

PORTRAIT OF A POLITICAL MURDER

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PREFACE

Mr. Zulfikar Ali Bhutto's historic trial for the murder of his political opponent brings out the story of meteoric rise and sudden fall of a man who rose to be the President and Prime Minister of Pakistan and was later deposed and hanged as a worst criminal. It also portrays vividly the instrumentalities utilized for executing this political murder.

At 0.13 a.m. on 11 November, 1974 Nawab Ahmad Khan, father of Ahmad Raza Kasuri, an opposition member of the National Assembly was hit with fire from automatic weapons. In a written statement at 3.20 a.m. the same day, Kasuri referred to an earlier murderous attack on him at Islamabad and asserted that the assassination of his father was the result of an attempt on his life carried out for political reasons. He recalled that in a statement in the National Assembly, Zulfikar Ali Bhutto had stated that it was not possible for him to tolerate Kasuri any more.

The Inquiry Tribunal comprising Justice Shafi-ur-Rehman reported on 26 February, 1975 that the occurrence at Lahore and the earlier incident at Islamabad had a common inspiration, motive and organization; the motive was political and that perpetrators of the crime were well organised, well equipped, resourceful and persistent. The recommendations of the Tribunal were not acted upon; rather the case was filed.

After Mr. Bhutto was removed from his office on 5 July, 1977, the case was reopened. An inquiry into the working of the Federal Security Force revealed its involvement in the murder. The Lahore High Court tried the case from September 1977 to March 1978 and indicted Z.A. Bhutto and four officials of the Federal Security Force. On an appeal to the Pakistan Supreme Court, the majority judgment of February, 1979 dismissing the appeal, said:

“There are no extenuating circumstances in favour of the appellant (Zulfikar Ali Bhutto), and the High Court was accordingly right in imposing the normal penalty sanctioned by law for the offence of murder as well as its abetment. The facts establish beyond any doubt that the appellant used the apparatus of Government, namely the Agency of the Federal Security Force, for a political vendetta. This was a diabolic misuse of power. Instead of safeguarding the life and liberty of the citizens of Pakistan, he set about to destroy a political opponent by using the power of the Federal Security Force, whose Director General occupied a

special position under him. Ahmad Raza Kasuri was pursued relentlessly in Islamabad and Lahore until his father became the victim of the conspiracy”.

Appellant Zulfikar Ali Bhutto was represented by a team of eight lawyers headed by Mr. Yahya Bakhtiar. During the seven month long trial in the Supreme Court, the appellant during his address of nearly 12 hours alleged that the case was politically motivated and there had been international conspiracy to remove the appellant from power. Mr. Bhutto also alleged bias on the part of the trial Court. Pakistan Supreme Court unanimously rejected the review petition also of Mr. Bhutto. The Sindh High Court dismissed in limini the habeas corpus petitions filed by Z.A. Bhutto and others challenging the constitution of the Lahore High Court and Pakistan Supreme Court bench which heard and decided Mr. Bhutto's case. After rejection by the President of all the appeals and petitions for mercy, Mr. Bhutto was hanged on 4 April, 1979 in the Rawalpindi Jail.

Doubts have, however, arisen in many minds regarding the 'legality' 'justness', 'proprieties' and 'fairness' of the Bhutto's trial both in the Lahore High Court and the Supreme Court of Pakistan. It had been said that the trial failed to reach basic standards of justice and that Bhutto himself became a victim of political vendetta. Whereas the military government of Pakistan claims that with the trial and execution of Bhutto, supremacy of law has been established, several jurists, journalists, lawyers, statesmen and parliamentarians have raised some important and crucial queries about the conduct of this famous trial which has created sharp opposite opinions throughout the world.

This book portrays explicitly these political murders and hangings and their legal and political ramifications. This will give to the readers a better understanding of the issues involved in these tidal horrendous crimes. It may also help to halt the resurgence of political killings around the world.

H. S. BHATIA

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INTRODUCTORY

Mr. Zulfikar All Bhutto has become the victim of his own contradictions. He was the greatest legal and political enigma of our times. It is hard to say whether his legal termination is being justified on political grounds or whether his political termination is being justified on legal grounds. Both law and political exigency have conspired to give Bhutto a taste of his own bitter medicines.

Everybody in India knows that Mr. Bhutto is the author of the slogan of 1000-year war with India which did not last even a thousand days. Whether we appreciate Bhutto as a *Demo* or depreciate him as a *Demon*, Pakistan Judgments on the case of Mr. Bhutto will inspire and perspire people of Pakistan and the world for thousands of years. If Bhutto lost a 1000-year physical war, he won gloriously a 1000-year psychological war. A tactician of the Cold War, he will live in history for a long time.

Born Jan. 5, 1928 in Larkana, Sindh, Pakistan; son of Shahnawaz Khan Khurshid Bhutto; wife-Nursat; children—Benazir, Sanam, Seema (daughters); Murtaza, Shahnawaz (sons); Education: University of California, Berkley, B.A. (with honors), 1950; Christ Church, Oxford, M.A. (with honors), 1952; called to Bar, Lincoln's Inn, London 1953; private practice of law 1953-58; University of Southampton, England, lecturer in International Law 1952-53; West Pakistan High Court Attorney, 1953-58; Sindh Muslim Law College, Karachi, teacher of constitutional law, 1956-58. Of medium build and distinguished looking, Mr. Bhutto was a forceful speaker and used to be called "the golden lad from Larkana."

An ambitious and flamboyant leader, Zulfikar Ali Bhutto has been in the thick of Pakistani politics for nearly a quarter century. He is the architect of the rapprochement between Pakistan and China and many hold him responsible for the break-up of Pakistan in 1971 after the Pakistan People's Party which he founded and led and secured a runaway victory in the election in West Pakistan. For many years his role in Pakistani politics was that of an implacable foe of India and he had once vowed to wage a thousand year war against this country. But his attitude softened a little after he became Prime Minister of truncated Pakistan.

Bhutto came into prominence when Gen. Ayub Khan, picked him for a Cabinet post. At 30, he was the youngest Minister and he held the portfolios of Commerce, National Reconstruction and Information, Kashmir Affairs and Minority Affairs and Fuel, Power and Natural Resources before being named

Foreign Minister in 1963. Bhutto's stewardship of foreign affairs was marked by virulent anti-Indian activities. He broke with the past and started cultivating the Peking regime.

Bhutto's ministerial career came to an abrupt end when he began criticizing President Ayub Khan for having signed the Tashkent agreement in 1966. For about a year thereafter he remained in the wilderness. As opposition to President Ayub Khan mounted in the country, Bhutto formed a party of his own in 1967 to launch an independent political career. The Pakistan People's Party, as it was christened, claimed "democracy is our policy and we believe in the supremacy of the people."

Detained under the emergency laws in November 1969, he acquired his freedom three months later.

In the West Punjab and Sindh provinces, the PPP did well in the elections of December, 70 making his party the second largest in the National Assembly. With the separation of Bangladesh, the PPP became the largest party, holding 82 of the 138 National Assembly seats from West Pakistan. Bhutto at last reached the pinnacle of power in Pakistan, though not in very palatable circumstances.

After launching the 1971 aggression on India, Gen. Yahya Khan persuaded Bhutto to accept the post of Vice Prime Minister and Foreign Minister. However, no Government was formed immediately and Bhutto was dispatched to New York to present Pakistan's case at the United Nations. When he learnt in New York of the Pakistan Army's rout in Bangladesh he characteristically created a scene and walked out of the Security Council.

A Flashback. In his autobiography, 'Zulfi, My Friend', Piloo nostalgically remembers the childhood years. He and Zulfi spent almost all their walking hours together—playing tennis, swimming, watching matinee shows, going for midnight walks, sharing 'first love' experiences and witnessing cricket matches (the two boys were very friendly with Mushtaq Ali).

Even when, at the age of 19, Piloo fell under the Mahatma's influence and Zulfi became an ardent follower of Jinnah, the friendship continued in spite of violent arguments. Says Piloo: "For this, I must give full credit to Zulfi. His personal loyalty, his capacity to absorb abuse and anger from his friends and his refusal to allow such incidents to diminish his respect for his friends was quite remarkable."

When the Mahatma was assassinated the two young friends were studying at the American university of Berkley. Piloo was terribly upset for days: "Throughout

this period it was Zulfi who consoled me and nursed me out of my condition, sharing my sorrow and in commiseration with me being careful not to say or do anything which could hurt me in any way. Eight months later, I did the same for him when Jinnah died.”

In more normal times, there were also bitter disputes. Pilloo remembers “a period when I was so angry with Zulfi that I refused to speak to him. But Zulfi’s loyalty and idea of friendship was very different and carried a certain attitude of permanence. In spite of the fact that I was terribly mean to him, he continued to make my bed and put away my clothes as if nothing had happened.”

“This was basically Zulfi’s most endearing trait, that for those for whom he had developed an attachment there was no wavering in his dedication and service. In friendship there was no quid pro quo, it was total surrender.”

After finishing college the two returned to their respective countries. The meetings were few and far between. However, Pilloo narrates one particular discussion with Zulfi in the VIP lounge at Santa Cruz Airport (December, 1963): “On that occasion, I told him that relations between India and Pakistan had deteriorated ever since he had become the Foreign Minister and I put 90 per cent of the blame on him... I told him that as things stood even if I became the Foreign Minister of India we would still not be able to settle our differences. He replied no, that was not so and that he was quite sure that we could reach an understanding within half an hour.”

To sum up in Pilloo’s words: “That our friendship has lasted through innumerable quarrels, the partition of the country and four wars, to some extent demonstrates the universality of human nature and relative insignificance of governments, nations and even nationalism.”

Bhutto’s Achievements. All of us are familiar with the achievements of Mr. Bhutto in public life. He was still in his 30s and a novice in politics when he took on the most powerful ruler that Pakistan has ever had, Field Marshal Ayub Khan, and he shook the power of the President with student power. He then went on to prove that he was not going to be a passing cloud of thunder. He consolidated his popularity with lightning speed and from a “youth” leader became a national leader within three or four years. He captured provinces in less time than others take to capture one or two constituencies, and faster than people become chief ministers he became the President and Prime Minister of his country.

It was a new phenomenon in the politics of Pakistan, and a rare one in the politics of all Third World countries which have been through periods of military

rule, that he pitted the political power of the people against the political monopoly acquired by the army, and he broke the monopoly.

It would be an exaggeration to say that he succeeded in confining the army to the barracks; he did not. He became President in 1971 because of the backing of the two most powerful leaders of the armed forces in those days, Lt. Gen. Gul Hussan and Air Marshal Rahim Khan. It is also true that when the army struck back on July 5, 1977, his popularity among the people could not protect him.

But it remains true that for the first time in the history of Pakistan, he made the visible support of the people a source of legitimate power as against the only source of power the country had known till then, a small coterie of army officers drawn from a few districts of one province of the whole country.

He did more than that. Gradually he gave a slant to his popular appeal which had a great promise of future dynamics. The Islamic socialism he began to preach might have been only demagoguery. But he used it well to carve out a base among the people instead of remember the leader of a transitory generation. This can be a base of great and continuous power in a poor country when it becomes genuinely democratic.

Next, with the help of this power he began to undermine the two most dangerous fortifications in the politics of Pakistan: the walls which divide Punjab from NWFP and Sindh; and the fortress of the army's political power in the heartland of Punjab, which have tunnels connecting it with many centres of authority in Pakistan, especially feudal authority. He burrowed under both fortifications until his support base began to reach out to the poorer people in all provinces and even into the core districts of the army-landlords complex.

In 1970 he proved that he had become a national leader of the people, the first since Jinnah and Liaquat Ali Khan. He proved it again in 1976 when his electoral victory was decisive even if there was some "over-kill" with needless rigging. He would have proved it again if President Zia had held the elections he promised but dared not hold for fear that he would have to face Mr. Bhutto again.

When Mr. Bhutto became President and Prime Minister on the shoulders of the power that he had created himself, he began to display another side of his talent by nursing wounded country back to nearly normal health. In the first three years of his office, he did a job of mass healing which has few parallels. A country which could have died of the shock of amputation became a whole person once more.

This recovery was also not fortuitous. The treatment was systematic. First Bhutto took a new look at the world and formed his own world view, different from that of all his predecessors (assuming that they had a world view at all). Then he recalculated Pakistan's position in the new world order as he saw it. Then he simultaneously performed the twin therapy of making the world realize and making the people of Pakistan realize that Pakistan was carving out a place for itself in this new world of its new perceptions.

Perhaps that was the secret of his mass healing: as Pakistan found a new place in the eyes of the world, it found a new place in the eyes of its own people as well. This reminds one of what Nehru did 20 years earlier, and to be reminded of Nehru is not a mean tribute to Mr. Bhutto.

Nehru and Bhutto. In the last few months writes Pran Chopra, Bhutto has displayed yet another side of his talents. He has shown himself to be not only a man of action but of ideas and concepts, not only perceptive but also articulate, perhaps the most articulate among the top politicians of the Third World countries at present. In a court affidavit—of all places!—he has given a penetrating analysis of the state of Pakistan, especially of the sickness of martial law which possesses it. The document, which the Pakistan Government tried to black out, but has been published as a book in New Delhi (*"If I am Assassinated....."* by Z. A. Bhutto – Vikas) equals the best of Nehru at places in its interpretations of history and in the eloquence with which it speaks of the power of the people. In the sharpness of its analysis it sometimes excels Nehru.

But this comparison only intensifies a contrast with Nehru, and that is where the tragedy of Mr. Bhutto lies, his fatal flaw because of which he has landed in a death cell from which his only escape had been through the gallows.

Mr. Bhutto has his own explanation for his downfall, and he develops it in the book with the excitement of a detective story. He makes many startling disclosures about what has been happening in Pakistan, which explains why the Pakistan Government tried to suppress the document. It sealed the press in which Bhutto's counsel, Mr. Bakhtiyar, tried to print it, and pre-censorship was imposed upon newspapers which tried to report it.

Foreign Hand? In brief, Mr. Bhutto's explanation for his downfall is that he was brought down by "a foreign hand". There was a "conspiracy" between "a foreign power" (though more than one is hinted at) and "internal forces" which he says betrayed him in order to deprive Pakistan of a nuclear reprocessing plant. "I am not challenging or supporting this explanation here, because that again is a separate story. But I am emphasizing another explanation which is probably a more valid one though it may be heartless to discuss it when the man

condemned to death is waiting for the hangman's knock upon the door of his cell in the District Jail, Rawalpindi" says Pratt Chopra.

Mr. Bhutto draws many parallels between India and Pakistan in the course of the book. In fact there is an Indian setting to his story where he refers to Indian election procedures to the Kamraj Plan and to Desai and Patel being districts administrators before they became politicians. At one place he says he did not wish anyone should do a "Jagjivan Ram on me". In developing his world view also he presents fascinating perspectives on the Indian sub-continent and on Indian democracy, the two things closest to the heart of Pandit Nehru, from whose "Discovery of India" he quotes at one place.

But his references to India and Nehru become poignant—or should I say ironic in this context?—when in the last four lines of his book Bhutto reproduces this penetrating quotation: "There is something in human history like retribution; and it is the rule of historical retribution that its instrument be forged not by the offended but by the offender himself". With this quotation, Bhutto separates himself from Nehru.

Mr. Bhutto repeats the quotation to prophesy that by hanging him his "assassins" would be assassinating themselves. After about 1975 Mr. Bhutto became the instrument of his own "assassination". The incomplete man in Mr. Bhutto killed the brilliant man in him. His rise became his downfall, his own theory his undoing. He accomplished mass healing but he did not cure the one flaw in him which brought him down so harshly.

Bhutto Personifies Pakistan

Bhutto is Pakistan, Pakistan is Bhutto. Bhutto embodies the aspirations, inspirations and perspirations, deeds, doubts and desperations, faults, foibles and failings of Pakistan, in a manner and intensity to which Mrs. Indira Gandhi never did, when Shri D. K. Barooah, the President of the Indian National Congress, coined the slogan, "Indira is India and India is Indira."

Zulfikar Ali Shahnawaz Bhutto was about twelve years old in 1940 studying in Cathedral Boys' School in Bombay when Muslim League passed the Lahore Resolution for the creation of Pakistan and thus Bhutto and Pakistan have grown up together, sharing their heart-beats like twins. The Principal, Col. Hammond felt that Bhutto should rather join Cathedral Girls' School, because he could not be admitted into the first standard at the Boys' School. But Zulfi revolted at the idea and Col. Hammond patted him on the back and said, "That's the spirit, boy", says Pilo Mody, Bhutto's boyhood friend. It is this kind of patting which urged Zulfi to ladder up from schoolship to Presidentship of Pakistan in record time like a young olympic wrestler.

Zulfi's father, Sir Shahnawaz Bhutto, was an important man in the British Empire, the biggest landlord of Larkana, member of Bombay Legislative Council, Supply Member of Viceroy's Executive Council, and a delegate to the Round Table Conference in London in 1931, who was responsible for creation of Sind Province and later on of Pakistan. In 1947, Sir Shahnawaz moved to Junagadh, a small princely state, and became its Dewan. Under Mr. M.A. Jinnah's direction, he advised the ruler to opt for Pakistan, which caused initial bitterness between India and Pakistan and led to India's police action in Hyderabad and Pakistan's invasion of Kashmir. Had thorns not been sown hastily in Junagadh, roses would have bloomed in Indo-Pak relations! Jinnah's advice to Sir Shahnawaz was unprincipled and created evil consequences. Bhutto has much of his father and Jinnah in him. He embodied the evil tradition and carried it forward to his own humiliation and death in a prison cell. That is why Mahatma Gandhi insisted that good ends to be achieved by good means, for good ends cannot be achieved by bad means. Bad means inevitably lead to bad ends, as Vedas says, "Pepper plant not grow roses, nor roses to thorns and thistles turn."

Making of Bhutto. Zulfi was nine years old when he joined Cathedral and John Cannon High School, Bombay, in 1937. He was a good cricket player, a great cricket fan, and made good friends at the Wellington Club. He failed in his Senior Cambridge Examination in December 1945 and his younger sister, of whom he was very fond, died. This double tragedy did not make him

despondent but spurred him on to greater activity and became virtually incommunicado till he passed his Senior Cambridge in December 1946.

His enthusiasm for cricket led him to strike an acquaintance with all famous cricket players of the era. Mushtaq Ali was his favorite and often lived in Bombay with the Bhutto family. Mushtaq Ali was greatly impressed by the God-fearing nature of Zulfi's mother and sisters. There was great friendship between Zulfi and Mushtaq, although Zulfi was sixteen years old and Mushtaq was ten year older.

At sixteen Zulfi was very smart, spoke good English and was very fond of cricket, clothes and good food as well as films. Extremely sensitive, he was very touchy and easily offended. He often showed his temper and sulked frequently. But he never let these occasions interfere with his friendships.

Zulfi secured admission to the University of Southern California in Los Angeles. In January 1949 Zulfi migrated from the University of Southern California to the University of California at Berkeley and enrolled as a major in the Political Science Department. In 1948 he had given a lecture on The Islamic Heritage in which he spoke on the need for socialism in Muslim countries. As a sage said, according to Pilo Mody, "If you are not a socialist at twenty, you have no heart, but if you are a socialist at forty, you have no head".

Soon Zulfi went to England, took Jurisprudence at Oxford University and attended Christ Church College and completed a three-year course in two years, gaining a high distinction missing a first class by a short run. , In 1952 he went to London to finish his Bar Examination at Lincoln's Inn. In less than a year he was called to the Bar and given an appointment at the University of Southampton as Professor of International Law. He returned to Pakistan in November 1953.

From Lawyer to Politician. Mr. Bhutto set up a lawyer's office in Karachi under the charge of Mr. Ramchandani, a highly successful Sindhi lawyer both in Civil and Criminal Law; but the latter advised him earnestly not to waste his time in law as he was more cut out to be a politician.

Mr. Bhutto wrote a pamphlet called *Pakistan, a Federal or Unitary State* which bitterly criticized the unitary system, and Mr. Khohro, Chief Minister of Sindh wanted to arrest him but feared because of his father's influence. Warnings were given to him and there were plenty of petty attempts at victimization. Bhutto's father advised him to keep away from politics for sometime. Sir Shahnawaz said to his son, "In the art of politics timing is an essential factor". He advised him against a political plunge prematurely. For this reason Bhutto kept out of provincial elections in Pakistan. Sir Shahnawaz was a powerful man and both

Motilal Nehru and Quad-e-Azam Jinnah had stayed in his ancestral home in Larkana.

Bhutto entered political life the easy way. Mr. Iskander Mirza, the President of Pakistan, was an old friend of the Bhutto family. He used to meet President Mirza and General Ayub Khan when they came to Larkana for the winter season. Larkana had one of the best shooting preserves in Pakistan.

In 1955 Iskander Mirza had a marathon discussion with Bhutto and decided to send him to the Security Council to represent Pakistan on Kashmir affairs. He recommended to the Prime Minister of Pakistan, Chowdhury Mohammad Ali, who opposed the move but finally agreed. In September 1957, when Bhutto was 29 years old, he went to the United Nations General Assembly.

In the Sixth Committee of the United Nations he gave a speech on *The Definition of Aggression* which is regarded as one of the best in Pakistan circles.

While Bhutto was at the United Nations, his father expired on November 19, 1957 and Bhutto hurried back to Larkana. In March 1958, Feroze Khan Noon, the Prime Minister of Pakistan, sent Bhutto as the leader of the Pakistan delegation to the United Nations on the Law of Sea in Geneva. Many Governments wrote to the Government of Pakistan paying tributes to his leadership.

Meteoric Career

Bhutto rose like a meteor in the political firmaments of Pakistan; and then like a meteor he fell!

After Iskander Mirza and Ayub Khan staged the coup, they were in search of talented people to run the government. Bhutto was not only talented but also extremely youthful, enthusiastic and inspired with highest ideals for the reconstruction of Pakistan. So their eyes fell on him.

“Being a scion of the Bhutto family”, writes Pilo Mody in *Zulfi My Friend*, “whose father had been a delegate to the Round Table Conference in London in 1931-32, the Minister representing Sind in the Bombay Government, the Chairman of the Public Service Commission of Sind (Bombay), the first Chief Adviser of the Sind Government, and later Prime Minister of Junagadh, Bhutto possessed the natural background. Academically and professionally he had the requisite qualifications.”

Immediately after the triumphant assignments in the United Nations, Bhutto earned his seat as Minister of Commerce in the Ayub Cabinet. L.F. Rushbrook Williams in his book *The State of Pakistan* refers to him as a young man new to politics, but with a reputation already established among economists. He later took charge of Fuel, Power and Natural Resources, before becoming Foreign Minister after Mohammad Ali Bogra died.

Did Bhutto Join the Conspiracy to Topple Democracy? “Reading and researching his life since 1953”, says Pilo Mody, “I did not find a single instance where Bhutto demand something he had not earned, or fell a victim to accepting easy office by compromising his stand on any issue of fundamental importance to Pakistan.

“In spite of this preponderant evidence, speculation persists about how Bhutto may have found his way into Mirza-Ayub *coup d'état*. The Observer, London, of 2nd January 1972 refers to a shoot presumably arranged by Bhutto for Iskandar Mirza and General Ayub Khan. It is just possible that Bhutto might have been something more than the host for the conspiracy that was supposed to have been hatched at the shoot. Nevertheless, it is absolute fact that Bhutto was well in with Mirza and Ayub, and therefore it did not need much persuasion to include him in the Cabinet.”

Bhutto's Socialism. Though Bhutto belonged to a privileged class, he was a socialist at heart. This is how he spoke at the Pakistan National Assembly on July 10, 1962:

“I too am a part of that society. Perhaps one reason why I am here today as a Minister is because I belong to this privileged class. Therefore, I do admit the advantages of the system. But, Sir, in spite of the advantage that some of its have derived from the system, in spite of the fact that some of us would fight to see it remain, it has many inherent drawbacks. It leads to petty intrigues, it leads to victimization of the people, it leads to callousness towards poverty and it leads to lethargy. So when feudal rivals clashed with each other the people remained exactly where they were. There was no development; no factories, no roads, no communication; absolute darkness and miserable poverty prevailed. Only the great ones, the chosen few prospered. What issues were such arrogant lords going to take to their chattels – the downtrodden people?”

From Power to Power. ‘As a member of Ayub’s Cabinet, first as Minister of Commerce from October 1958 to January 1960, and then in charge of the portfolios of Minority Affairs, National Reconstruction and Information, and later saddled with the newly-created Ministry of Fuel, Power and National Resources and Kashmir Affairs in April 1960, Bhutto did very well, learning all the time. When he was reappointed Minister in Ayub’s Cabinet under the new constitution he was given charge of the Ministry of External Affairs in 1960. He had the position he most coveted. Throughout this period he served Ayub with zeal and dedication, genuine respect and loyalty’.

When the Indo-Pak war broke out in 1965, culminating in Tashkent, Bhutto’s differences with Ayub became sharp-edged. Tashkent agreement was against Bhutto’s ideas and policies. Finally, Ayub sent Bhutto to London on an enforced sick leave and thereby eased him out of the Cabinet.

Was Bhutto Responsible for 1965 War? “In analyzing the situation”, says Pilloo Mody, “Bhutto most have played a predominant role, although much later Bhutto was to try and dissociate himself from having had any hand in the conflict of 1965.

“People on both sides of the border are inclined to the view that Bhutto had a great hand in persuading Ayub and his Government to the precipitate action of waging a war on the grounds that this was the most opportune moment. Knowing Bhutto it is quite possible that he might have provided the arguments and furnished the brief that could have clenched Ayub’s mind.”

PAKISTAN PEOPLE'S PARTY

By the end of 1967 Bhutto had decided that Pakistan needed an entirely new orientation through a new party. For months he had been thinking and planning. Once he had made up his mind, he drove himself and his colleagues mercilessly to create Pakistan People's Party. The inaugural paper of the party said:

"...a growing and powerful body of the people, spearheaded by the younger generation, firmly believes that the old ways and traditional methods are not sufficient to surmount the colossal problems facing Pakistan... The people are not prepared to return to the past or willing to tolerate the present system much longer. They want a new system based on justice and attached to the essential interests of the toiling millions".

On Kashmir, Bhutto reflected the popular attitude of Pakistan: the people of Jammu and Kashmir had been denied their inherent right of self-determination "by the arbitrary exercise of authority of a fleeing despot"; "the usurper State of India" had occupied Kashmir by force; by "both history and geography, the people of Kashmir were linked inseparably to the destiny of Pakistan"; no matter what the obstacles they must return to the brotherhood of Pakistan "to fulfill the two-nation theory".

Downing Dictators. On September 21, 1968, Bhutto launched his first direct attack on Ayub at Hyderabad. In a rousing speech he attacked Ayub for shortcomings of Pakistan and his dereliction of duty. On November 5, 1968 Bhutto attacked Ayub at Peshawar at a mammoth meeting. Ayub tried to reply to him at another meeting at Peshawar but he was hooted down. On November 13, 1968 Bhutto was arrested and imprisoned in Mianwali Jail.

By February 1969 Ayub found his position intolerable. He announced that he would not contest 1969 elections. He called a leaders' conference on how to effect change of power. As a token of goodwill both Bhutto and Mujib were released so that they could attend the forthcoming conference but while Mujib attended the conference Bhutto did not.

Bhutto-Yahya Pact. On March 24, 1969 Yahya and Bhutto met at Rawalpindi and made the following pact:—

- (i) Pakistan should follow an independent foreign policy.
- (ii) West Pakistan should be broken up into four units—Punjab, Sindh, N.W.F.P. and Baluchistan.

- (iii) General elections should be held in a year based on adult franchise. On March 26, 1969 Ayub finally resigned and handed over power to Yahya Khan, his Commander-in-Chief, who in turn assured him full protection. Bhutto called off his agitation and relative peace was restored.

Legal Framework Order. In November, 1969 Yahya issued a Legal Framework Order which included detailed study of how power should be transferred from the military to civilian rule.

The legal order not only called for elections but also established the guidelines on which the constitution was to be framed.

It said that “the election campaign would continue for a year, after which the Assembly would meet and which within 120 days had to come up with a constitution which again was subject to the presidential veto”.

In January, 1970 the election campaign began. It was the first election after 14 years of dictatorship. It was the first election based on Adult Franchise that Pakistan had known in 24 years.

The police did all they could to harass Bhutto and his party workers. There was an attempt on Bhutto’s life on March 31, 1970. Yahya Khan openly remarked that Bhutto was far more dangerous than Mujibur-Rahman.

Classless Society. The main goal of Pakistan People’s Party was “the attainment of a classless society”, which, according to Bhutto, “was possible only through socialism in our time”.

The manifesto defined socialism as “true equality of citizens, fraternity under the rule of democracy in an order based on economic and social justice”.

In order to achieve its aims PPP would “bring about peacefully early changes in the economic structure, leading logically to a more judicious socioeconomic order by opening the gates to progressive changes in the direction of the final goal”.

His foreign policy was aimed to “get out of entanglements with imperialistic neo-colonist powers” – which meant that Pakistan would immediately withdraw from SEATO and CENTO.

Provision would also be made for old age pensions and homes for disabled workers.

As regards the press, PPP would end censorship: "We ought to know not only the pleasant things about ourselves but also the unpleasant facts".

In the matter of health, numbers of bold and radical measures were set forth. The problems in any case are truly horrendous, for to quote directly from the manifesto: "ten per cent of the population suffer from some mental defects, ranging from idiocy and raving madness to loss of mental equilibrium".

Voting for Party, not an Individual. One of the far-reaching changes proposed by the Pakistan People's Party manifesto was in the electoral system. Bhutto advocated a system of voting for party lists, not for individual candidates. The number of candidates elected from each party would be proportionate to the total number of valid votes cast. In this system "it will depend on the political party concerned how its candidates are placed in respect of priority on the list. Since the local bosses cannot by merely spending money hope to get elected unless his name stands high on the party's list, election expenses will quickly be confined to essential and political conviction will become more important than personal influence."

Socialist Clichés. The manifesto of Pakistan People's Party ends with the slogan, "All power to the people" – the same slogan that dictators have always used to enslave the very people through whom they have come to power.

"My only advice to Zulfi", wrote Pilloo Mody "would be not to ape India in its massive, but meaningless, legislation in his fervor to burnish his socialist image. Instead he could learn a great deal by studying the innumerable failures caused by the dogmatic postures taken by Indian leaders and avoid the pitfalls inherent in chasing socialist clichés".

In September 1970 many members of the Pakistan People's Party were clapped in Jail but won their seats while still in Jail. Yahya promised Prime Ministership to Mujib and decided to restrain Bhutto and his party. But results were not to the liking of Yahya. Mujib won a preponderant majority in East Pakistan while Bhutto got an impressive victory in West Pakistan. Thus the country stood hopelessly divided instead of being united by elections.

In January 1971, Yahya went to East Pakistan to meet Mujib and declared at a press conference that Mujib was the future Prime Minister of Pakistan. Then Yahya met Bhutto at Larkana and asked Bhutto to cooperate with him.

Federation and Confederation. "Zulfi explained to Yahya that autonomy for province would mean autonomy for the other four provinces, and that what they

would be really creating would be five semi-independent states, or at any rate, two, East and West, and that each state would thereafter have equal powers. If such an arrangement came into being, Pakistan would no longer be a federation of five autonomous provinces but would become a confederation of five semi-independent states.

“Yahya’s reaction to Bhutto’s argument was entirely typical. He said he was a soldier and did not understand the difference between federation and confederation, and declared that all he wanted was to keep the country together, and told Bhutto that if he wanted any change he would have to discuss it directly with Mujib”.

On January 27, 1971 Bhutto went to East Pakistan and discussed the matter with Mujib but Mujib was determined on confederation rather than federation.

The Great Tragedy. Mujib made further demands. According to Bhutto in Great Tragedy, Mujib imposed on the West wing an external debt of 38,000 million out of 40,000 million and a contribution of 74 per cent to fulfill federal requirements. East Pakistan’s payment to the entire would be 24% notwithstanding the fact that its population was 56% of the total.

Thus the meeting of the Pakistan Assembly on 15th February 1971 had to be postponed. Mujib refused to accept the change and to waive 120-day restriction imposed by the Legal Framework Order. Bhutto wanted March 23, 1971 as the date for Assembly to give him more time for negotiations.

When Yahya postponed the Assembly *sine die*, Mujib was infuriated. It created havoc in East Pakistan. Law and order situation deteriorated beyond control.

Fight for Freedom. On March 17, 1971 Yahya went to Dacca to negotiate with Mujib and called Bhutto telegraphically on March 20th. Mujib told Bhutto to become Prime Minister of West Pakistan and he should become Prime Minister of East Pakistan. He also told Bhutto not to trust the military who would destroy them both. To this Bhutto said, “I would much rather be destroyed by the military than by history”.

Yahya decided to take military action in East Pakistan. He left Dacca on the night of March 24, 1971 without informing Bhutto or Mujib. At 11 p.m. on the night of March 25, 1971 the army struck. The next day Bhutto left for West Pakistan.

Indescribable violence was let loose on East Pakistan or Bangla Desh. Thousands were killed and millions were maimed. There were about three million refugees in India which became a burden for Prime Minister Indira Gandhi.

WAR AND AFTER

When the tide turned against the Pakistan Army in Bangla Desh, Yahya called Bhutto to help him find a solution. Bhutto told him to hand over power to a civil government and let them negotiate with Mujib.

Lifting a matchbox and pushing it towards Bhutto, Yahya said: "Is it as simple as that?"

Bhutto pushed the matchbox back towards Yahya and said: "Yes, it is as simple as that".

When Yahya delivered a jingoistic speech against India, Bhutto restrained him, saying, "You are not prepared for war – particularly with an army which has been in politics for 14 years".

Yahya launched a war on India on December 2, 1971 and was badly beaten. General J.S. Aurora captured General Tikka Khan in Bangla Desh with two million soldiers in a single sweeping attack. The war was over in a fortnight. Yahya resigned handing over power to Bhutto. He worked with zest and zeal for the reconstruction of Pakistan with miraculous results.

The Baltimore Sun, astonished at the number of reforms Bhutto was trying to push through, remarked: "The catalogue glows daily as Mr. Bhutto works until dawn sleeping only three or four hours each night".

Bhutto took the oath of office as President on April 21, 1972. He swore to do right to all people, without fear or favour,

Imposing stringent State control, he took over 11 major industrial units with a capital investment of Rs. 25 crores. In short order import of motor cars and tractors was prohibited. Affluent Pakistanis afraid of firm action declared concealed foreign exchange worth thirty crores of rupees.

Bhutto rationalized pay scales throughout the country. He raised basic pay from forty per cent in the lowest category to ten per cent at higher levels. He afforded government servants drawing less than Rs. 500 per month free schooling for their children.

Increased Production. "Having made it clear that the national goal was increased production, Bhutto assured the workers a fair stake in the benefits. The

workers' share in annual profits was raised from two to four per cent and a ten per cent bonus was guaranteed if production increased".

Ceiling on Land. "Bhutto himself was one of Pakistan's biggest landholders, possessing 250,000 acres at one time, but in line with his policies he introduced radical land reforms, putting strict limits on the amount of individual land holdings, shutting off every loophole, and providing for retroactive corrective measures to deal with violations of the law".

How different from India where ceiling on land has been only eyewash! It is wrong to say Bhutto was only using socialist clichés.

Free Education. To see that education was imparted as effectively and as rapidly, Bhutto passed a law guaranteeing schooling up to the eighth standard from 1st October 1972 and up to the tenth standard from October 1, 1974.

Grandiose Dreams. Bhutto created People's Works Programme that would generate increased job opportunities. He said, "Within a few years the majority of families in Pakistan will have a house for themselves, no hawker or vendor will be without a shop, illiteracy will be wiped out, and communicable diseases controlled".

Did CIA Topple Bhutto ?

When the Lahore High Court judged that the ex-Prime Minister of Pakistan, Zulfikar Ali Bhutto was guilty of murder, Bhutto did not want to contest the decision as he did not believe he would get an impartial trial under the army. It was his former Attorney General, Minister and friend, YAHYA BAKHTIAR who persuaded Bhutto not to give up hope but petition the Supreme Court against the judgment. Today the question is once again wide open whether Mr. Bhutto was guilty or not. And the maximum credit for this state of affairs goes to Mr. Bakhtiar, who has stuck by his friend and acted as Mr. Bhutto's chief lawyer through some very hard times indeed. M. J. AKBAR met the elderly, suave lawyer at a private residence in Lahore. Plainclothesmen sat outside the gate of his house but they (lid not interfere with the interview nor ask any questions of M. J. Akbar after he left the house.

Q : Could you briefly recapitulate the history of the case against Mr. Bhutto?

A : My feeling is that the army junta had this case in mind as soon as they came to power on July 5, 1977, because they arrested Masood Mahmood, DG of the Federal Security Force and Rao Rashid, Inspector General of the Punjab Police right away. Both were arrested on July 5. They thought it would make a good story because in 1974, Bhutto's name was mentioned in the First Information Report. They thought the people would believe them, as Bhutto's name was already linked to the murder. A few days later Saeed Ahmed Khan (Bhutto's former Chief Security Officer) was also arrested. Pressure was applied from July 5 on Masood and Rashid, and a few days later on Saeed Khan. Masood became an approver and Saeed Khan corroborated the testimony. Rao Rashid, who is a clean man in my opinion refused to yield to pressure and was kept in solitary confinement for eight months and was dismissed from service. Masood Mahmood is still in service and is staying in the VIP wing of the military hospital at Rawalpindi. Saeed Khan is free, but still under surveillance, and so is Masood. (While Rao Rashid was under detention) Bhutto was sentenced by the Lahore High Court. After the judgment, Rao contacted me and was ready to file an affidavit that he was pressurized to give false evidence against Bhutto, but he refused.

Q : *Are you under surveillance ?*

A : Very much.

Q : *What kind of person is Mr. Bhutto ?*

A : That is a very difficult question to answer. I may be prejudiced but I think he is a fine man, brilliant, full of energy, but very stubborn. He is enormously popular. You may call him a demagogue or whatever, but he is still the most popular politician in Pakistan. He is a very good friend. He has strong likes and dislikes. He may have made many mistakes—perhaps he was not a very good judge of men in this respect. Generally, this is what people say about him.

Q : Was there a vicious streak in him ?

A : Perhaps there is, I can't say—his tendency to have strong likes and dislikes—that could lead (to the impression that he can be very vicious), but I can't say that he has this streak.

Q : Is he feudal in his attitude ?

A : Probably. He is a landlord. This background has advantages and disadvantages. For instance, he takes quick decisions. But when you take quick decisions you make quick mistakes too.

Q : Was there rigging in the 1977 elections ?

A : That cannot be denied. Unfortunately, some of Bhutto's Ministers openly did that, and thus high-lighted the rigging. But I am confident that general instructions were not given by Bhutto to rig the elections. He called the elections because he thought he was in a strong position at that point and things might not be as good for him a year later, due to the economic problems and all that. There is no doubt about the fact that we did win the elections.

Q : How do you account for the mass upheaval following the elections ?

A : In our country, every five or six years the people want an agitation—their grievances pile up. An agitation was due anyway. Second, the Pakistan National Alliance started the agitation on the slogan of rigging in the elections, but that agitation fizzled out after a month or so. Then they injected the idea of Nizam-e-Mustafa into the agitation. They called Bhutto a drunkard and an atheist. That worked to some extent. But the most powerful reason for the success of the agitation was foreign intervention—the CIA. Mr. Aziz Ahmed (Bhutto's Foreign Secretary) gave evidence of the CIA's role in the agitation to Mr. Cyrus Vance (Secretary of State of the USA) when they met in Paris while Mr. Bhutto was in power, and Mr. Vance did not refute the allegation. Kissinger, if you recall, had warned earlier that if Mr. Bhutto did not give up his idea of acquiring a nuclear reprocessing plant (from France) he would make an example of Bhutto to the

world. I am convinced that if Bhutto had compromised on the nuclear reprocessing plant, he would still have been there.

Q : Are you trying to suggest that the Pakistani polity is so weak that a foreign intelligence agency can so easily de-establish it ?

A : Our polity has always been weak, unfortunately, from the day Pakistan was established. From the beginning we had this great fear of the Indian threat. We wanted some big power to help us. Liaquat Ali Khan took us to the USA. And then curious things happened. Liaquat Ali was assassinated. The civil servants and the big businessmen joined hands to retain their control over the country. Elections were not held. There was no political stability. We had our first Constitution only in 1956. Now, if you look at the PNA agitation you will find that crores of rupees were spent on it. All the PNA workers who were arrested had their families looked after. Today thousands of our PPP (Pakistan People's Party) workers are in jail, but we don't know how to contact their families. We do not even have a proper list of those who are suffering. But the PNA was provided for very well.

Q : Is it really as simple as that ? The CIA is an old excuse, and while it may be true it does sound a trifle simplistic.

A : Jamaat-e-Islami has been the spearhead of the CIA right from the beginning. Air Marshal Asghar Khan (head of the Tehrik-e-Istaqlal, once part of the PNA but now estranged) was also suspected of being a favorite of the CIA. I agree that Mufti Mahmood (head of the PNA) would not have collaborated with the CIA on his own. He is a man of some integrity. And I won't suspect Nasrullah Khan. But since they were in the alliance, the hatred against Bhutto was so strong that they would join hands with anybody (to unseat Bhutto).

Q : How have you found the behavior of the courts which are trying Bhutto ?

A : This is my case. The Chief Justice of the Lahore High Court became hostile, biased, prejudiced, the moment he was appointed Chief Justice – that is, on July 13, 1977. Days later he was appointed Chief Election Commissioner. In a press conference he openly denounced Bhutto and the People's Party. You see. Although he was the senior most judge in the Lahore High Court, Bhutto did not make him Chief Justice, nor was he appointed to the Supreme Court. I have said that these decisions were taken by Bhutto on my advice – it was my opinion that he was not fit to be a civil judge. Anyone who reads his judgment (convicting Bhutto) will agree. Ramsey Clark, former Attorney General of the USA under Kennedy and Johnson, has written about the bias of the Court after reading the

judgment. A senior lawyer from the Human Rights Commission has written a similar analysis of the judgment in Le Monde.

Q : Do you think that Indian and Pakistani courts can, within their respective legal frameworks, ever make politicians accountable for their misdemeanors?

A : Under the Pakistani and Indian Constitutions, they could be accountable, except of course for mistakes committed in their official functions, in which they are immune.

Q : Are you confident about the impartiality of the Supreme Court ?

A : We have been before the Supreme Court for six months. I still have faith in the integrity of at least some people in this country. I thought at least one or two judges would be honest, and they would not convict Bhutto on this charge. We began the Supreme Court hearing with nine judges; one has retired. He was an honest man. He expressed his opinion in the open court that there was no case. Now I have the feeling that I have half the court with me.

If Bhutto is hanged, there will be a serious danger of this country splitting. (*He was referring to the strong anti-Punjabi emotions in the three other provinces of Pakistan, Sindh, Baluchistan and the North-West Frontier Province, and to the fact that Bhutto, a Sindhi, had become Prime Minister of Pakistan*). Here was a Sindhi with the courage and ability to get votes in Punjab, 80 per cent of Punjab supported him. Now it seems that the Punjabi establishment wants to do away with Bhutto. It was the Punjabis who got Khwaja Nazimuddin dismissed; that was the day the foundation stone of Bangla Desh was laid.

Q : What do you think is the immediate political future of Pakistan ?

A : As one American journalist told me, if Bhutto is hanged the country will blow up. And if Bhutto is released the country will blow up. 1979 will be a year of turmoil. People are worried about Baluchistan, and the talk of secession there; Moscow is now seven miles away (*the reference to the Afghanistan's new, pro-Moscow Government*).

Q : On what basis are you confident that Bhutto will be acquitted ?

A : We have disproved the prosecution's case on four major points. First, the Federal Security Force which is said to have murdered Kasuri on Bhutto's orders, using 25 sub-machine-guns: all the experts have said that the empties shown in Court were changed. Second, Ghulam Hussain, the witness, was not in Lahore at all at the time of the murder. Third, the jeep that the FSF was said to have used

was not in the FSF's possession at all. Finally, the ammunition which the FSF is said to have used was not in the FSF's possession. The prosecution's case has collapsed.

White Paper on Bhutto

Islamabad, Jan. 30, 1979—Deposed Prime Minister Zulfikar Ali Bhutto ordered elaborate files kept on the private lives, habits and weaknesses of prominent Pakistanis during the last year of his regime, the Government said.

Covering 2,700 persons, “the preparation of these dossiers, which ran into over 8,000 pages, was undertaken in April, 1976, and was masterminded and meticulously guided by Mr. Bhutto himself. The details are unsavory and sordid,” said a newly issued final volume of an official White Paper on “performance of the Bhutto Regime.”

Titled, “Misuse of the Instruments of State Power,” the last volume also accused Mr. Bhutto of turning Pakistan’s intelligence apparatus into “a personal Gestapo,” and of responsibility for imprisonment, harassment and torture of his political foes by the police and other government agencies including income-tax authorities.

The dossiers made up 31 volumes, covering “A wide range of personalities from different walks of life. Among them were student and labour leaders, journalists and academics,” the White Paper said.

A preface to the dossiers reported that “the material should be of some use at a time when the nation is going to the polls.”

The White Paper reported that in their files, “A sizeable majority of national and provincial assembly members in the fold of Mr. Bhutto are described as licentious and lecherous and harborers of criminals, goondas and smugglers. At least a dozen of them been shown to be sexual perverts. A few of them are classified as outright criminals who would have been in jail but for their membership in the ruling party. One Minister is said to have smuggled narcotics on an outward journey on an official visit.”

Many of the descriptions reported criminal offences against which “no action appears to have been taken under the law,” the White Paper said.

Without giving names, the government White Paper gave some samples of descriptions it said were in the Bhutto files:

“Is addicted to wine and womanizing, and is also reported a homosexual. Allegedly while on his way back with (deleted) delegation he asked for two

bottles of whisky from the air hostess, and when she handed over the bottle, he tried to make advances to her but was snubbed. Reportedly indulges in large scale smuggling when he goes abroad.”

“Since his boyhood, promiscuity has had the better of his character. Verging on to a sex pervert, unabashed and unashamed, he marries, divorces wives, lets them aside into the morass of the red light areas.”

Much of the material was collected at government cost by the Pakistan Intelligence Bureau, which the White Paper said was used to harass, intimidate and influence Mr. Bhutto’s political opponents and oppress and coerce their families.

MURDER AND CONNIVANCE

A marked feature of the Bhutto regime was that, in many cases, political opposition and dissent were sought to be eliminated through physical extermination. The official machinery and the civil security forces, whose primary responsibility under the law is to protect the life, honour, and property of the citizens, have been found to be directly involved in murders at the behest of the political leadership in power. Some murders were so cold-blooded that the victims were taken out of jails or from police custody, declared or given out as absconders and then eliminated.

Often, when government investigating agencies probing into these crimes were on the verge of unraveling the clues, some hidden hand would intervene and either stall or deliberately misdirect the course of investigations. As a result, several political murders remained untraced or their investigation proceeded perfunctorily throughout the Bhutto regime. Efforts are now being made to establish their clues though, with the passage of time, the task has become difficult.

The facts pieced together by the investigating and prosecuting agencies are, therefore, being recorded here without prejudice to the merits of the respective cases. The validity or otherwise of the charges will of course be determined finally by the courts.

In one of these cases, however, a full bench of five Judges of the Lahore High Court has held Mr. Bhutto and four officers and men of the Federal Security Force guilty of the murder of Nawab Mohammad Ahmad Khan and sentenced them all to death.¹ For seven months, the Supreme Court of Pakistan has heard

¹ Excerpts from the judgment of the Lahore High Court have been reproduced in Chapter 9

the appeals of Mr. Bhutto and the four other condemned persons against the Lahore High Court's verdict, and at the time of this White Paper going to print; the judgment had not been pronounced.

Details of some of the other cases, which attracted public attention at the time of their commission are: Dr. Nazir Ahmad. Dr. Nazir Ahmad of the Jamaat-e-Islami was elected to the National Assembly in the 1970 general elections. He was an outspoken critic of Mr. Bhutto's politics and style of Government. On June 8, 1972, at about 8-30 p.m., two persons on a scooter came to Dr. Nazir Ahmad's clinic on the Quaid-i-Azam Road, Dera Ghazi Khan. While one of them stood outside, the other entered the clinic and shot him. He was wounded and later succumbed to his injuries.

The case was investigated by the local police and two persons, namely, Shah Nawaz and Farid Ahmad, were sent up for trial but both were discharged by the court. In his judgment on January 21, 1974, the Session Judge observed that "the investigation was not an honest one and seems to be intentionally dishonest". Even the Public Prosecutor submitted before the court that the Police had intentionally spoiled the case.

The Press had expressed doubts about the conduct of investigations right in the beginning. The daily '*Jasarat*' on June 19, 1972, barely 11 days after the murder, front paged an article under the heading "Who is the Murderer of Dr. Nazir?", saying that the "motive behind the murder is political and the police investigations are ridiculous". Mr. Bhutto's Information Minister, Maulana Kausar Niazi, in a note written the same day, brought it to his notice and said that in his opinion the article was highly provocative and preached violence, and suggested that action be taken against the paper after getting legal opinion on it. Mr. Bhutto giving his approval noted, "certainly this needs to be done".

On the basis of its own investigations conducted after the ouster of the Bhutto regime, the FIA (Federal Investigation Agency) has reported that it was in fact one Allah Wasaya who had accompanied Shah Nawaz, accused, to the spot and committed the murder and the local police, wider pressure, had spoiled the case. On interrogation, Allah Wasaya made a clean confession. He was also identified by the complainant in an identification parade held in the district jail. A.32 Bore revolver (Spanish made), which had been used in the crime, was recovered at his instance.

Three officers of the district police, namely Mushtaq Hussain, Mohammad Siddiq and Fateh Naseeb were arrested in the case and an incomplete charge-sheet was submitted in court on October 16, 1977. Further investigations were undertaken, and on September 10, 1978, a complete chalan was submitted in the

court against Allah Wasaya and three Police officers and also Qamaruddin Khan, then Superintendent of Police, Dera Ghazi Khan. The case is now pending in the court.

Khwaja Mohammad Rafiq. Khwaja Mohammad Rafiq, a worker of the Pakistan Movement and an important opposition leader, who had founded his own party known as the Pakistan Ittehad Party, was an outspoken critic of the People's Party and the policies of the Bhutto Government. In a TV appearance on January 11, 1979, Begum Mohammad Rafiq, narrating the story of her husband's murder said that Khwaja Mohammad Rafiq had been receiving both threats and baits from the People's Party Government to silence his voice, but he refused to compromise his principles. At one stage, she said. He was even called by the then Vice-President of Pakistan, the late Mr. Nurul Amin and advised to go slow at least for the sake of his own family. But, according to Begum Rafiq, her husband stuck to his views and continued to articulate them.

On December 20, 1972, the Tehrik-e-Istiglal of Air Marshal (Rtd.) Asghar Khan and Khwaja Mohammad Rafiq's Ittehad Party, both in the opposition, observed a Black Day and took out a procession from Neela Gumbad, Lahore, which ended near the Assembly Chambers. While the processionists were dispersing and going back home, some PPP workers allegedly opened fire at them. Khwaja Mohammad Rafiq was hit and taken to hospital where he breathed his last.

Several opposition leaders and papers described it as a "political murder". The daily '*Hurriyet*' Karachi, for instance, commenting editorially on December 23, 1972 wrote that "during the last one year this is the second murder in which a political leader has lost his life. After Dr. Nazir, member of the National Assembly from Dera Ghazi Khan, the murder in Lahore of the Chief of the Pakistan Ittehad Party, Khwaja Rafiq, has highlighted the sad reality that in this land which is called Pakistan the curse of political assassination has taken its birth from which it had so long been safe".

A tribunal consisting of Mr. Justice Shafi-ur-Rahman of the Lahore High Court was set up in February 1973 to enquire into circumstances of the crime. On March 5, 1974 a Punjab Government Press note announced that the Government had accepted the tribunal's report and recommendations in toto. The Press Note said that Chief Minister Ghulam Mustafa Khar had directed the Inspector-General of Police to institute fresh investigations into the death of Khwaja Mohammad Rafiq. He also set up a committee, consisting of the Additional Chief Secretary and Additional I.G. of Police to examine the conduct of Police officials named by the tribunal as having failed to perform their duties according to the prescribed law and practice. The tribunal in its report had expressed

dissatisfaction at the manner in which the investigation had proceeded and had given certain directions for the fresh investigating agency. One of these was that:

“The emphasis of the investigation should be not to determine the truth of falsity of the charge leveled in the FIR but to trace the perpetrators of the crime, and the investigating agency should be made responsible for tracing a crime committed in full view of the public in circumstances where identification of the culprit was quite easy”.

But even before the fresh investigation had got started, the *Pakistan Times* came out on March 8, 1974 with an editorial entitled: “Murder Inquiry”, saying that “much valuable evidence may have already been lost or destroyed because of the way the case was tackled in the early stages, and the fresh inquiry ordered may not result in producing very tangible results”.

The case was first investigated by the local police, who submitted a charge-sheet against nine persons on July 20, 1974. Only four of the accused had been named in the first information report and the remaining five were added during the investigation. The relatives/brothers of the deceased were later examined by the Federal Investigation Agency. They corroborated their earlier statements before the District Police. On July 30, 1977, the FIA undertook investigations all over again, and put up a supplementary chalan in the court of the Additional Session Judge, Lahore on July 5, 1978, where hearings have started from September 12, 1978.

Six Hurs. Politically, Pir Pagaro posed a problem to the former Prime Minister in his home province of Sindh. Mr. Bhutto therefore wanted to demolish the Pir’s influence by subduing his followers, the Hurs, who were mainly concentrated in Sanghar district. A Hur contingency plan was prepared in May 1973 by the Prime Minister’s Chief Security Officer, Mr. Saeed Ahmad Khan, and Jam Sadiq Ali, a minister in the province of Sindh, was made in-charge of the anti-Hur operations. Jam Sadiq Ali himself was at one time an ardent follower of Pir Pagaro. He joined the People’s Party before the 1970 elections and was elected to the Sindh Assembly on its ticket.

On October 5, 1973, one Mr. Ali Bakhsh Junejo, an active member of the People’s Party in Sanghar district and a close associate of Jam Sadiq Ali was murdered in Sanghar town by some unidentified men. On the following day, six Hurs, namely Mehrab Sinjhrani, Umaid Ali Sinjhrani, Jan Mohammad Sinjhrani, Hamzo Bahnejo, Syed Ali Sher and Dadan alias Allah Dad Wadho, went to attend the court of Mr. Imdadullah Unar, the then District Magistrate, Sanghar, where proceedings under the Goonda Act were pending against them. The District Magistrate handed them over to police custody, but in the record they

were allegedly marked absent and non-bailable warrants were issued against them. The next hearing of the case was fixed for October 17, 1973. They were allegedly confined in the lock-up of the Sanghar police station. In the night they were taken out hand cuffed and driven in a van escorted by a police party, towards Kanan Mori of Ban Wah. Jam Sadiq Ali, Mr. Imdadullah Unar and Mr. Ghulam Shabbir Kalyar, the then Superintendent of Police, followed them in two other vehicles. On reaching Kanan Mori, the detenus were boarded off and allegedly shot dead, under the false cover of an "encounter with the police". Ch. Fazle Haq, at that time Inspector General of Police, Sindh, who was camping at Hyderabad on the day of the occurrence, is reported to have subsequently rewarded the police party with promotions, cash awards and commendation certificates.

A meeting, presided over by Mr. Mumtaz Ali Bhutto, then Chief Minister, Sindh was held on November 7, 1973, under instructions from the Prime Minister, to consider the recommendations, made by Jam Sadiq Ali against the Hurs. In these recommendations, Jam Sadiq Ali had stated Pir Pagaro was an accomplice in the murder of Ali Bakhsh Junejo. None of the participants, and not even the former Prime Minister who subsequently saw and endorsed the minutes of the meeting, thought differently. Action against some Khalifas of Pir Pagaro was also approved.

In August 1977, the Federal Investigating Agency under instructions from the Government, registered a case relating to these murders. The following accused were arrested:

1. Ghulam Shabbir Kalyar, IG (Prisons), Sindh. (SP, Sanghar at the time of the occurrence).
2. Imdadullah Unar, the then DC, Sanghar.
3. Shahnawaz Junejo, a zamindar of Sanghar.
4. Mohammad Yaqoob, Inspector of Police, Sindh, the then SHO, Sanghar.
5. Hasan Junejo, a zamindar of Sanghar.
6. ASI Shah Mohammad.
7. Head Constable Abdul Ghaffoor.
8. ASI Mohammad Aslam.
9. Constable Noor Mohammad.
10. Constable Mohammad Munir.
11. Head Constable Mohammad Aslam.
12. Ghulam Qasim, dryer.

The accused at serial Nos. 6 to 12 confessed their guilt in their statements made before a magistrate under Section 164 of Criminal Procedure Code and said that

they had committed these murders on orders from Mr. Imdadullah Unar, then D.C. and Mr. Ghulam Shabbir Kalyar, then S.P., Sanghar. This was also confirmed by the accused at serial No. 4. ASI Mohammad Aslam was made an approver had he confirmed his earlier statement under Section 164 Cr. P.C.

The Federal Investigation Agency submitted a chalan in the case in the court of District and Sessions Judge, Sanghar, on January 30, 1978. Later, the case was transferred to the court of District and Sessions Judge, Karachi, where it is in progress.

The incident also figures in the statement given by Mr. Mohammad Khan Junejo, Home Secretary to the Sindh Government, during the Bhutto regime, in the course of an inquiry into his official conduct ordered by the Martial Law authorities. The charge-sheet against him included harassment and victimization of politicians in the Opposition, corruption, nepotism, misuse of official power and funds and involvement in the general elections in violation of service rules. He has stated that the newspaper reports about the Sanghar murders aroused his suspicions, but nobody could give him any details. A few days later Mr. Raisani, Deputy Inspector-General of Police, Hyderabad, saw him, and when he (Junejo) showed interest in the nature of the cases, Mr. Raisani told him that the encounters shown by the police were not genuine”.

Faqir Mohammad Amin. Faqir Mohammad Amin S/o Gaman Khan, resident of Pir-jo-Goth (Khairpur District) was rounded up by the Station House Officer, Police Station Pir-jo-Goth, and taken to Sukkur jail. He was chief Khalia of Pir Pagaro and a leading Hur. According to the statement of his brother, the complainant, Faqir Mohammad Amin had declined to join hands with Jam Sadiq Ali in his anti-Hur operations.

On October 6, 1973, he was taken out of the jail on the strength of a fictitious surety bond by Sub-inspector Maluk Hussain of Police Station, Sanghar, and taken to some unknown destination. Since then, Faqir Mohammad Amin has been missing.

A case was registered under directions from the Martial Law authorities and investigation was taken up by the FIA. It transpired during investigation that Sub-Inspector Maluk Hussain had produced Faqir Mohammad Amin before the then S.P., Sanghar, Haji Ghulam Shabbir Kalyar, and the then D.C. Sanghar, Mr. Imdad Ullah Unar, at Inspection Bungalow, Sanghar, where Jam Sadiq Ali, then a Minister in the Sindh Government, and Mr. Raisani then DIG, Hyderabad, were also staying. From the Inspection Bungalow, Faqir Mohammad Amin was allegedly driven to some unknown destination in a white car. It is believed that Faqir Mohammad Amin was done to death by one Ali Khan Junejo at the

instance of the district administration. A complete chalan against Imdad Ullah Unar, Ghulam Sahbir Kalyar, and SI, Maluk Hussain has already been submitted in the court. The remains of Faqir Muhammad Amin could not be recovered.

On April 5, 1978, Mr. Justice S. A. Nusrat of the Sindh High Court dismissed the bail application of Imdad Ullah Unar and Ghulam Shabbir Kalyar. In his order, the Judge observed that Amin Faqir could not have been taken out of prison without the assistance of the accused.

Abdus Samad Achakzai. It is alleged that, on the night between December 1 and 2, 1973, some unknown persons threw a hand-grenade from a ventilator into the drawing room of the house of the NAP Pakhtou Khwa leader, Mr. Abdus Samad Khan Achakzai, situated at Jamaluddin Afghani Road, Quetta. Mr. Achakzai died of injuries sustained from the hand-grenade explosion. A case was registered at the Quetta city police station on a telephonic message received through Mr. Abdul Halim Achakzai.

During the investigation of the case by local police, Barat Khan S/o Nida Mohammad Achakzai of Chaman, was arrested while his two alleged accomplices, Abdul Mannan and Abdul Alim absconded. A case against all the three accused was put up on May 30, 1974, in the court of the Sessions Judge, Quetta where it is still in progress.

Moulvi Shamsuddin. On March 13, 1974, Moulvi Shamsuddin, then Deputy Speaker, Baluchistan Assembly, belonging to the Opposition Jamiat-e-Ulema-e-Islam, left Quetta for Fort Sandeman in an official vehicle No. QA-6428. Malik Haji Gul Mandokhel, who was driving separately from Quetta to Fort Sandeman, found Moulvi Shamsuddin dead in his own car near village Killa Shagal. He went back to Qila Saifullah and reported the matter to the local Tehsildar. The death had been caused by bullet injuries. The murderer escaped from the scene.

During a magisterial inquiry as well as in a police inquiry under Section 202 Cr. P.C., it was found that the murderer had been travelling in the same car with the deceased. Later on, he was allegedly identified as one Shah Wazir who had been visiting the deceased at Quetta for two to three days prior to the occurrence and also insisted on accompanying him to Fort Sandeman.

Shah Wazir, accused, has not been apprehended so far, but the trial by a Jirga is now in progress.

Ashok Kumar. Certain facts relating to the reported liquidation of one Ashok Kumar, an assistant professor at Jamshoro University in Sindh, have recently

been brought to light by the committee inquiring into allegations of misconduct against Mr. Mohammad Khan Junejo.

According to the information given by the Martial Law authorities to the inquiry team, Ashok Kumar, who had been taken into custody by the police for interrogation on anti-State activities, was not traceable. He was believed to have been liquidated.

According to the statement of Lachmandas, father of Ashok Kumar, there was a clash between two groups of students of Jamshoro Engineering University on October 6, 1973. Ali Mardan Shah and Jan Mohammad died in the clash and three other students were injured as a result of bullet shots. A case vide FIR No. 65/73 u/s 302/307/34 Pakistan Penal Code was registered at the Jamshoro Police Station. On October 8, 1973, Mr. Nazeer Qureshi, Deputy Superintendent of Police, Kotri, and Abdul Razzak Soomro, Station House Officer, Jamshoro, picked up Ashok Kumar from his in-laws house at Shandadpur and took him to the Kotri Police Station. On October 10, 1973, Ashok Kumar was taken to his residential quarters in Jamshoro University by Niaz Pirzada, then an Inspector of the Central Investigation Agency at Dudu. His room was searched and a case of the recovery of an unlicensed pistol, vide FIR No. 75/73 u/s 13-D Arms Ordinance, of police station Jamshoro, was cooked up against him. Ashok Kumar was kept at Jamshoro in police custody. On October 23, 1973, he was produced before the Sub-Divisional Magistrate, Kotri. He was shown to have been arrested on October 22, 1973, in the above case 14 days' remand for police custody was obtained by the Inspector. Between October 10 and 22, Ashok Kumar had been kept at Budhapur, Manjhand and Thana Boola Khan Police Stations. After his remand he was sent to the Kotri Police Station and kept in the DSP's bungalow situated within the compound of the police station, where one Yousuf Lakhani and Sindhi Baloch, now practicing at Mirpur Khas was also kept.

On October 25, 1973, at about 4 p.m., Ashok Kumar's father met him in the DSP's bungalow and was informed that the police was planning to take him to some unknown place the next day. On October 20, 1973, at about 6-30 a.m. a police officer in plain clothes and an ASI with two constables in uniform came to Lachmandas's house at Mirpur Khas and searched his house, saying that Ashok Kumar had been allowed by the police to go out to see his friends on Diwali, Hindu festival of illumination, but he did not return during the night. Lachmandas immediately rushed to the Kotri Police Station contacted Inspector Niaz Pirzada and asked him about his son. The Inspector told him that he knew nothing about it as he had not been there that night. On his way back the same day, *i.e.* October 26, 1973, one Khemechand showed Lachmandas a news-item, about the escape of Ashok Kumar from police custody, in the Urdu newspaper *Jang's* issue of October 27. There upon Lachmandas again went to Inspector Niaz

Pirzada and showed him the news item. The Inspector behaved rudely with him and said that he knew nothing about the matter.

On October 10, 1973, Lachmandas, together with the President of the Hindu Panehayat and some other members of his community, met the Sindh Chief Minister, Mr. Mumtaz Ali Bhutto, by appointment. While they were waiting at the door to be called in, they heard Mr. Mumtaz Bhutto saying to somebody on the telephone "You had said that Ashok Kumar should be locked in a *Kaal Kothri* (a prison cell) for 12 months, what pressure has now made you say that Ashok is innocent"? They also heard Mr. Mumtaz Bhutto saying that he would talk face to face with the person at the other end of his arrival at Karachi. The application presented to Mr. Mumtaz Bhutto was marked to the Inspector-General of Police, Sindh, who in turn marked it to the Deputy Inspector-General, Hyderabad, but nothing was done though many other applications were sent to the Chief Minister and the Prime Minister. A judicial inquiry into the alleged escape of Ashok Kumar was, however, held during the last quarter of 1974 by the District Magistrate of Dadu, Mr. Mohammad Hashim Memon.

Early in 1974, the mother and sister of Ashok Kumar met Mrs. Nusrat Bhutto, who happened to be in Mirpur Khas to attend the marriage ceremony of the sons of Pir Ghulam Raoul. They requested her help in finding the whereabouts of Ashok Kumar. Begun Bhutto tried to console them. Pir Ghulam Rasool's wife later told Ashok's mother that, after she had left, Mrs. Nusrat Bhutto had expressed sorrow over the fact that Ashok Kumar was no longer alive. Later Pir Ghulam Rasool confirmed this to Ashok's father.

Niaz Pirzada, then a CIA Inspector at Dada (now DSP, Sind Constabulary Karachi, has stated that Ashok Kumar was picked up by SI Abdul Razzak Soomro on October 10, 1973, and made over to him as he had been entrusted with the investigation of a murder case in Jamshoro. Though Ashok Kumar was not named in the FIR of this case, there was material evidence against him. Niaz Pirzada, therefore, conducted a search of his house on October 9 and alarming incriminating material including weapons, was discovered. This showed that Ashok Kumar was an active participant in subversive and anti-State activities. Inspector Niaz registered three cases vide FIR Nos. 75, 76 and 77 of 1973, under the Arms Act and the Defence of the Pakistan Rules. For interrogation Ashok Kumar was removed to the Manjhand and Bhudapur Police Stations and finally lodged in the bungalow of DSP Kotri, in the custody of constables Wahid Bux, Abdul Hadi and Mohammad Qammar.

On February 25 1973, Niaz Pirzada went to Hyderabad, leaving behind Ashok Kumar in the custody of the above policemen, to apprise the S.P. Special Branch of the progress of the cases against Ashok. On his return he learnt that Ashok

Kumar had escaped from police custody. A case of escape under Sections 224/225 Pakistan Panel Code was registered vide FIR No. 131/73 at police station, Kotri, and investigated by him. All these cases against Ashok Kumar had been sent up by him to court showing him as an absconder.

The circumstances of Ashok Kumar's arrest, detention and his disappearance tend to suggest that he was eliminated. He was implicated in it number of cases, and kept at different police stations. On October 23, 1973, his 14 days remand to police custody was obtained in a case under the Arms Act. The date of his arrest was shwn as October 22 although he had actually been in police custody since October 8, 1973. He was lodged in a bungalow instead of a lock-up available within the police station premises, and he was missing for four days.

After the fall of the Bhutto regime, the case was reopened and fresh investigations started following the registration of a murder case on April 19, 1978 in Kotri Police Station. During investigations eight police officers were involved. Of them, three have since been arrested and two have been granted interim bail before arrest while three, including DSP Niaz Ahmed Pirzada, are absconding. An interim charge-sheet in this case was submitted in a Kotri court on October 23, 1978 against all the eight accused.

Saeeda Khatoon and Mohammad Sharif. Another murder case, which allegedly implicates, Mr. Bhutto and some of his colleagues in Government, has recently been registered in Mirpur Khas.

One of the three complainants in the case is Abdul Ghani, the husband of Saeeda Khatoon, who was allegedly killed by the Federal Security Force and the Sindh Constabulary on May 10, 1977 during the mass agitation against the Bhutto Regime. The second is Mohammad Khan, brother of Muhammad Sharif, who is said to have been killed by the firing of the two forces a day earlier. The third complainant is Abdul Ghaffar, a young man who was injured in the firing in Mirpur Khas.

The complainants have alleged that, soon after the incidents, they had lodged first information reports with the police (Nos. 85 and 87 of 1977), but no action was taken because Mr. Bhutto was then in power. The case has now been registered under the orders of the Sindh High Court. The accused named in the report are Zulfikar Ali Bhutto and Abdul Hafeez Pirzada and Kausar Niazi (formerly Ministers in the Federal Government), Ghulam Mustafa Jatoi (former Chief Minister of Sindh) and Jam Sadiq Ali (formerly a Minister in the Sindh Government).

Abduction and Torture

Mr. Z. A. Bhutto has been claiming the credit for overthrowing the government of Field Marshal Ayub Khan by using the power of the people against what he called the coercive authority of the State. But how, on assuming power in December 1971, Mr. Bhutto himself used this authority to silence and suppress the dissenting opinions of people belonging to every segment of society, including politicians, intellectuals, students and workers, is described in this Chapter.

Apart from murder, the machinery of government and the instruments of State power were used extensively for the abduction, arbitrary detention and wrongful confinement of refractory political dissidents. Some people were just picked up by the police, without even a semblance of legal formality, and whisked away to unknown destinations, where they were held as long as necessary or possible. Others were arrested in a manner hardly distinguishable from abduction. Yet others were detained in conditions bordering on wrongful confinement.

Dulai Camp. Many of these illegal actions resulted in judicial proceedings, but these were often frustrated by the authorities' denial of any knowledge of the arrest of the missing persons or their whereabouts. Some of the victims were secretly transported to Dalai Camp, in Azad Kashmir, and were held there until the fall of the Bhutto regime. This Camp was chosen for this purpose because Azad Kashmir was outside the jurisdiction of Pakistan's courts of law. It was on night of July 5/6, 1977, that the inmates of Dulai Camp were released.

Mian Iftikhar Tari and Ch. Muhammad Irshad had been ministers in the Punjab Provincial Government during the earlier years of the Bhutto regime. Later, they had, under the leadership of Ghulam Mustafa Khar, fallen foul of Mr. Bhutto and gone out of the Government and the People's Party. Mian Mohammad Aslam, another dissident, had been the Managing Director of the Party's principal mouth-piece, the Musawaat. The cases of these better known victims of terror attracted the attention of Amnesty International and figure in its report on Pakistan for the year 1976, published during the last phase of the Bhutto regime.

"Ch. Mohammad Irshad," said the Report, "has been missing since 6 October, 1975. He is one of the three dissident members of the Pakistan People's Party whose whereabouts have been unknown since October, 1975.

"According to reliable reports received by Amnesty International, Chaudhry Mohammad Irshad was arrested on 6 October, 1975. His arrest in Gujranwala

was witnessed by his younger brother, Ch. Mohammad Nawaz, and Mr. Z. A. Bajwa, a member of the National Assembly. In an affidavit presented to the Lahore High Court on 5 November, 1975, Raza Mohammad Afzal Khan, advocate and former member of the Legislative Assembly of Azad Kashmir.....stated that he had seen Mr. Irshad in Dulai Camp, a military detention camp in Azad Kashmir. The Government has denied any knowledge of his arrest. His brother, Mohammad Nawaz, submitted a habeas corpus petition to the Court and the case is stall pending before the Lahore High Court.

“Another missing member of the Provincial Assembly allegedly abducted is Mian Iftikhar Tari. On 10 October, 1975, Mr. Tari was granted interim bail before arrest after claiming that his renunciation of membership of the People’s Party placed him in immediate danger of arrest. On 15 October, he was taken from his home and has not been heard of since...Raja Mohammad Afzal Khan, who had also made a statement about the other missing MPA, claimed in court that he had seen Tari in Dulai Camp, Azad Kashmir

“When the Amnesty International asked the Law Minister about these disappearances, he said he had no knowledge of their arrest. But, even if they were being detained as alleged, he said, a habeas corpus petition could always be filed in the relevant High Court, that is, the High Court in Azad Kashmir. He said that Article 199 (b) of the Constitution of Pakistan empowered the High Court to order that a person in detention within their jurisdiction be produced in Court”.

But, as Amnesty observed, such constitutional safeguards were virtually meaningless in the case of missing persons whose whereabouts were not disclosed by the authorities. Accordingly, the Amnesty delegation (which had visited Pakistan in the summer of 1976) “remained unconvinced by the official explanation”. The organization called on the Government “to make any information about the missing politicians’ whereabouts publicly available and to institute a full-scale judicial inquiry to investigate the serious allegations made by relatives and the opposition that the dissident politicians were in fact abducted by Government forces to forestall a growing movement challenging the power of the ruling party in the Punjab Provincial Assembly”.

There was no response to Amnesty’s appeal, and the fate of the missing politicians remained the subject of speculation and rumor—until the Bhutto regime’s downfall when they were set free. The pending writ petitions in the Lahore High Court instantly revived, together with the related contempt proceedings, and were followed by proceedings for unlawful confinement. Several officers of the Federal Security Force have already been convicted of contempt of the High Court, the boss of the Force, Masood Mahmood, receiving

the maximum sentence of imprisonment prescribed for contempt. In the case arising out of the arrest and detention of Mr. Iftikhar Tari at Dulai Camp, Masood Mahmood was found guilty of the gravest contempt, unparalleled in the annals of legal history”.

“The extent of damage done to this Court and to the judicial process”, wrote the Judge, “will be apparent from the fact that, since October, 1975, the proceedings in the habeas corpus petition and in one contempt petition remained pending in this Court. The Provincial Government, through its two Deputy Secretaries, denied that it had anything to do with it. On behalf of the Federal Government, the Deputy Attorney-General denied the implication of the FSF”.

The court also issued show cause notices to Mr. Z. A. Bhutto and four other dignitaries of his regime, namely, his cabinet colleague, Mr. Abdul Hafeez Pirzada, Mr. Sadiq Hussain Qureshi, former Chief Minister, Punjab, Mr. Muzaffar Malik and Rao A. Rashid Khan, Chief Secretary and I.G. Police, respectively, of the Punjab. From the evidence produced in the case, these persons appeared liable to be proceeded against for contempt of court.

Regarding Mr. Abdul Hafeez Pirzada, the Judge noted that Mr. Ijlal Hussain, then Chief Secretary of Azad Kashmir, appearing as a witness, had stated that Mr. Pirzada was the first to order him to make arrangements for lodging “anti-state prisoners” from the Punjab.

According to Mr. Tari’s statement, observed the Court, Mr. Bhutto had met him at Muzaffarabad in the detention camp, tried to persuade him to his view, and, not succeeding, threatened and abused him, telling him that he would pass all his life in such a detention camp and die a slow death. And Mr. Ghulam Mustafa Khar had stated how Mr. Bhutto used the detenus, including Mr. Iftikhar Tari, as a lever to neutralize him politically and ultimately showed willingness to release them but did not.

In the first instance, according to the judgment of the Court, Mr. Masood Mahmood denied having maintained a detention camp at Dulai and also that he had arranged for and obtained the removal through his subordinates of Mr. Tari and his associates. He explained, however, that early in October, 1975, he had received telephone calls from Mr. Abdul Hafeez Pirzada, Mr. Sadiq Hussain Qureshi, Brigadier Muzaffar Malik, and Rao A. Rashid Khan, all telling him that certain under-trial prisoners in the custody of the Punjab Police were to be removed to some place in Azad Kashmir. He, as Chief of the FSF, was required to provide an escort from Rawalpindi to Muzaffarabad and to throw an outer cordon at the site where the camp was established.

Mr. Masood Mahmood checked with the Prime Minister, who “told me categorically that some under-trial prisoners were being removed from Lahore to Muzaffarabad and in liaison with the authorities of the administration in the Punjab and the Administration in Azad Kashmir, I should provide the necessary force required for escort and throwing a cordon around the premises in which the under trial prisoners were to be housed and, if need be, to augment the resources of Azad Kashmir. I informed the then Prime Minister about the various personalities from whom I had already received calls. After receiving his executive orders, I authorized the Director of Operations of the FSF (Mian Abbas) to provide the necessary cover”.

“At that stage”, Mr. Masood Mahmood told the Court, “I had no knowledge of the fact as to who the under-trial prisoners were, as to whether any of them or more of them had taken bail from this Hon’ble Court or any other Court subordinate to the Lahore High Court. I had no knowledge of the fact that the under-trial prisoners include either Mr. Iftikhar Ahmad Tari or an other ex-Minister or dignitary in the party I understood later from my officers that the entire operation at the other end in Muzaffarabad was handled under the personal directions of the then Chief Secretary, Mr. Ijlal Hussain, and a man called Major Aurangzeb who later came to be known as a DIG Police Azad Kashmir”.

In defence of his conduct, Mr. Masood Mahmood pleaded that “this action was taken in my capacity as Director-General, Federal Security Force, under Section 9(2) of the Federal Security Force Act 1973, which—I may be forgiven, if I do not recall the exact words—read something to the effect that officers and members of the Force shall perform duty beyond the territory of Pakistan and within the territory of Pakistan when called upon to do so. Therefore, my submission to this Hon’ble Court is that my action was in execution of orders given to me by the then Prime Minister, Mr. Zulfikar Ali Bhutto, but legally was covered under the provisions of the Federal Security Force Act, 1973, which under the deployment rules framed under the above said Act enjoin upon the local commander of an element of the Federal Security Force once having been so deputed to a Provincial Administration (Police to go in aid and take orders under the competent authority nominated) designated by the Provincial Administration... The people who arrested, who were arrested is not my responsibility. As I have said it was not known to me at that stage who they were. The administration of the prisoners camp which later on came to my knowledge was Dulai Camp was not of the F.S.F., F.S.F. were only in aid but the local commanders (the junior officers) were under obligations to take orders from the competent authority in Azad Kashmir”.

In his written statement, filed later in the course of the proceedings, Masood Mahmood admitted that, "a few days after the removal of the detenus, he learnt that some of them were those who had been granted bail or in respect of whom habeas corpus petitions were pending in the High Court". He stated that on this disclosure he was upset and protested to the Prime Minister, who "flared up" and told him to "keep his mouth shut". Mr. Bhutto also made it clear, according to Mr. Masood Mahmood, that "the whole operation was conducted, under his orders and was his own responsibility".

Mr. Masood Mahmood further stated that he had been coerced in to undertaking a visit to the detenus and obtain a writing from three of them which was to "sound the political death—knell of Mr. Ghulam Mustafa Khar".

After considering his oral and written statements, the Court proceeded to question him, and the questions and answers having a material bearing on the points at issue have been reproduced in the judgment ; some of them are quoted below

Q. Was it the first time, or more than once, that you escorted the under-trials from inside Pakistan to territories outside Pakistan?

A. This was the first occasion when I did so.

Q. Was it not in the normal circumstances expected of you when you received so many telephone calls from so many quarters other than the Prime Minister to escort the under-trials from one place to the other to inquire and to ascertain why their transfer was sought, who were they and where they were to be kept ?

A. I faltered.

Q. Your attention is drawn to Removal of Accused Persons Act of 1973 (Act LXIII of 1973) where under an accused or a prisoner could be removed by an order of the Federal Government from one Province to the other?

A. I am not aware.

Q. Could you go the extent that as Director General FSF you were under a legal obligation to obey the commands of the Prime Minister in whatever manner received even if devoid of legal or moral content?

A. Legally I was not obliged to obey illegal orders without testing them on the ground of legality at least, but, in the circumstances then prevailing the orders had to be obeyed.

Q. Did you maintain any record of the information or the duties that were assigned to You by which you said you were misled but which you had then thought to be proper and correct or get any record in respect of it maintained by any of your subordinates dealing with the matter?

A. I myself did not maintain any record of it.

Q. Did your subordinates maintain any record?

A. To my knowledge my subordinates did not maintain any such record.

Q. Normally don't you think that the record of the assignment at which the duty of the F.S.F. was placed should have been maintained at the unit?

A. Normally it should have been maintained.

Q. Did you ever make any chart to remove the illegality?

A. A number of times, even at Lahore I talked to the Chief Minister about a month after the removal of the detenus and tried to prevail upon them to legalize the illegality. Most averse and serious opposition to such a proposal came from the Chief Minister. He always told me that I should take it up with the Prime Minister.

In deciding the case, the Court relied primarily on Article 4 of the Constitution, which guarantees the life, liberty and property of the citizen and the rule of law; Article 5, which enjoins obedience to the Constitution and the law upon all citizens, and the Federal Security Force Act, 1973, which was the specific governing law for the respondent.

“The respondent”, says the judgment, “was bound by the law which created his office. Obedience was due from him only in respect of ‘orders and warrants lawfully issued to him’ by competent authority, directed towards achieving the ends for which the force was created or existed. The force could certainly be deployed outside Pakistan but on the strength of Article 4 of the Constitution and Section 188 Cr. P.C. as citizen of Pakistan he was bound even while acting outside the country to obey and also to enjoy the protection of laws of Pakistan. It was in the background of law that the respondent has ultimately conceded that he was bound to examine and satisfy himself with regard to the legality of the orders received. His saying that he received the orders from Prime Minister, even if he did receive such orders, was not sufficient to legally justify his act.

“The use of the very expression ‘under-trial’ which the respondent has over-emphasized in his statement in this Court is suggestive. Its meaning is clear even to a layman and should have been clear with greater force to a seasoned Police officer. It at once brings to the mind, a Court, an offender, a law, a prosecutor and a subsisting relationship between them. Before dealing with an under-trial in such a manner as to remove him, or assist his removal from inside the country to a place outside, for an indefinite period, for an unknown reason, the respondent was bound to satisfy himself on all the points including that of law applicable to the situation. There was and is a specific law on this subject too— (the) Removal of Accused Persons Act 1973 (Act LXIII of 1973). It is an Act to provide for the removal of an accused person from one province to another. The operative part of it reads:

‘Notwithstanding anything contained in any other law for the time being in force, the Federal Government may, by general or special order, provide for the removal of any accused person or class of accused persons held in custody in any Province to any other Province to be held in custody therein’.

“The respondent has pleaded complete ignorance of the existence of this law. Even if he were, he, according to his own statement, was for sure dealing with under-trials. How could an under-trial be escorted outside the country Not necessarily a police officer, not necessarily a Director General of Federal Security Force but even an ordinary knowledgeable man exercising prudence and commonsense would have satisfied himself about the identity of the individuals, about the legality of their removal, about the object and purpose of their removal, about the Court or authority where they were being tried. The name, the identity and the antecedent of an under-trial is never a secret. If the I.G.P. Chief Secretary and Chief Minister of Punjab could know all about them and also the Chief Secretary, Azad Kashmir and a Federal Minister and all of them so pressingly requested him about their removal, can it be imagined that the respondent remained ignorant, showed no inquisitiveness, omitted to do that which over a long period of service he was trained to do. How could he arrange for the escort and take the responsibility of removal without knowing who was to be removed and for what purpose? Courts, in appraising such a plea, apply the test of reasonable man, reasonableness being kept at the level of the very person (on a criminal or quasi-criminal charge) taking up such a plea. It is a plea devoid of all merit. The circumstances clearly indicate beyond any shadow of doubt that the respondent knew from the start to finish his exact assignment and the purpose of it. His subsequent conduct further lends support to this conclusion, as he negotiated with the detenus, handled valuable political documents and even mediated. What surpasses everything is that in spite of an awareness or opportunity extending over twenty months to become fully aware, he went on contributing and perpetuating the illegality. He never maintained any record of

these affairs. If the detention came to an end it was not, because of the respondent but in spite of him.

“He was given notice of maintaining a detention camp to which removal had taken place from within the jurisdiction of this Court. He denies it. The facts disclosed by him prove the charge. He admits having directed his subordinates to throw an outer cordon to the camp where such detenus were kept. It is not the feeding, the clothing, or bearing the expenses, or providing the site for the camp where detenus were to be kept, which alone determines whether what was done was maintenance of a camp, but also the restraint imposed, and it came from the respondent in the form of outer cordon. Therefore, on his own explanation it is proved that he was directly concerned in removing the detenus and in maintaining the detention camp”

As to the respondent’s plea that he was a helpless tool acting under the command of an all powerful superior, the Court observed :

“The plea of command from the superior, of the utter helplessness of the subordinate, of the slender and weak thread by which service or employment existed is defenses readily advanced and can be equally conveniently advanced for explaining every dereliction of duty. Legally it is not an absolute defense for an officer like the respondent for being what he is said to have done, and the manner in which it was all done. The officers at the apex are in a position to avert or prevent the operation of an unlawful order, by refusing to obey it. They should be able to show from the record or from other evidence that they did not fail in their duty in indicating the lawful path, in resisting to the extent commensurate with their position, the unlawful command and that in obeying the unlawful order they kept as close to the law as could be possible in the situation. If material on these points is lacking, they may be as well considered to have served as willing tools in the hands of unscrupulous superiors and for that there is no mitigation”.

Khawaja Khairuddin. Another serious case of political abduction on which there were general rumors early in 1976, and some sketchy information about which seeped into the columns of the Press, was that of Khawaja Khairuddin. The details of the case, however, remained something of a mystery until he reappeared in Karachi, after a long absence, in July 1977.

Khawaja Khairuddin is a cousin of the late Khawaja Nazimuddin, who succeeded Quaid-i-Azam Mohammad Ali Jinnah in 1948 as Governor General and later became Prime Minister on the assassination of Mr. Liaquat Ali Khan. Khawaja Khairuddin himself was a prominent Muslim League leader in the former East Pakistan. He was in Dacca when the city fell in December 1971, and was soon arrested. With a brief interval of freedom in 1973, he remained behind

the bars till the general amnesty in Bangladesh in 1975. Thereafter he migrated to Pakistan via London. There, he says, he was offered a visa for Pakistan, but refused to accept it on the ground that he had never ceased to be a Pakistani. The case was referred to Islamabad, where it was scrutinized. Mr. Mahmud Ali, a Minister in the Bhutto Government, was then sent to London to bring him to Pakistan. A passport (No. AD 373584) was issued to him and another to his wife. He sent his wife to Pakistan with Mr. Mahmud Ali and himself came later after performing Umra. He landed in Karachi in the middle of December 1975 and was received by the Sindh Government protocol.

After the coup in Bangladesh, according to Khawaja Khairuddin, Mr. Bhutto called him to Rawalpindi (the meeting was televised). He was thereafter asked to go to London to assess the situation in Bangladesh after meeting the Bangalis residing in London. He was also granted foreign exchange worth Rs. 24,453.90. On his return to Pakistan, he submitted his assessment to Mr. Bhutto, but was shocked to find that the latter was really interested not in a reunification of the two wings but in widening and perpetuating the gulf between them.

Towards the end of the year, Khawaja Khairuddin decided to re-enter political life. Early in 1976, he began to attract public attention when he addressed well-attended public meetings in various towns in the Punjab. He pleaded for the reunification of the two wings of the old Pakistan and criticized the Bhutto Government, particularly for its policy in relation to Bangladesh.

He was arrested on February 19, 1976, but let off a few days later. On March 13, 1976, he disappeared from Karachi and his whereabouts became the subject of public and press speculation.

In his statement after his reappearance in July, 1977, he alleged that he had been abducted, kept in wrongful confinement and unlawfully deported to Indian territory from where a merciful Indian Muslim had picked him up and later dropped him back on the Pakistan soil. Thereafter he had remained underground till the imposition of martial law on July 5. Later, he filed a writ petition in the High Court and also a criminal complaint in a court of the sessions charging Mr. Z.A. Bhutto and some Ministers and high officials of his regime with abduction, wrongful confinement and deportation in circumstances likely to cause his death. Both the cases are still pending.

In a writ petition filed in the High Court, Khawaja Khairuddin has accused the Government for abandoning him on an isolated marsh near the Indian border where he was sent by a craft. He was rescued by some Indian fishermen and found his way back to Pakistan through marsh and desert. He remained in hiding with some friends and surfaced only after the declaration of Martial Law.

The report adds: "As revealed by facts enumerated above, Khawaja Khairuddin was in Pakistan during 1975-76 for about six months, mostly in Karachi. He was well treated and no doubt was expressed about his national status. It was only when he publicly opposed the policies of the then Government and aligned himself with the Opposition (Muslim League) that his deportation was planned and executed.

"The entire resources of Provincial Government of Sind were utilized and the embarrassing presence of Khawaja Khairuddin was dealt with most effectively by utilizing the services of Wali Mohammad Jamote, who left him on an island in the Rann of Kutch".

ORGANISED VIOLENCE AND SUPPRESSION

While individuals who did not subscribe to Mr. Bhutto's policies or sought to prevent his party bosses from having their way were dealt with highhandedly, the instruments of State power were used against groups, communities, and the public in general. Organised violence was let loose, and any activity considered by the Bhutto regime as being out of line with its pre-planned programme was suppressed, without hesitation. A few instances of violence and suppression, which were a recurring feature throughout the period Mr. Bhutto was in power are cited in this Chapter.

Language Disturbances. In June, 1972, the Urdu-speaking population in Karachi and the rest of the Sindh province was disturbed by a statement attributed to the then Governor, Mir Rasul Bukhsh Talpur, that Sindhi alone would be the official language of the province. On the 29th of the month, Mr. Talpur, in a statement in Lahore, disowned the statement. He clarified that what he had said was that both Sindhi and Urdu would be the languages of the province.

Nevertheless, the ruling party in Sindh came forth with a bill, in early July, providing that:

"Sindhi shall be used as the provincial language of the Province.

"Sindhi and Urdu shall be compulsory subjects of study in classes IV to XII in all institutions.

"Subject to the provisions of the progressive use of the Sindhi language in offices and departments of the Government including the courts and the assembly".

When the bill was moved in the Provincial Assembly on July 7, the Opposition came up with several amendments, which were all ruled out of order on the

ground that they were time-barred, not having been submitted 48 hours before the commencement of the session.

Two members objected that they had not received copies of the bill three days in advance, as required under the rules; some members said they had got it only a day before. The Speaker, however felt, satisfied that the rule had been complied with, and ruled the amendments out of order. This resulted in a walkout by eleven out of the eighteen members on the Opposition benches; two members of the ruling party had also walked out earlier. The bill was then passed within five minutes on the same day (July 7).

The contents of the bill and the haste in which it was passed disturbed the Urdu-speaking population in the province, and as the ruling party rode rough shod over the objections and protests of their delegates in the Assembly, one hundred demonstrators were hurt in clashes with the police in Karachi, and there were protest *hartals* in Hyderabad and Sukkur. The next day, while Mr. Bhutto invited ten representatives of Sindh to meet him in the Capital three days later, at least twelve persons were killed in several rounds of police firing on demonstrators in various parts of the city.

According to eye witness accounts reported in the newspapers, the market and the adjoining shops in one of the affected localities had caught fire after a number of policemen and their families had looted the shops and cabins under police protection. As troops had been called out, residents lodged a complaint with the local commander.

The next day, the trouble continued. There were more firings between rival factions in which ten people, including a ten-year-old child, were killed. In the most serious incident a member of the Provincial Assembly representing the ruling party was reported to have opened fire on a peaceful demonstration, killing three persons on the spot.

Those disturbances were followed by an order under the Defence of Pakistan Rules imposing pre-censorship on all news items, photographs and comments relating to the language issue.

The trouble ended only after representatives of both the parties to the language controversy had come to an agreement which provided that the bill passed by the Sind Assembly would become law but protection would be afforded to the interests of Urdu through a separate Ordinance. (*Dawn*, July 8 -12, 1972).

Liaquat Bagh Tragedy. An instance of the abuse of State power to prevent the voice of dissent from being heard, occurred on March 23, 1973—the 33rd

anniversary of the adoption of historic Pakistan Resolution which identified the establishment of a separate homeland as the destination of Muslims of the Sub-continent. To add to the irony of it, the incident occurred within twenty-four hours of the completion of an important stage in Constitution-making—the conclusion of the second reading of the Federal Part of the Constitution. Also, it came a day after Mr. Bhutto had promised a reply, within three days, to the basic and minimum demands of the Opposition in regard to the Constitution then on the anvil.

The incident was the breaking up, by armed gangs (including men of the Federal Security Force in plain clothes), of a Pakistan Day meeting organised by the (Opposition) United Democratic Front, at Liaquat Bagh, Rawalpindi. According to the president of the Front, the Pir of Pagaro, “Lakhs of people” who had gathered for the meeting were “fired upon by rifles and automatic weapons. Incendiary and teargas shells were also thrown at the crowds. Men in the uniforms of the Federal Police and PPP Guards were seen firing at the innocent, unarmed and peaceful people”.

Before the meeting, he stated, he had received a Telephonic call from the Governor of the Punjab advising him not to go to the meeting, “as the Sanghar affair is still fresh in the minds of the people”. When he told the Governor that he was not involved in the Sanghar affair, the Governor asked him to go to the meeting late by at least half an hour, and that he would ask the police to arrange protection for him”.

At the Press Conference where the Pir Sahib made this statement, oil March 24, the Opposition leaders alleged that the PPP had brought its workers from outside Rawalpindi to break up the meeting. They released a photostat copy of an identity card of a PPP worker from Lyallpur who, they said, had been admitted to hospital after the meeting. He belonged to unit 53, which implied that there were probably 53 or more units of the People’s Party created for similar assignments in the country. They said the injured included an Opposition leader. Ameer Habibullah Saadi, who had received bullet splinters on his hand and ankle.

At the same Press Conference, a Muslim League leader, Sardar Shaukat Hayat Khan, said that, at 11 o’clock on March 23, that is few hours before the disturbance, the General Secretary of the UDF, Prof. Ghafoor Ahmad, had sent a telegram to the Divisional authorities, as follows:

“About 200 armed men are sitting in the West Pakistan House (Punjab House) and 1,000 have collected in Topi Park. These men have been imported from

outside Rawalpindi to disrupt the public meeting being arranged by the UDF in Liaquat Bagh at 2 p.m."

(Dawn, Karachi, March 25, 1973)

The Government and the leaders of the ruling party blamed the disturbances on the Opposition National Awami Party and its volunteer corps, the Pakhtoon Zalme. The charge was answered, among others, by the former Governor of the Frontier Province, Arbab Sikandar Khan Khalil. In a statement issued in Peshawar on March 26, he said it was inconceivable that a party would disturb its own public meeting by resorting to firing on people who had come to hear its leaders. He stressed that NAP workers had been searched on their way to Rawalpindi for arms at more than four check posts set up by the government and all those who were carrying even licensed arms were detained. Another proof against the government allegation, he said, was that most of those who had been killed or injured by bullets were NAP workers.

Narrating what he had seen on the spot himself, Arbab Sikandar Khan said that, when he reached the meeting place, firing from all directions was already going on. "I tried to persuade a senior police official to stop the firing, but he replied. 'We can't stop that because we have orders for it' ". Arbab Sikandar also denounced the exploitation of the incident to foment Pathan Punjabi hatred.

(Dawn, Karachi, March 27, 1973).

On the same day, the former Governor of Baluchistan, Mr. Ghaus Baksh Bizenjo, whose government Mr. Bhutto had dismissed a few weeks earlier, alleged, at a Press Conference in Lahore, that the Rawalpindi meeting had been disrupted by the government and the police and not by hired toughs. The very fact that automatic weapons and incendiary shells had been used, proved that the police itself was involved, as then weapons were not in the possession of common people. He said that a fairly big contingent of men sponsored by the Federal Home Minister, Khan Abdul Qaiyum Khan, had been brought from Mardan and asked to occupy an area around the meeting place where they could be easily seen. These people also participated in the firing, so as to create the impression that the people of the Punjab had been attacked by Pathans.

(Dawn, Karachi, March 27, 1973).

Since the all of the Bhutto regime a preliminary official inquiry into the Liaquat Bagh tragedy has brought some facts to light which are summarized in succeeding paragraphs.

In the year 1973 the Opposition Parties formed a United Front, called United Democratic Front. The UDF announced the holding of a public meeting on Pakistan Day *i.e.* March 23, in the Liaquat Bagh. Rawalpindi. The meeting was to be addressed by a number of Opposition leaders. The party in power however did not relish the idea of a meeting convened by the Opposition Parties in Rawalpindi on the Pakistan Day. A conspiracy was hatched presumably with the connivance of the then President Mr. Z. A. Bhutto between Mr. Ghulam Mustafa Khar the then Governor of the Punjab and the late Mr. Haq Nawaz Tiwana, Director-General of the Federal Security Force to disrupt the meeting, which was expected to attract a large number of people from all the provinces of Pakistan. There were also several other main characters involved in this tragedy.

Prominent leaders of the PPP arranged the import of their armed men from Mandi Baha-ud-Din (District Gujrat). Faisalabad, Lahore, Campbellpur etc., and they were received in well-organized camps located in the National Park and near the Rawal Dam, Rawalpindi. Specific instructions were given to these men to reach Liaquat Bagh and disrupt the public meeting arranged by the UDF.

The Federal Security Force, as also the local police, played their part. A special squad of the FSF was dispatched from Lahore. They were received at Rawalpindi by M/s Hassan Mohammad Randahwa and Mian Mohammad Abbas then Deputy Director of FSF. The local police with their teargas contingent and armed personnel were also present at the scene.

The meeting commenced at about 2-00 p.m. and the following Opposition leaders appeared on the stage:

1. Mr. Ajmal Khattak
2. Pir Pagaro;
3. Ch. Zahur Elahi;
4. Mr. Abdul Wali Khan;
5. Sardar Shaukat Hyat Khan : and
6. Prof. Ghafoor Ahmad.

The meeting had attracted a large crowd including people from the NWFP who had come in their own buses which were parked around the Liaquat Bagh. Just at the start of the meeting, indiscriminate tiring started from all sides of the ground. Inside the meeting the miscreants started burning the stage. The consequences of this hooliganism were

- | | | | |
|-----|-------------|-----|----------------------------------|
| (a) | Deaths | ... | 11 |
| (b) | Injured | ... | 80, including 12 members of FSF. |
| (c) | Buses burnt | ... | 13 |

- (d) Cars burnt ... 1
- (e) Shamianas & furniture burnt ... worth lakhs of rupees.

The deaths included four persons from Mandi Baha-ud- Diu and one from District Rawalpindi.

No details are available of the ammunition fired by the FSF; however, the local police fired seven rounds in the air, 80 teargas shells and 12 gas-grenades.

A case FIR No. 106, dated March 23, 1973 under Section 302/307/365 I48/149/PPC was registered at Police Station, 'D' Division, Rawalpindi. (These Sections of the Penal Code cover murder, attempt to murder, abduction and wrongful confinement, and rioting armed with deadly weapons). The Police arrested 89 persons. They were however, released on May 31, 1973, under the orders of the then Home Secretary to the Punjab Government.

The case remained under investigation with the Police Station from March 23 1973 to October 14 1977 when the investigation was taken over by the Crime Branch of the Punjab Police. According to the latest report submitted by the Crime Branch, the initial investigation was conducted by SI, SHO Ghulam Ali. He examined a number of prosecution witnesses, including the Police employees on duty.

From March 23 to April 4, 1973 the investigation changed many hands, which included CIA officers. After April 16, the investigation was virtually stopped. On October 5, 1973, S.I. Ghulam Ali wrote case diary No. 16, saying that the incident had political overtones and would be brought to the notice of the Deputy Superintendent of Police, City, for further action. Again on November 11, 1973, the same officer wrote the next case diary saying that the S.S.P., who had been apprised of the facts of the case, had asked the investigating officer to have the opinion of the Prosecuting D.S.P. Rawalpindi. The Investigating Officer continued with his inquiry till August 8 1974, giving four case diaries in all, but reported no worth while progress.

The successor S.I., SHO, Police Station 'D' Division wrote a solitary case diary on September 8, 1974 and waited for orders from the higher authorities. Thereafter the investigation remained practically dormant during the rest of the Bhutto regime, the inquiry officers waiting for further orders and guidance from the higher authorities.

The inquiry team also recorded the following observation:

The details of the occurrence as reflected in the F.I R. originally recorded are a distortion of the facts. The culprits were made complainants and vice-versa. The investigation was not conducted with a neutral mind and no serious efforts were made to bring the facts on the tile. Instead, the case was withdrawn under the instructions of the Home Department, and the accused persons, numbering 89, were let off as a gesture of 'goodwill'.

On July 25, 1977 Syed Zafar Ali Shah, an advocate of Rawalpindi filed a complaint in the High Court which was referred to the Crime Branch for investigation. The Police investigations into this case and into the complaint received from the High Court highlighted the following aspects:

- (i) Conspiracy to disturb the UDF public meeting.
- (ii) Preparation—Collection of PPP followers to be launched into the public meeting for creating disturbance.
- (iii) Execution of the plan—the occurrence sequence.
- (iv) Aftermath.

By now, some evidence has come on the file of the case which brings to light the facts of the incident and the losses suffered by the victims. There are strong indications to suggest that the entire matter was originally debated/ initiated at the highest level, which included Mr. Z. A. Bhutto himself, his confidant, Mr. Ghulam Mustafa Khar, and also some others who were close to him. Mr. Ghulam Mustafa Khar, who was then the Governor of the Punjab, was nominated chief of the operation. Mr. Khar in turn took into his confidence his most trusted ministers and also some federal ministers. Besides them, the then Chief Security Officer to the Prime Minister, Mr. Saeed Ahmad Khan, the Director General of the F.S.F., Mr. Haq Nawaz Tiwana and Mian Muhammad Abbas also of F.S.F., were thoroughly briefed for the execution of the plan.

Interrogation of some of the officials/personnel has revealed that F.S.F. men in plain clothes were used as instruments for disturbing the meeting and some hard core People's Party elements were also employed.

The Tadjpura Incident. Malik Ghulam Mustafa Khar, the Chief of the operation at the Liaquat Bagh, held important posts like those of Governor and Chief Minister, Punjab, before he was ousted. It is a strange coincidence that this "iron man of the Punjab", within a period of two years, had been put at the receiving end of the big stick. He fell foul of Mr. Bhutto and, in the autumn of 1975, pitted against Mr. Bhutto's nominee in the by-election to the provincial Assembly from Constituency No. 6 of Lahore. The contest bade fair to be tough, and elements of the Federal Security Force -- which had meanwhile grown into a terror armed

with sophisticated weapons were gathered in Lahore from other parts of the Punjab as well as the Frontier Province.

On October 16, F.S.F. men in plain clothes were sent to the last meeting on the Khar campaign to Tajpura, where they raised slogans against him and tried to cause confusion and disorder. The services of a few snake-charmers were hired, and after the commotion has started, snakes were let loose. In the ensuing confusion the police opened fire. A number of persons were killed and the meeting ended in a fiasco.

Before the incident, the powerful pro-Bhutto newspapers in the Punjab had launched a virulent campaign against Khar; after the event, the censor came down heavily (openly in Karachi and not so openly in the Punjab) to prevent the Press from reporting it faithfully.

On the morning of the fateful October 16, 1975, the N.P.T. paper *Pakistan Times* had come out with a vicious attack on Mr. Khar. In an editorial entitled '*A sinister game of rummy*' it asked: "Who paid Khar for the turnabout?"

In the same issue, the paper raised the following questions:-

"What ails Mr. Khar? That's the most common question in the streets today? There are other questions also:

"Why did Mr. Khar leave the People's Party?

"What has set him so against Mr. Bhutto?

"Whose game is he playing?

"Who is behind him?

"Why was he meeting some Western diplomats lately?

"Is he CIA's man!

"Where is all the money coming from that he is spending with both hands on his bye-election?

"Now that he is talking of Islam, where was his Islam when he was Chief Minister and Governor?

"How Islamic was it to have college boys stripped naked and beaten up?

"How Islamic was it for him to have done nothing to stop the rash of political murders in the Punjab?"

Mr. Khar's weaknesses were suddenly being discovered by NPT paper! On the day following the incident, *The Pakistan Times*, of course, published only the Government Press note, and even the Opposition *Nawa-i-Waqt* had, or the most part, to rely upon it adding a small innocuous bit from its own staff reporter at the tail end. A few inches of blank space at the top of the editorial columns on October 17 spoke for itself.

In Karachi and the rest of Sindh, the Press totally blacked out the Tajpura incident under the orders of the Provincial Government. Compliance by *Dawn* was ensured by the physical presence of police officials in the editorial department. Newspaper readers were formally informed of the ban only four days later, when the papers published the Government's order lifting the ban:

"The Sindh Government has withdrawn with immediate effect an Order issued on October 16, 1975, prohibiting comments regarding public meetings and processions in the Punjab under Section 54 of the Defence of Pakistan Ordinance."

No effective action was taken, during Mr. Bhutto's rule, to bring the culprits to book. But, last year in 1977, a private citizen, an eye-witness to the Tajpura tiring, filed a petition in the Lahore High Court praying for a direction to the police to register a case in regard to the incident. He alleged that about 80 people had been killed in the police firing and sought to have cases registered on charges of murder against nearly twenty persons including Messrs Z. A. Bhutto, Abdul Hafeez Pirzada, Dr. Mubashir Hasan, Mr. Sadiq Hussain Qureshi, Malik Meraj Khalid, Saied Ahmad Khan, Masood Mahmood, Rao Abdur Rashid and Ghulam Mustafa Khar himself. On June 12, 1978, the High Court directed the petitioner to approach the police in the first instance to register his complaint and to inform the Court about the action taken by the police. (*The Pakistan Times, Lahore, June 13, 1978*)".

SECTION 144

Section 144 of the Pakistan Penal Code is another weapon frequently employed by the Bhutto regime against the people. The Section prohibits the assembly of five or more people armed with lethal weapons and is intended to serve as a measure to control an explosive situation in terms of law and order. But the Bhutto regime used it as a favorite instrument to suppress its political opponents and deny the fundamental right of assembly to the people. Section 144 was imposed in various parts of the country for indefinite and prolonged periods. For instance, in the province of Sindh Section 144 remained in force in all the big towns with brief intervals. In Karachi, during the period of four years (1971-74) Section 144 was lifted for only 160 days in all.

In the NWFP, during the year preceding the last elections, Section 144 was imposed as thus: Peshawar 10 months; Kohat 10 months; Mardan 10 months; D. I. Khan 11 months; Bannu 10 months; Swat 11 months; Dir 8 months; Chitral 8 months; Hazara 5 months.

In the Punjab, Section 144 virtually remained in force throughout the PPP regime. During 18 months in 1976-77, Section 144 remained in the force in Rawalpindi for about 14 months. In Quetta (Baluchistan) during 18 months in 1976-77, Section 144 remained in force for about one year.

Violation of orders under Section 144 of the Cr. P. C. is an offence which is bailable; during the Bhutto regime the violators were generally refused bail on one pretext or the other and often had to remain in jail for considerable periods.

Bhutto's Appeal

Below we give the text of Mr. Bhutto's appeal to the Supreme Court of Pakistan against the judgment of the Lahore High Court which sentenced him to death. Bhutto contends that the impugned judgment is vitiated by bias and prejudice and the Chief Martial Law Administrator (General Muhammad Zia-ul-Haq) has a strong motive to get the appellant physically 'eliminated' from the political scene of the country. In Chapter 9 of this book is given the Lahore High Court Judgment. (Ed.)

Zulfikar Ali Bhutto, son of Sir Shah Nawaz Bhutto.

Kot Lakhpat Jail, Lahore Appellant. Versus

The State Respondent.

Appeal under Article 185 (2) (b) of the Constitution of Islamic Republic of Pakistan, from the judgment and orders of conviction and sentence of the Lahore High Court dated 18-3-1978 whereby the appellant has been convicted under section 120-B PPC (Pakistan Penal Code). 302 PPC read with section 301 PPC and sections 109 and III PPC and section 307 PPC read with section 109 PPC and sentenced under section 302 PPC read with sections 301, 109 and III PPC to death and also sentenced under section 120-B PPC read with section 115 PPC to rigorous imprisonment for a period of five years and further sentenced under section 307 PPC read with section 109 PPC to rigorous imprisonment for seven years. The appellant has also been ordered to pay a sum of Rs. 25,000 as compensation under section 544-A, Cr. P.C. (Code of Criminal Procedure) or in default to undergo rigorous imprisonment for a period of six months.

The above named appellant respectfully submits

I. That the appellant has been the elected President and Prime Minister of Pakistan. His Government was overthrown by General Muhammad Zia-ul-Haq, Chief of the Army Staff on 5th July, 1977 imposing Martial Law in the country and proclaiming himself as the Chief Martial Law Administrator. On the same day the appellant was taken into the so-called protective custody, and was released on 28-7-1977, *i.e.*, after about three weeks' detention.

2. That in his first address to the nation on 5th July, 1977 the Chief Martial Law Administrator declared, *inter alia*, that; --

“I want to make it absolutely clear that neither I have any political ambitions nor, does the Army want to be detracted from its profession of soldiering. I was obliged to step in to fill in the vacuum created by the political leaders. I have accepted this challenge as a true soldier of Islam. My sole aim is to organise free and fair elections which would be held in October this year. Soon after the polls power will be, transferred to the elected representatives of the people. I give a solemn assurance that I will not deviate from the schedule. During the next three months my total attention will be concentrated on the holding of elections and I would not like to dissipate my powers and energies as Chief Martial Law Administrator on anything else”.

It was repeatedly announced by the Chief Martial Law Administrator in his various broadcasts/interviews to the national and international information media that the sole purpose for his *coup d'état* was to hold fair and impartial elections in the country. He reiterated this pledge from time to time in Press conferences and television broadcasts. On 28th September, 1977 his chief spokesman in the United Nations, Mr. Agha Shahi, told the world that elections would be held on 18-10-1977 and the Interim Military Government in Pakistan was determined to transfer power to the elected representatives immediately after the elections.

3. That time in its fullness has shown that the Chief Martial Law Administrator had no intention to hold elections in the country within the specified schedule or otherwise. It is now clear that these promises were made with ulterior motive to gain time for consolidation of his rule over the country. He embarked upon witch hunt and victimization of the appellant, his family and other leaders and workers of the Pakistan Peoples' Party.

4. That as a link in the chain of the international conspiracy hatched against Pakistan and the appellant, the Chief Martial Law Administrator, exerted coercion, undue influence, duress and threats on Director General, Federal Security Force, Masood Mahmood and some of his subordinates to give evidence in order to falsely implicate the appellant in this fabricated criminal case. Five or six officers and employees of the Federal Security Force were thus made confessing co-accused of the appellant on the promise of pardon and 'or reward after the conclusion of judicial process. The family members of these so-called confessing accused were put under great pressure so that the confessions were not retracted by them. Their family members were not allowed to engage private counsel for them and counsel at State expense were appointed. Out of these officers and employees of the Federal Security Force, Director General Masood Mahmood and Inspector Ghulam Hussain were given pardon in advance and made approvers in the case. Masood Mahmood, who thus became the star prosecution witness and "approver" in the case was also taken into custody and

detained on 5-7-1977, the day the appellant's Government was overthrown. The second main prosecution witness Saeed Ahmad Khan, who had been the Chief Security Officer to the Prime Minister, was also arrested from Hyderabad on 9-7-1977.

5. That a Martial Law team headed by Major General Kalu and the Federal Investigating Agency (FIA) was specifically directed to reopen and reinvestigate the murder case of Nawab Muhammad Ahmad Khan which had been registered at Police Station, Ichhra, Lahore, vide FIR No. 402 on II. 1.1974 and had been filed as untraced in October, 1975. The main investigation in the case was conducted by the Martial Law team.

6. That after about six weeks in detention the star prosecution witness Masood Mahmood was sufficiently coerced to submit a 100-page tutored statement to the Chief Martial Law Administrator on 14-14-1977. Saeed Ahmad Khan was likewise coerced to submit a 30-page statement to the Chief Martial Law Administrator several weeks after his arrest. Another prosecution witness, Mr. M. M. Welch, former Director, FSF, was summoned by the Martial Law investigation team in the month of July, 1977 and coerced to make a statement involving the appellant as desired. The investigation machinery of FIA was supervised by the Martial Law team. It was on the basis of such questionable investigation and after the collection of false and fabricated evidence in the manner stated that the Chief Martial Law Administrator announced that he was "in possession of irrefutable evidence" implicating the appellant in the murder case. This announcement appeared in the national Press. The Chief Martial Law Administrator also said so in his interviews to the international Press. His interview to Kehyanitar International of Tehran was reproduced in the various newspapers of Pakistan. In that interview he, inter alia said:

"I told him: Sir, you have turned out to be a murderer, an embezzler. You pocketed the country's money, part of which was given by Muslim nations to help Pakistan out of its economic troubles.

Q : Do you really believe that Bhutto was really involved in such things or are we in the rumor-infested world of the Oriental bazaar ?

A : It is not a question of believing or not believing. I know it all. And what I know pains me. I have seen irrefutable proofs. The whole sorry affair makes me sick because I used to like Mr. Bhutto.

Q : You are the only Pakistani General who ever liked Bhutto. But shouldn't we await the verdict of the jury before passing judgment?

A : We certainly should. This is why I have allowed the whole matter to go through civilian courts. Otherwise I could have handed Mr. Bhutto to one of our military courts that would decide his fate in 12 hours and that would be the end of that.

Q : As things are now Bhutto would be able to contest the election...?

A : Why not? He would, if he does not get convicted before October 18. He might land in gaol for three years on the murder charge. And there are other charges against him also. What is repulsive is that Mr. Bhutto stooped so low as to arrange the murder of a nobody – a certain Kasuri, who escaped assassination while his father died by his side. Had Mr. Bhutto arranged for the murder of someone like Mr. Bhutto I might have understood the forces that compelled him to such a deed. But to try to kill someone who would in no way be a serious adversary smacks of cold-blood brutality.”

“But the same man, behind his fascinating mask. is an individual totally devoid of principles. He believes in nothing but himself and is prepared to sacrifice the closest of his kin simply in order to get along. He is totally unreliable, mercurial and cynical. For him, politics is a game with millions serving as mere pawns. Under his kid gloves are hidden a pair of soft and smooth hands, strained with the blood of the innocent. To reach the dizzy heights of his megalomania, he would not hesitate to turn the corpses of his dearest friends into a ladder, discarding it without ceremony the moment he has reached the top.

Q: I am sorry I have to ask this question. But I have seen so many generals, including some in Pakistan who made coups and said they merely wanted to set things right and then return to the barracks. All of them however hung on until they were pushed out not only of politics but also from the barracks. I have no reason to believe you would be different. Could you make what the Americans call a Sherman declaration?

A : I think I have already made my Sherman declaration and I am ready to make it ten times over. You cannot make me President and I shall never accept any political office; *The Sunday Times* has claimed that I was not such a simple soldier and that I was paving the way to become President of Pakistan...

Q : Are you not?

A : No. I am not. I assure you that I am not putting on a show. If I want political power, what is there to stop me? The Army is behind me and I have the power to do what I like. What is the Constitution? It is a booklet with 10 or 12 pages. I can

tear the n, from tomorrow we shall live under a different system. Is there anybody to stop me?

Q: Not for the time being. You might get away with it, for some months or years, if you are especially lucky.

A: Exactly. Today, the people will follow wherever I lead. All the politicians, including the once mighty Mr. Bhutto, will follow me with their tails wagging behind them, as long as I want them. But is that good for the country? No. I have no political ambitions personally I am not interested in political office and shall never accept one".

(*Musawat*, Lahore dated 28.9.77)

In his interview to the *Urdu Digest*, it was said:

Answering a question about Mr. Bhutto's personality, the General admitted that he took a long time in making a correct assessment. He referred to his first impression based on what was visible on the surface. Later the other image of Mr. Bhutto began to unfold before him. The story of the Dalai Camp gave him a real surprise and shock for the first time as far as the image of Mr. Bhutto was concerned. When the relevant files revealing widespread "plunder and loot" came to his notice, he found that no account was kept for crores and billions of rupees spent by the Bhutto Government.

The person whose exterior gave the impression of a humane personality, turned out to be a "worst cheat and cold-blooded murderer" in practical life the general observed. Mr. Bhutto, he said, had been running a Gestapo-style police state in which kidnapping and political murders had become a routine affair. The General said one could not imagine politicians being tortured in Dalai Camp while cells for pleasure and luxury were set up from place to place. He said the picture was so horrifying that 'I trembled'. He added he decided to trace out murderers. Every inquiry that was initiated tended to involve Mr. Bhutto himself. "Now the Law is taking its course and it can be said on the basis of evidence that Mr. Bhutto and his colleagues will not be able to escape severe punishment. If necessary, Martial Law would also be used to bring culprits to the book."

He said: "I do not have any sympathy with people who have been playing with the honour and dignity of the nation for five and half years. *We cannot be impartial regarding those who have committed crimes against the nation.* It is the legal duty of a Government that such people are fully taken to task."

(*Pakistan Times* Dated 15.9.1978)

Again in his interview to New York Times, he inter alia, stated:

“I have seen it with my own eyes”, he said in an interview to the *New York Times*. It was a report from intelligence giving the activities of a particular man he said in the margin Mr. Bhutto had written: “Eliminate him”. The man was killed six months or a year later. General Zia described Mr. Bhutto, whom he overthrew in a coup two months ago, as an evil genius who had been running the country on more or less Gestapo lines, misusing funds, blackmailing people.

The General, who was appointed Chief of the Army Staff by Mr. Bhutto last year, said he had had no knowledge of “what type of leader we had until recent weeks, when he began to see secret documents and memoranda that convinced him that the former Prime Minister was ‘Machiavellian (in 1977) The Prince’ in Pakistan”.

He disclosed that he had personally authorised Mr. Bhutto’s arrest on Saturday on a charge of conspiracy to murder a political opponent. The intelligence agents were acting on the orders of a court, he said, but they had first sought approval from him, as head of the Government.

(*Morning News*, Karachi. Dated 11.9.1977)

It is unprecedented for a Head of the Government or indeed any responsible functionary of the State to give statements of this nature to prejudice and brazenly prejudice a criminal case pending in a court of law. It is submitted that pronouncements of such damaging magnitude are without precedent in any civilized country. This modus operandi was deliberately adopted by the Chief Martial Law Administrator to distort, dishonor and tarnish the political image of the appellant on the national as well as international scene and to get him physically ‘eliminated’. The utterances of the Chief Martial Law Administrator constituted grossest contempt of court amounting to flagrant interference with the course of justice and prejudicing mankind against the appellant and yet the trial Bench took no notice of this well publicized contempt. On the contrary it has gone out of the way to corroborate and uphold these utterances of the Chief Martial Law Administrator in their Judgment without any evidence in these words :

“The constitutional provisions presuppose that before a person ventures to seek election to the office of the Chief Executive of the Federation he would order his own life in accordance with injunctions and teachings of the Holy Quran and the *Sunnah*...A person who considers the Constitution and the law as the hand-maid of his polity is neither qualified to be elected to the high office of the Prime Minister nor can ever he true to this oath.” (Para 610 of the Judgment).

What was the evidence on record of the case to support this conclusion? How was it relevant whether the appellant was a good Muslim or not in the trial of the

murder case? What was the basis for holding that he was not a good Mussulman? Does he not say his prayers? Does he not fast? Has he not been serving the cause of Islam more than any other living Pakistani? Do these remarks not prove deep-seated political bias of the Bench against the appellant? Was the Ouaid-e-Azam also a Muslim only in name? Does it mean that only a Maulvi is a proper Muslim? It is highly regrettable that the Chief Justice who presided over the Bench and pronounced the judgment should also be the Chief Election Commissioner. Can he be impartial in conducting the elections to the Parliament if he is of the view that the appellant 'can never be true to his oath' and is a Muslim only in name?

The judgment further says: "It is as is clear from oath of the Prime Minister as prescribed in the Constitution, a constitutional requirement that the Prime Minister of Pakistan must be a Muslim and a believer inter alia in the total requirement and teachings of the Holy Quran and the *Sunnah*. He should not be a Muslim only in name who may flout with impunity his oath without caring for its ugly consequences and terrible results, and treat the Constitution and the law as a source of unlimited power for himself which may satisfy his own inane craving for self aggrandizement and perpetuation of his rule. Such a person in all probability would destroy the very basis of the Constitution and the law which he is sworn to uphold." (Para 611 of the Judgment).

It is respectfully submitted that these observations could more appropriately be described as a political speech addressed to an audience outside the Mochi Gate Lahore rather than conclusions of a court of law in a judgment based on evidence. The appellant never considered the Constitution of the Islamic Republic of Pakistan a "12-page document to be torn". It was not the appellant but the Chief of Army Staff who having sworn to uphold the Constitution of the country violated his oath, suspended the Constitution, overthrew the elected Government of the appellant, seized power and imposed Martial Law in the country" as a source of unlimited power for himself which may satisfy his own inane craving for self aggrandizement and perpetuation of his rule". The appellant never went back on any solemn assurance given to the nation or broke his pledge to his people and the world community about holding elections on 13th October, 1977.

7. That it was under these circumstances that the appellant was arrested from his residence in Karachi on the 3rd September, 1977 on the basis of an FIR lodged in Lahore on 11.1 1.1974 by one Mr. Ahmad Raza Kasuri with regard to the death of his father caused by firearm injuries.

8. That on 13th September, 1977 Mr. Justice K.M.A. Samadani of the Lahore High Court was pleased to release the appellant on bail on the charges under section 302/109/102-13/307 PPC on the basis that there existed no reasonable

grounds for believing that the appellant was guilty of the offence alleged. On the same day *i.e.* 13th September, 1977, the then Acting Chief Justice (now Chief Justice) of the Lahore High Court constituted the Bench of five judges presided over by himself and transferred the case to be tried by it. It may be mentioned that a Bench of the High Court consisting of Mr. Justice K.M.A. Samadani (who granted the bail) and Mr. Justice Mazharul Haque who were already seized of this matter and inquiring into this matter on the complaint of Ahmad Raza Kasuri were not contrary to the normal practice included in the Special Bench of five judges constituted by the Chief Justice.

9. That in spite of a categorical assurance in a Press interview given on 13th September, 1977, after the release of the appellant on bail, that he would not haul up the appellant under Martial Law, the Chief Martial Law Administrator on 16th September, 1977, ordered the re-arrest of the appellant from his house in Larkana under Martial Law Order No. 12. He was first taken to Sukkur Jail and after being lodged there for a day he was marched to Karachi Jail and lodged there.

10. That on 21st September, 1977 the Bench of five judges issued a show cause notice to the appellant for 24.9.1977 as to why his bail granted by Mr. Justice K.M.A. Samadani be not cancelled. This notice was served through a special messenger on the appellant in Karachi jail at about midnight the same day. Meanwhile a notice had also been issued for him to appear for his trial before the said Bench on the said charges on 24.9.1977.

11. That on 21st September, 1977, the appellant had filed a petition for leave to appeal in the Supreme Court against the orders recorded by the then Acting Chief Justice of Lahore High Court, Mr. Justice Mushtaq Hussain ordering the transfer of the case for trial before the Bench of five judges. In the said petition for leave to appeal, it was *inter alia* stated that Mr. Justice Mushtaq Hussain was prejudiced and partial against the appellant. The petition however, was dismissed on 24th September, 1977, by this Honourable Court on the ground that the points raised in the petition, in the first instance, be raised before the trial Bench.

12. That on 24.9.1977, when the appellant was produced before the Bench, he requested for three weeks' adjournment as all his senior counsels were appearing at that time in the Supreme Court in Rawalpindi in Begum Nusrat Bhutto's constitutional petition questioning the validity of the detention of the petitioner and some other prominent PPP leaders under MLO I2. The Bench, however, only adjourned the case for seven days, as required by law, assuring the appellant that further adjournment would be considered if his counsel needed it after seven days. On this a junior Advocate, Mr. Aftab Gul intervened and requested for

more time. The court took amiss Mr. Aftab Gul's sudden intervention. Therefore the appellant rose to stop him and stated that he had confidence in the court clearly implying thereby that he was satisfied with the seven days of adjournment on the assurance of the court that if needed, a further adjournment in the date of commencement of the trial would be granted. This incident was not reported in the Press on the next day *i.e.*, on 25.9.1977. However, on that date, *i.e.* on 25.9.1977 a report appeared that a petition for leave to appeal had been moved in the Supreme Court on behalf of the appellant, *inter alia*, alleging partiality and bias against Mr. Justice Mushtaq Hussain. It was further reported that the same had been dismissed by the Supreme Court on the ground that the points may be raised in the first instance before the High Court itself. Thereafter on 26th September, 1977 a news report appeared in the *Pakistan Times* and other newspapers that counsel for the appellant had misstated the position before the Supreme Court and that the appellant had "fullest confidence" in the Bench presided over by Mr. Justice Mushtaq Hussain. This inspired and misleading report came as a complete surprise to the appellant.

When the appellant was again brought before the Bench on 27th September, 1977, he availed of the very first opportunity to point out the misleading report and explained that at the previous hearing, the question pertained only to fixing the next date of hearing of the challan case about which he had expressed his satisfaction and confidence in that limited context and not "fullest confidence" generally in the Bench. It was inconceivable for the appellant to specifically instruct his counsel to move the Supreme Court against the prejudice and partiality of Mr. Justice Mushtaq Hussain and yet on the same day and at about the same time express his "fullest confidence" in the Bench presided over by him. The fact that the Bench did not dispute the explanation of the appellant at that time clearly shows that the inspired newspaper reports were made deliberately with the purpose of misleading the public and casting a reflection on the appellant.

13. That thereafter the points about the bias etc., as mentioned in the order of the Supreme Court were duly raised before the trial Bench through a Petition (Cr. Misc. No. 932.M/1977). While Counsel for the appellant Mr. Ghulam Ali Memon was arguing his application, the appellant rose on two or three occasions to make a submission on certain points. On the first occasion he wanted to clarify a point after some observation from the Bench not directly related to the submissions of his counsel. Similarly, on the second and third occasions the appellant rose and stated that he wanted to supplement the submissions of his Counsel on the points which were being argued and on which the counsel was questioned by the Bench. On each occasion the appellant was categorically assured that he would be given sufficient opportunity to address the court after conclusion of counsel's submissions. On the second occasion the learned Acting Chief Justice

promised to give the appellant time to make submission for 'hours and hours'. This assurance was repeated again in open court and was heard by every one present in court. However, at the conclusion of the arguments of the appellant's counsel on 8.10.1977, before the appellant could rise to make his submission as promised to him the learned Acting Chief Justice, to the utter surprise of the appellant and those present in court, observed with obvious vehemence, that the appellant would not be permitted to address the court but if he wanted, he could submit in writing his views for which services of a stenographer would be made available to him in the court premises by the court. The court further announced that the orders on these applications and on the application for cancellation of bail which had been argued earlier by the Special Public Prosecutor and the appellant's counsel, Mr. Muhammad Hayat Junejo, would be announced on the following day.

15. That on 9.10.1977 the aforesaid Cr. Misc. No. 932-M/77 was summarily dismissed and the bail granted to the appellant was also cancelled.

16. That despite the aforesaid application dated 8.10.1977, wherein a lack of confidence in the Bench presided over by Mr. Justice Mushtaq Hussain was expressed, the trial of the appellant along with the other accused commenced before the trial Bench on 11.10.1977. The partiality and prejudice of the Bench presided over by Mr. Justice Mushtaq Hussain soon confirmed that the appellant was not getting a fair trial from the Bench.

17. That another petition for leave to appeal was filed in this honorable court inter alia raising the question of prejudice and bias of the Bench presided over by Mr. Justice Mushtaq Hussain and in the course of submissions by counsel for the appellant before the Supreme Court several instances of unfair treatment and prejudicial conduct of the trial were cited at the Bar. It was observed by the court at that stage that the instances cited at the Bar should have been made through an application or applications before the Full Bench and if found correct the trial will stand vitiated and the appellant could move the Supreme Court again after the trial has concluded or even earlier.

18. That on 18th December, 1977, a comprehensive application giving various instances of unfair conduct of trial was filed in the High Court by the appellant (Annexure 'D'). This application was listed in the cause list of the court for 19.12.1977 but there appeared, a remark against the item on the list that it was to be returned to the appellant. The appellant therefore submitted another application dated 22.12.1977. (Annexure 'E') requesting that his application dated 18.12.1977 for the transfer of the case be heard during the winter vacation of the High Court which had commenced from, 20.12.1977. Both these applications were rejected summarily on 9.1.1978, in camera and in chambers, in the absence

of the prosecutor, other accused and their counsel without even a proper hearing being given to the appellant or his counsel. Consequently on the same day the appellant disassociated himself from the unfair trial and cancelled the *Vakalatnkm* of his counsel and the trial proceeded undefended so far as he was concerned.

19. That the application for copies of the orders rejecting his applications dated 18 December, 1977 and 22 December 1977 and certified copies of the application was made to the Court, but the copies were not granted. Similarly applications for certified copies of several other documents and orders have been filed but the same have not been granted in spite of repeated requests. Consequently the Supreme Court could not be approached before the final judgment in this case.

20. That on 25.2.1978, the appellant sent an application through the jail authorities to the Acting Governor of the Punjab for the transfer of case under section 527 Cr. P.C. from the Lahore High Court to any other High Court in Pakistan. This application was also rejected by the Governor without hearing the appellant on 27.2.1978 (Annexure 'F').

21. That the prosecution evidence in the case was recorded in open Court but when the defence commenced, and in the course of the appellant's examination under section 342 Cr. P.C. the proceedings were suddenly converted into 'camera proceedings' on 25.1.1978 onwards and the statement of the appellant under section 342 Cr. P.C. on 25.1.1978 and 28.1.1978 was not recorded fully and its copies have also not been supplied in spite of requests to the appellant or counsel for the other accused. The reason given to the appellant was that his statement under section 342 Cr. P.C. on 25th and 28th of January 1978 was recorded in camera and therefore its copy would not be supplied. However, statements of other confessing accused under section 342 Cr. P.C. running in over 70 pages, which were also recorded in camera in which they had maligned the appellant and made wild and false allegations against him were allowed to be published in the Press and broadcast on radio and television through Press releases of the High Court.

22. The impugned judgment in its paragraph 622 directs as follows: "Each accused has been furnished with a copy of the judgment and has been informed that as per Article 150 of the Limitation Act he can file an appeal to the Supreme Court within seven days from today."

It is submitted that the appeal to the Supreme Court mentioned by the learned judges of trial Bench of the High Court in paragraph 622 does not lie under the Code of Criminal Procedure, 1898.

The appeals from conviction and sentences awarded by a High Court in the exercise of its original criminal jurisdiction are provided in section 411 of the Code of Criminal Procedure.

It will be seen from sub-section (I) of section 411A of the Cr. P.C. that the case in which an appeal lies to the Supreme Court under article 58 of the Constitution (1962 Constitution) corresponding to article 185 (2) (b) of the present Constitution section 411A of the Code of Criminal Procedure has no application at all.

Appeal from judgment decrees, final orders or sentences of a High Court lies to Supreme Court as of right if the High Court has withdrawn for trial before itself any case from any Court subordinate to it and has in such trial convicted the accused person and sentenced him to death or to transportation for life or imprisonment for life. This is provided for in article 185 (2) (b) of the Constitution. The present appeal falls within this category and lies to the Supreme Court as of right. The present appeal is therefore not an appeal under the Code of Criminal Procedure so as to attract the application of article 150 of the Limitation Act as erroneously field by the High Court.

For an appeal which lies to the Supreme Court under article 185 (2) (h) of the Constitution the Supreme Court Rules (Order XXIII rule I) provide a period of 30 days from the date of the judgment, final order of sentence appealed from. That as the trial Bench has illegally and to the grave prejudice of the appellant prescribed a period of seven days and it is likely that the sentence of death may be executed immediately on the expiry of seven days without even waiting for the period of Limitation for the appeal prescribed by law *i.e.*, 30 days, the present incomplete memorandum of appeal is being filed before this honorable court to avert such an eventuality which will render the appeal infructuous.

23. That the impugned judgment runs into 405 pages, the evidence recorded by the court, including the statement of accused (except the statements of the appellant recorded on 25.1.78, 23.1.78 and 7.2.78) are contained in about 938 pages. Documents produced by the prosecution and other accused number about 237 and are spread over 425 pages. Copies of the statements of the appellant recorded on 25.1.78 and 7.2.78 have not been granted. Copies of the orders rejecting several applications of the appellant including the application for transfer of the case dated 18.12.77 have also not been granted so far. Without examination of these documents and careful perusal of the evidence, judgment and exhibits it is not possible to prepare objections on legal and factual grounds in all material details. The appellant therefore reserves his right to submit detailed grounds of appeal and objections within the prescribed period of thirty

days or such extended time as this honorable court may in the interest of justice allow after the expiry of prescribed period of 30 days.

However, being compelled to comply with the illegal directive of the High Court with regard to filing of the appeal within seven days so as to avoid execution of the sentence of death before the expiry of the prescribed period of appeal the following general grounds are submitted at the stage :-

Grounds

(a) That the impugned judgment is vitiated by bias and prejudice and the same is also adequately and clearly reflected in the judgment itself.

(b) That the Chief Martial Law Administrator had condemned the appellant as murderer and guilty of this particular murder which formed the subject matter of the trial and the learned Court appears to have been influenced by the expression of malicious views of the CMLA who otherwise also has a strong motive to get the appellant physically 'eliminated' from the political scene of the country.

(c) That on account of his deep seated bias and prejudice against the appellant Mr. Justice Mushtaq Hussain was not qualified to transfer the case from subordinate court, and to constitute and preside over the trial Bench.

(d) That during the course of trial it became apparent that the other learned judges of the Bench selected by Mr. Justice Mushtaq Hussain were also affected by bias and prejudice against the appellant.

(e) That the trial was not conducted in accordance with the procedure as established by law and the rules of evidence and therefore it is vitiated.

(f) That the impugned judgment does not correctly appreciate the evidence in accordance with law and well settled principles of jurisprudence.

(g) That the learned trial court has erred in placing implicit reliance on the false and contradictory testimony of the approvers and tutored confessions of the co-accused.

(h) That the learned trial court has erred in relying on the tainted evidence of the approvers, three confessing accused, and on the retracted

confession of co-accused Mian Abbas in the total absence of any material and independent corroboration as required by law.

(i) That even from the evidence as recorded most of the witnesses for the prosecution including PW3 Saeed Ahmad Khan, PW4 M. R. Welch, PW12 Mohammad Asghar Khan, PW14 Abdul Vakeel Khan PW15 Malik Waris, PW16 Mohamamad Bashir, PW17 Mohammad Sarwar, PW 18 Abdul Ikram, and PW23 Nasir Nawaz are shown by the prosecution to be accomplices and therefore their testimony was not worthy of any credence.

(j) That the negative report of ballistic expert demolished the entire prosecution case. Perforce therefore resort had to be made by the prosecution to the theory of the alleged substitution of the crime empties which theory is not all reflected in the investigation or even the opening address of the Special Prosecutor. Clearly witnesses were tutored to falsely depose to this improvement in the prosecution case after the commencement of the trial but the material contradictions, omissions and improvements sought to be brought on record by the defence were not recorded or permitted to be brought out.

(k) That objections by the counsel for the appellant were either not recorded or overruled sometimes without even affording them an opportunity to argue in support of the objections.

(l) That defence counsel were insulted and humiliated in open court by the presiding judge and it was made almost impossible for them to perform their duty in defending the appellant in accordance with law and in a self-respecting and dignified manner. The irony, however, is that in the judgment the learned Bench has cast aspersions on the defence counsel and made highly unfair comments with regard to their conduct as an implied warning.

(m) That due to the bias and strong prejudice of the Bench, highly unfair manner of conducting the trial in favour of the prosecution as detailed in the application of the appellant including that of 18.12.1977, the maltreatment of his counsel and their inability to continue with the defence of the appellant, the appellant was compelled to disassociate himself from the trial and boycott the proceedings with the result that he could no longer defend himself, cross-examine the remaining about ten prosecution witnesses, or produce evidence of very important witnesses in his defence. At times, contrary to the established procedure and law the Bench continued the trial for several days in the absence of the appellant

due to his illness. This happened even when the appellant was not represented by counsel. This has also vitiated the trial.

(n) That some of the glaring instances of the unfair manner in which the trial was conducted and record of evidence and proceedings dovetailed to suit the prosecution are given in the appellant's application dated 18.12.1977 and application, dated 23/26. (2.1978 also in the application dated 25.2.1978 for transfer of the case addressed to the Acting Governor of the Punjab and in application dated 24.2.75.

(o) That without any legal or moral justification or propriety the trial Bench permitted the prosecution case with false, malicious and irrelevant allegations against the appellant to be heard in open court and widely publicized but the case of the appellant, including his complaints with regard to unfair manner, in which the trial was conducted, was heard in 'camera' and the Press was directed by the Public Relations Officer of the court not to publish the applications of the appellant. Statement of the appellant recorded in 'camera' on 25.1.1978 and 28.1.1978 and 7.2.1978 were also not allowed to see the light of day. The impugned judgment gives untenable reasons for holding proceedings in 'camera' without any reference to the valid objections raised by the appellant.

(p) That the impugned judgment betrays the political bias of the Bench against the appellant so much so that it arrogates to itself the right of the electorate to determine as to who is the proper person to be the Prime Minister of Pakistan.

(q) That the expression of political views by the Bench, its censure of the appellant for not being a proper Muslim out only a Muslim in name, were not only highly irrelevant, uncalled for, derogatory, not based on any evidence on record but constitute by themselves strong legal ground for vitiating the trial on grounds of bias and prejudice.

(r) That the impugned judgment cannot be sustained in law, on facts or even the evidence as recorded and is perverse on the face of it.

It is, therefore, respectfully prayed that the judgment, orders of convictions and sentences passed against the appellant be set aside, and the appellant acquitted.

It is further prayed that pending the final disposal of the appeal the operation of the impugned judgment and orders may be suspended and their execution stayed. The court may also be pleased to direct that the appellant may be immediately removed from the death cell (condemned prisoner's cell) where he

is being kept after the pronouncement of judgment as this amounts to very severe punishment and humiliation before he is validly and finally found guilty.

Lahore, dated 24th March, 1978.

Military Intelligence Used for Political Purposes Bhutto's Disclosures

In support of his appeal (Chapter 7) in the Supreme Court of Pakistan against the judgment of the Lahore High Court sentencing him to death, Mr. Bhutto submitted a 300-page statement in the Supreme Court now published under the title if '*I am Assassinated*'. The statement is partly a rejoinder to the White Paper issued by the Pakistan military government accusing him of acts of omission and commission and partly criticism of the military hierarchy as depicted in Hamoodur Rehman Report, which was not released to the According to the Director-General. Inter-Service Intelligence, military intelligence had been given political assignments on elections and post election repercussions. Mr. Bhutto says that a short term but sharp cause of their decline in East Pakistan had been the misuse of military intelligence and the services generally for political purposes thereby showing that in Pakistan military have all along been interested in politics. In his statement Mr. Bhutto writes:

I took pains to uphold the prestige and reputation of the armed forces. Even now, my open commentary upon the Hamoodur Reisman Report would irreparably damage the name of the armed forces. Therefore, despite the gravest provocation and inhuman treatment I will refrain. There are two significant references to the Hamoodur Rehman Report in the White Paper, which show how another effort is being made to turn virtue into vice.

All the senior military officers who had access to the Hamoodur Reisman Report were of the unanimous view that the report should not be published. Whenever I held a meeting to consider the publication of the Report each one of the senior officers of the armed forces vehemently opposed the idea. In deference to their wishes, and out of respect for the Army, I did not release the Report despite the enormous pressure from the public and the Opposition Parties.

I took the cruel and unkind brunt of the vicious attacks to protect the honour and the name of the armed Forces and this is how I am being repaid for it. The military regime has been in power for a year and a month. It has released all sorts of filth and lies to malign me with the object of turning the people against me. The regime would have jumped the gun to release the Hamoodur Rehman Report if its nefarious purpose of maligning me had been served by it.

The military regime is not releasing the Report because it is a severe indictment of the armed forces and the military hierarchy. In a Press conference in Lahore about four months ago, the Chief Martial Law Administrator tried to play down

the substance of the Report. He said that he had read it and there was nothing important in it. According to his yardstick, only those things are important which might damage me. Nothing else is important to him.

The Report is important. It is a story of rape, plunder and loot. If in those days lashing were a punishment for rape and cutting off hands for theft, I would shudder to think of the number of handless persons. (But) since “purifying the blood of Bengalis” is not rape, the President of Pakistan could have exercised his powers of mercy.

That Report exposed the macabre conspiracy of Yahya Khan and his clique. The colour of the map of Bengal had to be painted red. What a colorful directive from a General whose skin I saved with honour but whom nevertheless went to London to influence Jam Sadiq Ali to become an Approver in a false murder case against me!

The passage in the White Paper on page 106 shows that due to the clamour, I was reflecting on the demand but that I was requested to consider further the tentative decision to release the report. The passage in the White Paper is in italics and it reads:

Prime Minister to reconsider this item.

On page 107, the White Paper states: “Mr. Bhutto agreed with the line of action suggested with a cryptic ‘it can be omitted’.” This clearly shows that in a conflict of interests, I chose to sacrifice our political interests to safeguard the reputation and honour of the armed forces. I am receiving a wonderful token of gratitude.

How did Ayub Khan and Yahya Khan use the intelligence agencies? Yahya Khan used to the hilt the intelligence agencies for political purposes to divide the politicians and to influence the elections of 1970. I should know because at that time I was at the receiving end. My Party was subjected to enormous pressures by the intelligence agencies. After the elections of 1970 and until the collapse of Yahya Khan’s Martial Law the intelligence agencies, both civil and military tried to penetrate into my Party’s influence and contaminate the elected representatives.

Before leaving for London in January 1972, Mujib-ur-Rehman told me that he wanted to lay his hands on five persons from West Pakistan and hang them in the Paltan Maidan. Out of the five, two belonged to the civil and military intelligence. Mujib-ur-Rehman gave me an elaborate account of their mischief in the political field. I told him that our experience was not dissimilar.

Ayub Khan also used the intelligence agencies for political purposes to the hilt. He tried to break DAC through the civil and military intelligence. He tried to prevent my Party from getting off the ground through the intelligence agencies. He tried to sabotage our foundation meetings on 30th November and 1st December 1967, and it was through the intelligence agencies that he tried to stop my movement against his regime. I shall cite only three instances to illustrate Ayub Khan's exemplary use of the intelligence agencies:

(a) When the Indo-Pakistan War of 1965 started our military intelligence was not able to locate the whereabouts of the Indian Armored Division. Ayub Khan was furious. He summoned the Director-General, Inter-Service Intelligence, to his office in Rawalpindi. Brigadier Riaz Hussain, later General Riaz Hussain, the Governor of Baluchistan in Yahya Khan's regime, was the Director-General. As Foreign Minister I was present. Ayub Khan gave hell to Riaz Hussain. He told him that military intelligence had let down the country. I told Brigadier Riaz Hussain that the Armored Division of India was not a needle in a haystack. With an injured tone of voice President Ayub Khan said. "It is a monster and not a needle!"

He kept pressing Brigadier Riaz Hussain to explain to him what had gone wrong with the intelligence service. With a quivering voice, Brigadier Riaz Hussain replied, "Sir from June 1964, military intelligence has been given political assignments on elections and post-election repercussions."

(b) On the specific instructions of Ayub Khan the intelligence agencies blocked General Azam's candidature as a Presidential rival in 1964.

(c) In the beginning of November 1964, a very close friend of mine and a prominent politician of East Pakistan came to see me at my residence at 70, Clifton, Karachi. He was a leading figure of COP. After dinner and shortly before leaving, he made his small eyes smaller, and told me that a former Prime Minister of Pakistan would explode a bombshell in a month's time that would send Ayub Khan and all of us flying into the air.

I tried to play down his remarks as a prank. He then told me: "Look here, my friend, I do not know the details but it has something to do with a telegram Ayub Khan sent from Washington to the then Prime Minister of Pakistan on President Nasser". (At that time Ayub Khan was the Commander-in-Chief of the Army).

When I returned to Rawalpindi, I mentioned the talk to President Ayub Khan. He started to reflect. For a moment he gazed at the ceiling, picked up the scissors on his desk and told me. "But that was long ago and I do not exactly remember what I wrote." He then added: "It was a 'No Circulation' telegram". He further

mentioned that he had burnt the Embassy copy in our Chancery in Washington and, on his return to Pakistan, he had seen to it that the Foreign Office copy and the other two copies of 'No Circulation' were also destroyed. I told him that apparently the old man took the cypher telegram with him when he ceased to be Prime Minister. I further suggested to Ayub Khan that if he remembered what he had done with the copies of the cypher message, he should try to recollect what he wrote. He told me that it was more important to get the telegram and later got it.

Lahore High Court Judgment in Murder Trial

State vs Zulfikar Ali Bhutto and Others

APPELLANT STATE: (by M/s M.A. Rehman & Ijaz Hussain Batalvi, Sp. Public Prosecutor) Z.A. Bhutto (by M/s D.M. Awan, Ihsan Qadir Shah, Inayatullah, Advocate etc.)

RESPONDENT: Mian Mohammad Abbas (by Mian Qurban Sadiq Ikram, Advocate), Ghulam Mustafa, Arshad Iqbal & Rana Iftikhar (by Mr. Irshad Ahmad Qureshi, Advocate).

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

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

3. On the night between the 10th and 11th of November, 1974, at about 12-30 A.M. while Ahmad Raza Kasuri, P.W. 1, a Member of the Opposition in the National Assembly, Pakistan, was returning in his Car No. LEJ-9495, from the

wedding of one Bashir Hussain Shah of Shadman Colony, Lahore he was fired at with automatic weapons near Shadman-Shah Jamal Round-about as a result of which his father Nawab Muhammad Ahmad Khan received injuries, which resulted in his death in the United Christian Hospital at about 2-55 a.m. the same night. A statement in writing of this occurrence (Ex. P.W. 1/2) was given by Ahmad Raza Kasuri at about 3-00 a.m. and on its basis an F.I.R. copy of which is Ex. PW 34/1, was recorded at Police Station Ichhra.

4. According to this statement, a murderous attack by firing was made on the complainant on the 17th of January, 1972, at Kasur and a case about that occurrence was registered in Police Station City Kasur. Another attack was launched on the complainant on the 24th August, 1974, in Islamabad by automatic weapons. A detailed report of this occurrence was given in the Police Station Islamabad. On the 9th of November, 1974, the complainant received information from Muhammad Hanif, Electrician, Tube-well Model Town Society, that a day earlier 4 to 5 persons were in search of him and were making enquiries about the location of his house. At about 12.30 a.m. on the date of occurrence (night between the 10th and 11th of November, 1974), while the complainant was returning in his Car LEJ-9495 after attending the marriage ceremony of Bashir Hussain Shah, whose house is in Shadman Colony, and was going towards Shah Jamal, he was again fired at by automatic weapons from the right-hand side. Since the car of the complainant was a right-hand driven car, he was sitting in it on the right side while his father was sitting on the front seat towards his left. The rear seats were occupied by his mother and maternal aunt. The firing which started from Shadman-Shah Jamal Roundabout continued till the car reached about a distance of 100 yards. Some bullets hit the car while some hit his father on his head. The father started bleeding. He took him to the United Christian Hospital where he succumbed to his injuries.

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

6. The prosecution case is that Ahmad Raza Kasuri who was a founder member of the Pakistan Peoples Party and had been elected on the ticket of that party as Member of the National Assembly in the elections held in December, 1970, developed after the said elections strained relations with the principal accused, who in order to get him assassinated or liquidated entered into a

conspiracy with Masood Mehmood approver through the agency of the Federal Security Force. Mian Muhammad Abbas joined this conspiracy on the direction of Masood Mehmood and directed Ghulam Hussain approver, P.W. 31 to organise the murder of Ahmad Raza Kasuri. Mian Muhammad Abbas also arranged for the supply of arms and ammunition from the armoury of the Federal Security Force for the execution of this design. The other three accused and Ghulam Hussain approver also joined the conspiracy. Ghulam Mustafa obtained the requisite arms and ammunition with the help of Mian Muhammad Abbas to execute the conspiracy. On the night between 10th and 11th of November, 1974 after having received arms and ammunition from Ghulam Mustafa accused, Ghulam Hussain approver, Arshad Iqbal accused and Rana Iftikhar Ahmad accused in furtherance of the common intention fired with automatic weapons at the car of Ahmad Raza Kasuri at the round about of Shadman-Shah Jamal Colony, Lahore. The firing resulted in the death of Nawab Muhammad Ahmad Khan while the complainant Ahmad Raza Kasuri escaped unhurt.

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

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

Mian Muhammad Abbas accused were also interrogated and arrested. All of them confessed their respective guilt in statements made under Section 164 Cr.P.C. before the Magistrates. Masood Mehmood approver directly involved the principal accused in the commission of the offences. This is the background leading to the latter's arrest and this trial.

9. Coming back to the events of the fateful night it may be seen that Ahmad Raza Kasuri sped in his car, which incidentally was also damaged, to the United Christian Hospital. Nawab Muhammad Ahmad Khan was alive at that time. His outpatient card Ex. P.W. 6/1 was prepared by Dr- Zarrin Faiz. He was admitted in the Emergency Room at 1.00 A.M. on the 11th November, 1974 vide entry Ex. P.W. 6/2-A in the Emergency Room Register Ex.P.W. 6/2. He was attended to by Dr. Zarrin Faiz. Dr. Bashir Ahmad, Neuro Surgeon of the Mayo Hospital was called. The X-rays of the skull of the injured person (Ex. P.W. 6/3 and Ex.P.W. 6/4) were taken. According to the X-ray report Ex. P.W. 6/5 which was prepared by Dr. Muhammad Asif Choudhry P.W. 6 who had also attended the patient, the patient had a "stellate fracture mainly in the left frontal parietal region of skull. A bullet-like metallic foreign body was seen in the X-ray in mid frontal parietal region of skull cavity. There was found scattered radio opaque debris in the left fronto-parietal region, mainly and in right tempromandibular joint area." The medico-legal report relating to this case Ex.P.W. 6/7, was prepared and signed by Dr. Zarrin Faiz who being somewhere in America could not be produced as a witness.

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

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

- (1) Lacerated wound with ragged margins, 2 ½ " X 1 ½ ". The brain matter was visible, placed on the top right side of the head, obliquely transversed, the lateral end downwards and the medial end upwards, three vertical lacerations on the anterior margin of the wound and two vertical lacerations on the posterior margin. The size of the laceration ranged from 1/2" to 1/3". This wound was situated 6 ½ " above the tragus of the right ear at 11 O'clock.

- (2) Lacerated wound 1¼" X 1/3" X scalp deep transversely (slightly oblique) placed on the back of the left side of the head 5" above the tragus of the left ear at 2 O'clock. The medial end was slightly downwards than the lateral one.
- (3) An abrasion 113"X14" on the right zygomatic arch.
- (4) Abrasion 1/4" X 1/4" on the outer lower half of the left forearm 2½" above the wrist joint.

12. On the dissection of the cranium he found the whole of the under-scalp ecchymosed. There was eggshell fracture of the parietal bone along with multiple linear and fissured fracture extending in all directions. There was fracture of the base of the skull in its anterior and middle part (cribriform plat, crista galli etc.) The meninges and the brain (cerebral hemisphere occipital parts) was shattered under injury No. 1. The small pieces of bones were found stuck in. Two thin metallic pieces from the margins of the wound and one bullet from the right cerebral hemisphere in the middle were recovered. The injury No. 2 was only scalp deep.

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

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

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

On receipt of the statement Ex. P.W. 1/2 Abdul Hayee Niazi, Station House Officer, Ichhra Police Station, Lahore P.W. 34 recorded the formal F.I.R. copy of which is Ex. P.W. 34/1. He directed A.S.I. Muhammad Sarwar P.W. 17 to reach the hospital along with constables. He also sent another A.S.I. Zakaullah by name (not produced) to the spot along with 4/5 constables with a direction to preserve the spot. He himself first went to the spot and from there proceeded to the hospital, where he found senior officers like the Deputy Commissioner,

Sardar Abdul Wakil D.I.G., Khan Asghar Khan S.S.P. and Abdul Ahad D.S.P. He deputed Muhammad Sarwar, A.S.I., P.W. 17 to take care of the car- He prepared the inquest report of the deceased P.W. 7/5, obtained death certificate of the deceased P.W. 7/3 and submitted application Ex. P.W. 7/1 for post-mortem examination. He took into possession coat P.6, waist-coat P. 7 and a cap P. 5 bearing bullet marks which belonged to the deceased vide Recovery Memo Ex. P.W. 1/21. The coat and the waist-coat were blood-stained. He also took into possession Car No. LEJ-9495 of Ahmad Raza Kasuri by Memo Ex.P.W. 1/3. Since the glass of the rear right-window of the car had been smashed, he took the broken pieces into possession as also some blood from the car vide Recovery Memo Ex.P.W. 1/6.

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

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

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

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

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

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

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

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

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

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

Masjid-e-Shohada in connection with Mian Mahmood Ali Kasuri's election campaign. When he reached there the processionists shouted "first Camp and then Campaign." The said accused had under compulsion to come to Gol Bagh where he (P.W. 1) was "confined in a Military Camp." He requested the strikers to break their fasts but they refused on the ground that liquidation of National Press Trust was one of the commitments of Pakistan Peoples Party in its manifesto. On this the said accused took out his pen and in an angry tone threatened to resign from the Chairmanship of the party in his favour.

19. He further submitted that he was the only member of the Pakistan Peoples Party who went to Dacca to attend the Session of the National Assembly scheduled to be held on the 3rd of March, 1971. He had taken this action in the interest of integrity and solidarity of the country. On this, serious differences arose between him and the said accused. Later on he did not sign or vote in favour of the Constitution of Pakistan of 1973 since he considered it an instrument of tyranny which could only perpetuate one man rule. He was also one of those persons who did not accept the recognition of Bangladesh which was inter alia a result of the ambition of the principal accused to acquire power. He always expressed an opinion at the floor of the House that 94000 prisoners of war were locked up because of the principal accused's connivance with the Indian Government. He also opposed all black Laws which were introduced at the floor of the House in order to throttle any voice of dissent in Pakistan and particularly the Act pertaining to the Federal Security Force. He was an outspoken critic of the policies of the principal accused, internal as well as external, and this was never appreciated by the accused.

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

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

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

23. P.W. 1 made reference to an incident which happened in the Parliament on the 3rd of June, 1974 when he contradicted the principal accused who while holding the floor had stated that the Constitution of 1973 was a unanimously passed document. P.W.1 intervened to put the record straight and pointed out that nine persons had not signed it. On this the said accused lost temper and said pointing his fingers towards the witness "I have had enough of you. , Absolute poison. I cannot tolerate you any further." There was an exchange of hot words from both sides at that time. On the 4th of June, 1974 the witness filed a privilege motion (P.W. 2213) alleging that some goondas were looking for him and this had happened because of his altercation with the accused at the floor of the House a day earlier.

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

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

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

27. Regarding the incident, P.W.1 stated that he with his parents and maternal aunt went to attend the wedding ceremony of Syed Bashir Shah in Shad-man Colony, Lahore, on the 10th November, 1974, at 8.00 P.M. It was a dinner-cum-Qawali function. Shortly after midnight when the Qawali was over, he with his parents and aunt started towards his own house in his right-hand driven Toyota Mark-II car which he was himself driving. His father Nawabzada Muhammad Ahmad Khan deceased was sitting on the front seat towards his left while his mother was sitting on the rear seat behind him with his aunt towards her left. He reached in a few minutes the Shadman-Shah Jamal Round-about which is about 70 yards from the house of Syed Bashir Shah. He had hardly put his car into the second gear when the first burst of weapons hit the body the car's lights went off. Then there were repeat-of his car and damaged its dynamo. Immediately ed bursts with automatic fire-arms. He managed to drive on and when he cleared - the round-about and turned towards F.C., College bridge in Shah Jamal Colony and reached near the house of Muzaffar Ali Khan Qazalbash he looked into the driving mirror. After seeing that there was no car following him he noticed that his father was resting his head on this shoulder. He moved his hand forward towards his father whereby his hands were- soaked with blood. -Realizing that his father had been hit with bullets, he became panicky and was filled with grief. At that stage, his mother consoled him and- told him that "son, you have got to know about your father's injuries now but his blood is already in my feet."

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

29. He went on to state that his brother Maj. Ali Raza rang up the SSP Lahore and informed him about the occurrence. Asghar Khan SSP (P.W. 12) arrived in the hospital followed by D.I.G. Mr. Abdul Wakil Khan (P.W. 14). The witness described before the Police Officers the entire incident and told them that this attack had been launched on the instructions of the principal accused. He stated that while his father was still in the operation theatre, the police officials were trying to draft an FIR on the basis of the information supplied by him, but he did not agree to the registration of the case on the basis of the draft prepared by them. They had first mentioned in the draft that this attack might have taken place because of political differences to which he objected that he required precision and the term "political differences" was vague; after which they wrote that this attack might have been arranged by the Government. The witness stated that he took objection to this sentence also because in the set up of the Governmental organization, right from the Tehsildar up to the President of Pakistan, everybody

performs Governmental functions. He said that he would like the draft to be more precise and to include the name of the principal accused. The Police Officers persuaded him to drop the name of the principal accused. At about 3 o'clock in the night, a doctor came down from the operation theatre and formally announced the death of his father. He lost his temper and told the police officers with finality that if they had to record an F.I.R., the name of the principal accused must be included in it. Thereupon, they asked him to give his statement in writing promising that the case would be registered on its basis. The witness added that since he was not in a fit state of mind, he dictated his statement Ex.P.W. 1/12 to Javed Zaffar Khan and later signed it and handed it over to Asghar Khan P.W.1/2, who, later handed it over to some police man on duty.

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

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

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

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

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

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

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

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

36. Much of the cross-examination by the learned counsel for the principal accused was directed towards showing that the witness had great admiration for the leadership of the principal accused and in this connection he was shown his letter Ex. P.W. 1/18-D and his telegram Ex .P.W. 17-D which pertain to the period upto 1970. He denied having admiration but stated that he had been prompted to join the Pakistan Peoples Party, by its Manifesto. He however, admitted his cordial relations with the principal accused up to January, 1971. He described priorities in regard to his loyalties and stated that his first loyalty was

to the country and to the nation, second loyalty was to the Party and its Manifesto and the third loyalty was for the leadership. He was cross-examined at length regarding the incident of Habib Mahal Cinema, Kasur, May, 1971, the cross-cases registered in that connection against him, the case registered in his support in this connection and a cross-case registered against him and one Muhammad Ashraf, about another attack launched at his house at Kasur on the night between the 4th and 5th of August, 1971 in which his brother Khizar Hayat received as many as 100 injuries, and about an incident of the 8th of April, 1972, of a firing in a public meeting held at Khudian which he addressed, and the cases registered in this respect. He was also questioned about an assault by Ch. Muhammad Yaqoob Maan with his party on him on the 17th January, 1972, in which he sustained bullet injuries on his legs, with the intention of showing that he had inimical relations with Ch. Muhammad Yaqoob Maan. He was examined about his relations with one Akbar Toor who had disturbed the meeting at Khudian. The witness stated that his relations with Ch. Muhammad Yaqoob Maan were very cordial with him because he was his benefactor. It was when he got instructions from the principal accused that he started resorting to the strong man tactics on him and his family. He attributed indifference of the Authorities in such matters to the relations between the principal accused and General Yahya Khan. He stated that after the arrest of Sh. Mojeeb-ur-Rahman, General Yahya Khan was entirely banking on the political support particularly of the said accused who was enjoying the position of a private Advisor to General Yahya Khan.

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

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

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

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

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

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

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

44. Between the 12th of April, 1974 when the witness had an interview with the principal accused and the 23rd of April, 1974 the witness was visited several

times by Mr. Saeed Ahmad Khan, P.W.3 (who was the then Chief Security Officer to the principal accused and his Assistant, later Abdul Hamid Bajwa. Abdul Hamid Bajwa did not mince matters in making it plain that if the witness did not accept the job offered to him, his wife and children might not be able to see him again. Similar apprehensions were expressed by Saeed Ahmad Khan P.W.3, but in mild and persuasive language.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63. In reply to cross-examination questions of the learned counsel for the confessing accused the witness stated that his predecessor and the first Director of the Federal Security Force was Mr. Haq Nawaz Tiwana. He stated that some of the officers under him had direct contact with the Prime Minister's Secretariat. In some cases those officers had been complying with the orders of the officers of

the Prime Minister's Secretariat³ and orders of the principal accused without reference to him. Such orders used to be about 'a secret mission' which term was known to all the officials of the Federal Security Force. He conceded that the orders of the principal accused with regard to the instant case were also of 'secret mission'. In reply to a question whether it was impressed upon the subordinate officials of the Federal Security Force during the period of their training that they would have to obey all orders of their superiors whether legal or illegal, the witness stated that this could not be spelt out from the syllabus of training but an order of a superior in a disciplined force has to be carried out.

The witness further conceded that persons from outside the Force had been employed as 'sources' to gather information and to perform 'secret mission' and such persons were paid from the Secret Funds of the Federal Security Force. He admitted that Federal Security Force had been used to disperse meetings at Dera Ghazi Khan and Sheikhpura.

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

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

On receipt of this reply the learned counsel cross-examined the witness at length with a view to justify this supply of arms and ammunition in view of the alleged disturbances in Sanghar District. He was later cross-examined with a view to bring on record that he had imparted some information to Abdul Hafeez

Peerzada about the burning of records in the Intelligence Bureau. He conceded having given this information in the national interest. He admitted that the appreciation of this was communicated to him by the Military Secretary to the President (the principal accused). He however denied having asked Abdul Hafiz Peerzada to remember him in future since he had done a valuable job. He denied having sent Qamar-ul-Islam to the principal accused or having requested Abdul Hafiz Peerzada or having sent his wife to Mrs. Nusrat Bhutto to recommend his name for the post of Director General F.S.F.

Several questions were put to him about the disturbances in Baluchistan, occasional bomb blasts there and attack on the principal accused during his visits there. Suggestions were made to him about threats held out to him by the opposition leaders during the campaign of the election of March, 1977 particularly the threat by Air Martial (Retd) Asghar Khan during his speeches in February, 1977 that he (witness) would be hanged upside down. It is unnecessary to give a resume of the answers given to such and similar questions.

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

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

The witness however stated that during his tenure as Director General, F.S.F. he suffered misery, torture and agony and in their respective spheres Vaqar Ahmad and the principal accused were his enemies. The learned counsel then put numerous questions to him that he was serving with great pomp and show and

that he was allowed to take his wife sometimes to foreign countries as an official attendant and a sum of \$ 500/- was sanctioned for her expenses, that he was allowed purchase at State expense spectacles with a hearing aid worth about £482.30 and that the expense of the husband and his wife borne by the State amounted to Rs. 50,000/.

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

“The sequence is not clear from my statement quoted in the question. Now that a specific question has been asked of me, about which I state that I communicated orders to Mr. Welch after Mr. Z. A. Bhutto had asked me to take care of Mr. Ahmad Raza Kasuri on the 29th of July, 1974. The telephonic conversation followed this event.”

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

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

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

70. Similarly after questioning him at length about his detention, about his relationship with Seth Abid, about his confessions being involuntary and obtained by coercion and undue influence, it was suggested to the witness that he was induced' and threatened to make a statement against the principal

accused in order to justify the overthrow of the “Prime Minister’s Government” by the Chief of Army Staff, that he was promised pardon before he made the confessional statement and that as a reward of the confessional statement, Seth Abid, his relative has been granted the concessions of release of property, immunity from prosecution and permission to establish a bank in the country. The witness repelled all these suggestions.

71. In reply to cross-examination questions by the learned counsel for Mian Muhammad Abbas accused the witness admitted that this accused was a favorite of Haq Nawaz Tiwana who had allowed him unauthorisedly to sign himself as Director although he was a Deputy Director. He denied that Mian Muhammad Abbas presented to him his resignation in June, 1974 and another resignation in February, 1976 and that he returned the same to him. He denied that the resignations Ex. P.W.2/12-D and P.W.2/13-D which were produced by the learned counsel for Mian Muhammad Abbas from his brief were presented to him. He stated that Mian Muhammad Abbas had fallen ill and he had gone to see him in the hospital.

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

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

74. Saeed Ahmad Khan who was appointed as Chief Security Officer to the President on 11.8.1972 and after the election of the principal accused as Prime Minister became Chief Security Officer to the Prime Minister, appeared as P.W.3. He stated that while holding the post of Additional Inspector General of Police, West Pakistan, he was dismissed from service under Martial Law Regulation 58 on 23.5.1970. He then set up two business organizations under the name of Pak Field Corporation Limited with himself as its Managing Director and Saeed Ahmad Associates, his sole Proprietary concern. He stated that he had met the

principal accused for the first time at Larkana when he visited it as a Deputy Inspector General of Police in December, 1955. The principal accused had called upon him as a lawyer on behalf of Sultan Chandeo, his client. Thereafter the witness met him twice or thrice at Karachi and once at Quetta when he was a member of the Central Cabinet.

75. The witness furnished details of his appointment as Chief Security Officer of the President. He stated that he happened to go to Rawalpindi on a business trip in August, 1972 and entered his name in the visitor's book on the President's House. He was called by the President and he had an interview with him on the 11th of August, 1972 at 4.00 P.M. In this interview the principal accused persuaded him to work for him and for the country, but the witness pointed out an impregnable difficulty in this connection that being a dismissed civil servant he could not be re-employed to a post in the Government. A device was found by the principal accused for payment of salary and it was settled that the witness would be a Legal and Administrative Consultant to the All Pakistan Research Organization under the aegis of the Cabinet Division from where he would be getting his emoluments and allowances. Although he never worked for this organization even for a single day, he was paid by the above organization with effect from the 8th of December, 1972 while for services rendered prior to that period he was paid from the "secret fund" of the President through his Additional Secretary Mr. Afzal Saeed Khan. No notification was issued since there was no sanctioned post on which the witness worked.

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

The witness continued that he was asked by the principal accused to send reports on a number of persons including Ahmad Raza Kasuri and some other

renegades of the People's Party. He, therefore, opened files on such persons. The files in respect of Ahmad Raza Kasuri were also opened in the month of December, 1973. These were Ex.P.W.3/1, P.W. 3/2 and P.W. 3/3.

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

77. The witness further stated that in the middle of 1974 the principal accused in an interview with him abruptly asked him if he knew Ahmad Raza Kasuri. On his reply that he did not know him personally the principal accused said that he had assigned some work to Masood Mehmood P.W. 2 about Ahmad Raza Kasuri and that he should remind him. On re-turn to his office he passed this message to Masood Mehmood on the green line and the latter replied "all right".

78. He continued that on the 10th/11th November, 1974 as a result of firing by automatic weapons on the car of Ahmad Raza Kasuri, his father was killed. The First Information Report was registered at Ichhra police station, Lahore by Ahmad Raza Kasuri in which he blamed the principal accused being responsible for the murder. The witness proved a note by Abdul Ahad DSP, Ichhra, Lahore Ex. P.W. 3/2-A dated 22.1.1974 on file Ex. P.W. 3/2 with which he sent a copy of the First Information Report in the above case. He also proved a note dated 23.11.1974 Ex. P.W. 3/2-A/1 by Abdul Hamid Bajwa and another note dated 24.11.1974 Ex. P.W. 312-B written by him. In these notes Abdul Hamid Bajwa had taken exception to the recording of the F.I.R. at the instance of Ahmad Raza Kasuri, P.W. 1 clearly implying that if the First Information Report which was recorded after 2-1t2 hours had been recorded by the police, suo moto the Prime Minister would not have been named as a suspect in the Information Report and the publicity given to the case would have been avoided. The note by the witness was seen by the principal accused who agreed with it vide Ex. P.W. 3/2-B/1.

79. The witness stated that special inquiry tribunal was set up under the Special Inquiry Tribunal Act. During the proceedings before the Tribunal the name of the principal accused was mentioned. On this the latter rang up the witness either from Larkana or Karachi and inquired from him as to where he was. He replied that he was at Rawalpindi. On that he lost temper and rebuked him (the witness) and said "what the hell are you doing in Rawalpindi when my name is being taken before a Judicial Inquiry being held at Lahore by Justice Shafi-ur-Rehman in the murder case of late Muhammad Ahmad Khan. What kind of Chief Security Officer and Legal Advisor you are." He directed the witness to proceed to Lahore immediately and meet the Advocate General, the Chief Secretary, the I. G. Police and the Investigating Officers and also look into

the case himself. The witness stated that on his arrival at Lahore he met with the above mentioned persons on the 4th and 5th January, 1975. To his dismay he found that there was no worth while progress in the investigation, although one and a half month had elapsed since the murder.

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

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

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

83. P.W. 3 said that when he came to Lahore he found that the investigation had been entrusted recently to Malik Waris, DSP, C.I.A. It was decided in the meeting of the officers mentioned above that the new Investigating Officer would come to Rawalpindi and seek instructions from the witness on the subject. Malik Waris and Sheikh Abdul Ahad, DSP therefore saw him on the 14th of January, 1975. He sent Malik Waris to the Officer Incharge of the JADO in order to find out whether the Chinese weapons of 7.62 mm were available elsewhere. He informed the Officer In-charge that he was sending Malik Waris for this purpose. The Investigating Officer brought to him a report Ex. P.W. 3;3-B from the JADO to the effect that a number of service arms including 7.62 mm calibre

weapons could be purchased at Darra Adam Khel as well as in settled Districts from underground elements. In view of this report he sent Malik Waris DSP to Bara to find out if such weapons were available there. He also made an inquiry from the Defence Secretary by letter Ex. P.W. 3:3-A dated 17.1.1975. The Defence Secretary pointed out in his reply Ex. P.W. 3/3-C dated 20th of January, 1975 that the Chinese weapons were in official use of the Federal Security Force, Frontier Corp Units and Armed Corps Tank Crews.

84. The witness added that on receipt of the information (vide Ex. P.W. 3/3-C) that the Chinese weapons were also in official use of the Federal Security Force, he was perplexed since he had positive direction from the principal accused to keep out the Federal Security Force. He met the principal accused and inquired as to whether the letter, Ex. P.W. 3/3-C should be produced before the Tribunal. On this the principal accused was infuriated and asked "have I sent you to safeguard my interest or to incriminate me. This letter will certainly be not produced before the tribunal. You are trying to become over-clever and if you don't behave, you will suffer the consequences which your progeny will not forget." He, therefore, kept the original letter on the file and did not produce it either before the police or the special Tribunal.

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

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

87. The witness further deposed that the Tribunal gave its report on the 27th of February, 1975. He put up a note P.W. 3/3-I to the principal accused on the 28th of February, 1975 pointing out that the Tribunal had criticized the lapses in

the investigation at the initial stages, but seemed to have felt satisfied with the investigation carried on later by the DSP, C.I.A. He recommended the publication of relevant portions of the report with a view (as is clear from this document) “to clear the position, emanating as a result of this incident”, since “various possibilities and probable causes of this murder have been enumerated” in it. This note (Ex. P.W. 3134) came back to the witness with a note (Ex. P.W. 3134) from the principal accused that he would decide this after seeing the report. The matter was therefore kept pending.

88. The witness stated that the Chief Secretary, Punjab sent the copy of the report of the Tribunal to him with D.O. Letter Ex. P.W. 3/3-K. He asked his office (vide Ex. P.W. 3/3-L) to prepare a brief draft of the report, which could be recommended for publication. In the meeting of the witness with the Prime Minister the latter directed him that the report shall not be published as it was adverse. He further said that he would have nothing to do with this case any more.

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

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

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

92. The witness stated that in his first meeting with Ahmad Raza Kasuri he asked him to consider rejoining the Pakistan Peoples Party, of which he claimed to be a founder member since he had parted company with Air Marshal (Retired) Asghar Khan. On this Ahmad Raza Kasuri retorted how could he rejoin a party headed by the principal accused who had been responsible for the murder of his father and was also after his blood. The witness told him that it was all the more reason that he should make up with the principal accused and not put his life in jeopardy as he knew that he was a marked man. He also told him that if he rejoined the Peoples Party, he might even be rehabilitated. Ahmad Raza Kasuri P.W. 1 requested for time to think over. Later on he agreed with the soundness of this suggestion and asked the witness to inform the principal accused that he was prepared to join the Pakistan Peoples Party, and he would like to meet him.

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

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

94. Mr. D. M. Awan, appearing for the principal accused cross-examined him on his previous service, his association as well as the association of his father and brother with the family of the principal accused, about the authenticity of the story about appearance of the principal accused before him in connection with the case of Sultan Chandeo, appointment of his brother and brother-in-law through the good offices of the father of the principal accused, the business started by him after his dismissal from the post of DIG, reports submitted by him on what he called Karachi Affairs, Sind University Affairs, NWFP Affairs, the Language Problem in Sindhu Desh, his requests for interview with the principal accused and his meetings with him and the discussion between him and Vaqar Ahmad, Secretary, Establishment Division, for fixing his designation as Chief

Security Officer. The suggestion regarding the reports about the affairs of the Provinces was with a view to show that it was in consequence of these reports that the witness was appointed as a Chief Security Officer. In this connection, he was confronted with Exs. P.W. 3/11-D dated 22.8.1972, P.W. 3/12-D dated 28.8.1972, P.W. 3/13-D dated 30.8.1972 and Ex. P.W. 3/14-D dated 6.9.1972, letters written by the witness to the principal accused although none of these documents establishes that they pertained to the period prior to his appointment. Ex. P.W. 3/11-D on the other hand goes to show that the designation "Chief Security Officer" was under consideration prior to the 22nd of August, 1972 while other letters pertain to subsequent dates, Ex. P.W. 3/13-D and Ex. P.W. 3/14-D establish that a requests for personal interview for conveying vital information made by the witness. The learned counsel also cross-examined him with a view to establish that Abdul Hamid Bajwa was appointed on his suggestion but he denied it. He was questioned about his meeting with Ahmad Raza Kasuri. He stated that he must have met him first either in the end of June or beginning of July, 1975 after Abdul Hamid Bajwa had a talk with him in connection with the proposal for his rejoining the Pakistan Peoples Party. In order to prove that Ahmad Raza Kasuri was keen to meet the principal accused and the latter was putting him off, document Ex. P.W. 3/16-D was put to the witness. This was a photo-stat and was allowed to be exhibited subject to objection by the learned counsel for the prosecution, as the original was stated not to be traceable. The witness proved his own signature on the note as well as the signature of the said accused on other notes, but when he was questioned about the authenticity of the note of the said accused, he stated that the original of this document was not sent to him but was sent to the Private Secretary to the Prime Minister whose signature the witness also identified. The witness also stated that the two endorsements were in the hand of the principal accused.

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

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

Sd/- Z. A. Bhutto
29.7"

2. "Please file.

Sd/- Z. A. Bhutto
29.7

P.S."

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

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

97. The witness also proved another note submitted by him to the Secretary to the Prime Minister dated 13.11 .1975 (Ex. P.W. 3 17-D). He identified the signature of the principal accused as well as the signature of his Secretary, Mr. Afzal Saeed on this document.

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

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

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

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

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

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

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

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

written a note to the said accused against the directive of Khan Abdul Qayyum Khan but the accused had sent that file to Khan Abdul Qayyum Khan and thus compromised his position.

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

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

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

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

if they related to very confidential matters, they were sent to the Director General by name.

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

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

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

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

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

112. In cross-examination by the learned counsel for the principal accused the witness stated that it was a part of his duty to keep round-the-clock watch on politicians and to find out where they resided and when they were scheduled to move from one place to another. Similarly it was a routine to send reports like

Ex.P.W.2/1, Ex.P.W.4/1 and Ex.P.W.2/3 to the higher officers. He conceded that a 'source' had infiltrated in the meeting of the party of which P.W. 1 was a member but was later discovered. He was asked about certain omission in his earlier statement, but he explained that those were brief statements and moreover no question was put to him by the Magistrate or by the F.I.A. implying thereby that the portion of the statement made in Court, missing- from the earlier statements, was made on questions of the learned Special Public Prosecutor and was more elaborate.

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

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

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

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

117. Ghulam Hussain P.W. 31 stated that after his retirement as Naib Subedar from the Army where he served for 14 years as a commando, he joined the FSF on the 3rd of December, 1973, after an interview with the then Director General

of the Force, namely, Malik Haq Nawaz Tawana. He was questioned in this interview about his education, service as commando and Commando Courses. His paper posting was in Battalion No. 5 but an oral order was given by Mian Muhammad Abbas accused that he would work under him at the Headquarters. One or two days after he joined FSF, he was assigned a special duty at Larkana by Mian Muhammad Abbas and after having performed his duty, he was posted back in March, 1974, to Battalion No. 5 which was stationed at Rawalpindi.

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

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

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

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

122. Mian Muhammad Abbas again summoned the witness in the beginning of August, 1974, and asked him about the result of his efforts in connection with the search for Ahmad Raza Kasuri P.W. 1. On his informing him that he had located and identified P.W. 1 and found his residence also, he said that it would be his duty to remove P.W. 1 from the path of the principal accused and that it was an order given by Masood Mahmood P.W. 2. The witness stated that by the expression "removal of Mr. Kasuri" Mian Muhammad Abbas accused meant that he should kill Mr. Kasuri. The witness resisted this order but Mian Muhammad Abbas told him that this murder had to be committed since "Mr. Kasuri was an enemy of Mr. Z. A. Bhutto". He promised full protection to the witness. He emphasised upon him that it was a secret mission and since he had been taken into confidence, he would have to perform it otherwise his service as well as his life would be in danger. It was under this promise of protection, threat of loss of service and life and the pressure brought to bear upon him, that the witness agreed to implement the orders.

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

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

125. Mian Muhammad Abbas called the witness to his office again on the 20th of August, 1974, and complained to him that he had not performed the task assigned to him although he was getting him promoted as Inspector. He exhorted him to pay attention to the task because Masood Mahmood P.W. 2 was unhappy as the principal accused had started abusing him (P.W. 2) because of this procrastination. He further threatened him that any further inaction on his

part might endanger his own life. According to the witness, it came to his notice during those days that Mian Muhammad Abbas accused had also detailed another team who had instructions to do away with the witness in case he failed to perform the task assigned to him and then proceed to perform it.

126. In the morning of 24.8.1974 the witness established telephonic contact with Ahmad Raza Kasuri P.W. 1 at his residence, the telephone number having been supplied to him by Mian Muhammad Abbas accused. He told him that he was a clerk in the cantonment and wanted to see him so that his grievances might be redressed. P.W. 1 advised him to meet him at 1 O'clock at the gate of M.N.A. Hostel in Islamabad. He promised to be at the gate because otherwise the police posted there would not let him know of his whereabouts.

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

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

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

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

the jeep, the blind of which had already been rolled up, the moment the car reached the intersection.

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

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

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

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

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

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

137. Mian Muhammad Abbas accused ordered the witness to depute Head Constables Zaheer and Liaquat from the Commando Camp to go to Lahore and search Ahmad Raza Kasuri. The witness complied with the order. After some time in October, 1974 but before Eid, Mian Muhammad Abbas sent for the witness and informed him that his men had been enjoying holidays at Lahore and had done nothing and that the Prime Minister was abusing him since no progress had been made. The witness replied that he would himself leave immediately after Eid for Lahore. Mian Muhammad Abbas however directed him to leave for Lahore immediately and to inform him about his arrival there on telephone. He said that the Eid was the best occasion to deal with Ahmad Raza Kasuri since on this occasion he would be meeting his friends and relations. The witness consequently made an entry of his departure (vide entry P.W. 3/11 dated 16.10.1974) in the daily diary of Battalion No. 4 and left for Lahore from where he rang up Mian Muhammad Abbas to inform him about his arrival. Mian Muhammad Abbas rang him back at the FSF Headquarters in Shah Jamal with a view to confirm whether the witness had really given him a ring from Lahore.

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

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

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

141. On reaching Lahore the witness contacted Soofi Ghulam Mustafa at the FSF Headquarters in Shah Jamal and apprised him that he had been sent by Mian Muhammad Abbas for killing Ahmad Raza Kasuri P.W. 1. Soofi Ghulam Mustafa stated that he had already been informed of his arrival on telephone by Mian Muhammad Abbas accused and that the latter had asked him to help the

witness. He further said that he had already been told that the mission was to be accomplished by Iftikhar and Arshad Iqbal and the witness with his help. The witness informed Soofi Ghulam Mustafa about the ammunition and that he was supposed to provide him arms and the jeep.

142. After three or four days, Soofi Ghulam Mustafa apprised the witness of a telephone call received by him from Mian Muhammad Abbas who was annoyed that no positive steps had by that time been taken to accomplish the mission. He further told him that Mian Muhammad Abbas had asked him to push him (witness) out of the place and ask him to go and live with Ahmad Raza Kasuri if he could not comply with the orders because the principal accused had been grossly insulting him on that account. He also informed him that Mian Muhammad Abbas had threatened to have the witness murdered along with Ahmad Raza Kasuri P.W. 1 if he did not accomplish the mission. Soofi Ghulam Mustafa told the witness that he had informed Mian Muhammad Abbas that the witness was putting in a lot of efforts and that he would be able to report compliance of the order very shortly.

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

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

and see the car. They returned in a few minutes and confirmed that it was Ahmad Raza Kasuri's car.

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

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

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

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

149. The witness heard the sound of firing at about mid-night. The second and third bursts followed after short intervals. He hurriedly reached the intersection from the branch road which he was pacing. He saw shortly thereafter a car without head-light emerging from the road which links the road that he was pacing with the road that came from the house where the wedding was held. The car proceeded - on the way which leads to the canal. The witness realized that this must be the car of P.W. 1 because it was the first car which passed by him after the first burst was fired. He presumed that the car had not been hit and that Ahmad Raza Kasuri had switched off his lights in order to save his life. The

witness proceeded towards the Tomb of Shah-Jamal Sahib and was soon overtaken by Arshad Iqbal and Rana Iftikhar Ahmad accused. He expressed his apprehension to them that the person driving the car was alright and had not been injured. Arshad Iqbal, however, told him that he had fired in the air after identifying the correct car, while Rana Iftikhar Ahmad informed him that he had fired at the first car which came before him after Arshad Iqbal fired in the air, and that he had correctly aimed at the car before firing.

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

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

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

153. Mian Muhammad Abbas accused called the witness to his house. The witness went there and narrated to Mian Muhammad Abbas all that had happened. The latter consoled him by saying that if God was saving Ahmad Raza Kasuri they could not kill him. The witness made it clear to him that what

he and his companions had done was the result of coercion and undue influence and he was not prepared to repeat it again.

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

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

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

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

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

159. The witness applied by application Ex. PW. 9/1 to the District Magistrate for pardon, on the 13th August, 1977. He was produced before P.W. 9 on the 13th August, 1977 and after grant of pardon was sent to another Magistrate. At that

time, the witness was accompanied by the Assistant Superintendent, Camp Jail, Lahore. Thereafter his statement Ex. P.W. 10/11 was recorded by the Magistrate (P.W. 10). The witness concluded his statement by saying that the firing at Islamabad and at Lahore on Ahmad Raza Kasuri had been made due to pressure and coercion. He himself had no animosity with Ahmad Raza P.W. 1, nor did he know him.

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

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

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

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

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

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

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

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

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

spare and pistol with its magazines and ammunition since he thought that it was enough for the completion of the mission.

169. He was questioned about the presence of Zaheer in the incident at Islamabad but he stated that he did not remember whether he was there or not at that time. He stated that the other party who had been detailed for killing Ahmad Raza Kasuri as well as the witness in case he failed to execute his mission, comprised of A. D. Murtaza, Bahadur Khan, a Sub Inspector and probably Iqbal, an A.S.I.

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

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

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

173. According to him, the Commando Course was meant for the personnel attached to the 4th and 5th battalions. He repelled the suggestion that Road Certificates Ex. P.W. 24/7 and Ex. P.W. 24/9 were forged. He stated that they could be corroborated by the ledgers of the armory. It was suggested to him that

there was no Commando Camp and the Commando Courses were being held in the respective Battalions, but he denied it. He stated that he did not make any entry of 1500 rounds and ammunition in any register. He explained further that he drew the arms and ammunition from the 5th Battalion when he proceeded in uniform to perform the duty, but whenever he proceeded in Mufti on the instructions of Mian Muhammad Abbas to perform any duty he drew arms and ammunition from the armory at the Headquarters.

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

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

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

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

178. He did not know whether the ammunition of 7.62 calibre was available elsewhere. He stated that the number of the lot to which certain rounds belong and the year of its manufacture are engraved on the base of the cartridge and since a lot of similar number cannot be issued to anyone else, there are no other

markings on the rounds. Regarding message from Mian Muhammad Abbas received through Ghulam Mustafa in which it was said that if the witness was not prepared to perform his duty, he should be turned out and be dealt with along with Ahmad Raza Kasuri, it was suggested to him that in fact Ghulam Mustafa had gone to Rawalpindi and brought this message from there. The witness stated that it might be so but it was his impression that the message was communicated to Ghulam Mustafa on telephone.

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

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

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

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

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

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

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

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

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

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

188. Two or three days prior to the 25th of November, 1974, Ghulam Hussain came to return the ammunition which had been issued to him on the 9th May, 1974, by road certificate Ex. P.W. 24/7. He found that 50 to 51 SMG empties were short. He consequently refused to accept the ammunition unless the missing empty cases were accounted for. Ghulam Hussain took back the ammunition but he returned the entire ammunition in the form of empty cases on the morning of

the 25th November, 1974, by road certificate No. 2, Ex. P.W. 24/9 and an entry Ex. P.W. 24/10 to this effect was made in the stock register.

189. He stated that eight or ten days before the empty cases of 1500 rounds were deposited he was summoned by Mian Muhammad Abbas accused in his office. He enquired from him if he had with him any fired cartridges in the Armory. On the witness giving a reply in the affirmative Mian Muhammad Abbas ordered him to bring 25/30 fired cartridges SMG/LMG. The witness returned with 30 such empties. The said accused ordered him to place these empties on the table on the pretext that he was busy in the work. He further told him that he would let him know as to when he should collect these cartridges. The witness was summoned again after 2 or 2 ½ hours by the said accused and asked to take away the empties which on physical counting were found to be 30. They were deposited again in the Armory.

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

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

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

192. Amir Badshah Khan, P.W. 20, who was Deputy Director, FSF, Battalion No. 3, in October and November, 1974, stated that he received order from Mian Muhammad Abbas accused on telephone a few days after his transfer from Battalion No. 1 to Battalion No. 3 that Ghulam Mustafa S.I. would visit him and he should be supplied whatever weapons he required on a simple receipt without making any entry in the register. Ghulam Mustafa visited him thereafter and asked for two pistols and 16 cartridges. The witness called Muhammad Yousaf Head Constable of the armory and directed him to hand over the requisitioned weapons and rounds, on a receipt. He was directed not to make this entry in the register. He was informed that Ghulam Mustafa accused would return the weapon and ammunition so taken and that this direction had been given by Mian Muhammad Abbas accused. Muhammad Yousaf, therefore, handed over two pistols and 16 cartridges in the presence of the witness to Ghulam Mustafa. These articles were returned after a few days by Ghulam Mustafa who took away his receipt.

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

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

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

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

197. The learned counsel for Mian Muhammad Abbas put to the witness that Mian Muhammad Abbas was responsible for his removal from the post of Deputy Director and had made an inquiry against him. He denied all this. He, however identified the signatures of Mian Muhammad Abbas at the end of Report Ex. P.W. 20/1-D, but he stated that he received no notice. He admitted that he resigned his post.

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

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

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

201. In answer to the questions of the learned counsel for the principal accused he stated that the jeep was placed at the disposal of Ghulam Mustafa accused

three to six months before the murder on orders received from Rawalpindi. He further stated that Ghulam Hussain Inspector did use the jeep sometimes. He also used to drive it away unaccompanied but he did not make the entries in the log-book. They were made by Ghulam Mustafa accused. He also stated that about five or six days but less than a week before the occurrence he drove Ghulam Mustafa accused to Walton. He had taken the jeep to Shadman Colony at 8.00 P.M. on 10.11.1974.

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

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

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

205. He stated in cross-examination of Mr. D.M. Awan that the FSF Office at Lahore had a contract with a petrol pump situated at Ferozepur Road. He did not go to the petrol pump since he was informed at the FSF Headquarters at Shah Jamal that aviation was not available at the petrol pump. He therefore obtained the petrol from a petrol pump at McLeod Road. He stated that while at

Multan the keys of the car remained with him. He drove the car whenever P.W. 2 wanted to go anywhere. So far as he knew, P.W. 2 did not visit any place in Multan in the morning of 11th November, 1974.

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

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

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

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

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

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

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

Prime Minister was mentioned in the He suggested that the case could be registered on the statement of any other person. In that case the name of the Prime Minister would have been avoided. He referred to another meeting two or three days later with Abdul Hamid Bajwa in the presence of Sardar Abdul Vakil, D.I.G., P.W. 14. Abdul Hamid Bajwa again told the witness that the name of principal accused could be avoided but both he and the D.I.G. told him that it was not possible. Abdul Hamid Bajwa asked the D.I.G. about the empties, but the D.I.G. told him that those were properly sealed. Abdul Hamid Bajwa remarked against the hurry exhibited in sealing them. The witness could not explain why Abdul Hamid Bajwa had asked about the empties.

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

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

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

216. In cross examination by the learned counsel for the principal accused whether he was satisfied with the investigation carried out by Abdul Hayee

Niazi and Abdul Ahad, he stated that there was no progress in the investigation and hence question of his satisfaction or otherwise did not arise. He gave a very significant answer to the question whether the statements of the witnesses had not been recorded. He stated that the investigation a blind murder cases is started on the basis of motive. In the present case the motive was clearly mentioned by Ahmed Raza Kasuri in the First Information Report. The case could consequently be investigated only by interrogating the principal accused who had been named in the F.I.R. but neither he nor his subordinates were in a position to interrogate the then Prime Minister. The question of satisfaction or dissatisfaction was, therefore, irrelevant.

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

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

219. The document Ex. P.W. 3/2-A was shown to P.W. 14 also. He denied having seen it ever before: He also denied that Abdul Hamid Bajwa ever

approached him for the copy of the F.I.R. which an outside agency could get either through him or the S.S.P. or from the Court but certainly not from the D.S.P.

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

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

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

223. On 12th January, 1975 Abdul Vakil Khan, F.W. 14 also ordered him to go the next day, to Rawalpindi and meet Saeed Ahmad Khan for the same purpose. He could not, however, leave for Rawalpindi that day due to preoccupations. The D.I.G. and the S.S.P. (P.W. 14 and P.W. 12) got annoyed with him on this

account and the D.I.G. wrote D.O. 113 dated 13th January, 1975 to the I.G. Police against him. His explanation was called for non-compliance with the order of the D.I.G.

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

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

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

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

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

had to the witness to conduct the same. He had to concentrate all his efforts in conducting the investigation on the lines on which Saeed Ahmad Khan, P.W. 3, gave directions.

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

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

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

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

unless the cartridges were sent to him and they were minutely examined in the laboratory.

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

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

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

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

247. The witness deposed further that the D.S.P. gave 24 empty cartridges to the witness on the 23rd November, 1974, and ordered him to seal them and send the same to the Inspectorate of Armament G.H.Q. Rawalpindi. He complied with the order, prepared a sealed parcel of those empty cartridges, and deputed Muhammad Sarwar A.S.I., P.W. 16, to prepare the docket in order to take the parcel to its destination. The result of the inspection was communicated by the Inspectorate of Armaments on the 27th December, 1974 vide Ex. P.W. 32/1. It may be noted at this stage that this report confirms the use of 7.62X38 M.M service bore weapons (Rifle, LMG and SMG) of Chinese origin.

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

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

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

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

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

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

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

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

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

254. Muhammad Boota Inspector F.S.F., P.W. 39 said that he deposited two parcels received by him from Mr. Aslam Sahi, with Abdul Rauf Moharrir, Police Station Islamabad, as the docket could not be issued due to the closure of the office. He obtained the said sealed parcels on the 27th August, 1977, got their docket prepared after which he delivered them in the office of the Director, Technical F.I.A., Islamabad. He explained that he could not deliver the parcels on the 26th August, 1977, since it was Friday. The parcels were not tampered with and were delivered intact.

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

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

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

258. The witness said that he was then taken by Abdul Hayee Niazi P.W. 34 to the Police Station. Ichhra saying that he wanted to show to him the fired shells recovered by him from the scene of crime and to get some technical advice. He showed 24 shells and a mutilated metal which he said was a bullet recovered by him from near the wall at the scene of crime. These articles were not sealed and they were shown to him in an open condition. He examined each one of the articles and advised P.W. 34 that they were not fired from G-3 Rifles. He told him that he could not give any opinion about any other type of automatic weapons

without a detailed examination of the empties with reference to the concerned literature at the Laboratory. He stated that the calibre of G-3 rifle is also 7.62 mm. He further stated that he could not give any opinion about the metallic piece also. He left the police station but by that time the empties and the metallic pieces had not been sealed.

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

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

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

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

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

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

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

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

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

appointed as A.S.I., F.S.F. on 1.6.1973. He was promoted as Sub Inspector on 15th of December, 1973, and as Inspector on 1st of December, 1973. Arshad Iqbal joined as Foot Constable on 19.3.1973. He was promoted as Head Constable on 19.9.1973, as A.S.I. on 10.10.1974 and as Sub Inspector on 2.8.1976. Rana Iftikhar Ahmad accused joined F.S.F. as Foot Constable on 21st of May, 1974, was promoted as Head Constable on 1st February, 1975, and as A.S.I. on 2.3.1976. He further stated that in November, 1974, Ghulam Hussain, approver and Rana Iftikhar Ahmad accused were posted in Rawalpindi, Islamabad area while Ghulam Mustafa and Arshad Iqbal were posted in Lahore area.

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

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

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

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

- (1) Ex. P.W. 351, covering letter of the report by the Tribunal to the Chief Secretary, Punjab;
- (2) Ex. P.W. 35;1-A an endorsement on it bearing a direction of the Chief Secretary to the Secretary to the Chief Minister to bring the matter to the notice of the Chief Minister.
- (3) Note Ex. P.W. 35.2 by the Chief Secretary and Note Ex. P.W. 35;2-A by the Secretary to the Chief Minister with noting part of the file relating to the Tribunal's inquiry;
- (4) Ex. P. 353, office carbon copy of D.O. No. 178 CM (PM) 75 dated the 7th March, 1975, by the Chief Minister, Punjab, to the Prime Minister (the principal accused) enclosing the report of the Tribunal and informing the addressee that the report had already been discussed with his Chief Security Officer and that he had asked the Chief Secretary to send to him (Chief Security Officer, P.W. 3) a copy and seeking guidance from the addressee whether the report should be made public; and
- (5) Ex. P.W. 35 4, a letter by the Inspector General of Police to the Home Secretary, Punjab, dated the 27th September, 1975 soliciting orders from him that this case should be filed as untraced in view of the report of the Deputy Inspector of Police about the impossibility of tracing any culprit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

310. On 7.2 1978 after the defence evidence had been recorded, the accused was asked whether he would like to cross-examine D.W. 4 who had been produced on behalf of the three confessing accused. The accused stated that he would not cross-examine him but make a statement on his statement. He was allowed to do so although he had no right to make such statement after the close of his statement under Section 342 Cr. P.C. He dictated more than eleven pages to the typist and repeated all that had been said by him on the 25th and 28th of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

324. The accused filed a written statement in which he added that during the period of Anti-Qadiani movement in the year 1974, P.W. 2 had verbally ordered plain clothes men to stand guard at the house of Mr. N. A. Farooqi, his relative, and this guard remained posted at his house for a period of one year. P.W. 2 got annoyed because of the objection taken by the accused to this illegality. He further felt annoyed after the promulgation of Martial Law, on seeing a statement of the accused alleging that he had taken more than Rs. 95,000'00 out of the F.S.F. Secret Fund. The accused also made a statement before the Inquiry Committee, implicating P.W. 2. He further stated that he had held an inquiry against Amir Badshah P.W. 20 also and submitted his report Ex. P.W. 201-D. In paragraph No. 8 of the written statement he stated that the armory at the Headquarters was meant only for the supply of arms and ammunition in bulk to various battalions and not for individuals. He added that he had made adverse observations against P.W. 4 also during an inquiry against one Mustafa Khan of Quetta.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

nugatory the provisions of the above section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. I put it to you that in this Court you stated that under the direction of the DSP empty cartridges were shown to Mr. Abidi at the police station while you stated before Mr. Justice Shafi-ur-Rahman on 25 .12 .1974 that it is also incorrect in the statement of the Director that the empties were shown to him there and they had not been sealed at the spot?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“How stupid can you get?”

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

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

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

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

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

“You don't want Vaqar chasing you again”

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

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

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

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

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

471. The relevant portion in para 58 is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“I agree with you.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Secy. to the C.M. may kindly see and bring the matter to C.M’s notice.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This argument is, therefore, absolutely without merit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It was, therefore, observed in the Lahore case —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

criminal conspiracy in section 120-A and will attract the provisions of section 111 PPC which provides :-

“When an act is abetted and different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.”

606. Just as an actual killer is liable under section 301 PPC by killing another person instead of the one intended to be killed, so a person abetting the murder of the person intended to be murdered will be liable for offence under section 301 read with section 111 and 109 PPC. There is no substance in the argument.

607. The learned counsel lastly pleaded for the lesser sentence of Mian Muhammad Abbas on the grounds of sickness, old age and service under a hard task master like Masood Mahmud. Reference in support of this last proposition that Masood Mahmud was a hard task master was made to the evidence of, Welch P.W. 4.

608. This submission is not tenable. He is the person who supervised the entire operation, selected the assassins and supplied arms to them for the commission of the heinous offence. It would amount to miscarriage of justice if the normal sentence of death is not imposed upon him.

609. The principal accused is the arch culprit having a motive in the matter. He has used the members of the Federal Security Force for personal vendetta and for satisfaction of an urge in him to avenge himself upon a person whom considered his enemy. For his own personal ends he has turned those persons into criminals and hired assassins and thus corrupted them.

610. Indeed it is paradoxical that the ruler of a country with Islam Constitutionally declared as its State religion enabling the Muslims to order their lives in the individual and collective spheres in accordance with the teaching of Islam as set out in the Holy Quran and the Sunnah as its declared objective, and guaranteeing to the citizens their life and liberty should play with the valuable life of a citizen so whimsically and tyrannically. The constitutional provisions presuppose that before a person ventures to seek election to the office of the Chief Executive of the Federation he would order his own life in accordance with the injunctions and teachings of Holy Quran and Sunnah. Before undertaking to observe the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam he should inculcate these qualities in himself. Before a person embarks upon swearing to strive to preserve the Islamic

ideology he would bring himself to believe in that ideology and test his firmness in that belief. Before presuming his ability to guarantee to the citizens the enjoyment of the protection of law and their treatment in accordance with law he would be a believer and a true adherent of law. He would consider himself to be as much subject to law as he would wish others to be. A person who considers the Constitution and the law as the handmaid of his polity is neither qualified to be elected to the high office of the Prime Minister nor can ever be true to his Oath.

611. It is, as is clear from the oath of the Prime Minister as prescribed in the Constitution, a constitutional requirement that the Prime Minister of Pakistan must be a Muslim and a believer *inter alia* in the total requirements and teachings of the Holy Quran and the Sunnah. He should not be a Muslim only in name who may flout with impunity his oath without caring for its ugly consequences and terrible results, and treat the Constitution and the law as a source of unlimited power for himself which may satisfy his own inane craving for self aggrandizement and perpetuation of his rule. Such a person, in all probabilities, would destroy the very oasis of the Constitution and the law which he is sworn to uphold.

612. Islam does not believe in the creation of privileged classes. It believes in the equality before law of all-ruler and governed alike. It is opposed to all types of class distinction. Even the Caliph, the king, the Prime Minister or the President, by whatever name the ruler may be called, is as much subject to the law of the land as any ordinary citizen. Islam is opposed to the establishment of church or priesthood. It does not recognize any distinction between divine laws governed by priests and secular law administered by a secular Government. In this context the proclamation of the Holy Prophet *ana basharummislokum* is not only a refutation of divinity of any man but also acknowledgement of his subjection to all laws. By acknowledging himself to be a man like others he has preached the equality of all mankind as well as their equality before divine law. An apt illustration of equality before law in Islam is furnished by the oration of the first Caliph on his election to the Caliphate. He said that though appointed ruler of the people, he was no better than his people. The people ought to assist him in the just and upright performance of his duties but they should criticise him for his wrong actions. He directed them to obey him only for so long as he himself obeyed (the laws laid down by) Allah and the Prophet. They were free not to obey him if he himself was found to disobey Allah and his Prophet.

613. There can be no better illustration of equality before law. Equality before law and justice are corner-stones of Islamic polity and they were emphasised by the first Caliph who was one of the first believers and was distinguished not only for his piety and close intimacy with the Holy Prophet but also his

understanding of the true letter and spirit of the religion. No constitution of the world in this era of material progress and unprecedented advancement of knowledge and democratic ideas can provide such example of liberty to disobey the illegal orders of a ruler without any fear of reprisal and of the right to impeach and depose a ruler for his disobedience of law. Freedom from obedience of a sinful order is approved by Sunnah also. (Muslim 341, 342, 343) .

614. There are definite legislative injunctions in the Holy Quran against slaying save in the course of justice (vi: 152, xvii: 33 also see iv: 29, 93 and v: 32). The words “save in the course of justice” definitely point out the prohibition against slaying being equally applicable to persons whose duty is to administer justice or to arrange for administration of justice.

615. According to tradition *amarat* (Government) is a trust. The correct rule of law in Islam is much more progressive than the same concept in the modern world. There is however similarity to the extent that all governmental authorities are bound by law and are required to act according to law. This principle is the sheet anchor of our Constitution which specifically provides in its fourth Article that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen and in particular no action detrimental to the life of a person shall be taken except in accordance with law. The Constitution does not grant immunity from law to anyone in the country however high his rank or status may be, nor does it declare any one to be above law and yet the principal accused has acted as if either there is no law in the country relating to homicide or that he enjoyed complete immunity from law. His function as head of the executive was to eliminate law breaking tendencies but he has tried to inculcate in his subordinates such tendencies and used them for eliminating a person whom he considered his enemy. There is no rule under which he can escape the extreme penalty.

616. It was observed in *Muhammad Sharif v. Muhammad*. (PLD 1976 S.C. 452)

“No doubt having regard to the sanctity of human life and liberty the law has taken all conceivable precautions to safeguard it. The Law of Evidence and in particular the rules of admissibility including confessions made before a person or an authority, the rule of placing the onus on the prosecution, conceding to the accused the liberty of a privileged liar the Court’s responsibility to spell out reasonable existence of an un-repealed defence, if warranted by the facts and circumstances of the case and above all the golden rule of giving the benefit of doubt to the accused are measures aimed at the protection of human life against false implication and undeserved punishment. The matter does not end with the finality of judicial proceedings as the executive has also been invested with the power to meet the failures of legal justice and undo the mischief found to have

been done by it. As equally important aspect of this sanctity of human life often lost sight of is that once conviction is finally upheld the deliberate extinction of life is visited with the normal penalty of death which is not confined to the actual killer but is also extended to the other co-accused sharing the community of intention as the case may be and found to be constructively liable. The principal object behind this obviously is to avoid repetition of violent loss of life by award of deterrent punishment."

617. The principal accused is thus liable to deterrent punishment.

618. All the offences with which the accused are charged are thus proved to the hilt. It is also proved that the conspiracy to murder Ahmad Raza Kasuri did not end with the death of Nawab Muhammad Ahmad Khan but continued even thereafter. Since the object to assassinate Ahmad Raza Kasuri was not fulfilled, the case of punishment of conspiracy is governed by section 120-B read with the first part of section 115 PPC.

619. I convict Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa accused under section 120-B PPC, 302 PPC read with section 301 PPC and sections 109 and 111 PPC and section 307 PPC read with section 109 PPC. I further convict Arshad Iqbal and Rana Iftikhar Ahmad accused under section 120-B PPC, section 302 PPC read with section 301 PPC and section 34 PPC and section 307 PPC read with section 34 PPC.

620. I sentence all the five accused persons under section 120-B PPC read with section 115 PPC to rigorous imprisonment for a period of 5 years each. I sentence Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa accused under section 302 PPC read with sections 301, 109 and 111 PPC to death. I also sentence Arshad Iqbal and Rana Iftikhar Ahmad accused under section 302 PPC read with section 301 PPC and section 34 PPC to death. All these five accused shall be hanged by the neck till they are dead. I further sentence Zulfikar Ali Bhutto, Mian Muhammad Abbas and Ghulam Mustafa accused under section 307 PPC read with section 109 PPC to rigorous imprisonment for 7 years each. I sentence Arshad Iqbal and Rana Iftikhar Ahmad under section 307 PPC read with section 34 PPC to rigorous imprisonment for a period of 7 years each. Zulfikar Ali Bhutto shall also pay a sum of Rs. 25,000/- as compensation under section 544-A Cr. P.C. or in default undergo rigorous imprisonment for a period of 6 months. The compensation amount if recovered shall be paid to the heirs of Nawab Muhammad Ahmad Khan deceased. The sentences of imprisonment under each head shall be concurrent, and these sentences as also the sentence to be undergone in default shall be effective in case the sentence of death is commuted.

621. I have ordered only Zulfikar Ali Bhutto to pay the compensation because the offence was committed on his order.

622. Each accused has been furnished with a copy of the judgment and has been informed that as per Article 150 of the Limitation Act he can file an appeal to the Supreme Court within 7 days from today.

623. Before closing this case I would like to thank Mr. M. A. Rahman and Mr. Ejaz Hussain Batalvi, learned Special Public Prosecutors and Mr. Qurban Sadiq Ikram and Mr. Irshad Ahmad Qureshi for the assistance rendered by them to us in this trial. I wish I could have said the same thing about the learned counsel who appeared for the principal accused. I entertain great respect for the members of the Bar but it is unfortunate that the behavior of a certain member of the Bar has throughout the period he conducted this case, been arrogant and insulting to the Court despite all indulgence shown to him. The Court started the case in the morning according to his convenience and rose before time when he gave the slightest hint of inconvenience to himself. Copies of documents which were not required by law to be supplied to him were given to him whenever demanded. The Special Public Prosecutors were requested by the Court to cooperate with him and give him advance information about the name of the witness or witnesses to be examined on a particular day. He was thus fully accommodated.

624. No doubt the counsel has to discharge his duty towards his client but he has also some duties towards the Court, which he cannot perform by aligning himself with his client. Yet this was done by the counsel. He aligned himself with his client completely and adopted his attitude. I hope that the learned counsel might be having second thoughts and mentally reviewing his conduct and regretting it.

625. The conduct of the principal accused has already been reviewed briefly. He had been hurling threats as well as insults on us and at times had been unruly. In addition, he has proved himself to be a compulsive liar. He was allowed thrice to dictate his statement directly to the typist and he dictated 9 pages on the 25th January, 1978, more than 11 pages on the 28th January, 1978, and about 11 pages again on 7th February, 1978 without the least interference by the Court. All the three statements are full of repetition of false and scurrilous allegations against the Court. The first two statements were made, although they were absolutely irrelevant, in answer to questions under section 342 and the last statement was allowed to be dictated after the close of the defence evidence when all legal avenues for the making of such statement before Court were legally closed and yet he came out with allegations that the statements were not fully recorded.

626. Out of the five accused he is the only person who has been leveling all sorts of imaginary and false allegations against the Court. Mr. Qurban Sadiq Ikram on the other hand thanked the Court profusely on his own behalf as well as on behalf of his client for the patient hearing and fair and full opportunity given to his client for his defence. He also thanked the learned Special Public Prosecutors for their cooperation in this respect.

627. This trial has revealed the flaws in our law to deal with a recalcitrant party like the principal accused. The Law of Contempt which empowers the Court to sentence the contemner to simple imprisonment is of little value in a case where the contemner is an under trial prisoner in a murder case. It is time that necessary legislation be passed to remove this flaw.

(Sd/-) Aftab Hussain
JUDGE

Announced.

(Sd/-) Mushtaq Hussain
18.3.78

I agree (Sd/-) M. S. Qureshi

I agree (Sd/-) Gulbaz Khan

I agree (Sd/-) Zakiuddin Pal

I agree (Sd/-) Mushtaq Hussain

Pakistan Supreme Court Verdict

State-Complainant vs Zulfikar Ali Bhutto and Others

After a seven month long hearing the Supreme Court on February 6, 1979 in Rawalpindi, by a majority opinion dismissed the appeals of Z.A. Bhutto and four others who had been sentenced to death by a full Bench of the Lahore High Court and upheld the judgment of the trial Bench.

The judgment was announced by the Chief Justice, Mr. Justice Anwar-ul-Haq.

The main judgment spreading over 825 pages was written by Chief Justice Anwar-ul-Haq with whom Mr. Justice Mohammad Akram, Mr. Justice Karam Elahi Chohan, and Mr. Justice Nasim Hasan Shah agreed. However Mr. Justice Mohammad Halim, Mr. Justice Safdar Shah and Mr. Justice Dorab Patel disagreed with the majority view. Two of them wrote separate judgments expressing the view that the appeals of Z.A. Bhutto and Mian Muhammad Abbas be allowed, their sentences and convictions be set aside and they be acquitted and set at liberty. The third agreed with them.

Diabolic Misuse of State Power for Political Vendetta. The Chief Justice in the main judgment observed on the question of sentence that the facts which had been proved beyond any doubt established that Bhutto used the apparatus of the Government namely, the agency of the Federal Security Force for a political vendetta. "This was a diabolic misuse of the instruments of state power as the head of the administration. Instead of safe-guarding the life and liberty of the citizens of Pakistan he set about to destroy a political opponent by using the power of the Federal Security Force, whose Director-General occupied a special position under him. Ahmad Raza Kasuri was pursued relentlessly in Islamabad and Lahore until finally his father became the victim of the conspiracy, and Ahmad Raza Kasuri miraculously escaped. The power of the Prime Minister was then used to stifle proper investigation, and later to pressurize Ahmed Raza Kasuri in rejoining the Pakistan Peoples Party," He observed.

The Chief Justice also said in the judgment that these facts scent to show that there were no extenuating circumstances in favour of Bhutto and the High Court was right in imposing the normal penalty sanctioned by law for the offence of murder as well as it; abetment.

Motive Proved. The judgment said: "The cumulative effect of all this oral and documentary evidence is to establish conclusively the existence of motive on the

part of appellant Zulfikar Ali Bhutto; and the existence of a conspiracy between him, approver Masood Mahmood, approver Ghulam Hussain and appellants Mian Muhammad Abbas, Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad. It is sufficient that the task was entrusted to the Director-General of the Federal Security Force who was made personally responsible for its execution. The various subordinate officers were inducted at various levels and at various stages for the execution of the conspiracy through the employment of highly sophisticated and automatic weapons of the Federal Security Force as well its the trained personnel.

Prosecution Story Not a Concocted One. Continuing the judgment said It is true that most of the evidence was collected in this case after the promulgation of Martial Law, but I have not been able to persuade myself; that highly-placed officer like Masood Mahmood, Saeed Ahmad Khan, M.R. Welch, DIG Abdul Vakil Khan, SSP Mohammad Asghar Khan and a host of other smaller officers, have all come forward to concoct a false story against the former Prime Minister under pressure from the Martial Law authorities. Masood Mahmood and Saeed Ahmad Khan had enjoyed positions of special privilege and power under Zulfikar Ali Bhutto and were in constant and close touch with him throughout his years in office right up to his fall on the 5th of July, 1977. In view of their seniority, age and experience, and their close association with the former Prime Minister, and the privileges enjoyed by them under his patronage, it is difficult to believe that they would falsely fabricate such detailed evidence against him. Even if they were under any pressure to falsely implicate the former Prime Minister, I have not been able to discover any reason why people like Masood Mahmood, M. R. Welch, approver Ghulam Hussain and witnesses Fazal Ali and Amur Badshah Khan should falsely implicate appellant Mian Mohammad Abbas who was holding the rank of Director in the Federal Security Force at the relevant time. These circumstances lead assurance to their evidence, which in any case stands amply corroborated by contemporaneous documents, to which extensive references have already been made. It may also be observed here that it is true that some of the confessing accused expressed their willingness to confess after they had been in detention for four to six weeks, but this factor is irrelevant once the approver has appeared in Court to give direct testimony and subjected himself to cross examination. In any case, his evidence is not to be accepted unless properly corroborated. In the present case this requirement has been more than amply fulfilled”.

The judgment also said: “It has also to be remembered that the case was registered as long ago as the early hours of the morning of the 11th of November, 1974, and the Prime Minister’s name had been clearly mentioned therein by the complainant Ahmad Raza Kasuri. In spite of the identity of ammunition used in the Islamabad incident and the Lahore incident being established and clearly

pointing to the use of the Federal Security Force, both the cases were filed as untraced. There is no explanation as to why the investigation was not allowed to be conducted properly and independently, except that the Prime Minister must have apprehended that if the Investigators were to reach the Director-General of the Federal Security Force, he might divulge the whole plan. It is significant that the expert reports, to the admissibility of which objection was taken by the defence during the course of arguments in this case, were obtained by the police officers of two different districts, naively, Islamabad and Lahore, from the same Ballistics Expert, namely the Inspectorate of Armaments G.H.G. Leaving aside the question of their legal admissibility which is only a technicality for the purpose of the trial, the police officers engaged in the investigation of the two incidents had obviously no doubt that the crime empties found had been fired from Chinese automatic weapons of 7.62 mm calibres. In spite of this valuable information being available, no steps at all were taken to take the investigation into that direction. The confessing accused and the two approvers could not have prevented such a probe”.

No Political Motive. Continuing the judgment said: “In these circumstances there is absolutely no support for the contention that the present case was politically motivated, or was the result of international conspiracy. The case having been registered almost three years before the ouster of the appellant from power, and a clear indication being available as to the possible identity of assailants, not only in the kind of ammunition used in both the incidents, but also in the Report of the Shafi-ur-Rahman Tribunal, the investigation was deliberately allowed to be stultified. It is, therefore, futile to urge that the prosecution of the appellant is politically motivated, or a result of international conspiracy.

Conspiracy Proved. The judgment also said: “As a result of the very detailed and exhaustive examination of the evidence of the two approvers, supported as it is by a mass of oral and documentary evidence, I am left in no doubt that the prosecution has fully succeeded in establishing its case, namely, the existence of the conspiracy, the identity of conspirators and also the further fact that the death of Ahmad Raza Kasuri’s father Nawab Mohammad Ahmad Khan deceased was probable consequence of the aforesaid conspiracy, and was brought about during the course of a murderous assault launched on Ahmad Raza Kasuri in pursuance of this conspiracy. On these findings all the convictions recorded against the appellants are fully justified, except that in the case of appellant Zulfikar Ali Bhutto, Mian Mohammad Abbas and Ghulam Mustafa Section 301 of the Pakistan Penal Code has been found by me to be inapplicable, as this Section applies only to the actual killers, which in this case means Arshad Iqbal and Rana Iftikhar Ahmad”.

Facts Established. The Chief Justice observed that the oral and documentary evidence led by the prosecution had succeeded in establishing the following facts without reasonable doubt: –

(i) Ahmad Raza Kasuri was an admirer of appellant Zulfikar Ali Bhutto, and became one of the founder-members of the Pakistan Peoples Party, was made the Chairman of the local Branch of the Party in Kasur, and subsequently awarded the party ticket for election to the National Assembly of Pakistan in the elections held in December, 1970, and was so elected. However, thereafter differences began to develop between the two and Ahmad Raza Kasuri became a virulent critic of the person and policies of the appellant, both inside and outside parliament. He lost no opportunity of accusing appellant Zulfikar Ali Bhutto of being power-hungry, and being responsible for the break-up of Pakistan. He made speeches in Parliament criticizing the provisions of the Constitution, which in his view, were aimed at perpetuating the rule of one man, and stifling human freedom and rights in Pakistan. He even refused to sign the 1973 Constitution which had the support of all sections of the National Assembly, and ultimately he broke away from the Pakistan Peoples Party and joined the Tehrik-i-Istiqlal Party of Pakistan. The records of Parliament contain ample evidence of the outspoken and bitter criticism of Ahmad Raza Kasuri against the appellant.

(ii) The climax, or the breaking-point was reached on the 3rd of June, 1974 when a highly unpleasant altercation took place between the two on the floor of Parliament during the course of which Zulfikar Ali Bhutto told Ahmad Raza Kasuri to keep quiet, adding “I have had enough of you : absolute poison, I will not tolerate your nuisance”.

(iii) (a) The motive to do away with Ahmad Raza Kasuri is thus firmly established on the record on the part of appellant Zulfikar Ali Bhutto. During the lengthy cross-examination of Masood Mahmood and other prosecution witnesses no tangible motive was shown to exist on the part of either Masood Mahmood or Saeed Ahmad Khan, or any of the other accused persons involved in this case, to arrange for the assassination of Ahmad Raza Kasuri through the agency of the Federal Security Force.

(b) Ahmad Raza Kasuri was certainly not a non-entity in so far as the PPP was concerned. In one of the letters written by the appellant to Kasuri the latter was praised very high and described as a man of crisis. Even his speeches in Parliament display his flair for pungent speech. His surveillance and subsequent pursuit by the former Prime Minister’s Chief Security Officer and his Assistant show his importance to the appellant.

(iv) It was at this juncture that Zulfikar Ali Bhutto entered into a conspiracy with approver Masood Mahmood, who was then the Director-General of the Federal Security Force, to get Ahmad Raza Kasuri eliminated through the agency of the FSF. The exact direction given by Zulfikar Ali Bhutto to Masood Mahmood was to produce the dead body of Ahmad Raza Kasuri, or his body bandaged all over. In spite of the fact that Masood Mahmood protested to the then Prime Minister against the carrying out of such a task, yet all his subsequent actions show that he became a voluntary participant in the design to eliminate Ahmad Raza Kasuri, and for this purpose he inducted appellant Mian Muhammad Abbas into the conspiracy, whose name had also been indicated to Masood Mahmood by Zulfikar Ali Bhutto, saying that this man was already in the know of the thing having been given instructions in this behalf by Masood Mahmood's predecessor Haq Nawaz Tiwana.

(v) Mian Muhammad Abbas inducted approver Ghulam Hussain as well as appellants Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmad, directing them to assist Ghulam Hussain in this task. He also gave instructions to witnesses Amir Badshah Khan and Fazal Ali for the supply of arms and ammunition to Ghulam Mustafa and Ghulam Hussain for this purpose. Ghulam Hussain had been specially selected for the task as he had been a commando instructor in the Army for 14 years, and had also demonstrated his capabilities in this behalf by running a commando course for the Federal Security Force under the direct supervision of Mian Muhammad Abbas, and had been given rapid promotions from A.S.I. to S.I. and to Inspector in less than a year.

(vi) That it was in pursuance of this conspiracy that an abortive attack was made on Ahmad Raza Kasuri's car in Islamabad on the 24th of August 1974. Ahmad Raza Kasuri promptly registered a case in this behalf at Islamabad Police Station, and the Investigating Officer Nasir Nawaz was able to recover five crime empties bearing the mark 66171 and expert examination showed that they were of 7.62 mm bore *i.e.* of the type which was in use with units of the Federal Security Force. However, this case was filed as untraced although Ahmad Raza Kasuri tabled a privilege motion in the National Assembly.

(vii) On the 29th of July, 1974, the Prime Minister and Masood Mahmood were together in Quetta, and there Zulfikar Ali Bhutto again gave instructions to Masood Mahmood to take care of Ahmad Raza Kasuri during the latter's proposed visit to Quetta. Masood Mahmood thereupon gave instructions to his local Director M.R. Welch, who has given oral and documentary evidence in support of this part of the prosecution case. A study of the documents proved by M.R. Welch, leaves no doubt whatsoever that there was, indeed, a conspiracy to get Ahmad Raza Kasuri killed during his visit to Quetta, but he escaped owing to the fact that M.R. Welch did not play the game. The correspondence proved by

M.R. Welch shows beyond doubt that Mian Muhammad Abbas was fully in the picture at that stage. The oral testimony of M.R. Welch further establishes that the reason for getting Ahmad Raza Kasuri killed was that he was making obnoxious speeches against the Prime Minister.

(viii) After the failure of the Islamabad incident, and inability of M.R. Welch to take care of Ahmad Raza Kasuri during his visit to Quetta in September 1974, the scene of activities shifted to Lahore. The whole plan was again master-minded by Mian Muhammad Abbas through approver Ghulam Hussain and the other appellants already named. As a result the attack was eventually launched upon Ahmad Raza Kasuri's car when he was returning home after attending a marriage in Shadman Colony. Thirty rounds were fired from automatic weapons at a carefully selected road-junction, as a consequence whereof Ahmad Raza Kasuri's father Nawab Mohammad Ahmad Khan deceased was hit and later died at the United Christian Hospital at 2-55 a.m. on 11th of November, 1974. The evidence clearly establishes that the actual attack was made by appellants Arshad Iqbal and Rana Iftikhar Ahmad after the plan had been finalized by consultation among approver Ghulam Hussain, appellants Ghulam Mustafa and Arshad Iqbal as well as Rana Iftikhar Ahmad.

(ix) In the First Information Report registered soon after the death of his father, Ahmad Raza Kasuri clearly stated that the attack was launched on him as a result of political differences, and that he had previously also been similarly attacked, and he recalled that an unpleasant incident had taken place between him and Zulfikar Ali Bhutto in the Parliament in June, 1974.

(x) The calibre of 24 empties recovered from the scene of the crime again shows that they were of 7'62 mm bore, and they had the same marking, namely, 661/71 as was the case with the crime empties recovered after the Islamabad incident. The investigation of the case did not, however, make any head-way.

(xi) A Tribunal presided over by Mr. Justice Shafi-ur-Rahman of the Lahore High Court was appointed by the Punjab Government to enquire into the incident, but its Report was not allowed to be published for the reason that the Provincial Chief Minister, who was fully competent to decide the question of publication, "respectfully" sought the advice of the appellant in the matter. The original Report of the Tribunal has not been traced, but an office copy of the letter written by the Chief Minister of the Punjab to the former Prime Minister gives a gist of the conclusions and findings of the Tribunal and also the directions given by it for further investigation of the case. However, nothing came out of further investigation, and ultimately the case was filed as untraced on the 1st of October, 1975.

(xii) In the meantime Ahmad Raza Kasuri kept on clamoring for justice, and demanding the resignation of the then Prime Minister on the ground that he would not get justice as long as Zulfikar Ali Bhutto was in power. In spite of the identity of ammunition used in both the incidents at Islamabad and Lahore, the investigation was not allowed to travel in the direction of the Federal Security Force owing to the intervention of the Prime Minister's Chief Security Officer Saeed Ahmad Khan, and his Assistant the late Abdul Hamid Bajwa. The senior officers of the Punjab police like DIG Abdul Vakil Khan, SSP Mohammad Asghar Khan and DSP Mohammad Waris have also testified that they did not have a free hand in the matter of this investigation, and everything was being done in accordance with directions given by the Chief Security Officer and his Assistant.

(xiii) When the case was reopened after the promulgation of Martial Law in Pakistan on the 5th of July, 1977, it was found that there was voluminous documentary evidence to show the intermeddling of the Prime Minister's Chief Security Officer and his Assistant with the investigation of the case, so much so that even a copy of the Report of the Shafi-ur-Rahman Tribunal was found to have been sent to Saeed Ahmad Khan by the Chief Secretary to the Punjab Government, indicating that the matter had already been discussed between the two. It also transpired that both the officers on the staff of the appellant had been making frequent visits to Lahore during the pendency of the Inquiry before the Tribunal, as well as subsequently. The testimony of Saeed Ahmad Khan, supported by relevant documents, unmistakably shows that all this was being done under the directions of the appellant and he was kept fully informed of the day-to-day progress of the activities.

(vix) There is also voluminous oral and documentary evidence to show that after the murder, Ahmad Raza Kasuri was kept under special surveillance, and report on his activities and utterances were being submitted to the former Prime Minister in quick succession by the late Abdul Hamid Bajwa and Saeed Ahmad Khan. Even the physical description and identity of the gun-man engaged by Ahmad Raza Kasuri was brought on the record.

(xv) In the final phase, efforts were initiated by the appellant to bring Ahmad Raza Kasuri back to the fold of the Pakistan People's Party, and this task was entrusted to his Chief Security Officer Sated Ahmad Khan and the late Abdul Hamid Bajwa. The prosecution has placed on the record an exceptionally large number of documents which leave no doubt whatsoever that in a subtle manner these two experienced police officers were working on a such younger man like Ahmad Raza Kasuri, and almost succeeded in convincing him that his political future and the safety of his own life and family lay in a rapprochement with the Prime Minister. After a careful and detailed analysis of these documents I am left in doubt at all that the moves had been initialed by the appellant Z. A. Bhutto

otherwise the repeated visits of his senior officers like Saeed Ahmad Khan and Abdul Hamid Bajwa to this disgruntled politician did not make any sense. In fact, the last document in the series significantly speaks of “negotiations” having been conducted for the last six months with Ahmad Raza Kasuri so as to bring him back to the Pakistan People’s Party. This part of the evidence makes it clear that these moves were initiated so as to silence Ahmad Raza Kasuri, who was still persisting in his loud demand for justice against the sitting Prime Minister. As a result of these moves Ahmad Raja Kasuri did return to the People’s Party and was a shown petty favors including his deputation on a Parliamentary delegation to Mexico, from where he sent a report eulogizing the leadership of the appellant. In evidence he has asserted that he had to adopt this stance as a matter of self-preservation. All these acts of subsequent conduct are relevant under Section 8 of the Evidence Act, and are incompatible with the appellant’s innocence”.

Baseless Fears. It was held in the judgment that the trial bench of the Lahore High Court was law-fully and properly seized of this case on its transfer to its original side. There was no question of the judges of the bench having the slightest pecuniary or proprietary interest in the subject-matter of the proceedings. The apprehensions in the mind of Z. A. Bhutto, if any about the partiality or prejudices of the Chief Justice of the Lahore High Court were baseless.

Bias Against Trial Court Misconceived. The judgment said “allegation of bias leveled against the Acting Chief Justice in his capacity as the Chief Election Commissioner by the Central Executive Committee of the Pakistan People’s Party was totally misconceived. In fact on 24-9-77 at the hearing in Court the appellant had, for once, himself expressed his confidence in the learned Acting Chief Justice. The fact that in the circumstances the trial Bench did not allow an opportunity to the appellant to make his submissions on 9-10-77 after the close of the arguments by his learned counsel did not h. t ray any bias of the Court against him. At the commencement of the trial the dock had to be prepared for segregating the accused from the visitors in Court and there was no mala fides of the Court about it. Strictly speaking the allegations in connection with the “dock” and the “benches” had nothing to do with the actual proceedings conducted in the case. The appellant has failed to establish that thereby he was handicapped in communicating with his counsel in giving instructions to him in Court. To say the last the conduct of the learned defence counsel in Court was far from desirable and at times lie even aligned himself with his client. Even the appellant himself did not lag behind and was at times unruly.

This is in addition to the fact that he had all along indulged in baseless allegations of scurrilous and scandalous character against the learned Acting

Chief Justice that the trial would be held in the full light of the day attracted the wrath of the appellant to vilify him and strangely enough was taken to be an expression of bias on his part. The allegations that the record of the case was manipulated and tailored in a fashion to suit the prosecution is devoid of any force and the appellant has failed to substantiate it.

No Justification. Indeed the entire proceedings in the trial Court were tape-recorded and this could have been easily verified in case the appellant was at all serious about the allegations. In this connection it seems that most of the grievances put forward by the appellant were imaginary rather than real. I have already found against the appellant in connection with his other grievances contained in his petition dated 18-12-77. "his allegation, were based on mistrust and suspicions entertained by him from the very beginning shown against the Court, without any justification on surmises and conjectures".

The judgment further said: "It is a pity to find that from the very beginning the appellant entered upon his trial with an initial bias ingrained into him against the Court and as the prosecution evidence involving him began to pour in, he instead of defending himself, became more and more defiant and indulged in scurrilous and scandalous attacks on the Court. He was thus responsible for having created a tension and it was rendered increasingly difficult for the Court to maintain the decorum and control the proceedings".

Continuing the judgment said: "In conclusion I have held that the impugned judgment of the learned trial Court is substantially based on the evidence on the record and its conclusions are well founded. Indeed I have agreed with the learned trial Bench and substantially affirmed its findings on all the material issues raised in this case. As discussed above the allegation; of bias against the trial Bench are unfounded. In spite of the heavy odds the procedure followed at the trial in the case, as held by me above, was warranted under the laws and it did not in fact occasion and result in any prejudice caused to the appellant.

Observation 'Muslim in Name' Found Irrelevant. The Chief Justice observed in the judgment: "In paragraphs 610 to 616 of the impugned judgment the High Court has made gratuitous observations about the personal belief of the appellant and delivered a sermon as to the mode of conduct prescribed by Islam of a Muslim ruler. It is also stated that the appellant was a 'Muslim in name' only and that he had abused his powers under the Constitution. I am inclined to agree with the learned counsel that the observations in these paragraphs were not necessary for the disposal of the case by the High Court. In this connection, however, the learned counsel further submitted that these observations and remarks about the appellant disclose the extreme hostility and bias entertained on the part of the learned trial Bench against the appellant. It, however, appears

to me that the High Court had found the appellant guilty along with the other co-accused on the merits of the evidence adduced in the case. Its findings to that effect were not influenced by any such extraneous considerations. In fact it was only toward, the end of the judgment that this discussion occurs and the conclusion was drawn in proposing the punishment as stated in paragraph 617 that the appellant was “thus liable to deterrent punishment”. Although even for this limited purpose also these observations were not strictly relevant, yet that did not thereby vitiate the order conviction of the appellant which was not based on any such extraneous consideration”.

Bhutto-Principal Conspirator. Continuing the judgment said: “In the proceeding, as well as in the impugned judgment the learned trial Bench has often used the term ‘principal accused’ in referring to the appellant. In that connection stress was laid before us by the learned counsel to contend that this by itself sufficiently disclosed bias and prejudice of the Bench towards him. But is evident that on the findings recorded by the trial Court that the appellant alone had the motive behind the attempted murder and had thought about it. Even otherwise having regard to his status in life he was the principal amongst the co-conspirators, and occupied the most important position amongst them. It cannot however be denied that strictly speaking in law, the description of the appellant as the principal accused as an abettor was inapt. But this by itself is not sufficient to betray any bias and prejudice of the Court against him who was otherwise found guilty on the merits. Similarly the mere lame of the other terms like the ‘arch culprit’ and ‘compulsive liar’ etc. against the appellant do not go to prove the bias of the Court against a guilty accused”.

Mere Suspicion of Bias Not Sufficient. The judgment said: “One last contention advanced by the prosecution in this connection may also be mentioned here in passing. The trial Bench consisted of five learned judges of the High Court including its learned Acting Chief Justice heading it. Each one of the judges was independent and not susceptible of any influence of the learned Acting Chief Justice in their judgment. The allegations alleged in this case were almost entirely directed against the learned Acting Chief Justice. In these circumstances the independent opinion expressed by the other learned Judges constituting the Bench was entitled to its due weight and respect”.

The Court held that it had been authoritatively laid down in a number of cases by the Supreme Court that mere suspicion of bias, even if it was not unreasonable was not sufficient to render a decision void. A real likelihood of bias must be established. A mere apprehension in the mind of a litigant that he might not get justice such as is based on inference from circumstances was not sufficient.

Finally the Chief Justice on the question of bias of the trial court observed: "In the light of declared law and the facts I have reached the conclusion that although some of the orders made by the trial Bench in the day-to-day conduct of the case may not have been correct on a strict view of the law: and some others may not have been fully called for in the facts and circumstances of the case, yet these were all matters within the discretion of the Court and mere error therein cannot amount to proof of bias. The appellant was unfortunately misled into thinking from the very start of the case that the learned Acting Chief Justice was biased against him. There was, in fact no factual basis for such an apprehension. In any case there was no such apprehension in respect of any of the other four learned Judges constituting the Bench. The trial of the appellant has by and large been conducted substantially in accordance with law and the conclusions reached by the High Court on the merits of the case have been found to be correct on detailed analysis of the evidence and the law. I would, therefore, repel the contention that the trial was in any manner vitiated by reason of bias on the part of the Presiding Judge of the Bench".

Conclusion. The judgment said that this was an unprecedented trial involving a former head of the Government and for this reason the proceedings before the trial Bench were of a particularly difficult and taxing nature, "Unfortunately the task of the Bench was not made any the easier by certain attitudes adopted by appellant Zulfikar Ali Bhutto at various stages of the trial. In this court, major part of the arguments addressed by the defence were devoted to demonstrating that the trial had not been held fairly, and that it suffered from a large number of procedural illegalities which went to the root of the matter, vitiating the whole trial, and the convictions and sentences recorded as a result thereof. My examination of these submissions, ranging over almost the entire field of Criminal Procedure, has led me to the conclusion that by and large the trial was held substantially in accordance with the provisions of the Criminal Procedure Code and that any omissions, errors or irregularities, or even illegalities, that have crept in, were of such a nature as did not vitiate the trial, and were certainly curable under the provisions of Section 537 of the Criminal Procedure Code as it now stands in its amended form since 1972", it was observed.

The Chief Justice said: "I have further found that the allegations of bias against the Presiding Judge of the Bench, and criticism of the actions and orders made by the Bench during the course of the trial are not justified. In spite of the events, and the background alluded to by the appellant and his counsel, the High Court Bench of five Judges has done its best to conduct the trial as fairly as possible in the circumstances then prevailing".

Proceedings 'in Camera' Justified. With regard to holding the proceeding of the trial Court in camera the judgment observed that it was an essential principle of

administration of justice that it must not only be done but should also appear to have been done. This necessarily carried with it the right to an open trial in full gaze of the public including the Press. But this rule was not rigid and inflexible and must not be pressed to its breaking point in defeating the very ends of justice. It admitted of exceptions and cases might arise where by following this rule for an open trial justice might itself be defeated. There was no dearth of cases in which the very requirement of the administration of justice demanded that the trial be held in private or in camera as an open trial was likely to result in the stultification of justice. In this category were included cases within the parental jurisdiction of Court for the safeguard of the interest of the ward of lunatic. However each case depended on its own facts.

Hostile Attitude. The Court observed: "It cannot be denied that in the trial Court a number of applications were filed from time to time in which unfortunately scandalous and scurrilous allegations were made mostly against the present Chief Justice who headed the trial Bench constituted for the trial of this case in the Lahore High Court. In the course of the hearing in this appeal before us also those allegations were repeated on behalf of the appellant to contend that the entire trial stood vitiated because of bias in the learned Chief Justice. The blasphemous allegations attributing bias and motive, made in the face of the Judge of Superior Court constitute one of the worst forms of contempt, and these were repeated with impunity in this case to defame the Judge and the Court, with scant regard for the dignity of the law and its enforcing agency, viz., the Court. In the course of this trial the appellant, who was no less a person than the former President and Prime Minister of the country, appears to have adopted an openly hostile attitude in Court and became defiant towards the end, and it became all the more arduous for the Court to conduct the trial. He appears to have further developed a strategy, and started indulging in vilification and insults towards the Court and wanted publicity for it, without caring for his own defence in the case. Indeed the unfortunate situation thus created became all the more embarrassing to control at the trial.

The Court further observed: "It appears, therefore, that from 25th of January, 1978, onwards the Court had a genuine and reasonable apprehension that the appellant was out to further indulge in scurrilous and scandalous allegation against it and wanted publicity for it. This was likely to result in undermining the dignity of the High Court and shake the confidence of the people in it, in these circumstances, the Court was left with no alternative but to hold further proceedings in camera in the larger interest of the administration of justice; and this it had power to do in the exercise of the discretion vested in it under the Proviso to Section 352 of the Code".

Continuing the judgment said: "On 25th of January, 1978, the Court also observed that a few of the supporters of Zulfikar Ali Bhutto appellant were found shouting and yelling in the corridor outside the Chief Justice's Chamber. This raised a further apprehension in the mind of the Court about a likely disturbance in the proceedings of the Court, if held in open; and for this additional reason as well the Court was justified in holding further proceedings in the case in camera. Before us the learned counsel vaguely expressed his doubt about the genuineness of this last mentioned order passed on 25-1-78, but this appears to be a wholly unjustified allegation, and does not deserve any serious consideration. Before concluding discussion of this matter, it would not be out of place to repeat that the entire prosecution evidence in this case was recorded in open Court. Appellant Zulfikar All Bhutto did not produce any evidence in defence. Most of his own examination as an accused under Section 342 Cr. P.C. was also conducted in open Court. In these circumstances, I am satisfied that the alleged irregularity, if any, in the mode of the trial by holding it partly in camera has not in fact occasioned any failure of justice or prejudice to the appellant in his trial of defence. The objection is thus without any force and is here by repelled."

The Court continued: "As far as the proceedings conducted in open Court are concerned, the appellant can have no grievance if they were reported in the Press or otherwise. It seems to me, however, that publicity ought not to have been given to the statements made by the other co-accused during the time when the proceedings were being held in camera. It is possible, as suggested by the learned Special Public Prosecutor, that those statements were allowed to be published for the reason that the camera proceedings had not been necessitated on account of anything done or intended to be done by the co-accused. Whatever the reason, it would have been better to avoid even the publication of these statements made by the co-accused during camera proceedings does not, in any manner, detract from the necessity which was clearly made out for excluding the public from this stage of the trial, once appellant Zulfikar All Bhutto had notified the Court of his intention to repeat the allegations he had already made and publicized in successive petitions against the Presiding Judge of the trial Bench".

Fresh Law on Provisions of Cr. P.C. The Supreme Court laid down the law on a number of provisions of the Criminal Procedure Code and the Pakistan Penal Code. Interpretation of Section 10 of the Evidence Act with regard to admissibility of the statements of co-conspirators, the use of Section 10 with regard to confessions and statements made under Section 342 Cr. P.C. by the accused, the requirements of Section 347 and 164 Cr. P.C. regarding approvers and their statements, the application and scope of Section 540-A of the Cr. P.C. in regard to conducting proceedings in the absence of the accused and the failure of the High Court to pass a formal order under this Section. The Court also dealt with the legal position when statements of certain witnesses made to the police

were not provided to the defence. The admissibility of the Log Book of the jeep involved in the crime under Section 35 of the Evidence Act, the fact of non-production of certain witnesses by the prosecution, the hearing of miscellaneous applications in chambers, the principles governing the appraisal of approvers evidence, the relevance of motive in conspiracy cases, corroboration and credibility of approvers' statements, and leading of evidence regarding subsequent conduct of the accused were some of the propositions on which authoritative pronouncements were given. Another point decided by the Court was the exact nature of the position of an accomplice. And then the Court considered the definition of conspiracy and the nature of conspiratorial agreement, the mode of proof of conspiracy and the application of Section 111 read with Section 301 of the PPC. The Court also discussed in the judgment the immunity available under Section 22 of the Federal Security Force Act of 1973, to the personnel of force.

Dissenting Judgment. In his dissenting judgment spread over 441 pages Mr. Justice G. Safdar Shah expressed the view that certain statements of Masood Mahmood were in the nature of hearsay and were not admissible in evidence. Secondly this approver was not a reliable witness and those who supporting him were witnesses which fell in the category of accomplices. One accomplice could not support another accomplice. He was of the view that the case had not been proved to him by the prosecution. The evidence of the prosecution witnesses were according to the judge, unnatural, improbable and untrue and was made up or significant and prominent improvements made by them during their evidence in court.

Criminal Conspiracy Not Proved. The Judge expressed the view that the prosecution had failed to prove the existence of a criminal conspiracy between Zulfikar Ali Bhutto and Masood Mahmood and therefore no evidence of it could be brought under Section 10 of Evidence Act. The Judge said that the prosecution had failed to prove the case against Bhutto and Mian Abbas and the conviction against them should be set. According to him the cases of Sufi Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar Ahmed were different since they had admitted the commission of the offence. Accordingly he expressed the view that he was satisfied beyond doubt that all three of them were guilty and their convictions by the Lahore high Court were proper. He was of the view that all these accused had agreed to fire at the car of Mr. Ahmad Raza Kasuri with automatic weapons. The act of firing by Arshad Iqbal and Rana Iftikhar was not only a reckless act but was an independent act of their own. The case of Ghulam Mustafa was different because he was not at the site.

Independent Judgment. An independent Judgment was given by Mr. Justice Dorab Patel who disagreed with the majority view.

According to the judge Masood Mahmood was not a reliable witness and his evidence required stronger corroboration than was needed in the usual sort of murder case based on the evidence of an approver. The Judge was of the view that conspiracy between Bhutto and Masood Mahmood had not been proved. The second approver Ghulam Hussain was a thorough dishonest witness. His evidence was nothing more than hearsay upon hearsay.

The corroboration of Masood Mahmood's statement by Saeed Ahmed Khan was of no avail to the prosecution.

The judge was not satisfied with regard to the prosecution version that bullets had fallen at four places fired by two men. It was held by the Judge that the High Court had erred in proceedings with the trial in the absence of Z. A. Bhutto.

Mr. Justice Mohammad Haleem wrote a five page note agreeing with Mr. Justice G. Safdar Shah. He also expressed the view that the case against Bhutto and Mian Abbas had not been proved but since the other appellants had confessed the crime there was no doubt with regard to their guilt.

No Room Against the Judgment

President General Mohammad Zia-ul-Haq has said that it was his and his prerogative alone to reject or accept a mercy petition and he saw no justification why a Head of State should come in the way of a case after it had been duly decided by the superior courts.

He said the Government held the judiciary in the highest esteem. He would definitely use his prerogative, but his personal opinion was that in a criminal case which had been decided by the superior courts there appeared to be no room that the prerogative should be used against the judgment, he added.

About earlier reports that he would refer a petition on behalf of Mr. Bhutto to the Cabinet, he said he proposed to consult the Military Council and the Cabinet but the impression that he was seeking their approval was not correct. In the eyes of law he alone was competent to take a decision on a mercy petition and he alone would use that prerogative, he added.

Referring to the clemency appeals, he said that some friendly countries had made these appeals purely on humanitarian grounds, but they had made it clear that it was "strictly our internal affair and that we were in a better position to decide as to what our national interest was". Some of these countries had maintained that since capital punishment had been abolished in their own countries, "we should also not give capital punishment".

He said that during the last 18 months' rule of this Government about 400 convicts had been executed and asked: "Were they not human beings? Do not the remaining three convicts in the Nawab Mohammad Ahmad Khan murder case deserve sympathy?"

He said his Government might not have succeeded in resolving other issues, but it could take pride that it had given the country the rule of law. The military Government itself had abided by the law of the land, he added.

The President regretted that some vested interests had tried to publicise this purely criminal case. He, however, said that they could not succeed in their attempts.

Supreme Court Decision on Bhutto's

Review Petition

The Supreme Court on March 24, 1979 unanimously dismissed the Review Petition filed on behalf of Mr. Zulfikar Ali Bhutto in respect of the Court's decision confirming his death sentence in Nawab Mohammad Ahmad Khan Murder Case.

Pronouncing the decision, the Chief Justice said that the leading judgment had been written by Mr. Justice Mohammad Akram and a short note pertaining to his own reasons had been written by Mr. Justice Durab Patel." – We all agree that the petition he dismissed", he said.

In the 153-page leading judgment, the Court observed that the lengthy submissions made by the petitioner's counsel. Mr. Yahya Bakhtiar had left the Court in no doubt that this was nothing but an attempt to go over the same ground again as was elaborately discussed and covered during hearing of the appeal.

The judgment said that errors and omissions pointed out by the petitioner's counsel had been found by the Court to be of inconsequential import, having no material bearing upon the fundamental and essential conclusions reached in the majority judgment as to the guilt of the petitioner on various counts on which his conviction had been upheld.

On the question of the sentence, the judgment said that convictions and sentence upheld against the petitioner were not error apparent on face of record and thus did not constitute valid ground for review. Nor was there any rule or prudence to form a ground.

In conclusion, the judgment said "although we have not found it possible in law to review the sentence of death on the grounds urged by Mr. Yahya Bakhtiar, yet these are relevant for consideration by executive authorities in exercise of their prerogative of mercy.

Following is a salient summary of the judgment written by Mr. Justice M. Akram and concurred in by other Justices of the Supreme Court of Pakistan, rejecting the review petition of Mr. Zulfikar Ali Bhutto.

Two Questions. Mr. Justice Akram in the main judgment observed that initially two questions needed examination. They were :— (A) What is the meaning and

content of the phrase “A mistake or error apparent on the face of the record to enable the court to review the order? and (B) What is the scope and nature of the proceedings intended for the discovery and correction of such on error?”

Error Must be Manifest. After surveying the law on the subject the judge found that in order that an error might be a ground for review it was necessary that it must be one which was apparent on the face of the record namely that it must be so manifest, so clear that no court could permit such an error to remain on the record. “It may be an error of fact or of law, but it must be an error which is self-evident and floating on the surface, and does not require any elaborate discussion or process of ratiocination. The contention that the exposition of the law is incorrect or erroneous or that the court has gone wrong in the application of the law to the facts to the particular case; or that erroneous inferences have been drawn as a result of appraisal or appreciation of evidence does not constitute a valid ground for review. However, an order based on an erroneous assumption of material fact or without advertent to a provision of law or a departure from an undisputed construction of the law and the constitution may amount to an error apparent on the face of the record. At the same time if the judgment under review or a finding contained therein although suffering from an erroneous assumption of facts is sustainable on other grounds available on the record, then although the error may be apparent on the face of the record, it would not justify a review of the judgment or the finding in question. In other words, the error must not only be apparent, but must also have a material bearing on the fate of the case.

Review Proceeding Not a Re-hearing Nor an Appeal. Errors of inconsequential importance do not call for review. It is also to be borne in mind that as finality attaches to the judgments delivered by this court, which stands at the apex of the judicial hierarchy, a review proceeding is neither in the nature of a rehearing of the whole case, nor is it an appeal against the judgment under review. It is, accordingly, not permissible to embark upon a reiteration of the same contentions as were advanced at the time of the hearing of the appeal, but were considered and repelled in the judgment under review, in an effort to discover errors said to be apparent on the face of the record”.

No Interference with the Quantum of Sentence. The judge observed that it was settled that in criminal matters the Supreme Court would not interfere in review with the quantum of sentence, if a legal sentence had been imposed, or upheld, after due consideration of all the relevant circumstances.

Defence Points Analyzed. The judge then proceeded to analyze various points made by Mr. Yahya Bakhyiar to press the review petition. He observed that the counsel had devoted considerable time to show that there was an error patent on

the face of the record in as much as while coming to the finding that ammunition of the Federal Security Force of M. 7.62 bore and the marking of 661/71 was used in the incident, the majority judgment had not given proper effect to its findings that the empties might have been substituted and the recovery memo prepared at the spot was not genuine, not to the fact that Lt. Col. Wazir Ahmad, author of a letter was not examined at the trial to prove the markings of the ammunition supplied to the Federal Security Force.

Confessions and other Evidence Taken into Account. The judge observed, “All the seven judges of this court have found that the confessing accused Ghulam Mustfa, Arshad Iqbal and Rana Iftikhar Ahmad were involved in the incident and they were admittedly members of the Federal Security Force. The entire court has further found that approver Ghulam Hussain masterminded this attack. In coming to the finding that the personnel of the Federal Security Force were involved in the attack all the judges have taken into account not only the confessions of the three accused holding them to be voluntary and genuine but also the other evidence available on the record. As to the identity of the ammunition issued to approver Ghulam Hussain, and subsequently used in the attack the majority judgment has relied not only on the recovery memos but also on the other documentary evidence showing the supply of 7.62 mm ammunition to the units of the Federal Security Force from the Central Ammunition Depot, Havelian and this evidence has also been accepted by our learned brother Dorab Patel J., who has gone to the extent of observing that even the incorrect description of the marking of the ammunition in the recovery memo prepared by Abdul Hayee Niazi describing the same as BBI/71 instead of 661/71 was apparently due to his examination of the crime empties in insufficient light. The bore of the ammunition used in the attack also stood established from the examination of the core of the bullet recovered from the head of the deceased, and sent to the firearms expert for examination after having been sealed in a tube by Dr. Sabir Ali. In the circumstances there was considerable evidence to establish the fact that the ammunition issued to Ghulam Hussain and used in the incident, was of the same bore as was admittedly available with the Federal Security Force.

Defence Submissions have No Bearing on the Central Fact. The judge also observed, “In this background, the question is whether the submissions made by Mr. Yahya Bakhtiar as to the error appearing in the majority judgment has any bearing on the essential and central fact of the use of the personnel and arms and ammunition of the Federal Security Force in this Incident. Even if the genuineness of the recovery memo recorded by Sub-Inspector Abdul Hayee Niazi on the 11th of November, 1974 is doubted, there is his oral testimony as to the marking he had found on the crime empties. In this state of the record the lengthy arguments submitted by Mr. Yahya Bakhtiar on the question whether

the prosecution had positively succeeded in establishing the marking found on the crime empties, apart from being on the nature of a re-hearing of the case lose most of their relevance. It is well-established that it is not necessary for the prosecution to provide corroborate on of each single particular narrated by the approver; what is necessary is that the corroboration must lend assurance to the basic facts narrated by him and also connect the accused with the crime. In the present case there are two distinct aspects of the prosecution evidence one linking the petitioner with the conspiracy: and the other giving details of the manner in which the execution of the conspiracy was organised and carried out by the subordinate officers of the Federal Security Force. The evidence of approver Ghulam Hussain having been accepted by the majority as to the conspiracy and its execution, and by the minority only as to the mode of the occurrence, the points now urged by Mr. Yahya Bakhtiar have no effect on the fate of the case”.

With regard to the non-appearance of Lt. Col. Wazir Ahmed, the leading judgment said that the witness was “given up for the reason that the Public Prosecutor had conceded that ammunition hearing the marking 661/71 and 7.62 calibre may have been supplied to other units of the civil armed force, as well. It is clear that in this statement there is an implicit concession that the ammunition of this description had been supplied to the Federal Security Force.

Fact about Ammunition Supported by Reliable Documents. In this context the majority judgment could legitimately take the view that the objection as to the admissibility of Lt. Col. Wazir Ahmed’s letter giving the description of the ammunition supplied had been given up. However, even if effect is now given to the submission made by Mr. Yahya Bakhtiar that the aforesaid letter was not admissible without having been proved by its author the fact remains that Fazal Ali’s evidence, supported by the Stock Register, road certificates and vouchers etc, produced by him and accepted by the majority judgment as reliable documents, showed that the Federal Security Force’s armory at Rawalpindi had several lakhs of rounds of ammunition of 7.62 bore received in 1973 and 1974 and that at least 60,000 rounds of this calibre received in 1974 bore the marking 661/71. These facts would suffice to serve as corroboration of the prosecution case that ammunition of the type in use of the Federal Security Force of 7.62 mm calibre was employed in the Lahore incident, a fact which also stood fully proved by the examination of the core of the bullet which killed the deceased and was recovered from his head. It appears to us, therefore, that nothing turns on the very elaborate submissions now made by Mr. Yahya Bakhtiar on this point, apart from the fact that an error apparent on the face of the record is not one which requires elaborate arguments for its discovery”.

Negative Report of Ballistic Expert. With regard to the point that the negative report of the ballistic expert had smashed the prosecution case, Mr. Justice Akram held, "We find that the effect of the negative report of the ballistic expert on the question of the matching of the guns of the third battalion of the Federal Security Force with the crime empties was argued at length during the hearing of the appeal, and has been dealt with in the majority judgment. Precisely the same contentions were raised by Mr. Yahya Bakhtiar, but they were replied and the conclusions reached were expressed in the judgment.

Re-arguing on Same Lines. The judge observed "all the submissions now made by Mr. Yahya Bakhtiar are in the nature of re-arguing this point on the same lines as was done during the hearing of the appeal. This is clearly beyond the scope of review proceedings. Further we are of the view that even on merits the conclusions reached are in accordance with the facts of the case, and not in violations of any principle governing the administration of criminal justice".

Murderous Attack Proved. "With regard to the kind of weapons by which the firing on the car of Ahmad Raza Kasuri was undertaken together with the use of the ammunition of the FSF, the judgment said that a reply to these questions was found in the judgment. The essential question before the court was whether there was available on the record any corroboration of the account of the incident as given by approver Ghulam Hussain, who had asserted that he had carried out the attack with the help of the personnel, arms and ammunition of the FSF. All the seven judges had unanimously accepted the fact that Ghulam Hussain had master-minded the attack and that the two confessing accused Arshad Iqbal and Iftikhar, did actually mount the attack. Further, all the judges had held that Ghulam Mustafa had aided them by helping in the selection of the site at which the attack was to be launched on the car of Ahmad Raza Kasuri. "Even if, therefore, the questioned site plan and the doubtful or incorrect mathematical calculations based thereon, are completely excluded from consideration, the finding that the attack was mounted with Chinese automatic weapons by the persons named by approver Ghulam Hussain remain intact. It is well established that for an error on the face of the record to justify, a review of the judgment, it must be shown that the findings recorded therein could not be otherwise sustained. This is not the case here". It was observed.

Matter Regarding Accomplice Already Settled. The judgment also dealt with the plea of Mr. Yahya Bakhtiar that Saeed Ahmad Khan was a witness who fell in the category of an accomplice, and therefore, he could not corroborate the approvers. It was held, "The question as to who is an accomplice, and the further question whether Saeed Ahmad Khan could be so regarded, have been discussed at length in the judgment under review, and the conclusion reached in this behalf is that Saeed Ahmed Khan could not be treated as an accomplice. In arriving at

this conclusion the part played by Saeed Ahmad Khan in meddling with the investigation of this case has been fully taken into account, and it has been held that he did not have any hand of conscious involvement in the hatching or execution of the conspiracy leading to the present murder nor has he been shown to be misdirecting the investigation with the knowledge and intention of screening the offender from legal punishment. He was acting all along under the direction of his employer to clear the latter's name. According to, the Lahore police officers, he was advising them to act with wisdom and caution, and also telling them that the Prime Minister had been falsely accused by Ahmad Raza Kasuri. In these circumstances it cannot be held that he could at all be charged under section 201 of the Pakistan Penal Code, and be tried jointly with appellant Zulfikar Ali Bhutto and the other co-accused. Now, the inferences drawn may or may not be correct but that is not a ground for review. In the circumstances the submission now made by Mr. Yahya Bakhtiar amount to re-hearing of this part of case".

On the submissions of Mr. Yahya Bakhtiar with regard to the evidence of Mr. M. R. Welch, the court was of the view that they were in the nature of an attempt to re-argue the whole matter. This was not allowed by law.

Allegations of Bias Not Accepted. The leading judgment observed that the arguments of Mr. Yahya Bakhtiar were in the nature of a repetition of the submissions which had been elaborately presented by him during the hearing of the appeal. "If after a detailed consideration of his submission and the legal position obtaining in regard to the allegations of bias against judges of superior courts, the majority judgment has not accepted the view canvassed by Mr. Yahya Bakhtiar, that does not furnish a ground for review", it was held.

Re-appraisal Beyond the Realm of Review. The court observed, "A perusal of the lengthy submissions made by Mr. Yahya Bakhtiar at the bar, as well as of the relevant grounds mentioned in the review petition leaves us in no doubt that what the learned counsel is striving to achieve is a re-appraisal of the evidence of Ghulam Hussain and of the corroboration relied upon by the court in support thereof, but as observed by our learned brother Haleem J., in the case of Ghulam Sarwar and another (1979 SCMR 43), which was also a case of difference of opinion between the judges comprising the bench which had decided the case, in the first instance, such as exercise is beyond the realm of review jurisdiction as it is not an appeal where recourse can be had to the appraisal of evidence and corroboration which is a matter essentially interwoven with it. The majority judgment has already given detailed and elaborate consideration to all the aspects of Ghulam Hussain's evidence, and the corroboration available in that behalf as were urged on the behalf of the petitioner at the hearing of the appeal. The conclusions reached after due consideration of all the relevant circumstances

are not open to interference in review proceedings on the ground that reappraisal might yield a different result. The points now urged against the credibility of Ghulam Hussain are with respect to the learned counsel much too trivial and inconsequential to affect the unanimous conclusion of all the seven judges of the bench to the effect that Ghulam Hussain approver was at least master-minding the whole operation.

Conspiracy Denied again by Defence Counsel. Recording the existence of the conspiracy between Mr. Bhutto and Masood Mahmood the court observed, Mr. Yahya Bakhtiar next contended that the Majority judgment had erred in coming to the conclusion that there was agreement on the part of Masood Mahmood within the meaning of the definition of the term "conspiracy as contained in Section 120-A of the Pakistan Penal Code and he further submitted that there was a contradiction between the observation as contained in various paragraphs of the judgment and that there was also an inaccuracy in the statement that Masood Mahmood had asked Mian Muhammad Abbas to get on with the job after his meeting with the petitioner at which the conspiracy was alleged to have been hatched. He contended that in reaching this conclusion due weight had not been given to the fact that Masood Mahmood had been given orders by the petitioner and that he was also threatened in the sense that the petitioner was alleged to have asked Masood Mahmood whether he wanted to be chased again by the Establishment Secretary Mr. Vaqar Ahmad and that Masood Mahmood's subsequent conduct in regard to the Islamabad incident and his alleged directions to M.R. Welch at Quetta have also been misconstrued as indicating voluntary acquiescence on his part. In support of these submissions he referred to certain portions of the dissenting opinions delivered by our learned brothers Dorab Patel J., and G. Safdar Shah J. with whom Mohamood Haleem J. had agreed to show that there was no agreement on the part of Masood Mahmood".

But Not a Valid Ground for Review. Continuing the judgment said "The question whether there was, indeed in any agreement on the part of Masood Mahmood so as to constitute the offence of conspiracy, has been discussed at length in the majority judgment, and the final conclusion reached is based on an appraisal of the oral testimony of Masood Mahmood, and the circumstances showing his subsequent conduct in regard to the execution of the conspiracy. I have perused the judgment again, and I find that the submissions made by Mr. Yahya Bakhtiar have been fully considered therein, and accordingly no question arises of reviewing the inferences drawn from the facts found to have been proved simply on the ground that three learned judges of this court have taken a different view on the same facts. It is well-established that the contention that inferences drawn from the evidence are incorrect is not a valid ground for review, as it would either amount to a rehearing of the case or an exercise in the nature of an appeal against the original judgment of the court matters which are not

covered within the ambit of review. There is, accordingly, no merit in this submission”.

A New Point About ‘Conspiracy to Murder’. On the question of the conspiracy to murder Ahmad Reza Kasuri the court held, “During the present proceedings a new point was urged by Mr. Yahya Bakhtiar that the alleged conspiracy was not necessarily to cause the murder of Ahmad Raza Kasuri by use or automatic weapons, as he could also be killed by other methods. It is not only a new plea raised for the first time in review, but is also not borne out by the evidence on the record. In any case, the execution of the plan having been left to the Federal Security Force by the petitioner, and the persons who mounted the attack being his agents, he must be held responsible for the method actually adopted by them to execute the conspiracy and its probable consequences. We may now take up the contention that there is an error in applying Section 109 in addition to Section III PPC, while recording convictions against the petitioner. Section PPC III lays down, if an act is abetted and a different act is done the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it. This Section is, however, subject to the proviso that the act done was its probable consequence of the abetment and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment. It may be seen that even if the act committed is a probable consequence of the abetment this section by itself does not prescribe any punishment which is determined by reference to Section 109 PPC in case there be no other express provision prescribing punishment for the act abetted. This would show that in this case of murder the conviction of the petitioner under Section 302 read with Sections 109 and 111 of the Code was in order”.

The judgment said. For the foregoing reasons we are of the view that the submission made by Mr. Yahya Bakhtiar in relation to the application of Section III of the Pakistan Penal Code and other allied matters have no substance and do not in any manner, call for a modification of the majority judgment”.

New Points Raised by Bhutto’s Counsel. Lastly, the judgment dealt with a new point raised by Mr. Bhutto’s counsel that even if the conviction of the petitioner was maintained this was a fit case where the lesser penalty should be awarded for an offence under Section 302 of the PPC read with Sections 109 and 111. This was so because Bhutto was guilty only of abetment and was not present at the spot at the time of murder. Secondly the conspiracy was to kill Ahmad Raza Kasuri and not his father who was hit by accident. Thirdly, the conviction of Bhutto was based on the evidence of approvers. Fourthly a difference of opinion between the judges of the Supreme Court had arisen regarding Bhutto’s guilt. Lastly with the introduction of the Islamic laws it was anomalous to impose death penalty for unintentional murder specially when *Shariat* laws did not

recognize an approver, and the witness had to fulfill strict qualification, retarding integrity and character before their testimony could be acted upon.

Points Not Raised at the Proper Time. The Court found that none of these questions was raised by the counsel during the hearing of the appeal although all these factors except the difference of opinion among the members of the bench were present on the record. It was the duty of the counsel for the petitioner to press all these points at the proper time. His explanation was that he was more concerned with obtaining an acquittal for Bhutto rather than pleading for mitigation of the sentence imposed on him by the High Court. This was not worthy of acceptance as in a criminal case the question sentence was as important as that of conviction and if nothing was urged on the point of sentence it could be presumed that the defence had nothing to say in this behalf in case the conviction was maintained. *“It is well-settled that if a legal sentence has been imposed after due consideration then there is no error patent on the face of the record requiring correction in review in-so-far as the quantum of sentence is concerned. On this short ground alone the various submissions now made by Mr. Yahya Bakhtiar on this point are liable to be rejected”*, it was held.

Precedent Cases Not Applicable. It was observed in the judgment, “It would be absolutely outside the scope of review proceedings to embark upon a discussion of the precedent cases on these points except to say that none of these cases supports the general proposition that in all cases based upon the evidence of approver or where the abettor is personally not present at the spot, or where a person other than the intended victim is killed the sentence of death should not be imposed. There is no escape from the legal position that in the ultimate analysis, the question whether the extreme penalty mentioned by law should be exacted or not has been decided with reference to the peculiar facts of the case in point, and the lesser penalty is to be imposed only if mitigating circumstances exist in favour of the accused. On this point the majority judgment has clearly applied its mind and reached certain conclusion.

Difference of Opinion Not an Error. The court considered the question whether a difference of opinion between the judges comprising the appellate bench where the majority decided to uphold the conviction and death sentence and the minority recorded a judgment of acquittal, it provided sufficient justification for review of the sentence. “In this behalf the first observation that needs to be made is that such difference of opinion is not an error on the face of the record of the majority judgment, and for that reason it does not constitute a ground for review of that judgment. In the second place even on merits, it appears that there is no binding rule of law, or even of prudence, that in the event of the conviction of an accused person being upheld by majority opinion in appeal, the sentence of death should automatically be converted into one of life imprisonment.

Nor an Extenuating Circumstance. The judgment took cognisance where the judges of the confirmation bench were equally divided in their opinion. Mr. Bakhtiar had pressed the point that the rule adopted in such cases was not to confirm the death sentence. However, these views had been dissented from in a number of other cases. The judgment analyzed these cases and held, "It. would appear, therefore, that there is no recognised rule of prudence, much less of law, that if the judges comprising the Appellate Bench are equally divided as to the guilt of the accused and the matter is referred to a third judge, then the latter must acquit the accused; nor there is any rule that if the equal division is in respect of the quantum of sentence, then the death penalty should not be imposed irrespective of the presence or absence of mitigating circumstances. In all such cases the decision must depend upon the independent appraisal of the third judge as to the guilt of the accused in the first case, and as to the appropriate sentence in the second case. It is also to be noticed that these cases relate to an equal division of opinion on the question of sentence, and not where the conviction as well sentence are upheld by majority opinion. In such situations the opinion of the majority has to prevail both on the point of guilt as well as of the quantum of sentence the difference of opinion by itself not constituting an extenuating circumstance, nor would it constitute a ground for review".

Split Judgment Not a Valid Ground. The judgment concluded in the following words: "For the forgoing reasons we are of the view that the fact that the convictions and sentences recorded against the petitioner have been upheld by this court according to the majority opinion, does not constitute a valid ground for review on the question of sentence. It is not an error apparent on the face of the record, nor is there any rule of prudence or of law that in the event of such a difference of opinion the sentence, though legal and imposed after due consideration of the relevant circumstances, should be reviewed for this reason alone. Before parting with this aspect of the matter, it will not be out of place to mention that in regard to accused Ghulam Mustufa, all the seven judges of the Court have maintained the sentence of death awarded to him by the High Court even though he was also not present at the spot at the time of the murder, his conviction was, at least partly, based on the evidence of approver Ghulam Hussain, and Section 111 read with Section 109 PPC was also applied to his case. All the judgment delivered in the case state reasons for upholding the sentence of death passed against him. In some respects his case was, indeed, similar to that of the petitioner, if not exactly identical, with one significant difference, namely that Ghulam Mustafa had no motive of his own even against Ahmad Raza Kasuri."

Shariat Laws Not Applicable. Continuing, the judgment said: "Now as to the submission made by Mr. Yahya Bakhtiar with reference to the application of

certain *Shariat* laws in Pakistan with effect from the 10th of February 1979, it needs to be stated that the case of the petitioner was tried under the ordinary law of the land obtaining prior to the 10th of February 1979, that the appeal was also heard under the ordinary law, namely, the Pakistan Penal Code read with the relevant provisions of the Constitution of 1973 and even the judgment under review had been announced before the 10th of February 1979; and that in the *Shariat* laws promulgated on the 10th of February 1979, the offence of murder has not been covered. Further; in the Constitution Amendmet Order, 1979 (President's Order No. 3 of 1979) Article 203-D clearly stipulates that pending proceedings shall continue, and the point in issue therein shall be decided, in accordance with the law for the time being in force. In the circumstances, it is not permissible for us to embark upon a review of the question of sentence in this case with reference to certain provisions of the *Shariat* Law, as those provisions were not invoked or applied at as stage of the trial in the High Court, or of the appeal proceedings in this court, and have not been made applicable to pending proceeding."

No Ground for Review. The judgment further said: "A detailed examination of the lengthy submissions made by Mr. Yahya Bakhtiar in support of this review petition has left us in no doubt that this is nothing but an attempt to go over the same ground again as was elaborately discussed and covered during the hearing the appeal. The errors and omissions pointed out by him and discussed in the preceding paragraphs have been found by us to be of inconsequential import, having no material bearing upon the fundamental and essential conclusions reached in the majority judgment as to the guilt of the petitioner, on the various counts on which his convictions have been upheld as well on the question of sentence".

Separate Note by Justice Patel. In his separate note, Mr. Justice Dorab Patel dismissed the review petition and made certain observations on the question of sentence.

Mr. Justice Dorab Patel agreed with the leading judgment that the sentence could not be revised in a review petition. "If we were to alter the sentence in this review, we would be unsettling the settled law", Mr. Justice Dorab Patel observed.

Mr. Justice Dorab Patel observed that the learned counsel for the petitioner should have referred to the circumstances which, according to the settled law, were relevant to a plea for mitigation of sentence, during his arguments in connection with the appeal before this court. "I am also not aware of any case either of this court or of the High Court in which counsel for the appellant has, whilst challenging a conviction for murder, not addressed arguments in the

alternative on the question of sentence”.

Mr. Justice Dorab Patel wrote: “However Mr. Yahya Bakhtiar’s arguments on the question of sentence were without prejudice to his main submission, which was that the majority judgment suffered from errors apparent on the record which had resulted in the dismissal of Mr. Bhutto’s appeal. Now the learned counsel has addressed us for nearly two weeks on this question, but as he has failed to persuade the judges who pronounced the majority of judgment of the court to revise the findings of the guilt of the petitioner, it follows that the review petition must be dismissed. In these circumstances, consistently with judicial dignity and the practice of this court, I do not think it would be proper for me to make any observations on learned counsel’s submissions; and I would dismiss the petition for the reasons given herein.

The note written by Mr. Justice Dorab Patel has also been signed by Mr. Justice Mohammad Haleem and Mr. Justice Safdar Shah.

Remarks on Verdict, Press Release. Rawalpindi, March 20, 1979. The Supreme Court today issued following press release:-

The attention of the Chief Justice of Pakistan and the remaining five Judges constituting the Bench which dismissed Mr. Bhutto’s review petition against the judgment of the Supreme Court dated 6th February, 1979, has been drawn to some remarks reported in the press today as having been made by Mr. Justice G. Safdar Shah in relation to certain observation contained in the Order made by the Court on the 24 March, 1979. These remarks are said to have been made by the learned Judge to the B.B.C. correspondent and two others whom he came across while walking on a road in Islamabad. It is not the practice of the superior court to issue statements explaining import of their judgment or order or of any observations contained therein, they speak for themselves. Whatever Mr. Justice G. Safdar Shah has said reflects his personal views only, and he had no authority to speak on behalf of the other members of the Bench, as the remaining Judges would not like to depart from this settled practice. They would refrain from making any comments in this behalf.

DEFENCE COUNSEL ARGUMENTS. The Supreme Court reserved on March 17 its judgment on the review petition filed by Mr. Zulfikar Ali Bhutto in respect of the court decision upholding his death sentence in the Nawab Mohammad Ahmad Khan murder case. Earlier, Mr. Yahya Bakhtiar concluded his submissions, which continued for 11 days.

The Chief Justice, Mr. Justice Anwarul Haq observed that all the judges agreed that there was no necessity for asking the State Counsel, Mr. Ijaz Hussain Batalvi,

to make his submissions on the review petition. Earlier on the court's directive Mr. Ijaz Hussain Batalvi had addressed the court for one day on the questions of the scope of review and sentence and the role of the minority opinion judges *vis-a-vis* the review petition.

Role of Minority Opinion Judges. Mr. Yahya Bakhtiar submitted his written arguments on the point of the role of the minority opinion judges and the notes elaborating his points on what he called the inconsistency of findings in the majority judgment on the questions of weapons and ammunition, corroboration of approver Masood Mahmood, inconsistency about approver Ghulam Hussain and recovery of empties from four places. He also read them in the court. Mr. Yahya Bakhtiar also submitted that without prejudice to his main prayer for reversal of the majority judgment or re-trial, there were several factors in the present case which called for lesser punishment for petitioner Zulfikar Ali Bhutto. Making a reply to the arguments of State counsel Ijaz Hussain Batalvi on the scope of the review petition and the role of the minority opinion judges in the hearing of the review petition, Mr. Yahya Bakhtiar submitted that minority opinion judges were as free in deciding the review petition as in hearing the appeal.

Mr. Yahya Bakhtiar submitted that there was no quarrel with the submission that the majority opinion was the judgment of the court and was binding. He, however, did not agree with Mr. Batalvi that the minority opinion was not a judgment. He submitted that it was also a judgment of the minority judges but it had no binding force.

Mr. Yahya Bakhtiar argued that if the majority judgment was the judgment of the court, then each judge who heard the review petition and found ground within the prescribed scope of the review had the right—nay a duty—to reverse the judgment of the court. He would not be sitting in appeal over the judgment of his brother judges holding majority opinion but within the ambit of review petition, performing a duty imposed upon him by law in reviewing the judgment of the court. If he was barred from doing so, then he might as well not sit on such a 'Bench at all, Mr. Yahya Bakhtiar added.

Review and Appellate jurisdictions are Alike. Mr. Yahya Bakhtiar submitted that he did not agree with Mr. Batalvi that as the majority view was under attack, therefore the verdict whether the review petition should be admitted or not should be unanimous. In other words, he argued, if a judge who had held the minority opinion honestly felt that there was an error apparent on the face of the majority judgment, still due to considerations of judicial dignity or propriety he should not say so. He submitted that this was an untenable and fantastic stand

and review jurisdiction was not distinguishable on this ground from appellate jurisdiction.

Mr. Yahya Bakhtiar submitted that he agreed that a minority opinion judge was not sitting in appeal over the majority judgment but nor was the judge holding majority opinion sitting in appeal over his own judgment.

Mr. Yahya Bakhtiar submitted that a judge should respect the views and opinion of another judge and hold it in the highest esteem but if his duty or function was to review or reverse, the opinion of his brother judge, or his own view, he would do so in accordance of his oath of office. The oath, he argued, enjoined upon him to discharge his duties honestly to the best of his ability, faithfully, without fear or favour, affection or in accordance with law. He submitted that review jurisdiction was not distinguished from any other jurisdiction so far as the discharge of duty was concerned. The only restriction was that which was imposed by law which prescribed the scope and limits within which the review jurisdiction was to be exercised. There was no other restriction, he added.

Precedent Cited. He referred to the Hafiz Umer Gul case (PLD 1973) in which five judges heard the appeal from the judgment of Peshawar Bench dismissing the writ petition pertaining to Dir State—tribal—area on the ground that writ jurisdiction did not extend to tribal areas.

He submitted that three judges, namely the then Chief Justice Hamoodur Rahman, Mr. Justice Sajjad Ahmed Jan and Mr. Justice Salahuddin Ahmad dismissed the appeal holding that the High Court had no jurisdiction in the tribal areas but Mr. Justice Yakub Ali and Mr. Justice Waheeduddin Ahmed held that the High Court had jurisdiction.

Mr. Yahya Bakhtiar submitted that he was Attorney-General at that time and he filed a review petition in respect of the majority judgment since he had always been working for extension of writ jurisdiction to tribal areas. He said Chaudhry Zahur Elahi was then in detention and had been taken to the Marri-Bugti area. At a meeting, which was attended by Mr. Ghulam Mustafa Khar, Mr. Abdul Hafeez Pirzada, Mr. Badiuzzman, besides the former Prime Minister, he was asked to withdraw the review petition as in the case of its acceptance the Government might have had to withdraw Chaudhry Zahur Elahi from that area since the writ jurisdiction in that case would be extended to the Marri-Bugti area. Mr. Yahya Bakhtiar said he insisted on pursuing the review petition and Mr. Bhutto agreed with him.

Mr. Yahya Bakhtiar submitted that the review petition was heard by four judges, including Mr. Justice Hamoodur Rahman and Mr. Justice Salahuddin of the

majority opinion, Mr. Justice Yakub Ali of the minority and Mr. Justice Anwarul Haq since Mr. Justice Sajjad Ahmad Jan and Mr. Waheeduddin had retired by that time. Chief Justice Hamoodur Rahman dismissed the review on merits and limitation. Mr. Justice Yakub Ali reiterated his view held in the minority opinion. Mr. Justice Salahuddin and Mr. Justice Anwarul Haq also thought that the review should be allowed. Thus by majority timer Gul's case was reviewed.

Lesser Punishment. On the question of sentence, Mr. Yaha Bakhtiar submitted that the courts had been following the rule of discrimination in awarding lesser punishment to such persons as had not participated in the crime and particularly those who were not even present on the place of occurrence. He said lesser punishment was also awarded in cases where there was no motive for killing a person who was actually killed in place of the person intended to be killed. The division in the opinion of the court was also one of the considerations for awarding lesser punishment.

Burma Prime Minister's Case. State counsel, Mr Ijaz Hussain Batalvi, presented a book on the trial of U Saw, a former Prime Minister of Burma, who was awarded death sentence although he was not present on the scene of occurrence but was the author of the entire plot to shoot the entire Cabinet. He also presented Burma law reports containing the judgments of the High Court and the Supreme Court of Burma in that case.

The Supreme Court consisted of the Chief Justice, Mr. Justice Anwarul Haq. Mr. Justice Mohammad Akram. Mr. Justice Dorab Patel, Mr. Justice Mohammad Haleem, Mr. Justice Safdar Shah, Mr. Justice Karam Elahi Chauhan and Mr. Justice (Dr.) Nasim Masan Shah.

Mt. Yahya Bakhtiar was assisted by Mr. Addul Hafeez Lakho, Mr. Mohammad Sharif, Mr. D.M. Awan, Mr. Mohammad Yasin Khan Wattoo, Mr. Abdul Hafeez Pirzada and Mr. Mohammad Afzal Siddiqui.

Mr. Ijaz Hussain Batalvi, Mr. M.A. Rahman, Mr. Mahmood A. Shaikh and Shaikh Riaz Ahmad were present on behalf of the State.

Earlier, the Supreme Court paid rich tributes to the memory of Mr. Ghulam Ali Memon a counsel for Mr. Zulfikar Ali Bhutto, who died of heart failure on March 9 in Rawalpindi.

On resumption of the hearing of the review petition, Chief Justice Anwarul Haq referred to the untimely death of Mr. Memon and said the great thoroughness with which, Mr. Memon prepared his case was not only of the highest value to

his client but was also of great assistance to the court. He died at the prime of his legal maturity. He was in harness and was working till the last minute.

Acknowledging the feelings of Judges of the Supreme Court, Mr. Yahya Bakhtiar submitted that they would be conveyed to the family of Mr. Ghulam Ali Memon.

SHARIAT LAWS ENFORCED IN PAKISTAN

Mr. Yahya Bakhtiar arguing the Review Petition referred to the application of certain Shariat laws in Pakistan with effect from 10 February 1979 which the Supreme Court did not accept in the Bhutto's case. Following are the relevant portions of the President's declaration introducing the Islamic Laws. (Ed.)

Islamabad, February 10, 1979. President Mohammad Zia-ul-Haq has declared the introduction of Nizam-i-Islam in Pakistan with a package of fiscal and penal laws framed in the light of the teachings of the Holy Quran and Sunnah.

The scheme provides for collection and utilization of Zakat and Usher from next July and immediately enforces maximum Islamic punishments for drinking, theft, adultery and rape and Qazf (false imputation of adultery and rape).

The historic announcement coming on the occasion of Eid Milad-un-Nabi was made by the President in a speech from the National Assembly hall.

Code of Conduct for Police. Stressing the need for the reformation of Police, the President said a comprehensive code of conduct for Police had been prepared. He said Police would be reorganized in the light of Islamic principles and there would be separate detective, and watch and ward departments. The criminal cases would be handled by a separate autonomous body instead of police. He said special emphasis would be laid on the Islamic teachings and moral aspects in Police training.

Shariat Benches. Another important step he pointed out was the formation of *Shariat* Benches in the superior courts. The announcement about which he had made at the beginning of the current Hijra calendar year.

The President said a Permanent Law Commission with the Chief Justice of Pakistan in the chair has been set up to make recommendations to provide expeditious and inexpensive justice to the public. Besides the Chief Justice of Pakistan, the Chief Justices of the Provincial High Courts and the Attorney-General would be members of the Permanent Law Commission.

Post-graduate Faculty of Shariat. Another step taken towards the enforcement of Islamic system in Pakistan, he said, was the finalization of the project to introduce a post-graduate faculty of *Shariat* in the Quaid-e-Azam University which would start functioning in September or October next. This faculty would produce such persons who besides having knowledge of the legal system would be experts in Islamic *Fiqh* and *Shariat*.

Maximum Punishment for Drinking. Announcing the enforcement of maximum Islamic punishment for drinking, adultery and rape, theft and false imputation of *Zina*, the President said the punishment in each case could be awarded if the Islamic requirements of evidence were met. Pointing out that drinking liquor had been banned, the manufacture, and sale of other intoxicants would also be banned.

Hearing of Shariat Petitions: Draft Rules. The rules, which have been made by the Supreme Court in consultation with the High Courts, also provide that no *Shariat* petition would abate for the reason of the death of the petitioner, and that a petition fixed for preliminary hearing or otherwise would not be rejected solely because of the absence of the petitioner, the counsel or the jurisconsult.

The rules, to be called the *Shariat* Benches of the Superior Courts Rules, provide that a *Shariat* petition could be filed by a citizen of Pakistan, the Federal Government or a Provincial Government.

A *Shariat* petition could be filed in English, Urdu or any other language as permitted by the court.

A *Shariat* petition, filed under Article 203 of the Constitution, would be placed before a *Shariat* Bench of a High Court for preliminary hearing. The Bench could admit it for hearing if it came to the conclusion that the law or the provision of law, challenged in the petition, required detailed examination or appeared to be repugnant to the injunctions of Islam.

Under the draft rules, a petitioner was required to mention the names of Ulema, experts, jurists and witnesses whom he wanted to produce before the *Shariat* Bench in support of his contention. He was also required to give his own reasons why a law or the provision of law was repugnant to the injunctions of Islam, and cite the Fatwa, if any in support of his contention.

An appeal against the decision of the *Shariat* Bench could be filed before the *Shariat* Appellate Bench. In the appeal, the appellant was required to give the ground of objection to the decision of the *Shariat* Bench.

The draft rules provide that each High Court and the Supreme Court would maintain a panel of *Ulema*, to be nominated by the Chief Justice of the High Court and the Chief Justice of the Supreme Court of Pakistan respectively, in consultation with the members of the *Shariat* Bench or the *Shariat* Appellate Bench. The selection of *Ulema* for each panel would be made from amongst the persons holding a certificate, diploma or degree of a recognised religious institution. It was also provided that any person could be selected in the panel whose religious knowledge, understanding and appreciation of Islam had gained recognition, irrespective of the fact that he did not have a diploma or a degree.

The draft rules propose that every *Aalim*, jurisconsult, expert and witness appearing before the *Shariat* Bench or the *Shariat* Appellate Bench, would be paid Rs. 100 per diem, besides the travelling allowance.

The draft rules would be considered by the members of the *Shariat* Benches and the *Shariat* Appellate Bench and finalized by the heads of all these Benches. These would be given formal approval by the President of Pakistan

Last Legal Battles to Save Bhutto

1. **Lahore** : Mr. Justice Shafiur Rahman of the Lahore High Court dismissed in limine on March 19 a constitutional petition filed by Malik Ghulam Jilani, ex-MNA, seeking deferment of the execution of death sentence of Mr. Zulfikar Ali Bhutto while challenging the constitutional position of the resignation of Mr. Fazal Elahi Chaudhry from the office of the President of Pakistan and the assumption of that office by General Mohammad Zia-ul-Haq.

The learned judges bench ruled that there was no merit in the petition.

2. **Karachi** : A Full Bench of the Sindh High Court dismissed in limine on March 29 two habeas corpus petitions seeking release of Mr. Z.A. Bhutto, detained in Central Jail, Rawalpindi. One petition was filed by Mr. Bhutto himself and the other by Miss Benazir Bhutto. The Full Bench comprised Mr. Justice I. Mehmud, Mr. Justice Fakhruddin G. Ebrahim and Mr. Justice Zafar Hussain Mirza.

The same Full Bench also dismissed as non-maintainable another petition filed by Mr. Abdul Hafeez Pirzada challenging the assumption of office of Chief Justice of Pakistan, by Mr. Justice S. Anwarul Haq.

Dismissing the habeas corpus petition of Mr. Z. A. Bhutto and Miss Benazir Bhutto, the Full Bench order said: "It is admitted that the present detention of the said detenu is in pursuance of a Full Bench judgment of the Lahore High Court sentencing him to death, which conviction has been upheld by a 4-3 majority of the Supreme Court.

"The contention in support of these petition is that for different reasons, the High Court at Lahore was *coram non judice* and so also the Supreme Court of Pakistan. More particularly it was argued that on the assumption that the CMLA Order No. 6 of 1977 was valid, it revived the original Article 195 of the Constitution and, therefore, Mr. Justice Sardar Mohammad Iqbal, the then Chief Justice of Lahore High Court, continued to remain the Chief Justice and that the subsequent assumption of that office by his successors, including the present Chief Justice, Mr. Justice Maulvi Mushtaq Hussain, was not in accordance with law and therefore, the Lahore High Court became *coram non judice*. As regard the Supreme Court the contention was that the present Chief Justice is not the Chief Justice of that Court, making the Supreme Court *coram non judice*.

"We inquired from Mr. Abdul Hafeez Pirzada, learned counsel, as to our jurisdiction to entertain these petitions as admittedly Mr. Z. A. Bhutto is

presently detained at Rawalpindi, which is not only outside the territorial jurisdiction of this court, but also in pursuance of orders made by the authorities, not functioning within the territorial jurisdiction of this Court. Mr. Pirzada contended that the detenu was illegally removed from the jurisdiction of this court on September 23, 1977, and taken to Lahore”.

The order continued: “On further inquiry by us, the learned counsel stated that the detenu was detained under MLO 12 when he was removed to Lahore and that detention was illegal. There is no doubt that there is an averment to this effect in the petition that the detenu has been illegally detained at Karachi before his removal to Lahore. But, it is significant that no particulars have been given so much so that the petitions do not even state that he was detained under MLO-12, much less is there any mention in support of a vague assertion that detention was illegal.

“A copy of the detention order has also not been filed. At the bar, it was argued that the said detention was illegal because MLO 12 was void. This argument is not available to the counsel in as much as in majority judgment of the High Court in case of Mumtaz Ali Bhutto and Abdul Hafeez Pirzada versus DM LA and others (constitutional petition number 1203 of 1978) a Full bench of the High Court has held that MLO 12 is a valid piece of legislation. Learned counsel placed reliance on the case of Ch. Manzur Elahi versus Federation of Pakistan (PLD 1975 Supreme Court 66).

“But the reliance on this case is misconceived, for among other things jurisdiction of this Court would be attracted only if the arrest of the detenu at Karachi was demonstrated to be illegal”.

Furthermore, the Court pointed out, in the present case, the alleged illegality of detention under MLO 12 was of academic interest only, as not only that lapsed by operation of law on 31-3-78, but since then the detention of Mr. Z. A. Bhutto is in pursuance of an independent and unconnected proceedings taken outside the jurisdiction of this Court.

“We are further of the view that, in effect, these petitions are directed against the judgment delivered by Superior courts and, therefore, any interference of us will, in effect amount to issuing a writ against the said court, which cannot be granted under sub-Article (5) of Article 199 of the Constitution, which provides that no writ of any kind can be issued against the High Court and Supreme Court of Pakistan.

“For the foregoing reasons, we find no force in these petitions. They are accordingly dismissed in limine”.

Z. A. Bhutto. Hanged

Zulfikar Ali Bhutto was hanged at Rawalpindi District Jail at 2 a.m. on April 4 following his conviction by the Lahore High Court in the Nawab Mohammad Khan murder case and subsequent rejection of his appeal by the Supreme Court of Pakistan. Earlier, many mercy petitions filed or received on his behalf were rejected by the President of Pakistan, after they had been processed in accordance with the normal procedure.

The dead body was flown in a special aircraft from Rawalpindi and handed over to the elders of the family who buried him, after Namaz-i-Janaza, in the ancestral graveyard at Garhi Khuda Bakhsh near Nau Dero, Larkana, at 10-30 a.m. in accordance with the wishes of the family. The funeral was attended by relatives, including his two uncles, Nawab Nabi Bakhsh Bhutto and Sardar Pir Bakhsh Bhutto, his first wife Shirin Amir Begum, friends and residents of the area.

Begum Nusrat Bhutto and Miss Benazir Bhutto, who were informed of the rejection of the mercy petitions, had their last meeting with Mr. Bhutto for about three hours a day earlier in the jail. Other relations, including his first wife, had also seen him in the jail during the last few days.

It may be recalled that Mr. Z. A. Bhutto was tried in the murder case under the normal law of the land by a Full Bench of the Lahore High Court consisting of five Judges. The court unanimously found him guilty of the charge and sentenced him to death on 18 March 1978 after hearing the case for five months. Mr. Bhutto went up in appeal to the Supreme Court which heard the case for seven months and, on 6 February 1979, upheld the conviction and the sentence of death passed by the Lahore High Court. After the rejection of the appeal, a review petition was filed on behalf of Mr. Bhutto. The petition was rejected by the Full Bench of the Supreme Court on 24 March 1979.

Mr. Bhutto was informed earlier by the jail authorities about the rejection of the mercy petition filed on his behalf by his step-sister and others and as laid down under the Jail Manual.

The hanging took place in the Rawalpindi District Jail in the presence of Duty Magistrate and the Superintendent of Jail and other jail authorities. After the hanging the medical officer pronounced him dead and then his body was removed from the gallows and transported to his home town Nau Dero by an aircraft where arrangements for his burial in his family yard were prearranged in the consultation with his uncle Mr. Nabi Bakhsh Bhutto.

The authorities had made special security arrangements inside and outside the jail. As is the custom in the jail, the prisoners housed in the vicinity of the condemned prisoner's cell were asked to recite the verses of the Holy Quran throughout the night. The recitation was loud and in chorus. This is 'specially arranged for occasion when any one is to be hanged.

Mr. Bhutto was given a bath early in the morning after which he was asked to recite certain verses of the Holy Quran. Later, the Superintendent and the Deputy Superintendent of Jail entered his cell and read out the text of the black warrant. Some other officers were also present there.

The Superintendent of Jail then went to the platform to make a final check-up of the hanging arrangements when Mr. Bhutto was still in his cell. Later, his hands were tied behind his back and he was conducted to the gallows under the escort of security staff.

At the platform, the magistrate on duty identified Mr. Bhutto as the condemned prisoner and the Superintendent again read out the black warrant and thereafter he was handed over to the hangman for carrying out his duties. His legs were tied and the rope noose was fixed around his neck with the finalization of all arrangements. Go-ahead signal was given to the hangman by the Superintendent of the Jail.

Later, the Medical Officer, after a medical examination pronounced Mr. Bhutto dead. His body was removed from the gallows and after completing the other formalities, the dead body was transported to the airport for air flight to Larkana.

BHUTTO'S LAST WORDS

"Oh Lord help me for I am innocent," Mr. Bhutto said at the foot of the gallows and before he was hanged this morning, the Urdu daily, *Nawa-i-Waqt* reported.

Mr. Bhutto walked slowly with his escort, his hands tied behind his back, his eyes on the ground and his lips closed until he reached the foot of the gallows, the newspaper said.

According to *Nawa-i-Waqt*, Mr. Bhutto wrote a long will which he was made to sign before he "climbed the steps to the gallows. The will was countersigned by a magistrate".