed for July 6, 1970. Kartar Singh deceased had brought vegetables from his fields to sell them in the vegetable market at Amritsar. Hardip Singh, who is the son of Shingara Singh accompanied his father. Harnam Singh P.W. came to Amritsar because 6 or 7 days before, his wife Smt. Piaro was admitted in V. J. Hospital, Amritsar, as an indoor patient. Harnam Singh, P.W. used to look after his wife. On July 6, 1970, he came to Amritsar with the meals of his wife as usual. One Malook Singh son of Bhagwan Singh of village Ranike also travelled in the same bus. All the five got down from the bus at Bhandari-Bridge at Amritsar. Shingara Singh, Hardip Singh deceased and Malook Singh went to bazar, Kartar Singh went to vegetable market to sell his vegetables and later on joined Shingara Singh deceased in Courts and Harnam Singh P.W. went to the Hospital. Shortly thereafter, all the three deceased and Malook Singh reached the hospital to enquire about the health of Smt. Piaro wife of Harnam Singh P.W. Harnam Singh, P.W. then told Shingara Singh deceased that a bottle of blood was required by the doctor for the operation of his wife and requested him that he should arrange the same through Dr. Mohinder Singh who was the nephew of Shingara Singh and was posted in V. J. Hospital, Amritsar. Shingara Singh deceased promised to do the needful after he had attended the Court. Shingara Singh and Hardip Singh deceased then went to District Courts. After waiting for some time, Harnam Singh P.W. started towards the District Courts and met them in Courts. At about 1.00 P.M. Shingara Singh was free from the Court and all the four then went to V. J. Hospital, Amritsar, via Mall Road. When they reached near the chowk known as Crystal Chowk near V. J. Hospital, a big vehicle and a car came from the side of the Railway Station. Ajit Singh accused Jasbir Singh proclaimed offender, Satbir Singh, Satara, Paramjit Singh, Beghel Singh, Tara Singh, Arju, Bachna, Darshan Singh,

Pritu accused persons Malooka and Dial, came out of those vehicles. There were two other persons in police (Thanedar's) uniforms who came out of the car and the said persons were called as Pamma and Malkiat. Both of them were armed with revolvers. Paramjit Singh had a stengun. Jasbir Singh and Satbir Singh had revolvers. Malooka had a Double Barrel Gun. Dial Singh had a rifle. Hardip Singh deceased was also holding a rifle. Shingara Singh deceased had a Kirpan and Kartar Singh deceased was empty handed. Malkiat Singh P.O. snatched the rifle of Hardip Singh deceased and all the accused persons physically lifted Karter Singh, Shingara Singh and Hardip Singh deceased persons, and threw them in the bigger vehicle and abducted them away from Amritsar. While the deceased were being taken away from Amritsar to village Burj, Gurdip Singh (P.W. 14) nephew of Shingara Singh deceased, who happened to be present at the canal bridge of village Doda, when going to village Chhina at about 3.00 P.M., saw two vehicles coming from the side of Jhabal and those were the same vehicles which were recovered during the investigation of this case. The car was driven by Satara accused P.O. Jassa P.O. and Paramjit Singh accused were seated on the back seat flanking Hardip Singh deceased and on the front seat, Satbir Singh was sitting. Paramjit Singh was armed with a stengun. In the bigger vehicle, Ajit Singh, Bhagel Singh, Tara Singh, Malooka and some other persons were sitting. The prosecution case further is that all the three deceased persons were then taken to the Haveli of Ajit Singh accused where Atma Singh (P.W. 27) Sarpanch of village Bhitewad, saw them in the Haveli of Ajit Singh accused. This witness indulges in trade in milch cattle and it was in this connection that he went to village Burj where he saw the deceased in the Haveli of Ajit Singh accused and also saw the deceased persons being belaboured by Jasbir Singh P.O., Satbir Singh and Paramjit Singh. The deceased were then taken from the Haveli of Ajit Singh accused towards Indo-Pakistan Border when Mohinder Singh (P.W. 28), who belongs to village Rattan Kalan, saw M. P. Singh accused on a motorcycle coming from the side of village Mode followed by two vehicles, which this witness identified in Court to be the same as recovered in this case. He saw Paramjit Singh accused holding a stengun. Jasbir Singh, Satbir Singh and Hardip Singh deceased, were sitting in the back seat. The prosecution case further is that during the night intervening 6th and 7th of July, 1970, all the three deceased were taken to Indo-Pakistan Border where on that very night, some goods were to be exchanged between

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the accused including Balkar Singh P.W. with the Pakistani Smugglers. Balkar Singh (P.W. 4) is a witness who belongs to village Bhaggu Pura and who used to indulge in smuggling and the smuggled goods were being exchanged near picket Rattan Khurd in connivance with M. P. Singh and Shiv Narain accused and Balkar Singh P.W. was also the associate of Puran Singh P.W. Only July 6, 1970, this witness alongwith Ajit Singh, Satbir Singh, Paramjit Singh, Jasbir Singh P.O., Mehru, Malooka, Dayal, M. P. Singh, Arjan, Pritu, Bachna, Darshan and two other persons, namely, Pammi and Malkiat Singh, had to collect the smuggled goods at the Samadh of Baba Guria. Shingara Singh, Hardip Singh and Kartar Singh deceased were also there. The eyes and hands of these three persons were blinded and tied. M. P. Singh Inspector was also there. This witness and M. P. Singh asked the three deceased to return the gold. Shingara Singh replied that he had no gold with him and it may be with Puran Singh P.W. who was already in their custody. Dial Singh accused was armed with a rifle. Paramjit Singh accused was armed with a stengun. Malook Singh had a double barrel gun. Satbir Singh, Jasbir Singh alias Jassa Singh, Pammi and Malkiat Singh were armed with revolvers. Pammi and Malkiat Singh were in police uniforms. At about 12 mid-night, Harbhajan Singh accused came there when M. P. Singh asked him to bring Shiv Narain as smuggled goods had to be lifted. Shiv Narain accompanied by 2 or 3 Border Security Force constables, came there and all of them reached near pillar No. 100. This party handed over 1½ maunds of silver to Yakub a Pakistani smuggler at the border and received gold in return after consulting Pakistani rangers. Jasbir Singh and Satbir Singh made over Shingara Singh to Yakub and Shaffi, who were accompanied by Pakistani rangers. This party brought gold from the border and reached at a distance of 100 yards. Hardip Singh and Kartar Singh deceased were brought by Satbir Singh and others towards Indian side. Balkar Singh P.W. enquired as to why Shingara Singh had been handed over to Pakistanis when Shiv Narain accused fired two shots with very light pistol. Harbhajan Singh, M. P. Singh and Paramjit Singh fired shots from their weapons at Hardip Singh and Kartar Singh from a distance of 25 yards who dropped dead. Jasbir Singh came there and untied their hands and removed cloth from their eyes. A rifle was placed near the dead body of Hardip Singh and a Kirpan was placed near the dead body of Kartar Singh. This witness also heard the sound of a fire shot in Pakistan territory, when Ajit Singh accused said that Shingara Singh had also been killed.



(7) The prosecution case further is that Puran Singh P.W., who was in the custody of Shaffi and Yakub Pakistani smugglers, was also brought on the border on the same night and he was confronted with Hardip Singh deceased and the other deceased persons. He asked Hardip Singh deceased to return the gold to Ajit Singh and his party as they were putting him to great hardship. The deceased, Hardip Singh, replied that he would not return the gold under pressure. After this confrontation, Puran Singh P.W. and his father Shingara Singh deceased were made over to Yakub and Shaffi, Pakistani smugglers, whereas Satbir Singh and his companions returned to the Indian side with Kartar Singh and Hardip Singh deceased. Puran Singh P.W. and Shingara Singh deceased had hardly travelled a distance of about 20 or 25 yards when Puran Singh P.W. heard shots being fired in the Indian Territory. Prosecution case is that Hardip Singh and Kartar Singh deceased were killed with these shots in the Indian Territory. At that time Shaffi fired a shot and killed Shingara Singh father of Puran Singh P.W. in Pakistan Territory. Shaffi then told Puran Singh P.W. that he would be killed at that time and would be killed after getting the gold recovered from him. Puran Singh P.W. was then kept in village Dial (Pakistan) by the Pakistani smugglers above named for 2 or 3 days and thereafter, he managed to escape and went to another Pakistani smuggler named Bhila of village Bhasin in Pakistan where he remained for about three months. On November 6, 1970, Puran Singh P.W. managed to cross the international border and came to India when Sub-Inspector Jai Ram P.W. arrested him at Naka in the area of village Daoke at about 4.00 or 5.00 A.M. on his having come from Pakistan territory to the Indian territory.

(8) The prosecution case further is that in order to justify the killing of Hardip Singh and Kartar Singh deceased in the Indian territory, M. P. Singh, Inspector, Shiv Narain, Sub-Inspector and the other officials of the Border Security Force, whose names have been referred in the earlier part of this judgment, manipulated and thought of an encounter story and got a false case registered at Police Station Gharinda on July 7, 1970, falsely alleging that on a secret information having been received by M. P. Singh Inspector that some smugglers would bring some goods from Pakistan to India after crossing the border, Shiv Narain Sub-Inspector, Harbhajan Singh and the other constables, whose names have already been referred in the earlier part of the judgment and who stand discharged, as per

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orders of M. P. Singh, conducted ambush behind Burji No. 100 on the night intervening 6th and 7th of July, 1970. At about 2.00 A.M. some men were seen coming from Pakistan side. On this Shiv Narain alerted the ambush party. When these men crossed the border and reached near the party, Shiv Narain asked them to stop as the Border Security Force were holding Naka. On this one of them fired at the Naka party and in defence the Naka party also fired shots at them. Shiv Narain also fired two cartridges from the very light pistol and he saw that some men were running away after having thrown the gunny bags and were firing shots. The Naka party also went on firing in defence. Two men fell down on receiving the fire shots and some were seen running towards Pakistan. The Naka party remained in position till morning. In the morning the nearby area was searched and two Sikh youngmen were found lying with their faces downwards on receiving the fire shots and 4 bags of Almond seeds weighing 130 Kgs. were found lying near their dead bodies. From the right side of one person, one rifle .303 No. 43C. 1618 of 1943 of No. 4 Mark and No. 216 written on its butt fitted with sling, with one empty cartridge in its chamber and two 303 Pakistani live cartridges in Magazine, P.O.F. written on them, was found lying. A Kirpan with the sheath of black colour was found lying on right side of the other person. Besides it, one empty cartridge of 303 was found lying fallen. Rs. 18 in the Indian currency notes and change worth 75 N.P. were found in the pocket of one person. It was alleged in the first information report lodged by Shiv Narain accused that in this way the said persons had committed offences under section 307 of the Indian Penal Code, 3/34/20 of the I.P. Act, 123 Customs Act and 25/54/39 of the Arms Act. It may be pointed out that this first information report Exhibit P.P.O/1 was lodged on a Ruqa having been sent by Shiv Narain accused at 5.00 A.M. on July 7, 1970, and the case was registered at 6.30 A.M. at Police Station, Gharinda by A.I.S. Gurbachan Singh P.W.

(9) On this, a case having been registered, A.S.I. Gurbachan Singh (P.W. 62) proceeded to the spot, prepared the inquest reports Exhibits P.P.Q. and P.P.R. of the two dead bodies lying at the spot. He picked up the blood stained earth from near the dead bodies and sealed it separately and took it into possession *vide* memo Exhibit P.P.S. He took into possession *vide* memo Exhibit P.P.T. one .303 rifle Exhibit P. 9 from near the dead body and a Kirpan Exhibit P. 14, which was lying near the other dead body, was also taken

into possession, *vide* memo Exhibit P.P.V. In addition to the cartridges, he also took into possession four bags of Almond seeds *vide* memo PPW which were lying near the dead bodies. On personal search of one of the dead bodies, a sum of Rs. 18.75 Ps. in Indian currency was recovered and the same was taken into possession *vide* memo Exhibit P.P.X. It may be pointed out at this stage that Hardip Singh deceased was a member of the Home Guards of the picket of Rattan Khurd area and rifle Exhibit P. 9, which is alleged to have been recovered by the side of his dead body, admittedly is a Home Guard rifle which was issued to him by the Home Guard authorities.

(10) S.I. Baldev Sharma (P.W. 63), who was posted as S.H.O. at Police Station Gharinda at the relevant time, reached the spot on July 7, 1970, in order to verify the investigation. Finding suspicious circumstances, he took up the investigation of the case from A.S.I. Gurbachan Singh P.W. and he did not agree with the encounter version. On July 8, 1970, he went to mortuary at Amritsar where Kabul Singh and Gopal Singh P.Ws. met him after the post mortem examination. Kabul Singh (P.W. 6) identified Hardip Singh while Gopal Singh (P.W. 42) identified Kartar Singh deceased. This witness handed over the investigation of this case to D.S.P. Surjit Singh P.W. on July 9, 1970.

(11) Dr. J. P. Jalota (P.W. 2) performed the post mortem examination on the dead bodies of Kartar Singh and Hardip Singh deceased on July 8, 1970. He found on the dead body of Kartar Singh deceased four gun-shot wounds and on dissection of the gun-shot wounds on the right side of the chest below right nipple and on the left side of the back on the lumber region, he found the liver of the deceased to be ruptured. All the injuries were ante-mortem and in his opinion, were the result of gun-shots. The stomach of the deceased was empty. The probable time that elapsed between the injuries and death was immediate and between death and post mortem examination, 48 hours.

(12) This doctor found six gun-shot wounds on the dead body of Hardip Singh deceased and two abrasions, one on the middle of the front of the left leg and the other on the right knee. Except these two abrasions, the other injuries in his opinion were caused by gun shots. His stomach was found to be empty and scrotum was

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found to be swollen. In his opinion, the abrasions could be caused by a fall if there was a friction. In the opinion of the doctor both the deceased died because of the gun shot injuries on their persons which were sufficient to cause death in the ordinary course of nature.

(13) Surjit Singh D.S.P. (P.W. 64), who was the Supervising Officer of Police Station, Gharinda, took up investigation from S.I. Baldev Sharma P.W. and found that the encounter story was false. He moved for the cancellation of the first information report Exhibit P.P.O./1 lodged by Shiv Narain accused, as according to him in fact no encounter took place. He after investigating and verifying the facts wrote report Exhibit P.P.Z. on July 12, 1970, to the Senior Superintendent of Police, Amritsar, who ordered the registration of case *vide* endorsement Exhibit P.P.Z./1 on July 17, 1970. It was in this manner that a case under sections 302/364 of the Indian Penal Code regarding the murders of Hardip Singh, Kartar Singh and Shingara Singh was registered against the accused persons. After the registration of this case, Bachan Singh (P.W. 68) investigated this case under the supervision of Shri Surjit Singh, D.S.P., (P.W. 64).

(14) Inspector Bachan Singh (P.W. 68) searched for the accused in village Rattan Kalan, Rattan Khurd, Burj, etc., but the accused were not available. He recorded the statements of various prosecution witnesses during the course of investigation. Inspector M. P. Singh, Shiv Narain S.I., Harbhajan Singh and the other six Border Security Force personnel, appeared before him in Police Station, Gharinda, on July 29, 1970, and he formally arrested them. All the other accused absconded. A.S.I. Kastoori Lal (P.W. 43) arrested Mehru, Diala and Arjan accused on July 31, 1970, and Darshan Singh accused on August 14, 1970. A.S.I. Vidya Sagar (P.W. 44) arrested Bachan Singh accused on August 14, 1970. Inspector Gurdarshan Singh (P.W. 59) formally arrested Satbir Singh and Paramjit Singh accused on September 4, 1970, who had already surrendered themselves in the Court at Delhi. A.S.I. Jai Ram (P.W. 58) arrested Bhagel Singh and Tara Singh accused on September 19, 1970 and September 22, 1970, respectively. Ajit Singh accused surrendered in the Court of the Sessions Judge, Ambala, and was formally arrested in September, 1970.

(15) Inspector Gurbachan Singh (P.W. 59) went to Delhi on September 28, 1970, and took into possession two vehicles, one Viking Tempoo and a car, from the show-room of R. P. Gandhi (P.W. 52) in the presence of B. S. Dhillon (P.W. 50) and Romesh Chander (P.W. 51). Romesh Chander P.W. produced registration certificates Exhibit P.P.G. and P.P.H. On October 5, 1970, R. K. Sahni (P.W. 48) produced the booking order of Viking Mini bus Exhibit P.P.C. and its delivery receipt Exhibit P.P.D. The same were taken into possession by this witness *vide* memo Exhibit P.P.E. He recorded the statements of R. K. Sahni and P. C. Mehra P.Ws.

(16) Shri R. K. Sahni, Sales Officers of M/s. J. J. Motors Corporation, New Delhi (P.W. 48) deposed that a Viking Mini bus taken into possession in this case, was booked in the name of Prithipal Singh son of Shri Sohan Singh, 16-D, Chanan Singh Park, Delhi Cantt *vide* booking order Exhibit P.P.C. No. 75/17 dated April 21, 1970, which order was booked by this witness and signed by Prithipal Singh. On June 24, 1970, this vehicle was delivered to Prithipal Singh who issued a receipt in token of the delivery Exhibit P.P.D.

(17) Shri P. C. Mehra, Sales Executive, Madras Motors Pvt. Ltd., Delhi (P.W. 49) deposed that he had purchased Vox Wagon Valient of 1600 A C bearing DLX No. 866, from the State Trading Corporation and sold the same to one Balwant Singh through Shri R. P. Gandhi (P.W. 52) for Rs. 26,000. This Balwant Singh gave his address for the transfer purpose as 4-Scindia House, Connaught Palace, New Delhi. This was the same car which was taken into possession during the investigation of this case.

(18) Shri B. S. Dhillon (P.W. 50) and Shri Romesh Chander (P.W. 51) deposed about the taking into possession of the said two vehicles from the show-room of Shri R. P. Gandhi (P.W. 52). Shri R. P. Gandhi P.W. was declared hostile and he did not support the prosecution case. He admitted that Vox Wagon, the car which was taken into possession in this case by the Police, was sold by V. L. Mehra through him to some person of Amritsar and he did not remember the name of the said purchaser. However, in his police statement, with which he was duly confronted, he stated that the said car was purchased by Jasbir Singh accused. In cross-examination this witness stated that he could not contradict if he had stated

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before the police that the said car was purchased by Jasbir Singh accused.

(19) The prosecution has led evidence to show that the recovered car No. DLX-866 and Viking Tempo No. DLE-5775 were in possession of Jasbir Singh and Paramjit Singh accused sons of Ajit Singh prior to the occurrence. A.S.I. Parma Nand (P.W. 57) was posted as Traffic Incharge at Amritsar in 1970. He used to see Jasbir Singh alias Jassi P.O. driving car No. DLX-866 and Viking Tempo No. DLE-5775. Similarly, A.S.I. Mohinder Singh (P.W. 61), who was posted at Amritsar in the year 1970 in the Anti-Smuggling Staff, Amritsar, knew Ajit Singh and his sons Satbir Singh, Jasbir Singh and Paramjit Singh and stated that the said vehicles belonged to Ajit Singh and Jasbir Singh accused and that he saw these vehicles many times in the possession of these persons.

(20) The other evidence led by the prosecution is regarding recoveries. Jai Chand, A.S.I. (P.W. 9) deposed that on September 9, 1970, Bachan Singh, Inspector interrogated Satbir Singh accused in his presence, who after making a statement under section 27 of the Indian Evidence Act, got recovered a rifle Exhibit P. 2 and five cartridges Exhibits P. 3 to P. 7, from a drain in the area of Rajatal. Inspector Bachan Singh (P.W. 68) also deposed that he interrogated Satbir Singh accused on September 9, 1970 in the presence of Jai Chand and Lachhman Singh P.Ws., who in consequence of his disclosure statement made to him got recovered the rifle Exhibit P. 2 along with the cartridges Exhibits P. 3 to P. 7, from a drain in the area of Rajatal.

(21) S. I. Brij Lal (P.W. 34) interrogated Paramjit Singh accused on September 12, 1970, who disclosed that he had kept buried a rifle near a Burji beyond village Burj and that he could get the same recovered. In consequence of his statement which is Exhibit P.F.F. this accused then led the police party to the said place and got recovered rifle Exhibit P. 8 after digging the place from near the Burji. This witness registered a separate case against the accused under the Arms Act.

(22) Inspector Bachan Singh (P.W. 68) interrogated Shiv Narain accused on September 24, 1970 in the presence of Gurbachan Singh (P.W. 37) and Chanan Singh (P.W. 18) at Amritsar, about

the gold bar alleged to have been delivered to him by Satbir Singh accused on the night of the occurrence. On interrogation, Shiv Narain accused made a statement under section 27 of the Evidence Act disclosing that he had kept buried a gold bar weighing 10 Tolas near the railway lines and near the Border Security Force Lines and offered to get the same recovered. The accused then led the Police party to the place of concealment and got recovered a gold bar Exhibit P. 15 after himself digging it out from the specified place. The disclosure statement of Shiv Narain accused is Exhibit P.U. and the memo regarding the taking into possession of the gold bar Exhibit P. 15 is Exhibit P.V. This witness also interrogated M. P. Singh accused who made a statement that he had kept concealed the gold bar received by him from Satbir Singh accused on the night of the occurrence in the southern corner of the grassy field of his residential house in Gopal Nagar No. 120-A and offered to get the same recovered and in consequence of his disclosure statement Exhibit P.S., this accused got recovered the gold bar Exhibit P. 16 from the place referred to above after digging out the same. This gold bar was taken into possession *vide* memo Exhibit P.T. It may be pointed out that Gurbachan Singh (P.W. 37) and Charan Singh (P.W. 18), who are his recovery witnesses did not support the prosecution case and were declared hostile.

(23) Charan Singh (P.W. 18), who was an attesting witness to the disclosure statement and the subsequent recovery of the gold bar made at the instance of Shiv Narain accused, did not support the prosecution story. Similarly, Gurbachan Singh (P.W. 37), who was the marginal witness of the disclosure statement and the consequent recovery of the gold bar at the instance of M. P. Singh accused, also did not support the prosecution case. Both these witnesses were duly confronted with their police statements wherein they had supported the prosecution case.

Jai Chand A.S.I. (P.W. 9) deposed that Ajit Singh accused after making a statement under section 27 of the Indian Evidence Act, got recovered a D.B.B.L. gun Exhibit P. 1 from the manure heap near his Haveli at village Burj on October 1, 1970. Jaswant Singh (P.W. 36) is a witness of the disclosure statement made by Ajit Singh accused and the consequent recovery of the D.B.B.L. gun Exhibit P. 1 from the manure heap near the Haveli of Ajit Singh accused on October 1, 1970. Constable Piara Singh (P.W. 8), who

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is an attesting witness of the recovery of D.B.B.L. gun Exhibit P. 1 referred to above, from Ajit Singh accused, corroborated the statement of A.S.I. Jai Chand (P.W. 9). Inspector Bachan Singh (P.W. 68) also deposed regarding the statement made by Ajit Singh accused which led to the recovery of the D.B.B.L. gun Exhibit P. 9.

Lachhman Singh (P.W. 30), who was an attesting witness to the disclosure statement made by Satbir Singh accused and the consequent recovery of rifle, also did not support the prosecution case. It will not be out of place to mention here that there are some other important witnesses in the case on whom, it is apparent, that a powerful pressure was exerted on behalf of the accused and consequently the said witnesses did not support the prosecution case. This aspect of the matter, I shall be dealing with in the later part of the judgment.

(24) It may be pointed out that Ajit Singh and his sons surrendered themselves in the Courts at different places and they could not be arrested by the police for a number of months. None of these accused persons claimed to be identified by the prosecution witnesses. Malook Singh accused put in an application for holding an identification parade which parade was arranged and was to be conducted by Shri S. R. Garg, Executive Magistrate 1st Class, Amritsar (P.W. 23) but as is clear from the statement and report of this witness Exhibit P.X dated September 4, 1970, this accused refused to participate in the identification parade. This witness recorded the statement of Malook Singh accused, Exhibit P.Y. in that regard. Similarly, Manmohan Singh, Executive Magistrate (P.W. 24) organised an identification parade on an application made by Pritam Singh accused, who also refused to participate in the parade and the statement of Pritam Singh accused, Exhibit P.Z. was recorded by this witness. Except the above mentioned two accused persons, namely, Malook Singh and Pritam Singh, no other accused claimed to be identified by any of the prosecution witnesses.

(25) Another important witness in this case is Shri R. K. Kapur (P.W. 41), who was posted as Commandant of the 26th Battalion of the Border Security Force, which battalion was detailed at the Indo-Pakistan border at Amritsar and Inspector M. P. Singh, and S. I. Shiv Narain and Harbhajan Singh, Constable, were serving in this very Battalion under him. This witness received a wireless message on July 7, 1970, from M. P. Singh accused, who was then second



in command, that there was an incident near pillar No. 100 falling in the area of picket Rattan Khurd. This witness asked Basant Singh, Deputy Superintendent of Police, to reach the spot and told him that he will follow him. He reached the spot at 12 noon on July 7, 1970, accompanied by D.S.P. Durga Singh, and Inspector Kashmir Singh. When he reached picket, Rattan Khurd, Havildar Karnail Singh was present there who took him to the spot and this witness saw that there was blood lying on the ground at two different places closely but the dead bodies had been removed by them. When he reached Pul Kanjri, he saw M. P. Singh, Shiv Narain and Harbhajan Singh and the other constables, who stand discharged, present there. He was told that there was an encounter with two intruders into India who had been killed. A.S.I. Gurbachan Singh P.W., Investigating Officer, was also present there who showed this witness a rifle which appeared to this witness to be either of N.C.C. or that of Home Guards or that of the Army. M. P. Singh told this witness that the dead bodies could not be identified as they were of smugglers of a far away place. He asked Gurbachan Singh A.S.I. and the officers of his company to verify the origin of the rifle. M. P. Singh recommended for the confirmation of Shiv Narain accused for having done good work. At about 6.00 P.M. he went back to Amritsar. On July 8, 1970, this witness left for Delhi for a week. On the evening of July 8, 1970, when he was leaving for Delhi by train, Inspector Kashmir Singh met him at the Railway Station and conveyed his doubts on the story of encounter on the basis of some rumours. This witness discussed this matter for some time with Inspector Kashmir Singh and asked him to make further enquiries. Shri Durga Singh and Shri P. N. Handa, Deputy Superintendents of Police, also met this witness at the Railway Station and expressed similar suspicions. This witness had also written a report about this incident to the higher authorities earlier in the morning in which he had recommended that the services of Shiv Narain shall be recognised separately for the good work done. In the evening when this witness heard the rumours that the encounter was a faked one, he then deleted those lines from his report and recorded that further enquiries shall be made. From Delhi he contacted Shri Handa D.S.P., on telephone on July 10, 1970, to enquire about this matter, who told him that till then no case had been registered by the local police and there were only rumours. He ordered Shri Handa to further interrogate all those nine B.S.F. persons involved in the encounter story with a warning that they should state the

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truth otherwise they would not be supported by him. This witness came back to Amritsar on July 16, 1970. On July 17, 1970, in the evening, he questioned M. P. Singh and Shiv Narain accused about this matter but they still supported the encounter story. He enquired from Karnail Singh and others, who also supported the encounter story. He continued making enquiries secretly. On July 19, 1970, he came to know that a case had been registered with the police regarding this incident. This witness again enquired from M. P. Singh and Shiv Narain on July 19, 1970, telling them that since a case had been registered, they should state the truth. He also made enquiries from all other Border Security Force officials about this matter at that time. Harbhajan Singh accused told this witness that he, Jai Gopal and Shabad Singh had left the picket on July 6, 1970 at about 8.00 P.M. to hold Naka at the border. He stated that he had in turn told Shabad Singh and Jai Gopal that on that night some smugglers might come at the border and big smuggling would take place and some smugglers would kill the other smugglers to wreck vengeance against them, and that all the recovered goods would be shown as a good work done. Harbhajan Singh accused then told this witness that they then took up positions at the border. At about mid-night, 7 or 8 smugglers passed by them from some distance out of which one Sati came to them and said that they had brought three smugglers and they would be finished in the Pakistan Territory. Harbhajan Singh accused also told this witness that the smugglers went towards Pakistan territory and Sati accused followed them and he himself rushed back to his picket and brought Shiv Narain accused to the Naka and then Shiv Narain accused asked Harbhajan Singh accused to go to border and ask Sati accused that one man may be got killed in Pakistan territory and the remaining two persons be killed in our territory so that the members of the Nakabandi party may show it as good work done. Harbhajan Singh further told this witness that he then went to the border and gave the directions to Sati accused as desired by Shiv Narain accused. He further told this witness that one alive person was handed over to some Pakistani Rangers and Pakistani Civillians and the name of that person was subsequently known as Shingara Singh. He then returned to the Naka side and smugglers followed him. In the meantime Harbhajan Singh accused heard a shot having been fired in the Pakistan territory. Sati accused then opened fire with his 303 rifle at those two smugglers whose names were subsequently found to be Hardip Singh and Kartar Singh.

Shiv Narain accused also confessed before this witness stating the same story reiterating that Harbhajan Singh accused came to him on the fateful night at about 12.00 and told him that Sati accused had brought smugglers which he wanted to kill in Pakistan. He told this witness that thereafter he sent Harbhajan Singh accused with a message to Sati that he should send one person to be killed in Pakistan and kill two persons on Indian side so that they would also show to have done good work. Thereafter, Harbhajan Singh accused went to Sati accused and accordingly one person was made over to Pakistan Rangers and Pakistani Nationals and the others two were brought to the Indian side where Sati accused killed them after hearing a report of a shot from Pakistan side. Thereafter it was learnt that the person killed in Pakistan was Shingara Singh and the persons killed on the Indian side were Hardip Singh and Kartar Singh.

(26) I have tried to touch the salient points of the prosecution case in the foregoing paragraphs of the judgment. Some of the other evidence led by the prosecution will be discussed at the relevant places in the later part of the judgment and some of the evidence being of formal nature need not be commented upon. Before venturing to appreciate the prosecution case and the defence version, it would be useful to point out the defence plea at this stage. The main defence plea as taken up by the main accused Ajit Singh and his sons, is that Surjit Singh D.S.P. P.W., Investigating Officer in this case, was annoyed with them and it was because of this that he registered a false case against the accused and procured false evidence. The defence has gone to the extent to allege that even Shri R. K. Kapoor, Commandant of the Border Security Force (P.W. 41), who is an officer of the rank of the Senior Superintendent of Police, supported the prosecution case under the pressure of Surjit Singh D.S.P. In this connection, the defence relies on a resolution of the Panchayat Samiti, Gandiwind, Exhibit D.H., passed under the Presidentship of Ajit Singh accused, who was then the President of the said Panchayat Samiti on August 5, 1963, in which it is mentioned that on July 26, 1963, Jhabal Police under the supervision of Shri Surjit Singh, Inspector of Police, conducted a raid at village Chhina Bidhi Chand in the house of Shri Harbans Singh, Vice-Chairman, Panchayat Samiti, Gandiwind and President Congress Mandal, Chhina Bidhi Chand. It is alleged that this has done on account of the vindictiveness on the part of the S.H.O. Shri

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Bawa Singh against Harbans Singh because Shri Harbans Singh had made complaints to the Senior Superintendent of Police, District Amritsar against Shri Bawa Singh, S.H.O., Jhabal and his companions. It is mentioned in the resolution that during this raid, Bawa Singh used filthy language against Harbans Singh and the women folk of his family. The resolution demanded from the Punjab Government that all responsible police officials concerned with this raid should be transferred from the place and an enquiry be held. It is claimed that it is because of the passing of this resolution by the Panchayat Samiti under the Chairmanship of Ajit Singh, accused that Surjit Singh D.S.P., who was then Inspector of Police, is instrumental in fabricating a false case against the accused.

(27) According to the defence plea taken up by Inspector M. P. Singh accused, he had strained relations with D.S.P. Surjit Singh P.W. and in a number of encounter cases registered at the instance of the personnel of the Border Security Force, D.S.P. Surjit Singh P.W. ordered the cancellation of such cases. Inspector M. P. Singh, accused impressed upon D.S.P. Surjit Singh P.W. that he was following a wrong policy which led to an argument on this issue on a number of times and for that reason he falsely involved him (Inspector M. P. Singh) in this case. He denied any connection with the other co-accused and pleaded that there was an encounter between the Nakabandi Party led by Shiv Narain accused and the smugglers in which the two deceased, namely, Kartar Singh and Hardip Singh, were shot dead. Shiv Narain accused admitted that he sent a *Ruqa* to Police Station, Gharinda on July 7, 1970, and got a case regarding the encounter registered and persuaded that the encounter was not a faked one and that the two deceased, namely, Kartar Singh and Hardip Singh, were shot at during the encounter. To the similar effect is the stand taken by Harbhajan Singh accused.

(28) Before venturing to appreciate the evidence led by the prosecution and the defence plea taken, it would be appropriate to broadly mention the background which, in my opinion, needs to be kept in mind for properly appreciating evidence of the case in hand. As I shall be presently pointing out, it is conclusively proved from the evidence on the record that this dispute, which resulted into the murders of three persons, is a matter which concerns the underground world of smugglers and anti-national elements who operate on the International Borders of this country. It is further clear

from the facts of this case that Ajit Singh, accused and his sons are not ordinary type of smugglers but are quite powerful people who indulge in smuggling at a big scale involving the illegal transactions of lacs of rupees. Since the dispute relates to the gang of smugglers which unfortunately fell out with each other, therefore, it will not be appropriate to expect, on the facts of this case, that persons not connected with these undesirable persons, that is to say, respectable persons, will poke their nose and come forward to give evidence. The persons who are not connected in any manner with the smugglers and the smuggling, would firstly not know the hidden tricks of this trade, there being no chance to know the facts, and secondly, no respectable person would come forward to associate himself with the police and to depose against the smugglers of the type of which Ajit Singh and his sons are, who are bound to wield a lot of influence in view of their money power and in view of their being desperate characters. The influence of these accused persons pervaded throughout the investigation and even at the trial of this case, as I shall be pointing out at the relevant places. So in my opinion, this is not a case where the evidence of the witnesses has to be brushed aside on the ground that the witnesses are not of good moral character and that the witnesses are police officials. Normally, the argument that the witnesses do not possess good moral character or that on the facts of a given case, the sole testimony of a police officer may not be believed, may carry some consideration, but keeping in view the facts and circumstances of this case, this ground alone, in my opinion, should not influence the judicial mind so as to ignore the evidence of such witnesses, though this will be kept in view while appreciating the evidence.

I may point out here that the judgment of acquittal written by the trial Judge, Shri Avtar Singh Gill, is really perverse. As is apparent from the judgment, he has recorded contradictory findings and has failed to appreciate the evidence from its true perspective. He has judged the evidence as if he was dealing with a case of recovery of 10 grams of opium in which defence had been taken that the accused had been falsely involved in the case because of the enmity with the Investigating Officer. He has in fact gone out of the way in rejecting very good pieces of evidence which the prosecution produced and which, in my opinion, go a long way to implicate some of the accused persons named in this case. Various types of evidence have been led in this case and also findings have been recorded

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thereon. It is a different matter that after the findings on each matter are recorded, the result may be acquittal or conviction of the accused, but to start with a prejudice and to reject each and every piece of evidence, though proved on record to the hilt, is not a judicial approach to the problem before the Court. I cannot refrain from mentioning here that Shri Avtar Singh Gill, who tried this case, has been placed under suspension on the allegations of corruption. I may point out here that in the judgment at one place, Shri Avtar Singh Gill recorded the following sentence :—

“Inspector Bachan Singh P.W. stated that he recorded the statement of Charan Singh P.W. on 18th July, 1970. If that was so, he ought to know about the meeting that took place at the residence of Ajit Singh accused on the Taylor Road, Amritsar.”

It may be seen that throughout the evidence on record, there is no mention that Ajit Singh accused resides at Taylor Road, Amritsar, though there is evidence that he owns a house at Amritsar, but the learned trial Judge mentioned the address of the house of Ajit Singh accused at Amritsar not from the judicial record but from his personal knowledge which crept into the judgment unconsciously. It is admitted before us by the learned defence counsel that Ajit Singh accused has got a house at the Taylor Road, Amritsar. I am conscious that merely because Shri Avtar Singh Gill is suspended on account of corruption charges, this should not influence the judicial mind, but the way he has written this judgment, clearly goes to show that he has not applied dispassionate judicial mind to the evidence led in this case. It was not even necessary for me to mention about the trial Judge in this manner, but since what I have observed is a fact and there being an appeal against acquittal where I am supposed to take into consideration the findings of the learned trial Judge while taking a contrary view, therefore it became necessary to make these observations. If I try to criticise the judgment of the learned trial Judge on each and every finding recorded by him, which in my opinion, are liable to be reversed, it will become very difficult for me to do so, because the approach made by him to the case is perverse and is not consistent and contradictory findings have been recorded on a number of matters. Therefore, it will not be possible to discuss the findings recorded by him in that

fashion and I have, therefore, made these observations in order to obviate the necessity of discussing each and every finding recorded by him. I propose to appreciate the evidence led by the prosecution and the defence afresh as in my view the judgment of the learned trial Judge stands vitiated on the grounds referred to above and it is not necessary for me to reverse each of the findings recorded by the trial Judge.

(29) In my view, the starting point of the case should be to find out whether Ajit Singh and his sons, the main accused in this case, are really international smugglers indulging in smuggling at the international border or not, or is it that they have been wrongly dubbed so because of Ajit Singh's having presided over a meeting of the Panchayat Samiti of which he was a Chairman—which Samiti passed a resolution condemning the attitude of Bawa Singh and Suijt Singh police officers in the year 1963. In this regard, the statement of Daljit Singh (P.W. 67), Inspector Customs, is very much revealing. Though this witness did not support the prosecution case and was declared hostile, but when cross-examined, it became apparent that he was trying to support the accused, but still from his statement some material has come on the record which is favourable to the prosecution. This witness remained posted at Amritsar from 1968 till August, 1970 and he admitted that he had been sending reports to the higher authorities of the Customs Department against M. P. Singh accused. He admitted that he submitted the reports to the higher authorities of the Custom Department to the effect that Ajit Singh accused and his sons were carrying on smuggling in league with M. P. Singh. This report was sent by him in June, 1970. In examination-in-Chief this witness stated that though he went to the border on July 7, 1970 yet he did not meet M. P. Singh accused on that date, but in cross-examination he admitted that he went to police post Kahangarh to see the captured smuggled goods on the border as M. P. Singh accused had told him that he would hand over those goods to the police. He admitted that M. P. Singh accused met him on July 7, 1970 at the border. It is apparent from the statement of this witness that he is favourably inclined towards the accused and is not their enemy, but in cross-examination he came out with a truthful statement that he made a report to the higher authorities of the Customs Department in June, 1970, that Ajit Singh and his sons were carrying on smuggling at the international border in league with M. P. Singh accused.

(30) We have again the statement of Puran Singh (P.W. 3) who deposed that he was a partner in smuggling with Ajit Singh and his sons and they continued these activities for two to three years and that a sum of Rs. 15,000 became due to him from this business which was not paid by Ajit Singh and his sons to him. It was because of this that Puran Singh P.W. then on one occasion slipped away with 2,000 Tolas of gold worth five or six lacs of rupees which gold in fact created bad blood between him and Ajit Singh and his sons. I shall be referring to the details of this incident while discussing the motive part of the prosecution case. Gurbax Singh (P.W. 38), who is the brother of Shingara Singh deceased also stated that Puran Singh P.W. was companion of Ajit Singh and his sons in the matter of smuggling. In the confessional statement made by Shiv Narain and Harbhajan Singh accused before Shri R. K. Kapoor, P.W. also, it is mentioned that Sati accused and others were present on the border of the fateful night in connection with smuggling. S.I. Darshan Singh (P.W. 45), in December, 1969, was posted at Police Station, Lopoke. On July 6, 1969, when holding a Nakabandi in the area of village Bachiwind, he intercepted jeep No. MRB-387 from which he recovered 20 Kgs. of opium and a rifle from the possession of Dayl Singh accused. This jeep, according to his statement, belongs to Ajit Singh and his party.

(31) As I will be presently discussing the prosecution evidence regarding motive, it would become amply clear that Ajit Singh and his sons were indulging in large scale smuggling along with Puran Singh P.W. and others and Puran Singh P.W. fell out with them as he, having taken away gold worth five or six lacs of rupees, which Ajit Singh and his party wanted to recover from him.

(32) It would be appropriate to discuss the evidence regarding motive at this place. At the outset, it may be pointed out that Shingara Singh deceased lodged the first information report Exhibit P.P.Y. at Police Station, Gharinda on May 20, 1970, that is about 1½ months before this occurrence took place. In this report he stated that his eldest son from his first wife, namely, Puran Singh P.W., was indulging in smuggling along with Ajit Singh and his sons of village Burj and that on May 6, 1970, Satbir Singh and Jasbir Singh accused along with some others took Puran Singh P.W. from their village and on the third day, Ajjit Singh, accused along with others again came there to ask regarding the whereabouts of



Puran Singh P.W. when Ajit Singh accused told him that Puran Singh P.W. had fled away with gold worth rupees five or six lacs and that Shingara Singh deceased should search out Puran Singh P.W. and produce him before them. He further stated that on the third day of Puran Singh P.W. having been abducted, this party abducted Shabeg Singh, brother-in-law of Puran Singh P.W., resident of village Chhidon of Police Station, Lopoke. Shingara Singh deceased alleged that he had firm suspicion that Satbir Singh, Jasbir Singh and Paramjit Singh sons of Ajit Singh accused of village Burj and others have abducted Puran Singh P.W. due to a dispute over a big amount of illegally smuggled gold and that they have kept him concealed with an intention to get him killed or to kill him. This first information report has been proved by S.I. Baldev Sharma P.W. who recorded the same. According to the prosecution case, the motive for murder of Shingara Singh and Hardip Singh deceased along with Kartar Singh deceased, who are father, brother and uncle of Puran Singh P.W. respectively, is the dispute regarding gold worth five or six lacs of rupees which Puran Singh P.W. took away and which was not being returned. It has been vehemently contended by Shri J. N. Kaushal, the learned counsel for the accused, that the statement made by Shingara Singh deceased in the first information report referred to above which throws light on the motive part of the prosecution case in hand, is inadmissible in evidence as the same is not covered under the provisions of section 32 of the Indian Evidence Act. It has been emphatically argued by the learned defence counsel that the statement of a deceased person regarding the motive of his murder made before his death cannot be held to be admissible under the provisions of section 32 of the Evidence Act. The learned counsel in this regard relies on *Pakala Narayana Swami v. Emperor* (1), *Public Prosecutor v. Munigan* (2), *Gokul Chandra Chatterjee v. The State* (3), *Nimoolpal Majumdar, v. The State* (4), *Harendra Kumar Mondal and others v. Emperor* (5), *Imperatrix v. Rundra* (6), *Autar Singh v. The Crown* (7) and *Vinayak*

- (1) A.I.R. 1939 P.C. 47.
- (2) A.I.R. 1941 Madras 359.
- (3) A.I.R. 1950 Calcutta 306.
- (4) A.I.R. 1955 Calcutta 359.
- (5) A.I.R. 1938 Calcutta 125.
- (6) I.L.R. 25 Bombay 45.
- (7) A.I.R. 1924 Lahore 253.

*Datta Durbhatkar and another v. The State and another* (8), *Rattan Gond v. The State of Bihar* (9) and *Pritam Singh v. The State of Rajasthan and others* (10).

(33) From the perusal of the provisions of sub-section (2) of section 32 of the Evidence Act, it is difficult to hold that a statement of a deceased person made by him regarding the motive which ultimately led to his murder, cannot be held to be admissible under the provisions of this section. This broad proposition cannot be accepted. It may well be, that on the facts of a given case, a particular statement may be held to be admissible and another statement on the facts of that case, may be held to be inadmissible in evidence. The provisions of sub-section (1) of section 32 of the Indian Evidence Act are reproduced below :—

“32. *Cases in which statement of relevant fact by person who is dead or cannot be found etc., is relevant:—*

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be produced without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

1. *When it relates to cause of death.*—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

(8) 1970 Criminal Law Journal 1801=A.I.R. 1960, Goa, Daman and Diu 96.

(9) A.I.R. 1959 Supreme Court 18.

(10) 1969 C.A.R. 418 (SC).

(34) It would be seen from the plain language of this subsection that when a statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of the dead person's death comes into question, such statements become relevant and admissible whether the person who made them was or was not at the time when they were made under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question. The words "as to any of the circumstances of the transaction which resulted in his death" are wide enough to include the motive of the alleged crime which must have proximity to the alleged crime. The motive in a given case may be one of the circumstances of the transaction which resulted in the death of the person who made the statement. The basic authority is *Pakala Narayana Swami's case (supra)*. It was held by their Lordships of the Privy Council in that case that the circumstances must have some proximate relation to the actual occurrence and must be of the transaction which resulted in the death of the declarant. It was precisely held by their Lordships that the suggestion that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the "Circumstances" can only include the acts done when the death was caused and then alone the provision of section 32 of the Evidence Act will be attracted is not correct. These limitations were held to be not applicable by their Lordships as the natural meaning of the words "as to any of the circumstances of the transaction which resulted in his death" do not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. It was held by their Lordships that the statements made by the deceased that he was proceeding to the spot where he was in fact killed or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be admissible and relevant whether the person was unknown, or was not the person accused. In nutshell, the circumstances must have some proximate relation to the actual occurrence though in some

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cases they may be related to dates at a considerable distance from the date of the actual killing. The contention of the learned defence counsel that the statement regarding the motive made by a deceased person cannot in any circumstances be held to be admissible under the provisions of sub-section (1) of section 32 of the Evidence Act, is thus without any merit. On the facts of a given case, it may become admissible and on the facts of another given case, it may not be held to be admissible.

(35) Coming to the facts of the present case, I am of the considered opinion that the first information report lodged by Shingara Singh deceased on May 20, 1970, at Police Station, Gharinda, copy of which is Exhibit P.P.Y., which contains the allegations that Puran Singh, P.W., his son, was involved alongwith the sons of Ajit Singh of Burj in smuggling and that there was a dispute about the smuggled gold worth rupees five lacs between Puran Singh and Ajit Singh and his sons and that Puran Singh P.W. had been abducted by Satbir Singh, Jasbir Singh, Paramjit Singh sons of Ajit Singh and others, and that Shabeg Singh, brother-in-law of Puran Singh P.W. was also subsequently abducted, is a statement which becomes admissible and relevant in view of the provisions of sub-section (1) of section 32 of the Indian Evidence Act because in the present case the death of Shingara Singh is in question, and according to the prosecution case, the motive for the abduction and killing of Shingara Singh deceased is the earlier abduction of Puran Singh P.W. and because of the dispute with Puran Singh P.W. over the smuggled gold valuing to the tune of rupees 5 or 6 lacs. It is in this context that it can safely be held to be a circumstance of the transaction which resulted into the death of Shingara Singh deceased. My view in this regard is fortified by a decision of a Division Bench of the Bombay High Court in *Allijan Munshi v. State* (11). In that case it was held that a complaint made by the deceased to the police expressing apprehension of death at the hands of the accused even made two months before, was held to be admissible under the provisions of section 32 and also under the provisions of section 8 of the Evidence Act. In my opinion, the statement of Shingara Singh deceased, referred to above, is clearly admissible in view of the provisions of section 32 and so also under the provisions of section 8 of the Evidence Act.

(11) A.I.R. 1960 Bombay 290.

(36) Similarly, A Division Bench of the Madras High Court in *Emperor v. Faiz and others*. (12), held that where a person commits suicide as the result of ill treatment received at the hands of an accused person and that treatment is the cause, though not the direct cause of the death, the whole affair, ill-treatment and subsequent suicide, forms one transaction, and therefore, statements made by the deceased as to the cause of his death are admissible in evidence under section 32(1) of the Evidence Act.

(37) Reference in this connection may also be made to the decisions of the Judicial Commissioner of Himachal Pradesh reported in *Ranjit Singh and another v. State* (13) and *Findal v. State*. (14) wherein same view was taken.

(38) Reference may now be made to the authorities relied upon by the learned counsel for the defence in this regard. I may straight way point out that I am not inclined to agree with the view taken in a decision of the Judicial Commissioner of Goa, Daman and Diu in *Vinayak Datta Durbhatkar and another v. State and another* (*Supra*). It was held in that case that where the deceased refers in his dying declaration to threats given by accused to him then that part of the declaration is not admissible under section 32(1) of the Evidence Act which has to be strictly construed. With due respect to the learned Judicial Commissioner, in my view, this interpretation of the provisions of sub-section (1) of section 32 of the Evidence Act is not warranted, and is also against the basic authority of the Privy Council in *Pakala Narayana Swami's (supra)*. No doubt the proximity of the act of the statement of the deceased sought to be relied upon and the ultimate transaction of death is the necessary ingredient to attract the provisions of sub-section (1) of section 32 of the Evidence Act, but to hold that the threats given by the accused which were followed by actual assault, would not be admissible in the statement of the deceased made in the dying declaration, is in fact nullifying the very provisions of this sub-section. This authority has been very much highlighted and has been wrongly relied upon by the trial Judge in coming to the conclusion that the statement of Shingara Singh referred to above is inadmissible in evidence.

(12) A.I.R. 1916 Lahore 106.

(13) A.I.R. 1952 Himachal Pradesh 81.

(14) A.I.R. 1954 Himachal Pradesh 11.

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(39) The two Supreme Court decisions relied upon by Shri J. N. Kaushal, the learned counsel for the defence, in support of his proposition that the statement of a deceased person regarding the motive of the commission of offence is not admissible under section 32(1) of the Evidence Act, are *Rattan Gond v. The State of Bihar* (9) *ibid* and *Pritam Singh v. State of Rajasthan and others*, (10) *ibid*. Both these authorities in fact do not lay any such proposition of law. In *Rattan Gond's case (supra)*, the statement which was sought to be relied upon was in fact not the statement of the deceased person. The accused person was tried for the murder of B. When B's mother left the house in the morning, B and her sister A were both in the house. The mother finding A alone in the house when she returned, enquired from her about B. She made certain statement about B to her mother and later in the day to others. But A died before her statement could be recorded in a judicial proceedings. It was in this situation held that the statement made by A did not relate to the cause of her death or any of the circumstances relating to her death, but on the contrary, the statement related to the cause of death of her sister and, therefore, this statement was not admissible under section 32(1) of the Evidence Act. Similarly, in *Pritam Singh's case (supra)* also, there was no such proposition laid down as is being contended by the learned defence counsel. In that case, the deceased was the wife of the accused. The statement of the mother of the deceased to the effect that her daughter (deceased) had at one occasion told her that it would have been better if she had not been married to the appellant, was construed by the trial Judge to draw an inference that the deceased was a woman of loose moral character and that she did not want to live with the accused and, therefore, it is likely that she had attempted to murder her husband, was held to be wholly unwarranted inference by the Supreme Court. It may be mentioned that in this case the accused husband had taken a plea that it was in self-defence of his person that he gave injuries to the deceased who died. The statement of the mother from which an inference was sought to be drawn that the deceased was a woman of loose moral character, clearly was not capable of drawing any such inference and, therefore, was held to be inadmissible under section 32(1) of the Evidence Act. This authority is a decision on the facts of its own case.

(40) I have already discussed Privy Council and Supreme Court authorities relied upon by the learned defence counsel. The other authorities relied upon by him, which have been mentioned in the earlier part of this judgment, need not be discussed in detail as those are the cases decided on their own facts and no such proposition of law has been laid down as is being canvassed by the learned defence counsel, and if in any of these authorities contrary view is taken than the one taken by me as is taken by the Judicial Commissioner of Goa, Daman and Diu in *Vinayak Datta Durbhatkar's case (supra)*, I am inclined not to follow the said authority as according to me that is not the correct interpretation of the provisions of section 32 of the Evidence Act, and I am not bound by any of these authorities. In this view of the matter, it is to be held that the statement of Shingara Singh in the form of first information report Ex. P.P. 1 made by him on May 20, 1970, 1½ months before the actual occurrence, which furnishes a piece of motive for his ultimate abduction and killing, is relevant and admissible in evidence and shall have to be taken into consideration while deciding this case.

(41) There is overwhelming oral evidence regarding the motive on the part of Ajit Singh accused-respondent and his sons, Satbir Singh, Paramjit Singh and Jasbir Singh, for committing the crime. No doubt some parts of the oral statements of the witnesses, reference to which will be made a little later, are not to be relied upon, but it would not mean that their testimony should be completely held to be unreliable. I am conscious that while appreciating the evidence given by the prosecution witnesses, I shall have to separate the grains of acceptable truth from the chaff, but I am unable to agree with the learned defence counsel that this is a case where truth and falsehood are inextricably mixed up that grains cannot be separated from the chaff. There are certain very important circumstances which go to probalilise certain important parts of the statements of the prosecution witnesses. It is well settled that the mere fact that the evidence of the prosecution witnesses is not firm and safe and unable to be relied upon with regard to certain part of the prosecution case, is no ground to reject it mechanically as regards the other part of the prosecution case if it inspired confidence. The maxim "*falsus in uno falsus in omni bus*" is not to be blindly invoked in appraising the evidence adduced in Courts where the experience shows that the witnesses seldom tell the whole truth, but often resort to exaggeration, embellishment and padding up to support the story, however true in

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the main. In the present days the function of the Court to disengage the truth from the falsehood and to accept what it finds to be true and reject the rest, is of utmost importance. It is only where truth and falsehood inextricably mixed up, pollute the entire fabric of the narration given by a witness that the Court can be called upon for rejecting his evidence *in toto*, but not otherwise. In this connection, reference may be made to *Bhagwan Tana Patil v. The State of Maharashtra*, (15) and *Laxman and others v. The State of Maharashtra*, (16). It is also well settled that the mere fact that the prosecution witnesses are police officers, is no ground to discard their testimony in the absence of evidence of their hostility to the accused. In this connection reference may be made to a decision of the Supreme Court in *Nathusingh v. The State of Madhya Pradesh*, (17).

(42) As I have already observed in the earlier part of my judgment that this case relates to the underground world of the smugglers operating on the international borders indulging in the smuggling transactions amounting to lacs of rupees and in such cases respectable citizens, who are not in any way connected with this underground world of the smugglers and who cannot appreciate the techniques of the smugglers, cannot be expected to become prosecution witnesses. Either persons, who are associated with this underground world and who happen to fall out among themselves, can come forward to reveal the mysterious events or the police officers who are put on duty to detect such crimes, can depose about the facts coming to their notice. It is in this background that the oral evidence adduced by the prosecution has to be appreciated in order to judge the guilt or otherwise of the accused named in this case. In addition to the statement of Shingara Singh made in the first information report lodged by him on May 20, 1974 Ex. P. P. y regarding the dispute of Puran Singh P.W. with Ajit Singh accused and his sons in connection with the smuggled gold worth five to six lacs of rupees and consequent abduction of Puran Singh P.W., we have the direct evidence of Puran Singh (P.W. 3) in this regard. This witness stated that he joined with Ajit Singh and his sons in the smuggling and a sum of Rs. 15,000 was due to him on account of the profits made out of this trade which amount was not being paid to him by Ajit Singh and his sons and that a few

(15) A.I.R. 1974 Supreme Court 21.

(16) A.I.R. 1974 S.C. 308.

(17) 1974 Cril. L.J. 11.



months before the occurrence, when he along with Satbir Singh, Jasbir Singh and 10/12 labourers smuggled 15 jackets of gold each weighing 1,000 tolas from Pakistan in the Indian Territory with the connivance of M. P. Singh and Shiv Narain accused, he succeeded in taking away two jackets of gold weighing 2,000 tolas. Ajit Singh and his sons made endeavours to recover this gold from Puran Singh P.W. who informed them that he had handed over that gold to his brother Hardip Singh deceased, but when they did not succeed in recovering the gold, they abducted Puran Singh P.W. and handed him over to the Pakistani smugglers namely, Shaffi and Yakub with the connivance of M. P. Singh and Shiv Narain accused. Gurbax Singh (P.W. 38) brother of Shingara Singh deceased is another witness who deposed about this fact. Charan Singh (P.W. 31) whose sister was married to Shingara Singh deceased, also corroborated the statement of Puran Singh P.W. This witness was contacted by Ajit Singh accused for pressing Puran Singh P.W. and his relations for the return of the gold. It would thus be seen that it can safely be held beyond all reasonable doubt that the prosecution has succeeded in establishing that Ajit Singh accused and his three sons, namely, Satbir Singh, Paramjit Singh and Jasbir Singh P.O., had a dispute about 2,000 tolas of gold worth rupees five to six lacs in those days with Puran Singh P.W. and that in consequence thereof they abducted Puran Singh P.W. in the month of May, 1970, with a view to pressurise him to recover the gold. It is, therefore, safe to hold that during the days of this occurrence Ajit Singh and his sons were actively operating to recover the said gold and they had motive to abduct Shingara Singh, Hardip Singh and Kartar Singh deceased persons, with a view to confront them with Puran Singh P.W. and to effect the recovery of the gold. They also had the motive to kill the deceased persons in the presence of Puran Singh P.W. in order to pressurise him that he will also meet the same fate if he failed to deliver the gold.

(43) The next important question, which needs determination at this stage, is whether Hardip Singh and Kartar Singh deceased along with Shingara Singh deceased were present at Amritsar on July 6, 1970 and were abducted from there in the manner suggested by the prosecution or whether Hardip Singh and Kartar Singh deceased in fact indulged in smuggling resulting in an encounter with Shiv Narain and his party on the night intervening 6th and 7th of July, 1970 and thus were killed in the encounter. It is to be noted that it is not disputed either by the prosecution or the defence that

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Hardip Singh and Kartar Singh deceased were shot dead on the night intervening 6th and 7th of July, 1970 near pillar No. 100 of picket of Rattan Khurd at the international border of Pakistan and India. The only question to be determined is whether they were killed in an encounter as given out by M. P. Singh, Shiv Narain and Harbhajan Singh accused-respondents or was it that they were killed in the circumstances as given out by the prosecution. In this regard it may be pointed out that there is overwhelming and convincing evidence to hold that Shingara Singh, Hardip Singh and Kartar Singh, since deceased, were present at Amritsar till about 2.00 p.m. on July 6, 1970. In this regard reference may be made to the statements of Mangal Singh (P.W. 17), Smt. Jasbir Kaur (P.W. 26) Lady Dr. S. K. Kohli (P.W. 21), Dr. Mohinder Singh (P.W. 12), Kishan Singh (P.W. 19), Harnam Singh (P.W. 5) and Gurnam Singh (P.W. 22). According to the prosecution case, all the three deceased travelled together in a bus from their village for Amritsar where Kartar Singh deceased had come to sell his vegetables in the market. Mangal Singh (P.W. 17) is the father of Kartar Singh deceased. He deposed that Kartar Singh left the village Amritsar to sell the vegetables (Tindas). To the similar effect is the statement of Smt. Jasbir Kaur (P. W. 26), who is the wife of Kartar Singh deceased. It may be pointed out that both these witnesses did not support the prosecution cases regarding the rest of the matter and there are glaring circumstances proved on the record to hold that both these witnesses were in fact won over by the accused persons with their pressure of money or otherwise. This part of the case will be discussed a little later, but the fact remains that to the extent that Kartar Singh deceased came from his village to sell Tindas at Amritsar, both these witnesses supported the prosecution case. Kishan Singh (P.W. 19) is a Commission Agent of Vegetable Market, Amritsar, who on the basis of the record pertaining to July 6, 1970, deposed that Kartar Singh deceased brought Tindas for sale at his shop on July 6, 1970 and the same were sold to various parties for a consideration of Rs. 16.80 Ps. and this witness paid this amount to him who left his shop before 9.00 a.m. Kartar Singh deceased was personally known to him. It is significant to note that at the time of the preparation of inquest report of Kartar Singh deceased A.S.I. Gurbachan Singh (P.W. 62) recovered a sum of Rs. 18.75 P. from the pocket of Kartar Singh deceased which further corroborates the statement of Kishan Singh P.W., that he paid him Rs. 16.80 P. as the sale price of the Tindas to him.

(44) According to the prosecution case, Shingara Singh deceased had come to Amritsar on that day as he was to appear in a Court in

connection with a case pending against him under section 9 of the Opium Act. This fact is amply proved from the statement of Gurnam Singh (P.W. 22) who was then working as a Reader in the Court of Shri Daibara Singh, Judicial Magistrate 1st Class, Amritsar, who deposed that on July 6, 1970, Shingara Singh deceased, who was being prosecuted under section 9 of the Opium Act, appeared in Court and that the case was adjourned to August 3, 1970, when and subsequent thereto, he did not appear. According to his statement, no evidence was recorded on that date in this case and the case was adjourned sometime before lunch. It is thus conclusively proved that Shingara Singh deceased was at Amritsar before lunch time on July 6, 1970. Hardip Singh deceased was the son of Shingara Singh deceased and he accompanied his father as he was to appear before a Magistrate for trial. Harnam Singh (P.W. 5) is a witness in whose presence the three deceased persons were abducted from Crystal Chowk Amritsar at About 2.00 p.m. on July 6, 1970. The learned defence counsel has vehemently argued that the statement of this witness should not be relied upon as his presence at the time of abduction is not natural. In order to analyse this argument, it has to be seen whether his statement that he was present at Amritsar at the time of occurrence finds corroboration from some independent evidence or not. With a view to examine this aspect of the case, reference may be made to the statement of lady Dr. S. K. Kohli (P.W. 21) and Dr. Mohinder Singh (P.W. 12). According to the statement of Harnam Singh P.W., his wife Smt. Piaro was admitted in V. J. Hospital, Amritsar, before July 6, 1970 and in that connection he used to come from his village daily to the hospital with her meals and other articles. It was because of this reason that he accompanied the three deceased persons and Malook Singh P.W. from his village in the same bus. All the five persons got down from the bus at Bhandari Bridge when Kartar Singh deceased went to the vegetable Market, Shingara Singh, Hardip Singh deceased persons, and Malook Singh went to the Bazar and this witness went to the hospital. Shortly thereafter, the three deceased persons and Malook Singh P.W. came to the hospital to enquire about the health of his wife Smt. Piaro. It was then that he told Shingara Singh that a bottle of blood was required by the doctor for the operation of his wife and he requested him that he should arrange the same through Dr. Mohinder Singh (P.W. 12) who was his nephew and who was posted in V. J. Hospital. Shingara Singh deceased told him that he would first attend the Court and thereafter he would come to the hospital and held him in this regard. This witness waited for

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Shingara Singh deceased till 1.00 p.m. and when Shingara Singh did not come to the hospital, he went to the Court from where all the three deceased along with this witness proceeded towards V. J. Hospital, when they were near the Chowk of V. J. Hospital, a big vehicle and a car, which this witness identified to be the same which were recovered in this case, came and stopped there. Ajit Singh, Jasbir Singh P.O., Satbir Singh, Stara, Paramjit Singh, Baghel Singh, Tara Singh, Arju, Bachna, Darshan and Pritu along with Malooka and Dayal came out of those vehicles. There were two other persons in police (Thanedar's) uniforms who were called Pamma and Malkiat. Both of these persons were armed with revolvers. Paramjit Singh had a stengun. Jasbir Singh and Satbir Singh had revolvers. Malooka had a double barrel gun. Dayal had a rifle. Hardip Singh deceased was also armed with a rifle and Shingara Singh deceased had a Kirpan. Kartar Singh deceased was empty handed. Malkiat Singh P.O. snatched the rifle of Hardip Singh deceased and others, physically lifted Kartar Singh, Hardip Singh and Shingara Singh deceased, put them in the bigger vehicle and took them away. The statement of this witness regarding his presence at Amritsar on the day of occurrence is corroborated from the documentary as well as oral disinterested and convincing evidence. Lady Dr. S. K. Kohli (P.W. 21) deposed that in July, 1970, she was working as Registrar, Medical College, Amritsar. On the basis of the Register of Admission (Indoor Admission Register) of Unit No. 1, she stated that according to S. No. 1729, dated 30th June, 1970, Smt. Piaro, wife of Harnam Singh P.W. was admitted as an indoor patient as a case of Fibriod Uterus. She further stated that this patient absconded on July 8, 1970, she produced Exhibit P.A., and attested copy of the relevant entry of the original register in this regard. Dr. Mohinder Singh (P.W. 12) further corroborates the statement of Harnam Singh P.W., that on July 6, 1970, Shingara Singh and his son Hardip Singh deceased met him in V. J. Hospital at about 9 or 10 a.m. and requested him to arrange some blood which was required for the operation of Smt. Piaro, wife of Harnam Singh P.W. Shingara Singh deceased further told him that he would come after attending a hearing in Court at about 2 or 3 p.m. It was argued by the learned defence counsel that whereas Harnam Singh P.W. said that Shingara Singh deceased told him that he would first attend the Court and then he would meet Dr. Mohinder Singh P.W. and this witness said that Shingara Singh and Hardip Singh deceased had met him at about 9 or 10 a.m., and, therefore, their statements are contradictory. This argument of the learned defence

counsel has not appealed to me. No doubt that Shingara Singh deceased had told Harnam Singh P.W., that he would meet Dr. Mohinder Singh P.W. after attending the Court, but it is not improbable that while leaving the hospital, he might have met Dr. Mohinder Singh P.W., so that he should arrange for the blood and promised to meet him again after attending the hearing in the Court. Dr. Mohinder Singh is no doubt related to Shingara Singh deceased, but there is no reason to disbelieve the statement of this witness as is clear from the evidence that Smt. Piaro did need blood for being operated upon and it was quite natural for Harnam Singh to have asked Shingara Singh deceased to help him in arranging the blood through the influence of Dr. Mohinder Singh P.W. In this view of the matter, the presence of Harnam Singh at Amritsar on the day of occurrence, to my mind, is established and it is to be held that all the three deceased and Harnam Singh P.W. travelled in the same bus and reached Amritsar and that Harnam Singh was with the deceased persons when they were abducted from the Crystal Chowk, Amritsar.

(45) It has been vehemently contested by the learned defence counsel that Harnam Singh P.W.'s conduct is not natural as he did not report the matter to the police and further that he did not inform his relations about this abduction. The other criticism levelled against his statement is that he stated that there is no Bazar or shop near the place of occurrence whereas there are a number of shops near the place of occurrence. As regards the alleged contradiction that there was no Bazar or shop near the place of occurrence, suffice it to say that it is not a material contradiction as there is overwhelming evidence to hold that Harnam Singh P.W. used to visit V. J. Hospital, Amritsar in connection with the ailment of his wife Smt. Piaro, who was admitted in the hospital and while going to the hospital, he was bound to pass near the place of occurrence and, therefore, it cannot be said that he never saw the place of occurrence and it is because of this that he made this part of the statement. This is a minor contradiction and no weight can be attached to it when it is found that he did visit this place while going to the hospital several times.

As regards the other criticism that he did not inform the police about the occurrence, it is to be noted that this was a dispute between smugglers *inter se* Puran Singh P.W. had already been abducted and though first information report had been registered,

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yet with no consequence. Puran Singh P.W. could not be recovered. Firstly, it is quite natural on the part of Harnam Singh P.W. to have thought of remaining aloof rather than to be involved in the dispute of smugglers and secondly, even if he was to report the matter to any petty police officer, it is clear that no action was likely to be taken as is clear from the facts of the present case that though D.S.P. Surjit Singh (P.W. 64) reported on July 12, 1970, that the encounter story was a faked one, yet the case could not be registered till July 17, 1970 without obtaining the orders of the Senior Superintendent of Police. It is clear that there was no bar for D.S.P. Surjit Singh P.W. himself to have registered a case but as it appears in the present day administration that no petty police officer is likely to take responsibility in the matter of prosecuting international smugglers without having the blessings of the highest police officer in the district and even above. The witnesses against whom criticism is now being made that they did not inform the police in fact were quite helpless and they could not come out with this reason in the Court that since they were helpers in the matter, therefore, no proceedings were taken because if he would have said so at the trial, the police officials, who are responsible for investigating the case, would be annoyed which will not help the witnesses in any manner. It is in this background that this criticism that the witnesses kept silent and did not inform the police for some time, has to be held of no consequence as till the encounter story was held to be a faked one by the Senior Superintendent of Police, no police official was prepared to register any case on the statement of these insignificant witnesses. It was only when a decision was taken at the level of the Senior Superintendent of Police that the encounter story was a faked one and a case regarding the occurrence was to be registered, the police started the investigation and the statements of the witnesses were sought to be recorded. In the facts and circumstances of this case, therefore, in my opinion, the criticism that their statements before the police were belated, cannot be attached much weight. It may be pointed out that the said witness including Harnam Singh P.W., have made an attempt to explain the delay in their police statements by stating that the accused persons subsequent to the abduction and killing of the deceased persons, threatened them that if they reported the matter to the police, they will be dealt with in the same way, and this padding obviously is at the instance of the police in order to explain the conduct of the police officers who failed to take prompt decision in the matter. Therefore, this portion of the statement of Harnam Singh P.W. and that of the

other witnesses stating that the accused threatened them subsequently that 'they would be killed and, therefore, they did not disclose the incident to anyone is to be held a police padding and no weight can be attached to this part of the statements made by some of the prosecution witnesses including Harnam Singh P.W.

(46) Another important piece of evidence which also goes to prove that an incident of abduction took place in the Crystal Chowk, Amritsar, on July 6, 1970, consists of the statements of D.S.P. Gurdial Singh (P.W. 10), Inspector Gurmukh Singh (P.W. 11), and Constable Amrik Singh (P.W. 46), who proved the copy of the daily diary Exhibit P.P.A., dated July 6, 1970, relating to Police Station, Civil Lines, Amritsar, concerning entry No. 40 relating to the departure of Inspector Gurmukh Singh P.W., and also his return to the Police Station, Civil Lines, Amritsar. Gurdial Singh (P.W. 10), who was posted as D.S.P. Saddar, Amritsar, on July 6, 1970, received a telephonic message at about 2.00 P.M. at his residence that there was some fight between some smugglers near Crystal Chowk or that some legislator had been abducted. He instructed Inspector Gurmukh Singh of Police Station, Civil Lines, Amritsar, to reach the spot and to take necessary action. In accordance with the instructions of this witness, Inspector Gurmukh Singh (P.W. 11) proceeded to Crystal Chowk and made enquiries but since no credible information could be collected as nobody was coming forth to make a positive statement, therefore, no action could be taken by him. Exhibit P.P.A., entry No. 40 in the Roznamcha of the police station, Civil Lines, Amritsar, corroborates the statements of these prosecution witnesses. This entry was made on July 6, 1970 on the very day of the abduction. It is quite natural and probable that even though there are certain shops near the place of occurrence, but still none of the citizens offered to come forward to become an eye-witness of an occurrence like this. This is a matter of common experience that respectable people living in cities would always try to avoid to become witnesses and in a case of this nature where the abduction was a glaring one during the day in the busy locality of the city by well known smugglers ordinarily no person would like to be involved in the case of this nature, so as to become an eye-witness. Therefore, since nobody made any positive statement, no further action could be taken in the matter. But from this one fact is established that an incident of the type did take place at Crystal Chowk, Amritsar, on July 6, 1970. The entry in the Roznamcha, dated

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July 6, 1970, relating to Police Station, Civil Lines, Amritsar copy of which is Exhibit P.P.A., is in the following terms:—

S. No.	Name of Informant	Nature of report	Substance of report
40	S. Gurmukh Singh, Inspector	Return and Departure	At 9.15 O'Clock I, who went vide report No. 29 above, returned. Nothing new could be learnt about the occurrence of Crystal Chowk. I have tried my level best but, none at the spot and in the vicinity has given any plausible information and I proceed for patrol in the Illaqa.'

(47) The only criticism, which is levelled regarding this entry is that this entry is the last entry on the sheet. We had sent for the original but the same is not available having been destroyed as the Roznamchas are generally destroyed after two years. This criticism to our mind is of no consequence. Merely because this entry is the last entry of the page, it is difficult to hold that this is a fictitious entry. If such an entry was to be manufactured for providing evidence for this case some better particulars could be fabricated in this entry so as to connect the accused with the crime. The contents of this entry accompanied by the statements of Gurdial Singh and Gurmukh Singh P.Ws. appear to be quite natural and having been made in due discharge of their duties at the relevant time. It would thus be seen that this piece of evidence also corroborates the statement of Harnam Singh P.W. that an incident of the type did take place at Crystal Chowk, Amritsar on July 6, 1970. In this view of the matter, I am of the opinion that the material part of the statement of Harnam Singh P.W. finds corroboration from the above mentioned evidence and circumstances, therefore, his statement cannot be brushed aside as is being argued by the learned defence counsel. However, the question as to which of the accused participated in the abduction, has to be dealt with separately because before the accused are to be convicted, the participation of each one of them has to be ensured.

Remaining evidence led by the prosecution may now be discussed. Gurdip Singh (P.W. 14) is a witness who deposed that while he was going on cycle towards village Chhinna from Baba Budha Sahib at about 3-00 P.M. he saw two vehicles coming from



the side of Jhabal, which vehicle have been recovered in this case. The car was being driven by Satara accused P.O. and Jassa P.O. and Paramjit Singh accused were seated on the back seat flanking Hardip Singh deceased. On the front seat Satbir Singh was sitting. Paramjit Singh was armed with a Stengun at that time. In the bigger vehicle, Ajit Singh, Baghel Singh, Tara Singh and Malooka and some other persons were sitting. This happened about 1½ years before he was examined by the trial Court. It may be pointed out that his statement was recorded at the trial on November 4, 1971. This witness is the son of Kabal Singh real brother of Singara Singh deceased and his statement was recorded by the police on July 23, 1970, i.e., even six days after the registration of the case. The reason given by him that since he had gone to Malwa side and returned after about 15 days, therefore, he could not make the statement before the police earlier has not appealed to me. He admitted that he knew about the abduction of Puran Singh P.W. and also knew that a case in that regard had been registered. He being a close relation of the deceased persons, if his statement is correct, would have immediately smelt foul play and could not remain on Malwa side for such a long period as is alleged by him. Moreover, he claims to be going towards Chhinna on the day of occurrence when he had no particular business at Chhinna as is admitted by him. He is a chance witness whose presence at the canal bridge of Doda where he is alleged to have seen the deceased with the accused whose names have already been mentioned, is highly doubtful. He admitted that he knew that a case regarding the abduction of Puran Singh P.W. had been registered against some of the accused, but in spite of this he did not suspect any foul play with Hardip Singh deceased. The reason for his going to Malwa side as his father's maternal uncle was lying ill there, is also not convincing. His statement, therefore, has to be ignored as no implicit reliance can be placed on his statement, nor there is any corroboration available to the statement of this witness.

(48) Atma Singh (P.W. 27) is another witness who saw all the three deceased persons, namely, Shingara Singh, Hardip Singh and Kartar Singh, being beaten up by the accused persons in the Haveli of Ajit Singh of village Burj at about 6.00 P.M. The statement of this witness that the deceased persons were being beaten up openly in the Haveli of Ajit Singh when the ladies were on the roofs of their houses seeing this beating, is far from being convincing. This witness had no connections with Ajit Singh and in

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the way he deposed that he entered the Haveli of Ajit Singh and saw the deceased being beaten up, does not appeal to reason. If the deceased persons were being beaten up in the Haveli of Ajit Singh accused, as alleged by him, this witness could not have been allowed to enter the Haveli of Ajit Singh accused to witness this occurrence. He is a chance witness. He had no special reason to go to the Haveli of Ajit Singh accused. According to him, he deals in the sale and purchase of milch cattles and it was on this account that he was moving about in the villages. His further statement that the accused told him that Shingara Singh owed 200 bars of gold, with which his son decamped while the same were being smuggled in India, is also unnatural. He was not a friend of Ajit Singh accused or that of the deceased and there was no occasion for the accused to narrate this story regarding the motive to him. His village is far away from the place of occurrence. According to his statement, Kartar Singh and Hardip Singh deceased were found injured and they were bleeding from their injuries but from the *post-mortem* report it is clear that there was no such injury on the bodies of these deceased persons except gun shot wounds. Therefore, no reliance can be placed on the statement of this witness.

(49) The next witness in this sequence is Mohinder Singh (P.W. 28) of village Rattan Kalan. He is again a chance witness who is alleged to have seen M. P. Singh accused going on a motorcycle from the side of village Mode followed by two vehicles which he identified to be the same as have been recovered in this case. According to him, Paramjit Singh accused was holding a stengun. Jasbir Singh, Satbir Singh and Hardip Singh deceased, were sitting in the back seat. In the bigger vehicle, Ajit Singh, Arjan Singh, Darshan Singh, Bachan Singh accused and other persons were sitting. According to his statement, on the following day early in the morning, Jasbir Singh, Satbir Singh and Paramjit Singh accused threatened him that since he had seen them at the bridge of drain and that they having killed Kartar Singh, Hardip Singh and Shingara Singh deceased in connivance with the Border Security Force officials, if he disclosed this to anyone, he would be killed. Firstly, Shingara Singh deceased's sister is married to this witness and thus he is closely connected with the deceased. Secondly, this part of his statement that the accused told him that they had murdered Kartar Singh, Hardip Singh and Shingara Singh deceased in connivance with the Border Security Force Officials, does not appeal to reason and is a result

of police padding, about which I have already commented. Thirdly, it is proved from the documentary evidence that this witness has inimical relations with Arjan Singh accused, who is a resident of village Rattan Khurd. He denied the suggestion that he trespassed in the house of Arjan Singh accused and behaved in an obscene manner towards the mother of Arjan Singh, but this fact stands proved from the documentary evidence. Exhibit D. K. is the copy of the statement of Smt Wiro where in she deposed against Mohinder Singh P.W. and his co-accused Arjan Singh in that case to the effect that they took off their Chaddars and started dancing in the courtyard in a naked position after trespassing in her house. Exhibit I.J. is the copy of the judgment of the Magistrate 1st Class, Amritsar, dated July 5, 1950, by which this witness and his co-accused were sentenced under sections 451 and 509 of the Indian Penal Code, for six months and three months rigorous imprisonment respectively. The statement of this witness also does not sound to be natural and, therefore, no reliance can be placed on his statement.

(50) The other two most important witnesses, who throw light as to what happened on the night intervening 6th/7th of July, 1970 when the three deceased persons were killed, are Puran Singh (P.W. 3) and Balkar Singh (P.W. 4). The deposition of Puran Singh P.W. may be discussed first. It has been vehemently contended by the learned defence counsel that no reliance should be placed on the statement of Puran Singh P.W. firstly because he is the son of Shingara Singh deceased and brother of Hardip Singh deceased. Secondly, according to the learned defence counsel, his statement is not natural and is full of contradictions and thirdly, that he made the statement before the police after a number of months of the commission of this offence and, therefore, he is a false witness. According to the learned defence counsel if at all there was a motive on the part of Ajit Singh and his sons for killing any persons out of the complainant party, Puran Singh P.W. ought to have been the first casualty and not Shingara Singh and Hardip Singh deceased. It is contended by the learned defence counsel that he could not slip away with 2,000 Tolas of gold as is alleged by him. It has been argued that he is a false witness as he does not mention that Balkar Singh P.W. was present at the international border at the time of the actual occurrence on the night intervening 6th and 7th of July, 1970. I have gone through the statement of this witness a number of times, keeping in view the criticism made by the learned counsel for the defence, against his deposition, with a view to find out whether this witness has truly

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deposed about the facts in his knowledge. I find that there is nothing to reject his testimony as suggested by the learned defence counsel. No doubt this witness stated that he was proceeded against under section 110 of the Code of Criminal Procedure and was bound down and was also on the list of bad characters with police, but that in my opinion is a situation which makes his statement realistic and truthful. Only a person of such character as is possessed by this witness would join Ajit Singh and his sons in the profession of smuggling. The testimony of this witness finds ample corroboration from the statements of other prosecution witnesses, reference to which has already been made to the effect that this witness was indulging in smuggling with Ajit Singh and his sons at the international border of Pakistan much prior to the actual occurrence. The next part of his statement that he was abducted in the month of May, 1970, has been corroborated from the documentary evidence in the form of the statement of Shingara Singh deceased on the basis of which he lodged the first information report at Police Station Gharinda on May 20, 1970, copy of which is Exhibit P.P.Y., regarding the abduction of Puran Singh P.W. The contention that Puran Singh P.W. could not slip away with 2,000 Tolas of gold is really without any merit. He was one of the trusted companions of Ajit Singh and his sons and if he became dishonest and ran away with 2,000 Tolas of gold during the course of smuggling under the cover of darkness, it is not such an act which could not have been done. As I have already discussed, there is ample evidence to hold that there was a dispute between Ajit Singh and his sons and this witness regarding the gold worth rupees five or six lacs, which evidence has already been discussed when dealing with the motive part of the prosecution case. The fact that after he was abducted in the month of May 1970, he was handed over to Pakistani smugglers, namely Shaffi and Yakub, by Satbir Singh and Jasbir Singh accused through the instrumentality of Inspector M.P. Singh and Sub-Inspector Shiv Narain of the Border Security Force, also finds corroboration from the circumstances. If he was present in India, as is being argued by the learned defence counsel, there was no reason for him not to come forward and make a statement before the police immediately after the case was registered against Ajit Singh and other accused on July 17, 1970. This witness in fact crossed the International Border on November 6, 1970, from Pakistan and is being prosecuted for an offence for entering the Indian Territory without a passport. The argument that since earlier he had no difficulty in crossing the border, therefore, his statement that he could

not cross the border earlier to November 6, 1970 is false, is really without any merit. Earlier, he was indulging in smuggling along with Ajit Singh and his sons who had the backing of the Border Security Force officials, such as M.P. Singh and Shiv Narain, who were posted on the Pakistan Border at picket Kattan Khurd and it was only through their good offices that the smuggled goods were being exchanged freely and without any fear of being apprehended and, therefore, there was no difficulty in crossing the border. After the occurrence in this case, that link which was available to him earlier was no more available. Ajit Singh and his party, who have been found to be smugglers in the earlier part of the judgment, are bound to have their counter-parts on Pakistan side and, according to this witness, they are Shaffi and Yakub, Pakistani smugglers. It is obvious that the interest of the Pakistani smugglers in the gold taken away by this witness (Puran Singh) was also very much there, because the trade was common between smugglers on both the sides, therefore, they were also likely to lend helping hand to Ajit Singh and his sons for the recovery of the huge quantity of gold taken away by this witness. According to him, he was first kept in village Dial (Pakistan) and then he was taken to village Karewala Picket (Pakistan). He was being interrogated by the Pakistani smugglers. His brother-in-law Shabeg Singh was also subsequently abducted and was kept with him at village Dial in Pakistan. This part of his statement is corroborated as there is a mention about the abduction of Shabeg Singh in Exhibit P.P.Y., i.e., the first information report lodged by Shangara Singh. Shabeg Singh was also then taken to village Karewala Picket (Pakistan) along with Puran Singh (P.W.) where Satbir Singh, Paramjit Singh, M. P. Singh, Shiv Narain, Bhajan Singh accused and one Didar Singh driver were present. Satbir Singh accused had a talk with Shaffi and Yakub that Shabeg Singh was innocent and then they brought Shabeg Singh with them to the Indian side leaving Puran Singh in the custody of M. P. Singh, Shiv Narain, Bhajan Singh accused and Didar Singh driver. Shiv Narain accused also interrogated this witness about the gold but since nothing came out, he was again handed over to Shaffi and Yakub who detained this witness in village Dial in Pakistan for some days. On the night of occurrence, this witness was brought by Shaffi and Yakub on the Indo-Pakistan Border, Satbir Singh, Paramjit Singh, Jasbir Singh P.O., M. P. Singh, Shiv Narain and Bhajan Singh were present there. His brother Hardip Singh deceased was also brought there from the Indian side. This witness asked Hardip Singh deceased to return the gold to them as they were putting him to

great hardship but he replied that that he would not return the gold under pressure. Shingara Singh deceased was also there. This witness and Shingara Singh deceased were then made over to Shaffi and Yakub, Pakistani smugglers, and Satbir Singh and his companions returned to Indian side with Kartar Singh and Hardip Singh, deceased. When this witness and Shingara Singh deceased had travelled a distance of about 20 or 25 yards, they heard some gun shots having been fired. At this, Shaffi fired at Shingara Singh deceased and told this witness that he will not be killed at that time but would be killed after recovering the gold from him. He was then taken to village Dial (Pakistan) where he was kept for 2/3 days. Thereafter, this witness managed to escape and went to one Bhila of village Bhasin (Pakistan) where he remained for about three months and on November 6, 1970, this witness managed to cross the border and came to India. The criticism that the main enmity was with this witness and since he was not killed, therefore, there is no reason to kill Shangara Singh, Hardip Singh and Kartar Singh deceased, is really without any basis. The object of the accused persons was to recover gold which was worth five or six lacs of rupees and if they had killed this witness, the said object would have been frustrated. The object of killing Shangara Singh deceased in the presence of this witness was to make him realise that he will also meet the same fate if he failed to disclose the whereabouts and return the smuggled gold to Ajit Singh and his party. Therefore, the accused were really not interested in killing this witness, rather their interest was only to recover the gold and if they happened to kill Shingara Singh, Hardip Singh and Kartar Singh, it was only to make Puran Singh P.W. realise the consequences which he was also likely to face in the event of his failure to return the gold. It is quite reasonable and probable to presume that not only that the Border Security Force officials, who were also helpful to them in crossing the borders, had become inimical because of this occurrence, but also he knew that he had fallen out with Ajit Singh and his sons, who were big smugglers and had a lot of influence, therefore, his remaining in Pakistan for a few months even after the occurrence, is not unnatural, rather fits in with the prosecution story. It is not disputed that he is being tried for having come to Indian Territory on November 6, 1970 and the moment he entered the Indian Territory, he was taken into custody and his statement was recorded by the police.

(51) As regards the criticism that he has not deposed about the presence of Balkar Singh P.W. in his statement, suffice it to say that

I am inclined to hold that no reliance can be placed on the statement of Balkar Singh P.W. when he stated that he was present at the time of the occurrence at the Border. Balkar Singh, according to his statement, is a witness, who was also one of the members of the gang of smugglers and according to him on July 6, 1970, they had collected the smuggled goods at the Samadh of Baba Guria. Ajit Singh, Satbir Singh, Paramjit Singh, Jasbir Singh P.O., Mehru, Malooka, Dayala, M. P. Singh, Arjan, Pritu, Bachana, Darshan and two other persons were present there. The other two persons were called Pammi and Malkiat Singh. Shingara Singh, Hardip Singh and Kartar Singh deceased were also there, and their eyes and hands were blinded and tied. He and M. P. Singh accused asked those deceased persons to return the gold but Shingara Singh replied that he had no gold with him and it may be with Puran Singh P.W. who was also in their custody. Dial Singh accused was armed with a rifle, Paramjit Singh accused was armed with a stengun; Malook had a double barrel gun; Satbir Singh, Jassa Singh alias Jasbir Singh, Pammi and Malkiat Singh were armed with revolvers. At about 12 mid night, Harbhajan Singh accused came there. M. P. Singh accused asked Harbhajan Singh accused to bring Shiv Narain accused as the smuggled goods had to be lifted. Shiv Narain accused accompanied by 2/3 Border Security Force constables came there and they reached near Pillar No. 100. This party handed over 1½ maunds of silver to Yakub at the Border and received gold in return after consulting with the Pakistani Rangers. Jasbir Singh and Satbir Singh accused made over Shingara Singh to Yakub and Shaffi who were accompanied by Pakistani Rangers. When they brought the gold and reached at a distance of 100 yards, Hardip Singh and Kartar Singh deceased were brought by Satbir Singh and others towards the Indian side. He then enquired as to why Shingara Singh had been handed over to Pakistanies, when Shiv Narain accused fired two shots with very light pistol. Harbhajan Singh, M. P. Singh, Satbir Singh and Paramjit Singh fired shots from their weapons at Hardip Singh and Kartar Singh from a distance of 25 yards who dropped dead. Jasbir Singh came there and untied their hands and removed cloth from their eyes. A rifle was placed near the dead body of Hardip Singh and Kirpan was placed near the dead body of Kartar Singh. It may be pointed out that I do not consider it safe to rely on the statement of this witness. This witness, according to his statement, was a member of the gang of smugglers headed by Ajit Singh and his sons, but still he could not identify Paramjit Singh accused out of the accused persons in Court. He claimed that he could identify Satbir Singh

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accused whereas he pointed out towards Pritam Singh accused as Satbir Singh accused and touched him by hand. He could not identify Harbhajan Singh accused in Court. It was thus to be seen that Paramjit Singh and Satbir Singh sons of Ajit Singh could not be identified by this witness. This would show that he was not one of the members of the gang of the smugglers and if he was a member of the gang, there is no reason for him not to know Paramjit Singh and Satbir Singh, who were very important members of the gang. Therefore, there was no question of his joining Ajit Singh and the other accused for the smuggling of goods on the fateful night. His statement that smuggling of silver and gold took place during the night is not corroborated by any other piece of evidence led by the prosecution. He stated that he saw some marks of scratches on the faces of Hardip Singh and Kartar Singh deceased and blood was oozing out from those scratches, but we find that there were no such injuries found on the dead bodies of these persons during the course of post-mortem examination by the doctor. There are many other contradictions in his statement which go to show that he cannot be held to be a truthful witness and no part of his statement can be relied upon. I am, therefore, not inclined to place any reliance on the statement of this witness and hold that he was not an eye-witness of the occurrence. In view of this when it is held that he was not present at the place of occurrence, if Puran Singh P.W. does not mention his presence at the time and place of occurrence, his statement cannot be discredited. The statement of Puran Singh P.W. cannot be disbelieved on the ground of his close relationship with the deceased persons. Material parts of his statement have been held to be corroborated by reliable evidence and the circumstances of the case. He being a close relation of the deceased persons is least interested in involving innocent persons. A finding has already been recorded that the three deceased persons were abducted from Crystal Chowk, Amritsar, on 6th July, 1970, and, therefore, the presence of the deceased at the border on the night intervening 6th and 7th of July, 1970, is quite natural. I have therefore, not been able to persuade myself to disbelieve the statement of this witness which seems to be quite natural and material parts of which are corroborated by reliable evidence and circumstances of the case.

(52) The next important piece of evidence relied upon by the prosecution is the extra judicial confession alleged to have been



made by Shiv Narain and Harbhajan Singh accused before Shri R. K. Kapoor, Commandant 48th Battalion of the Border Security Force (P.W. 41), under whom they were serving. This witness went to the spot on July 7, 1970, after having received a wireless message regarding the encounter and later on a suspicion crept in his mind that this encounter story was a faked one. This was so conveyed to him by Inspector Kashmir Singh, D.S.P. Durga Singh and P. N. Handa D.S.P. on July 8, 1970. On July 8, 1970, he went to Delhi. On July 10, 1970, he contacted Mr. Handa D.S.P. on telephone and advised him to further interrogate all the nine accused, i.e., M. P. Singh, Shiv Narain, Harbhajan Singh and six other constables who stand discharged, by calling them at the Headquarters and by warning them that they should state the truth otherwise they would not be supported by this witness (Shri R. K. Kapur P.W.). After coming back from Delhi on July 16, 1970, he interrogated Shiv Narain and M. P. Singh accused on July 17, 1970, who again supported the encounter story. On July 19, 1970, he came to know that a case had been registered by the police and consequently he again enquired from M. P. Singh and Shiv Narain accused on July 19, 1970, telling them that now that the case has been registered, they should tell the truth. It was then that Harbhajan Singh accused told this witness that he told Shabad Singh and Jai Gopal, discharged co-accused, that on that night some smugglers might come at the border and big smuggling would take place and some smugglers would kill the other smugglers to wreck vengeance against them and that all the recovered goods would be shown as a good work done. He told this witness that at mid-night, 7 or 8 smugglers passed by them from some distance out of which one Sati came to them and told them that he and his companions had brought three smugglers and they would be finished in the Pakistan Territory. These smugglers went towards Pakistan Territory and Sati followed them. Harbhajan Singh accused then brought Shiv Narain accused to the Naka who asked Harbhajan Singh accused to go to the border and ask Sati that one man may be got killed in Pakistan Territory and the remaining two persons be killed in the Indian Territory so that the members of the Nakabandi party may show good work done. Harbhajan Singh accused further told this witness that he went to the border and gave the directions as desired by Shiv Narain to Sati and one man, who was subsequently known as Shingara Singh was handed over to Pak Rangers and Pak Civilians, and the two persons, who were later on known to be Hardip Singh and Kartar Singh, were shot at by Sati accused on the Indian side of the border and it was shown as an encounter.

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(53) The learned defence counsel has vehemently argued that no reliance should be placed on the statement of Shri Kapur P.W. as he is not a witness of truth and that Shri Kapur P.W. made a false statement under the pressure of D.S.P. Surjit Singh P.W. This contention is really without any merit. I have carefully gone through the statement of Shri Kapur P.W. and find that nothing could be brought out from his statement to show that he had any animus to falsely depose against the accused regarding the extra judicial confession which was made before him by Shiv Narain and Harbhajan Singh accused. This officer possesses the status equivalent to that of the Senior Superintendent of Police and it is difficult to conceive that he under the pressure of D.S.P. Surjit Singh P.W. could be pressurised to come out with a false statement regarding the extra judicial confession of the accused. He denied the suggestion that D.S.P. Surjit Singh ever told him to support the prosecution case. If the accused had not confessed before him and he had the reason to believe that the encounter story was the correct version of the incident, there is no reason why this witness being a boss of the accused, would have not taken a stand that since the accused had killed the deceased in due discharge of their duties in the encounter, therefore, there was no reason to discard that evidence. He is the Commandant of the Company in which Inspector M. P. Singh, S.I. Shiv Narain and H.C. Harbhajan Singh accused were working, and as such he could certainly take up that stand with the higher authorities of his department. Judicial notice can be taken of the fact that Shri Ashwani Kumar, who is now the Commandant General of the Border Security Force of India, was the Commandant of the Border Security Force in Punjab and he was also discharging the duties as the Inspector General of Police, Punjab. In this view of the matter, if this witness was convinced about the encounter story being correct, it was not difficult for him to have taken the stand in this regard with a view to protect his subordinates who acted in due discharge of their duties, but I find that he did not do so. This is circumstance which corroborates his testimony that the two accused, namely, Shiv Narain and Harbhajan Singh, made confession before him and admitted before him that the encounter story was a faked one.

(54) The criticism against his statement that in his police statement, he did not elaborately state about the extra judicial confession made by Shiv Narain and Harbhajan Singh accused, is also without any merit. As has earlier been pointed out, to begin with, M.P. Singh, Shiv Narain, Harbhajan Singh and six other employees of

the Border Security Force were sought to be prosecuted in this case. The other six Border Security Force constables were discharged and, therefore, they were not tried along with the three accused mentioned above. Some of the discharged accused also made extra judicial confession before Shri Kapur P.W, and his statement made under section 161 of the Code of Criminal Procedure relates to all these extra judicial confessions made by the accused. In his statement, only the sequence of making the confession is different because it gives the details of the extra judicial confessions which were also made by the discharged accused. Therefore, the confrontation of this witness with his police statement Exhibit D.F. at the trial in fact assumes no importance when one examines his statement made by him under section 161 of the Code of Criminal Procedure in its true perspective. It is clear that this witness did mention about the extra-judicial confession made by Shiv Narain and Harbhajan Singh accused in his police statement with which he was confronted.

(55) Shri Kapur P.W., as I have already observed, is an official of the rank of the Senior Superintendent of Police and he cannot be expected to have gone so low to have falsely stated about the extra judicial confession made before him by his subordinates, one of whom is a Head Constable and the other is Sub-Inspector. He has absolutely no axe to grind to come out with a false story. It was not necessary for him to state about this if the accused had not confessed before him in the manner as given out by him. His statement appears to be quite truthful and natural. He being the Commandant of the Border Security Force, was naturally interested in knowing the truth about the encounter story so that if he was convinced with the encounter story being correct, he could take a stand and help his subordinates who acted in due discharge of their duties. It was his curiosity to know the truth to decide about his own line of action and keeping this in view, he had been asking the accused to tell him the truth.

(56) The only other criticism levelled against this witness by the learned defence counsel is that his statement is not admissible in evidence because of the provisions of section 24 of the Indian Evidence Act, 1872. The provisions of section 24 of the Indian Evidence Act are as follows:—

*"24. Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding.—A confession*

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made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."

(57) No doubts it is true that Shri Kapur P.W. is a person in authority as far as Shiv Narain and Harbhajan Singh accused are concerned as he was the Commandant of the Battalion in which these two accused were serving. It is also true that Shri Kapur P.W. had been telling the accused-employees working under him to come out with the truth. There is nothing in his statement to suggest that he ever offered any inducement, threat or promise to the accused and thereby extracted extra judicial confession. The only argument raised is that since he promised the accused to help them in the case, therefore, in all probability the accused came out with the extra judicial confession. It is, therefore, contended that since the extra judicial confession was extracted by Commandant that if the accused would come out with the truth they would be protected, therefore, the confession becomes inadmissible in evidence. This argument is in fact based on the misreading of the statement of Shri Kapur P.W. Reference may now be made to his statement regarding this aspect of the case. On 10th July, 1970, he contacted Shri P. N. Handa D.S.P. on telephone from Delhi and advised him to further interrogate the nine accused calling them at the Headquarters with a warning that they should state the truth otherwise they themselves would be responsible for their actions. He also asked Shri Handa D.S.P. to ask the officials to make their statements in their own handwriting. It is in his statement that when he came back from Delhi, he read the statements of the accused and found that they had stuck to their encounter version. Therefore, the contention that he asked Shri Handa D.S.P. to ask the accused to tell the truth otherwise they will themselves be responsible for their actions and, therefore, it be presumed that a promise to help the accused was made and they then confessed their guilt is without any basis. When this was conveyed to the accused by Shri Handa D.S.P., the accused still stuck to the encounter version and made their statements in writing supporting the encounter version.

The said threat of Shri Kapur P.W. did not work and the accused stuck to their old story.

(58) On 17th July, 1970 in the morning again Inspector M. P. Singh, S.I. Shiv Narain and Harbhajan Singh were interrogated about this matter but they stuck to their encounter version. It was on 19th July, 1970 that Shiv Narain and Harbhajan Singh were questioned separately when he told them that they should come out with the truth otherwise they would themselves be responsible for their actions and if they had done anything wrong, they would go to jail. Instead of giving them any promise of help, he in fact told them that if they were in the wrong, they would go to jail. This witness categorically denied the suggestion in his statement that at any stage he promised for any help in that connection. He did not record the statements of the accused as the statements were meant for his own satisfaction and not for the department. From the statement of this witness, which I have gone through minutely, it is difficult to hold that he gave any inducement, threat or promise to the accused persons and that the accused persons made the confessions in pursuance thereof. It is well settled that in order to attract the provisions of section 24 of the Evidence Act, what is more important is that mere existence of threat, inducement or promise is not enough, but, in the opinion of the Court the said threat, inducement or promise shall be sufficient to cause a reasonable belief in the mind of accused that by confessing he would get an advantage or avoid any evil of a temporal nature in reference to the proceedings against him: while the opinion is that of the Court, the criterion is the reasonable belief of the accused. From the statement of this witness, as I have already held, it is clear that it cannot be held that he gave any threat, inducement or promise to the accused muchless that a finding can be recorded that any such threat, inducement or promise caused reasonable belief in the mind of the accused that by confessing they would get an advantage or avoid any evil of a temporal nature in reference to the proceedings against them. Reference in this connection may be made to a decision of the Supreme Court in *Pyare Lal Bhargava v. The State of Rajasthan*, (18). It is worthy to note that since Inspector M. P. Singh did not make any confession before him, he has not stated anything about this accused. Therefore, the statement of Shri R. P. Kapur P.W. cannot be brushed aside and it is, therefore, held to be proved that

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Shiv Narain and Harbhajan Singh accused made extra judicial confession before this witness and the facts deposed by him are true.

(59) I may now make mention of the frantic efforts made by Ajit Singh and other accused persons in interfering with the prosecution evidence. Mangal Singh (P.W. 17) is the father of Kartar Singh deceased. This witness was declared hostile and was confronted with his police statement wherein he is alleged to have stated before the police that Ajit Singh accused and his son Satbir Singh, came to his house after the murder of Kartar Singh deceased and told him that Kartar Singh had been murdered by mistake and he should consider them as his sons just like Kartar Singh and they also paid rupees ten thousand to the widow of Kartar Singh deceased. Similarly, Smt. Jasbir Kaur (P.W. 26), widow of Kartar Singh deceased, who was also declared hostile and was confronted with her police statement, wherein she is alleged to have stated that Ajit Singh and Satbir Singh accused came to her and told her that her husband had been murdered by mistake and they will render help to her and paid rupees ten thousand to her. No doubt reference cannot be made to the statements of these witnesses made before the police but it is proved on the record that Mangal Singh P.W. swore in an affidavit on July 13, 1970, copy of which is Exhibit P.M., stating that Kartar Singh, his deceased son, used to remain in the company of Shingara Singh and Hardip Singh deceased and that on July 6, 1970, Shingara Singh and Hardip Singh came to his house in his presence and they called Kartar Singh and took him away. After going with them, his son Kartar Singh had not returned till that day, i.e., July 13, 1970. It is a proved fact that the deadbody of Kartar Singh was received by this witness on July 8, 1970, on the very next day of the encounter after the post-mortem examination, and was cremated in the village. His statement in the affidavit that after his going with Shingara Singh and Hardip Singh, his son Kartar Singh had not returned till July 13, 1970, is obviously a false statement. This affidavit by Mangal Singh P.W. is proved by the statement of Harbhagwan Dass (P.W. 15), who wrote this affidavit at the behest of Mangal Singh P.W. and entered this affidavit at Serial No. 200 in his register. This witness was also declared hostile as he did not support the prosecution case as allegedly stated by him in his police statement that when Mangal Singh P.W. came to get this affidavit recorded, he was accompanied by Ajit Singh accused. It may be pointed out here that Jasbir Kaur (P.W. 26) admitted in cross-examination that

it was a fact that she had deposited Rs. 5,000 in the Post Office of Attari in her name and Rs. 2,500 each in the names of her sons Satnam Singh and Jaswinder Singh on September 29, 1970. She did not give any source as to from where she received this amount of Rs. 10,000. Jaswinder Singh (P.W. 25), who is the son of Kartar Singh deceased is another witness, who was declared hostile. He was confronted with his police statement wherein he had stated that 7/8 days after the murder of Kartar Singh Ajit Singh and his son Sati accused came to his house and gave Rs. 10,000 to his mother Jasbir Kaur. He further stated in his police statement that 7/8 days thereafter, his mother took him and his brother Gurnam Singh to Attari and deposited Rs. 5,000 in her own name and Rs. 2,500 each in the name of this witness and his brother Gurnam Singh. It is thus to be seen that though this witness did not support the prosecution case in this regard at the trial, but the fact that a sum of Rs. 5,000 was deposited in the name of his mother and Rs. 2,500 each in his name and in the name of his brother, Gurnam Singh, in the Post Office at Attari on 29th September, 1970, a little time after the occurrence stands proved from the statement of Smt. Jasbir Kaur (P.W. 26). It is further to be seen that the copy of the affidavit Exhibit P.M. was recovered by the police from the house of Shri Tirath Singh Munjral, Advocate (P.W. 39), who was counsel for Ajit Singh accused. This witness was also declared hostile. However, the fact remains that he stated that he was engaged as a counsel by Ajit Singh accused and his two sons for giving advice and also for conducting various applications including one in the Court of Sessions Judge, Ambala and also in the Court of Sessions Judge, Delhi. He stated that some documents were given to him by the friends and relations of Ajit Singh accused out of which one document was taken from his house by the police when they brought Ajit Singh accused with them. He stated that he had seen the copy of the affidavit Exhibit P.M. This document as far as he remembered was not taken in possession by the police from him. He further stated that so far as he remembered he had not kept any copy of the document taken from him by the police during the investigation of this case. Ultimately he stated that he cannot contradict that document Exhibit P.M. was the same document which was taken into possession from him because he did not remember. The recovery of this document from his house could not be specifically denied by him and the same is proved by the statements of S.I. Anup Singh (P.W. 60), who, after interrogating Ajit Singh, accompanied Ajit Singh to the house of Shri Tirath Singh Munjral, Advocate, from where

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he recovered this document. Statement of Anup Singh (P.W. 60) finds support from the deposition of Iqbal Singh (P.W. 29), who is a witness to the recovery of this document from the house of Shri Tirath Singh Munjral P.W., which was recovered,—vide memo Exhibit P.D.D. The statement of this witness stands unchallenged as no cross-examination whatsoever was directed against this witness by the defence. It is not out of place to mention that Sati and Paramjit Singh accused surrendered in the Court of Sessions Judge at Delhi whereas Ajit Singh accused surrendered himself before the Sessions Judge, Ambala and it was in this connection that Shri Munjral P.W. was engaged as counsel by these accused persons. Even if for argument's sake it be presumed that this document was given to Shri Munjral by the relations of the accused, but the fact still remains that this affidavit was taken from Shri Munjral at the instance of the accused. The contents of this affidavit clearly go to show that this was sworn in by Mangal Singh P.W. at the instance of the accused and the same was obtained with a view to use it against the prosecution. Mangal Singh P.W. falsely stated in his affidavit that since Kartar Singh deceased left the house with Shingara Singh and Hardip Singh, he did not return to the house till 13th July, 1970. The dead-body of Kartar Singh was cremated in the village on 8th of July, 1970. He being the father of Kartar Singh deceased, a close relation, could not be prepared to swear in an affidavit favourable to the accused without having received some consideration for the same. As I have already pointed out that accordingly to the statement of Smt. Jasbir Kaur P.W., widow of Kartar Singh deceased, Rs. 5,000 were deposited in her name and Rs. 2,500 each in the names of her two sons in the Post Office at Attari, but she did not disclose any source from where this amount came. This part of the case throws light on the failing of human behavior when greed overpowers all other sentiments of love and affection for persons who have been once one's near and dear ones.

(60) It will not be out of place to mention here that during the pendency of the trial, Ajit Singh accused-respondent managed to get a report from Dr. R. L. Mahajan, Doctor-in-charge, Central Jail, Amritsar, to the effect that he was suffering from Cardiac Neurosis and on the basis of which he was released on bail. While dealing with Criminal Miscellaneous No. 502-M of 1971, which was a petition for the grant of bail on behalf of Jai Gopal, Constable, who was one out of the six discharged accused persons, this fact came to my notice and I after having sent for the file and having



found that there was no real basis for releasing him on bail, issued notice to him as to why his bail should not be cancelled. I had ordered him to appear before late Dr. Berry, who was the Heart Specialist in the P.G.I. at Chandigarh, and had asked him to make a report after examining him. After examining him, the doctor found that he had no clinical basis for any serious ailment whatsoever and the tests conducted by him disclosed his normal condition. The bail granted to him then was cancelled by S. S. Sandhawalia J.,—*vide* his order dated June 14, 1971. It may be pointed out that Dr. Mahajan was summoned in this Court in connection with the cancellation of the bail of Ajit Singh accused and he was cross-examined from where it is apparent that he had no basis to report about the heart ailment of Ajit Singh accused.

(61) The other piece of evidence consists of the recovery of rifle Exhibit P.W. and five cartridges Exhibits P. 3 to P. 7 at the instance of Satbir Singh accused in consequence of his disclosure statement made by him. On 9th of September, 1970, Inspector Bachan Singh (P.W. 68) interrogated Satbir Singh accused in the presence of A.S.I. Jai Chand (P.W. 9) and Lachman Singh (P.W. 30), who made a disclosure statement to the effect that a rifle Pathani with five .303 cartridges had been buried by him underneath the ground near a Burji on the Hudiara drain near Rajatal bridge and offered to produce the same. No doubt Lachhman Singh P.W. did not support the disclosure statement made by Satbir Singh accused at the trial, but the statement of Inspector Bachan Singh P.W. stands corroborated from the statement of A.S.I. Jai Chand (P.W. 9), who deposed about Satbir Singh accused having made such a statement. In consequence of this statement, Satbir Singh accused got recovered a rifle Exhibit P. 2 and five cartridges Exhibits P. 3 to P. 7 as has been deposed by Inspector Bachan Singh P.W. This has been so stated by A.S.I. Jai Chand (P.W. 9) as the recovery was then entrusted to this witness by Inspector Bachan Singh P.W. A.S.I. Jai Chand P.W. recovered the rifle and the cartridges in the presence of Gian Chand Constable (P.W. 32), who has corroborated the statement of A.S.I. Jai Chand P.W. to this effect. There is no reason to disbelieve the statement of these three police officials and they had no animus to plant to costly rifle Exhibit P. 2 and the cartridges Exhibits P. 3 to P. 7 on Satbir Singh accused.

(62) Paramjit Singh accused was interrogated by S.I. Brij Lal (P.W. 34) on September 12, 1970 in the presence of Lachhman

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Singh, Gian Chand and Partap Singh P.Ws., who disclosed that he had kept buried a rifle near a Burji beyond village Burji and offered to get the same recovered. This accused then led the police party to the abovementioned place and got the rifle Exhibit P. 8 recovered after digging it from near the Burji. The statement of Brij Lal S.I. (P.W. 34) finds corroboration from the statements of Gian Chand and Partap Singh P.Ws. No doubt Lachhman Singh P.W. has not supported the prosecution and was declared hostile, but there is no reason to disbelieve the statement of S.I. Brij Lal, Gian Chand and Partap Singh P.Ws. Their testimony cannot be brushed aside on the sole ground of their being police officials especially when there is nothing on the record to show they had any animus to falsely plant the costly rifle and the cartridges on this accused.

(63) Ajit Singh accused was interrogated by A.S.I. Jai Chand (P.W. 9) when he disclosed that he had kept concealed a D.B.B.L. Gun wrapped in a piece of cloth in a manure heap near his Haveli and offered to get the same recovered. This statement was made in the presence of Jaswant Singh (P.W. 36) and Piara Singh (P.W. 8). In consequence of this statement, he got recovered Gun Exhibit P. 1. The disclosure statements and the recoveries have been deposed by A.S.I. Jai Chand (P.W. 9), Jaswant Singh (P.W. 36) and Piara Singh (P.W. 8). No doubt all these three witnesses are police officials, but, as I have already observed, there is no ground to brush aside their testimony on this ground alone which otherwise appears to be quite truthful and straightforward.

(64) Inspector Bachan Singh (P.W. 68) interrogated Shiv Narain accused on September 24, 1970 in the presence of Gurbachan Singh (P.W. 37) and Charan Singh (P.W. 18) at Amritsar, and in consequence of the disclosure statement made by him under section 27 of the Evidence Act, he got recovered a gold bar Exhibit P. 15 weighing 10 Tolas, buried near the Railway Lines and near the Border Security Force Lines at Amritsar. This witness also interrogated M. P. Singh accused, who also, in consequence of his disclosure statement made by him, got recovered a gold bar Exhibit P. 16 from the southern corner of the grassy field of his residential house in Gopal Nagar No. 120-A. No doubt Gurbachan Singh (P.W. 37) and Charan Singh (P.W. 18) have not supported the prosecution case, but there is no reason to disbelieve the testimony of Bachan Singh, Inspector (P.W. 68) in this regard. The gold recovered

from both these accused weighed 20 Tolas and is worth a few thousand rupees. This could not be planted by Inspector Bachan Singh, P.W. from his own pocket and there cannot be any probable reason for his planting the recovery of the gold bars on Shiv Narain and M. P. Singh accused. As I have already observed that in view of the pressure of the accused persons on the prosecution witnesses and in view of the peculiar circumstances of the case, there is no need of any corroboration to the testimony of Inspector Bachan Singh (P.W. 68) whose testimony cannot be rejected on the sole ground of his being a police officer, which otherwise is trustworthy and straight forward.

(65) The other piece of evidence led by the prosecution is that the accused after the commission of the crime absconded. Inspector Bachan Singh (P.W. 68) Investigating Officer, searched for the accused in village Rattan Kalan, Rattan Khurd and Burj and at various other places, but the accused were not traceable. M. P. Singh, Shiv Narain and Harbhajan Singh accused and other six officials of the Border Security Force, who stand discharged, were formally arrested by him on July 29, 1970. A.S.I. Kastoori Lal (P.W. 43) arrested Mehru, DIALA and Arjan accused on July 31, 1970 and on August 14, 1970, he arrested Darshan Singh accused. A.S.I. Vidya Sagar (P.W. 44) arrested Bachan Singh accused on August 14, 1970. Inspector Gurdarshan Singh (P.W. 59) formally arrested Satbir Singh and Paramjit Singh, accused on September 4, 1970, at Delhi, who had already surrendered themselves in the Court of Sessions Judge at Delhi. A.S.I. Jai Ram (P.W. 58) arrested Baghel Singh and Tara Singh accused on September 19, 1970, and September 22, 1970, respectively. Ajit Singh accused surrendered in the Court of Sessions Judge, Ambala, and was formally arrested on September 3, 1970. Pritam Singh and Malook Singh were arrested on August 17, 1970, and September 1, 1970, respectively. There is no valid explanation offered by the accused persons in their statements for their absconsion. This is, therefore, another circumstance which points out towards the guilty mind of the accused persons.

(66) Malook Singh and Pritam Singh respondents applied that they should be got identified from the prosecution witnesses. Shri S. R. Garg (P.W. 23) and Shri Manmohan Singh (P.W. 24), Executive Magistrate 1st Class, arranged the identification parades on 4th September, 1970 and 21st August, 1970, respectively. The witnesses, who were to identify these accused respondents, were

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Malook Singh, Ajaib Singh, Mohinder Singh, Balkar Singh, Gurdip Singh and Harnam Singh, P.Ws. Both these accused refused to participate in the identification parades saying that these witnesses knew them already. Exhibit P. X. is the report made by Shri S. R. Garg (P.W. 23) Executive Magistrate, to this effect and Exhibit P.A.A. is the report made by Shri Manmohan Singh (P.W. 24) Executive Magistrate, who organised the parade. It would thus be seen that according to the stand taken by both these accused persons, they were already known to the prosecution witnesses referred to above. None of the other accused claimed to be got identified in a parade from the prosecution witnesses.

(67) As regards the vehicles, which were used in the alleged crime, Viking Mini Bus, as per statement of Shri R. K. Sahni, Sales Officer of M/s. J. J. Motors Corporation, New Delhi (P.W. 48), was booked in the name of Prithipal Singh son of Shri Sohan Singh of 16-D, Chanan Singh Park, Delhi Cantt. on April 21, 1970,—*vide* booking order Exhibit P.P.C. No. 75/17 and the same was delivered to Shri Prithipal Singh on June 24, 1970. Vox Wagon Valient of 1600 A.C. having DLX No. 866, was originally owned by Shri P. C. Mehra (P.W. 49), who had sold the same to Balwant Singh through Shri R. P. Gandhi (P.W. 52) for a consideration of Rs. 26,000. This witness did not know Balwant Singh personally. Both these vehicles were taken into possession by Shri Gurdarshan Singh (P.W. 59) on 28th September, 1970 in the presence of Shri B. S. Dhillon (P.W. 50) and Romesh Chander (P.W. 51) from show room of R. P. Gandhi, a Second Hand Car Commission Agent at New Delhi. Romesh Chander (P.W. 51), son of Shri R. P. Gandhi (P.W. 52), and Shri R. P. Gandhi, P.W. in fact did not disclose the complete particulars of Balwant Singh who purchased this car. Shri R. P. Gandhi P.W. was declared hostile and was cross-examined by the Public Prosecutor and was confronted with his police statement in which he had stated that he had sold this car to Jasbir Singh accused. However, it is significant that throughout the trial Balwant Singh, the alleged owner of this car, did not put in any application before the trial Judge for the return of the said vehicle. It is only after the acquittal order was passed by the trial Judge on 11th November, 1971, that an application Cr. M. No. 2011 of 1972 has been made on behalf of Balwant Singh son of Karam Singh, now residing in House No. 200, Sector 19-A, Chandigarh, in this Court, that the car should be returned to him. According to paragraph 2 of the application, Balwant Singh has stated that the above said car was entrusted to Shri R. P. Gandhi P.W. but there is no mention as

to how, when and for what purpose this car was entrusted by him to Shri R. P. Gandhi P.W. He has not produced any document along with the application to show that he continued to be the owner of the said car muchless there being any explanation as to how the said car came into the hands of the accused. Except this application filed by him, there is nothing on the record to show that this car is owned by Balwant Singh. If the car was not used in the crime and the same was actually owned by Balwant Singh and he had no connections with the accused, it is quite clear that Balwant Singh would have come forward immediately before the Court after the vehicle which is worth thousands of rupees, was taken possession by the police on September 28, 1970, but no such effort was made and it is only after the acquittal order was passed, that an application was filed in the year 1972 before this Court for the return of the car. To the same effect are my observations about the Viking Mini Bus. The said vehicle was also taken into possession by the police on September 28, 1970. Prithipal Singh, the alleged owner of this vehicle, did not make any application before the Court below for the return of the vehicle to him. Smt. Pritam Kaur, widow of Prithipal Singh, moved an application Cr. Misc. No. 2012 of 1972, before this Court with a prayer that the said vehicle be ordered to be returned to her. In this application there is no mention as to for what purpose the said vehicle was given to Shri R. P. Gandhi P.W. from whose possession the same was taken over by the Investigating Officer. It is quite clear that this vehicle was purchased by Prithipal Singh, only on June 24, 1970 and there could be no question of selling this vehicle immediately after the same was purchased in brand new condition. It is quite obvious that the accused Ajit Singh and his sons, who absconded after the commission of the crime and who surrendered in different Courts, as has been referred to in the earlier part of the judgment, handed over this vehicle to Shri R. P. Gandhi P.W., who is the Second Hand Car Commission Agent at New Delhi, from where the police took into possession the said vehicle. There is evidence of A.S.I. Parma Nand (P.W. 57), who was posted as Traffic Incharge at Amritsar that he used to see Jasbir Singh, P. O. accused driving car No. DLX-866 and Viking Mini Bus No. DLF-5775. Similarly, A.S.I. Mohinder Singh (P.W. 61), who was posted in the Anti-Smuggling Staff at Amritsar in the year 1970, saw Ajit Singh accused and his sons, namely, Satbir Singh, Jasbir Singh P.O. and Paramjit Singh, driving car No. DLX-866 and Viking Tempoo No. DLE-5775, which belong to Ajit Singh and his sons. He saw these vehicles in possession of the accused on a number of times.

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As I have already found, Ajit Singh and his sons are known smugglers of this area, therefore, this witness, who was posted in the Anti-Smuggling Staff at Amritsar, is supposed to know the activities of the smugglers and had a chance to see these vehicles being used by these accused persons. It may be pointed out here that the vehicles which are used in smuggling and for the commission of the crimes, as is involved in the present case, are not expected to be got registered by the accused persons in their own names so as to be caught straightway. It is in such matters that dubious methods are always adopted and thus in these circumstances it is practically impossible for the prosecution to prove the ownership of the vehicles used in such crimes by leading documentary evidence. From what has been stated above, I have no doubt left in my mind that both these vehicles were in possession of Ajit Singh and his sons and are in fact owned by them though they may be still standing in different names in papers but Ajit Singh and his sons are *de facto* owners of these vehicles. I, therefore, do not find any merit in Cr. Misc. No. 2011 and Cr. Misc. No. 2012/72 which are hereby dismissed.

(68) I may now make mention of the defence plea on the basis of which the trial Judge has rejected the testimony of all the police officials holding that Surjit Singh, D.S.P. (P.W. 64) was inimical to Ajit Singh and his sons and it was on this account that the accused were falsely involved in this case and the police officials came forward to support the prosecution case. The defence plea is that in the year 1963, a raid was conducted at the house of Shri Harbans Singh, who was then Vice-Chairman of the Panchayat Samiti, Gandiwind and who was also the President of the Congress Mandal Chhina Bidhi Chand, by S.I. Bawa Singh, S.H.O. Police Station Jhhabal, which raid was supervised by Surjit Singh P.W. It is alleged that Ajit Singh accused, who was then Chairman of this Panchayat Samiti, had made complaints against the police officers to the higher authorities with a prayer that the police officers concerned should be transferred. Firstly, it may be pointed out that the said resolution passed by the Panchayat Samiti, which is Exhibit D.H., was passed in 1963, and there is no specific complaint about the conduct of Shri Surjit Singh, Inspector, who had supervised the raid. The main complaint was against the conduct of S.I. Bawa Singh, S.H.O. Secondly, D.S.P. Surjit Singh, P.W. did not register the case against the accused himself, but he submitted the report to the Senior Superintendent of Police on 12th July, 1970, who after satisfying himself passed an order for the registration of the case on 17th

July, 1970. In this case, one Inspector, one Sub-Inspector, one Head Constable and the other constables of the Border Security Force were also involved and the plea that Shri Kapoor P.W., Commandant of the concerned Battalion of the Border Security Force, was also under the influence of D.S.P. Surjit Singh P.W. is really fantastic. D.S.P. Surjit Singh, P.W. cannot be taken to be so powerful to have succeeded in implicating the accused persons, who are all powerful smugglers, in this case falsely. The resolution passed by the Panchayat Samiti was passed by almost all the members except Shri Gurdial Singh Dhillon, who was then M.L.A., and there could be no special reason for D.S.P. Surjit Singh P.W. to be vindictive towards Ajit Singh and his sons. During the investigation of this case, no complaint was made by the accused persons to the higher authorities about their false implication in this case by D.S.P. Surjit Singh, P.W. It is only at the trial that an after-thought plea has been taken which unfortunately found favour with the trial Judge and he used this plea in rejecting the testimony of the police witnesses. A number of police officials, who have appeared in this case, cannot be held to be deposing falsely under the influence of Shri Surjit Singh, D.S.P., P.W., who has absolutely no motive for falsely implicating the accused. The reading of the resolution Exhibit D.H. would show that in the resolution the conduct of S.I. Bawa Singh, S.H.O. was objected to and about Shri Surjit Singh, D.S.P., P.W., the only mention made was that he supervised the raid. Moreover, this resolution was passed in 1963 about 7 years before the present occurrence took place. There is nothing to show that this resolution harassed Surjit Singh, P.W. in any manner. If there could at all be any grievance, the same could possibly be against Shri Harbans Singh, Vice-Chairman of the Samiti whose house was raided and who was really instrumental in getting it passed and not against Ajit Singh who merely presided. In this view of the matter, there is no force in the defence plea that Surjit Singh, D.S.P., P.W., concocted a false case against the accused.

(69) As regards the other three accused, namely, Inspector M.P. Singh, S.I. Shiv Narain and Constable Harbhajan Singh, it is important to note that these three accused stuck to the encounter story even at the trial. In answer to the last question put to Harbhajan Singh accused in the Committing Court, he categorically stated that the version given by his co-accused Shiv Narain about the encounter story is correct, and the version of the prosecution is false. At the trial in his answer to question No. 14, he denied about the

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factum of recording of report No. 10 in the Daily Diary of Chowki Rattan Khurd by Shiv Narain, that he, i.e., Shiv Narain and Harbhajan Singh, left for Naka, during the night intervening 6th and 7th of July, 1970 and that there was an encounter and two persons who were later on identified to be Kartar Singh and Hardip Singh deceased, were killed. It may be pointed out here that Kashmira Singh (P.W. 53) on the basis of the record deposed about the departure and arrival of Shiv Narain and the other members of the Naka Party on July 6, 1970 and he produced Roznamcha Exhibit P.P.L., relating to Police Post Rattan Khurd containing this entry before the Investigating Officer which was taken into possession,—*vide* memo. Exhibit P.P. M. Similarly, Inspector M. P. Singh accused, in his answer to the last question before the Committing Court, stated that the encounter story was correct and that the deceased were killed in an encounter. At the trial also, he stuck to the encounter story and stated that Shri Surjit Singh, D.S.P., P.W. had directed the cancellation of a number of encounter cases and he represented against this wrong policy of Shri Surjit Singh and, therefore, he has been falsely involved in the case. S.I. Shiv Narain accused in his Committing Court statement stated that he along with his party of the Border Security Force was at Naka when the encounter took place and he sent a Ruqa to S.H.O., Police Station, Gharinda and got the case registered. He admitted at the trial that he sent a Ruqa to S.H.O., Police Station, Gharinda on July, 7, 1970, which is Exhibit P.O.O. and got the first information report Exhibit P.O.O./1 recorded regarding the encounter story.

(70) It is thus to be seen that even at the trial a plea of two of the respondents namely M. P. Singh and Shiv Narain is that the encounter took place and that a police party led by S.I. Shiv Narain accused in which Harbhajan Singh accused also participated, killed Hardip Singh and Kartar Singh deceased. It is pertinent to note that there is not an iota of evidence led by the defence, nor the defence could bring out anything on the record from the prosecution witnesses that the encounter story is correct. Except the bald statements of these accused persons coupled with the fact that Shiv Narain accused got a case registered at Police Station Gharinda regarding the encounter story, there is absolutely nothing to show that Kartar Singh and Hardip Singh deceased were killed in the encounter. There is thus admission of these respondents to the effect that they killed Kartar Singh and Hardip Singh deceased and there is no evidence to hold that these deceased persons were killed



in encounter and, on the other hand, there being ample evidence, as has earlier been discussed, to hold that these two deceased persons along with Shingara Singh deceased, were abducted on July 6, 1970, and that M. P. Singh, Shiv Narain and Harbhajan Singh accused had good relations with Ajit Singh and his sons, who are leading smugglers at the international border and the participation of the accused, whose names will be mentioned a little later, having been proved beyond all reasonable doubt from the prosecution evidence, it is to be held that the encounter story is a faked story and in fact the deceased were killed as in suggested by the prosecution. The trial Judge, without there being any basis on the record, found that the encounter story stood proved. This finding is really based on no evidence and is set aside.

(71) There is another circumstance which belies the defence version regarding the encounter. It is not denied and also amply proved from the record that Hardip Singh deceased was a part-time member of the Home Guards and was attached to Picket Rattan Khurd. Sovinder Singh (P.W. 47) Quartermaster of Home Guards, deposed that on 27th December, 1968 rifle Exhibit P. 9, which was found lying by the side of Hardip Singh deceased when his deadbody was removed by the Investigating Officer, was issued to Hardip Singh deceased who was a part-time member of the Home Guards. We find in the statement of Shri Kapur P.W., Commandant of the Border Security Force, that when he saw the rifle, he formed the opinion that either the rifle belonged to the Home Guards or to the Army. Inspector M. P. Singh, S.I. Shiv Narain and Harbhajan Singh accused were also posted at Picket Rattan Khurd. It is in evidence that village Ranike, to which the deceased belonged, is also four miles away from Picket Rattan Khurd. It is, therefore, difficult to believe that Hardip Singh deceased, who was a part-time constable of Home Guards and who was issued a Home Guards rifle, would not be known to M. P. Singh, Shiv Narain and Harbhajan Singh accused, who were posted at the border in that very area where Hardip Singh deceased was also working as a part-time Home Guard Constable, but according to the first information report lodged by Shiv Narain accused giving the encounter story, go both the persons, who were shot dead, could not be identified and were unknown persons belonging to a distant place. This gives an inkling that it was with a purpose that in the first information report Exhibit P.O.O./1, which was got lodged by Shiv Narain accused, it was purposely mentioned that the two deceased persons were smugglers and belonged to some distant place.

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(72) It may be pointed out that during the course of arguments in this appeal, it was brought to our notice that the evidence led by the prosecution that Paramjit Singh accused absconded was not put to him in his statement recorded under section 342 of the Code of Criminal Procedure so that this accused had not been provided with any opportunity to explain this circumstance. We asked the learned counsel for the defence if his client wanted to furnish any explanation regarding this piece of evidence led by the prosecution, the learned counsel for the defence informed us that since Paramjit Singh accused was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and, therefore, he was not in a position to contact him. Thus he could not furnish any explanation. The learned counsel further pleaded that the supplementary statement of Paramjit Singh accused in this connection may not be recorded. We,—*vide* our order, dated 16th January, 1975, over-ruled this contention of the learned counsel for the defence on the ground that since evidence has been led by the prosecution that Paramjit Singh accused absconded after the commission of the crime, it was just fair that he should be given an opportunity to explain this circumstance appearing in the evidence of the prosecution against him. We, therefore, ordered the Home Secretary, Punjab to make necessary arrangement for the production of Paramjit Singh accused before us on January 20, 1975. In compliance with this direction, Paramjit Singh accused was produced before us on January 20, 1975 and this piece of evidence was put to him. He stated that he was in U.P. during the days of this occurrence with his cousin Mahanvir Singh at his farm, who is the son of the brother of his father, Ajit Singh. Mahanvir Singh, came to Amritsar later on and when he returned to U.P., then he came to know that a case had been registered against him (Paramjit Singh). He then surrendered in the Court of the Sessions Judge at Delhi. This explanation furnished by him is hardly convincing. It is difficult to believe that a case having been registered against himself, his father and his brothers in the month of July, 1970, he did not come to know of the same till September, 1970, when he surrendered himself in the Court of the Sessions Judge at Delhi.

(73) After having recorded findings on the evidence abduced in this case, it is now to be seen that the participation of which of the accused persons, in view of the findings recorded above, is proved beyond all reasonable doubt. In this respect the evidence which has been found to be acceptable has to be kept in view.

As regards the charge of abduction of Puran Singh P.W., Satbir Singh, Jasbir Singh, P.O., Rajinder Singh and Makhan Singh accused abducted him and after that he was never released and was kept in custody against his will and was then handed over to Pakistani smugglers regarding which the findings have already been recorded. I have relied on the statement of Puran Singh P.W., who implicates Satbir Singh, Jasbir Singh P.O., Rajinder Singh and Makhan Singh. Jasbir Singh is a proclaimed offender, therefore, no finding regarding him need be given. As regards Makhan Singh and Rajinder Singh, they are not accused persons in this case. Therefore, no finding *qua* them need be recorded as well. The only person, who is being proceeded against in connection with his charge of actual abduction of Puran Singh, is Satbir Singh accused and this part of the prosecution story is relevant for the purpose of proving motive regarding which findings have already been recorded. Therefore, no other person except Satbir Singh accused, is liable to be held guilty under section 364 of the Indian Penal Code for having abducted Puran Singh P.W. I convict him accordingly and sentence him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2,000 and in default of payment of fine, he shall further undergo rigorous imprisonment for three years. All the other accused except Satbir Singh accused are, therefore, acquitted of this charge.

(74) As regards the charge of abduction of the three deceased persons from Crystal Hotel Chowk on 6th July, 1970, on the finding recorded in the earlier part of the judgment and on the evidence of Harnam Singh (P.W. 5) having been found to be acceptable, the respondents who participated in the abduction of the three deceased persons, have to be found guilty of an offence under section 364 of the Indian Penal Code. Harnam Singh P.W. in the Committing Court could not correctly identify Paramjit Singh and Satbir Singh accused. When he was asked to point out Satbir Singh accused, he pointed out towards Pritam Singh accused. Therefore, benefit of doubt has to be given to these three accused persons, namely, Paramjit Singh, Satbir Singh and Pritam Singh, as regards this charge. Harnam Singh, P.W. has not named Mehar Singh accused as a participant in the abduction of the three deceased persons. He is also to be acquitted of this charge. As I have already pointed out, none of the accused except Malook Singh and Pritam Singh, claimed to be identified and these accused persons also refused to be got identified when the identification parade was arranged which evidence has already been discussed in the earlier part of the

judgment. Keeping in view the findings recorded in the earlier part of the judgment and the statement of Harnam Singh P.W., I find that Ajit Singh, Baghel Singh, Tara Singh, Arjan Singh, Bachan Singh, Darshan Singh, Malook Singh and Dayal Singh participated in the abduction of the three deceased persons from Crystal Chowk, Amritsar, during the day time and all these accused persons are liable to be convicted under section 364, of the Indian Penal Code for three counts. This witness also named Jasbir Singh, Pama Satara and Malkiat Singh as participants in the abduction but they are yet to be tried. Therefore, no finding regarding these three accused persons need be recorded in these proceedings. I, therefore, convict Ajit Singh, Baghel Singh, Tara Singh, Arjan Singh, Bachan Singh, Darshan Singh, Malook Singh and Dayal Singh, for an offence under section 364 of the Indian Penal Code for three counts for having abducted the three deceased persons in order to murder them and sentence them to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2,000 each and in default of payment of fine, they shall undergo further rigorous imprisonment for three years each on each count. Out of fine, if realised, half shall be paid to the legal heirs of Kartar Singh deceased and the remaining half to the legal heirs of Hardip Singh deceased. Paramjit Singh, Satbir Singh, Pritam Singh and Mehar Singh accused are acquitted of this charge.

(75) As regards the actual murder of the deceased persons, in addition to the other findings given earlier accepting the prosecution case, it is in the statement of Puran Singh P.W., that on the fateful night when these murders took place, Satbir Singh, Paramjit Singh, Jasbir Singh P.O., M. P. Singh, Shiv Narain and Bhajan Singh accused were present at the Border, when Puran Singh, P.W. was confronted with Hardip Singh deceased with a view to get back the gold. It was then on the refusal of Hardip Singh deceased to hand over the gold, that Shingara Singh and Puran Singh were handed over to Yakub and Shaffi, Pakistani smugglers, whereas Satbir Singh, Paramjit Singh, Jasbir Singh, P.O., M. P. Singh, Shiv Narain and Bhajan Singh accused returned to the Indian side of the Border with Kartar Singh and Hardip Singh deceased. Puran Singh P.W., had hardly travelled a distance of about 20 or 25 yards when he heard shots having been fired and simultaneously Shaffi fired a shot at Shingara Singh. It would thus be seen that the presence of Satbir Singh, Paramjit Singh, Jasbir Singh P.O., M. P. Singh, Shiv Narain and Bhajan Singh accused at the crucial time of the murder of Kartar Singh and Hardip Singh deceased is

proved beyond all reasonable doubt. There is ample evidence and it is also the defence case that the two deceased, namely, Hardip Singh and Kartar Singh, were found murdered on the Border on the night intervening 6th and 7th of July, 1970 and they were killed in an encounter regarding which finding has already been given that the same was a faked one. There is also extra judicial confession of Shiv Narain and Bhajan Singh accused disclosing to Shri Kapoor, P.W., about the murders of these two deceased persons, namely, Kartar Singh and Hardip Singh, telling the circumstances in which they were murdered and it having been found that the encounter story as put forth by the defence, is a faked one, it is to be held that the two deceased, Kartar Singh and Hardip Singh, were not killed in encounter as put forth by the defence, but they were actually murdered and the participation of Satbir Singh, Paramjit Singh, Jasbir Singh P.O., M. P. Singh, Shiv Narain and Bhajan Singh, having been proved beyond all reasonable doubt and there being evidence that all these accused had a motive to kill the deceased and that it was in consequence of a conspiracy that the deceased were abducted and killed, it is to be held that Satbir Singh, Paramjit Singh, M. P. Singh, Shiv Narain and Harbhajan Singh, are guilty of an offence under section 302 read with section 120-B of the Indian Penal Code for the murder of Kartar Singh and Hardip Singh deceased on two counts. No finding can be recorded as to who, out of these accused, actually fired at the deceased persons, but it is clear that all these accused persons are liable for the murders of the two deceased, namely, Kartar Singh and Hardip Singh. Jasbir Singh is a proclaimed offender, who is not being tried and, therefore, nothing said herein regarding him, should be taken against him as he is to be tried separately. I, therefore, convict Satbir Singh, Paramjit Singh, M. P. Singh, Shiv Narain and Harbhajan Singh, accused for an offence under section 302 read with section 120-B of the Indian Penal Code on two counts. No doubt the offence committed by the accused is very alarming, but since the responsibility of firing the shots cannot be pinpointed to any of the five accused named above, therefore, in my opinion, the ends of justice will be met if all the five accused persons, namely, Satbir Singh, Paramjit Singh, M. P. Singh, Shiv Narain and Harbhajan Singh, are sentenced to imprisonment for life each under section 302 read with section 120-B of the India Penal Code on each count. I order accordingly. All the other accused, namely, Ajit Singh, Darshan Singh, Arjan Singh, Pritam Singh, Mehar Singh, Baghal Singh, Tara Singh, Dial Singh,

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Bachan Singh and Malook Singh, are acquitted of the charge of murders and conspiracy.

(76) The appeal filed by the State is accepted to the extent indicated above. All the sentences in case of each convict shall run concurrently. The accused are on bail. They shall surrender to their bail bonds and be taken into custody forthwith to serve out their sentences. The appeal against Mehar Singh and Pritam Singh is dismissed.

S. S. SINDHU.—I agree.

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N. K. S.

