

Ranjit Singh Vs. State

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Court : Delhi

Decided On : Oct-03-1997

Reported in : 1997VAD(Delhi)689; 69(1997)DLT188

Judge : A.B. Saharya and; M.S.A. Siddiqui, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120A, 120B and 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 157, 428 and 465; [Evidence Act, 1872](#) - Sections 8

Appeal No. : Criminal Appeal No. 74 of 1993

Appellant : Ranjit Singh

Respondent : State

Advocate for Def. : Mr. Kaira

Advocate for Pet/Ap. : A.S. Randhawa,; Satnam Singh,; Seema Gulati,;

Judgement :

Arun B. Saharya, J.

(1) This is an appeal by the appellant Ranjit Singh under Sub-section 2 of Section 374 of the Code of Criminal Procedure, 1973, against conviction by judgment dated 26th March, 1993 and order of sentence dated 27th March, 1993, passed by

the Additional Sessions Judge, Delhi, in Sessions Case No. 33 of 1984.

(2) The appellant has been convicted and sentenced under six heads. First, for conspiracy to kill Baba Gurbachan Singh, under Section 120-B, IPC. Secondly, for the murder of Baba Gurbachan Singh in pursuance of the conspiracy under Section 302 read with Section 120B, IPC. Thirdly, for the murder of Pratap Singh under Section 302 read with Section 34, IPC. Fourthly, for attempt to murder Kuldip Singh Walia under Section 307 read with Section 34, IPC. Fifthly, for conspiring to cause explosion of hand-grenades to endanger life and property under Section 4 of the Explosive Substances Act, 1908. Lastly, for possessing arms and ammunition with intent to use the same for unlawful purpose under Section 27 of the Arms Act, 1959. On each of the first three heads, sentence of imprisonment for life and fine of Rs. 4,000 .00 , and in default of payment of fine rigorous imprisonment for one year, has been passed against him. And, in respect of each of the other heads, sentence has been passed for rigorous imprisonment for 7 years and fine of Rs. 4,000.00 , and in default of payment of fine rigorous imprisonment for one year. The life sentence under the first three heads was directed to be concurrent. However, the benefit of set-off under Section 428, Cr.P.C. was not extended in respect of the sentence of imprisonment for life.

(3) According to the prosecution, there was long- standing enmity between the Akali faction of Sikhs and the Nirankar is due to ideological differences between the two sects. On Baisakhi day i.e. 13th April, 1978, a fight amongst them took place in which 13 Sikhs were killed at Amritsar. In that case Baba Gurbachan Singh and 60 other Nirankar is were prosecuted. But, they were acquitted on 4th January, 1980. This further enraged the Akal is. Jathedar Sant Jamail Singh Bhinderwala, a leader of the Akal is, made provocative speeches against the Nirankar is and gave a call for killing the Nirankari head Baba Gurbachan Singh. His offensive speeches were published in various newspapers in Punjab and elsewhere from time to time. On 19th March, 1980 there was an attack on Baba Gurbachan Singh at Durg in Madhya Pradesh, but he survived. Baba Deep Singh Ranjit Akhara trained Sikhs in martial arts in Delhi. Its members were staunch Akal is and anti Nirankar is. They used to obstruct and disrupt Nirankari congregations (Samagams) held in Delhi. Appellant Ranjit Singh was an active member of the

Akhara. He was a carpenter by profession, knew shooting by gun and was a good marksman. Incensed by anti Nirankari feelings and to avenge the killing of Sikhs at Amritsar, appellant Ranjit Singh along with some other known and unknown persons hatched a conspiracy to kill Baba Gurbachan Singh. In pursuance of the conspiracy and to achieve the object thereof, in February, 1980, he infiltrated into the rank and file of the Nirankari through the good offices of Onkar Singh (Public Witness -24) and Dr. Des Raj and joined the Nirankari Mission. Baba Gurbachan Singh had his residence in the Nirankari Bhawan, which was a castle of the Nirankari. Ranjit Singh started working in the carpentry workshop inside the Nirankari Bhawan Complex. Ostensibly, he also started doing service (Sewa). Gradually, he won over the confidence of those who mattered and gained free access into the Nirankari Bhawan. In March and April, 1980, he also worked at the places of some of the Nirankari. Off and on, when he was working at places outside, he borrowed tools and brought in beams and logs of wood for sawing and grooving in the carpentry workshop. Sometimes, he also stayed in the guest house that was located just opposite the residence of Baba Gurbachan Singh inside the Nirankari Bhawan complex. Thus, he managed to bring in and take out timber, borrow tools from the carpentry workshop and stay back in the guest house, without arousing any suspicion. While feigning as a Nirankari, he was actually working on the plan to kill Baba Gurbachan Singh. He disclosed to Harjinder Singh (Public Witness -91), who was also an Akali and active member of the Akhara, his plan to kill Baba Gurbachan Singh and had asked him to arrange for chloroform from the hospital where he was working and on another occasion his father's revolver for that purpose. Ranjit Singh also told Harjinder Singh that he had gone to Amritsar to meet Sant Bhinderwala, that arrangements had been made, and that he would soon be getting a 'happy news' in respect of the Nirankari. Coinciding with this, just two or three days before the incident actually took place, Sant Jarnail Singh Bhinderwala had given a rabid speech and declared before his followers at Gurdwara Santpura (Yamuna Nagar) in Haryana, that within two or three days 'we would achieve our aim and Nirankari Baba would be murdered'. In furtherance of the conspiracy, an improvised box was prepared out of a log of wood at the workshop of Bada Gyan Singh. The box was so made as to conceal among other things, .30 Carbine, an unsheathed sword and its top when screwed

together, looked like a beam of wood. The arms and ammunitions concealed in the improvised log like box, Along with other weapons wrapped in a bundle of cloth, were carried in a new Ambassador car and delivered to Ranjit Singh and his companion by their co-conspirators on the day of occurrence at about 6.45 p.m. at the culvert on the outskirts of Nirankari Colony near Sant Nirankari School, Delhi.

(4) On 24th April, 1980, Ranjit Singh reached the Nirankari Bhawan in the afternoon. He Along with his companion Kabul Singh (P.O.) came to the carpentry workshop at about 4.30 p.m. At that time, he was having in his hand a noose prier (Ex.P-4). He took from Ajit Singh (Public Witness -12) a 10 inches long screw driver (Ex.P-3). He took his companion reconnoitering from place to place in and around the Bhawan, including the portion on the first floor of the guest house right opposite the residence of Baba Gurbachan Singh. On the way, he introduced his companion to everybody as his maternal uncle's son (Mama KaLadka). At about 6.30 to 7.00 p.m., Ranjit Singh was seen sitting outside the Nirankari Bhawan, on the culvert opposite the house of Vidyawanti, with a beam of wood, which was actually the log-like box of wood (Ext. P-1). There, he was accompanied by his young companion and two other Sardars. From there, on the way back to the Bhawan, he and his companion took water at the school canteen at about 7 to 7.30 p.m. The two of them were seen carrying a log of wood through the rear gate of the Bhawan at about 8.30 p.m. They were then seen at about 9.30 p.m. back again at the stair-case leading to room No. 14 on the first floor, insidetheBhawan At about 10.00 p.m., itwasnoticedthatRanjit Singh was inside and his companion was standing outside the bathroom attached to room No. 14. At about 10.00 to 10.15 p.m., Ranjit Singh and his companion were again seen together outside room No. 14, which was not allotted to anyone that day.

(5) At about 10.30 p.m., Baba Gurbachan Singh returned from his usual Thursday discourse (Satsang) held at Paharganj, in a convoy comprising a motor cycle and three motor-cars. The motor cycle rider was the pilot. Then, the Volkswagen car was occupied by Pratap Singh, who was the bodyguard of Baba Gurbachan Singh and two other Nirankar is. Thereafter was the Mercedes car, which was driven by Kishan Pal (Public Witness -2). Baba Gurbachan Singh was sitting in the front seat. Gobind Singh (Public Witness -1) Along with two others and a child were

sitting in the rear seat of that car. The last in the convoy was a Fiat car, driven by Amar Singh (Public Witness -25). Niranjan Singh (Public Witness -3) was sitting in it. The convoy stopped in the courtyard in front of the Baba's residence where a Dari was spread out and a number of persons were waiting for meeting Babaji. Just as Baba Gurbachan Singh stepped out of the left front door of the Mercedes car and had reached the front left headlight of the car and Pratap Singh had come by his side, after getting down from the Volkswagen car, a number of bullets from 0.30 carbine were showered upon them from a concealed position through the window of room No. 14 on the first floor of the guest house. First, Baba Gurbachan Singh was hit and then Pratap Singh. Both of them fell down there on the ground. Kuldip Singh Walia (Public Witness -141), his wife Shiv Darshan Kaur, and Jai Ram Dass (Public Witness -55) were also injured. The assailants threw two hand grenades also. One fell in the courtyard and the other in the staircase leading from the courtyard to the balcony in front of room No. 14 on the first floor of the guest house. The hand-grenades, however, did not explode. Gobind Singh (Public Witness -1) and Kishan Pal (Public Witness -2) noticed two persons on the balcony running away towards the bathroom attached to room No. 14 on the first floor. The assailants passed through the bathroom window into the back lane and escaped.

(6) Baba Gurbachan Singh, Pratap Singh and PW-141 Kuldip Singh Walia and his wife Shiv Darshan Kaur were immediately removed to different hospitals. Baba Gurbachan Singh was taken to Tirath Ram hospital. There he was declared dead. His body was brought back to the Nirankari Bhawan. Pratap Singh was taken to L. N.J.P. hospital, where he also succumbed to the injuries. Kuldip Singh Walia (Public Witness - 141) and his wife Shiv Darshan Kaur were taken to the Hindu Rao hospital. Shiv Darshan Kaur was discharged earlier, where as Kuldip Singh Walia was discharged from the hospital on 30th April, 1980.

(7) A telephonic message was received at 10.49 p.m. at Kingsway Camp Police Station from a Police Control Room van that some 'Sadhu' was firing inside the Nirankari Mandir. It was recorded in the daily diary of the Police Station (Ex. PW-143/DA). S.I. Ramesh Pal Singh (Public Witness -143) Along with Constable Jai Kishan (Public Witness -37) left for the Nirankari Bhawan. On enquiries made at the Bhawan, S.I. Ramesh Pal Singh (Public Witness -143) found that information

about a 'Sadhu' firing was incorrect, and he learnt about the incident that had taken place there. Gobind Singh (Public Witness -I) gave to S.I.Ramesh Pal Singh (Public Witness -143) information relating the commission of the offence, which was reduced to writing (Ex. PW-I/A).The Sub-Inspector made a note thereon Ex. PW-143/A and sent the same (Rukka) to the Police Station through Constable Jai Kishan (Public Witness -37). There, it was registered at 1.05 a.m. as Fir No. 395/80 (Ex. PW-149/A). S.H.O. Dalbir Singh (Public Witness -149) rushed to the spot and took over investigation of the case. S.I. Mahesh Chand was sent to Hindu Rao hospital. From there, he obtained clothes of Kuldip Singh Walia in a sealed parcel, his Mlc and the statements of Kuldip Singh Walia (Public Witness -141) and his wife Shiv Darshan Kaur. Senior officers of the Delhi Police, Crime team, CfsI team and Dog squad also reached the place of occurrence. The dog handler took the dog in and around room No. 14. The dog then led the police party through the back lane up to the Yamuna river embankment (bandh). S.I. Ramesh Pal Singh (Public Witness -143) was sent with the police . party. On his return, on direction of S.H.O. Dalbir Singh, S.I. Ramesh Pal Singh prepared, in the presence of Khem Raj Chadha (Public Witness -54) inquest report Ex. PW-54/ C, on the body of Baba Gurbachan Singh and made applications Ex. PW-143/B and Ex. PW-143/C for post-mortem. He also proceeded to the L.N.J.P. hospital and prepared inquest report Ex. PW-54/A on the body of Pratap Singh and submitted an application Ex. PW-I 43/D for his post-mortem also. The post-mortem report in respect of Baba Gurbachan Singh is Ex. PW-38 /A and that of Pratap Singh Ex. PW-38/B and Ex. PW-7/B. S.H.O. Dalbir Singh (Public Witness -149) inspected the scene of occurrence Along with S.I. Ramesh Pal Singh, Niranjana Singh (Public Witness -3) and Mangal Sen (Public Witness -4), and got prepared site plans Ex. PW-143/E and Ex. PW-143/F. Various articles found in room No. 14, including the log-like wooden box Ex. P-1, Sword Ex. P-2, Screw Driver Ex. P-3 and Noose prier Ex. P-4, those found in the bathroom attached to room No. 14, and those in the courtyard and in the back lane were taken into possession vide seizure memos Ext. PW3/A, Ext. PW3/B, Ext. PW3/C, Ext. PW3/D, Ext. PW3/J, Ext. PW-3/K, Ext. PW-3/L and Ext. PW3/M, which were scribed by S.I. Ramesh Pal Singh. When the Screw Driver Ex. P-3 was found near the box Ex. P-1 inside room No. 14, A)it Singh (Public Witness -12) was sent for. He recalled that it was the same Screw

Driver that had been taken from him by Ranjit Singh. A Matador van No. HRF-8517, in which some persons were traveling Along with arms and ammunition, was intercepted by officials of Police Station, Tilak Marg in the early hours of the morning. Those persons, after interrogation, appeared to be innocent and were released; but the arms and ammunition found in the vehicle were seized and deposited in the Malkhana of Police Station Kingsway Camp. S.H.O. Dalbir Singh (Public Witness -149) recorded statements of eight persons, including Anoop Kumar (Public Witness -15), under Section 161, Cr.P.C. Inspector Munshi Ram (Public Witness -57) summoned the bomb disposal squad of the army. One hand-grenade lying in the staircase was taken into possession vide memo Ex. PW-57/A, and it was defused by Captain Ajay Kumar. The other one that was found in the courtyard was taken away and later exploded by the Army Authorities on 27th April, 1980. Inspector Munshi Ram also seized die guest register Ex. PW-9 / A containing entry in the name of Ranjit Singh indicating his trans Yamuna river (Yamuna Paar) address. Statements of the Receptionist Amarjit Singh (Public Witness -9) and that of the Caretaker Kulwant Singh (Public Witness -35) were also recorded under Section 161, Cr.P.C. Jai Ram Dass Aiya (PW-55) was sent for medical examination. His blood stained Kurta was taken into possession. His statement also was recorded. On 25th April, 1980, all items of case property that were taken into possession were deposited by S.I. Ramesh Pal Singh (PW-143) in the Kingsway Camp Police Station Malkhana. A Police party was sent in search of Ranjit Singh. He was not found at his house. His brother was brought to the police station and interrogated. Police parties were also sent in search of Ranjit Singh to Durg, Amritsar, Ludhiana and various places in Delhi, but in vain.

(8) On 26th April, 1980, further investigation of the case was transferred by the Government of India to the Central Bureau of Investigation (C.B.I.). Consequently, the C.B.I. registered Regular Case No. 2/80 Ex. PW-163/A. Further investigation was entrusted, among others, to D.C. Sorari (Public Witness -119), S.B. Sinha, (Public Witness -120), R.S. Chauhan (Public Witness -125), O.P. Chhatwal (Public Witness -137), R.P. Kapoor (Public Witness -138), N.P. Singh (PW-142), R.S. Dhankar (Public Witness -150), R.P. Singh (Public Witness -154), Morari Lal (Public Witness -155), A.K. Suri (Public Witness -160) and PW-163B.R. Puri, from time to time. C.B.I, officers inspected the scene of crime and collected intelligence

and information about it. They took into possession various documents and other articles related to the case, collected articles of case property from Malkhana of Police Station, Kingsway Camp and deposited the same in the Malkhana of the C.B.I. They got recovered quite a lot of arms, ammunition and hand-grenades from the bed of Yarnuna river and also recovered a double barrel gun from one Nirankari Kundan Singh. Various articles collected during investigation were sent for examination and reports obtained from the concerned experts. They also recorded statements of a large number of persons, including those of Gobind Singh (Public Witness -1), Harbhajan Singh (Public Witness -6), Anoop Kumar (PW-15), Damodari (Public Witness -19), Harjinder Singh (Public Witness -91), Kuldip Singh Walia (Public Witness -141), Yog Raj and Dr. Des Raj, under Section 161, Cr.P.C.; searched for and interrogated some of the persons who were suspected to be connected with the commission of the crime Appellant Ranjit Singh remained absconding for three and half years, till he was ultimately arrested on 23rd November, 1983.

(9) The C.B.I, forwarded the case of the appellant Along with five other persons, namely, Gian Singh, s/o Mela Singh (referred to as Chhota Gian Singh), Charanjit Singh, Avtar Singh, Kundan Singh and Lakhbir Singh @ Lakha, for trial under Sectional 70, Cr.P.C. The challan nam three more accused persons, namely Gian Singh, s/o Wadhwa Singh (referred to as Bada Gian Singh), Kabul Singh and Dalbir Singh,,as absconders. They Along with the co-accused Lakhbir Singh @ Lakha, who jumped bail and absconded, were proceeded by the Trial Court under Section 299, Cr.P.C. TO. The prosecution fielded 164 witnesses and produced over 700 documents during the trial. The accused was asked 292 questions to explain the circumstances appearing in the evidence against him under Section 313, Cr.P.C. He refused to answer those questions and submitted a written statement. In defense, he examined 8 witnesses primarily for running down credibility of Harjinder Singh (Public Witness -91),who had deposed against the accused.

(11) The Sessions Court acquitted Avtar Singh and Kundan Singh for want of evidence against them on the charge under Section 201, IPC. Chhota Gian Singh and Charanjit Singh were given the benefit of doubt and acquitted of the charge of

conspiracy under Section 120B, IPC. As regards, the injury to Shiv Darshan Kaur and Jai Ram Dass Arya, the medical report in respect of the former had not been proved, and the nature of injury on her arm was not known; and the injury to the latter was not caused by any bullet or any piece thereof. therefore, it could not be held that there was an attempt to kill either of them. That part of the charge against Ranjit Singh also failed. Thus, Ranjit Singh is the sole accused person convicted and sentenced under the above mentioned six heads, which he has challenged in the present appeal.

(12) The Trial Court, on the basis of the overall facts and circumstances emerging from the evidence on record, found the earlier mentioned charges fully established against the appellant. It has found that the appellant, who v/as present Along with his companion, had fired shots from a .30 carbine through the front window of room No. 14 on the first floor of the guest house opposite the residence of Baba Gurbachan Singh, which resulted in the death of Baba Gurbachan Singh and Pratap Singh and serious bodily injury to PW-141 Kuldip Singh Walia. He and his companion also threw two hand grenades from the balcony in front of room No. 14 towards the courtyard, which did not explode. He did so in pursuance of the conspiracy to kill Baba Gurbachan Singh. Chhota Gian Singh knew about Ranjit Singh's intention to kill Babaji. But, the evidence on record is not sufficient to specifically show that Chhota Gian Singh was a party to the conspiracy. Since the year 1978 there was general atmosphere of hatred and hostility whipped up by Sant Jamail Singh Bhinderwala and his Akali followers against the Nirankar is and particularly against the head of their sect Baba Gurbachan Singh. Especially, after the 13th April, 1978 episode, Bhinderwala made several inflammatory speeches exhorting his followers to kill Baba Gurbachan Singh. In June, 1978, he declared that the day was not far off when Baba Gurbachan Singh would be beheaded and his head hung at the 'Darshani Deohri' of the Golden Temple at Amritsar. Declarations made by him that the Nirankar is should not be allowed to hold their congregations, and speeches creating ill-will and inciting violence in the minds of Akal is against the Nirankar is were published in various newspapers like Daily Ajit, Hind Samachar, Kamboj, Pratap, Veer Pratap and Punjab Kesri Exs. PW-61 /B-1 to B-11, Exs. PW-63/ B-1 and B-2, Ex. PW-64/B-1, Ex. PW-50/A. A commandment (Hukamnama) was also issued at Amritsar in June, 1978 directing

all Sikhs to socially boycott Nirankar is. Attempt at the life of the Nirankari Baba was also made at some places, including Durg in Madhya Pradesh. Three days prior to the incident Bhinderwala made another violent speech at Gurdwara Santpura, Yamuna Nagar (Haryana), where he referred to the Nirankari Baba as 'NirankariBaba' and declared that within 2/3 days they would achieve their aim and the Baba would be murdered. Appellant Ranjit Singh was an active member of Baba Deep Singh Ranjit Akhara situated in trans-Yamuna area in Delhi. He was regularly attending the meetings of the Akhara. In the Akhara, training was imparted for fighting with stick (Lathi), spear (Barchha), Club (Gatka) and Sword. Members of the Akhara used to disturb assemblies, congregations and processions of Nirankar is. Chhota Gian Singh was its President and Charanjit Singh, Avtar Singh (all acquitted) were also active members of the Akhara. They, Along with Ranjit Singh, used to arrange processions on behalf of the Akhara, and whenever Nirankari congregation was arranged in the area, they used to create trouble. Members of the Akhara used to obstruct the activities of Nirankar is. Appellant Ranjit Singh knew how to shoot with a fire arm. Incensed by strong anti Nirankari feelings, he developed the intention to kill Baba Gurbachan Singh. Chhota Gian Singh (acquitted) knew of Ranjit Singh's intention to kill Babaji. He declared in the course of a routine Friday assembly (Path) of the Akhara that all the members would be happy to know that Ranjit Singh was going to do something to bring good name for the Akhara, he would bring the head of Baba of Nirankar is, and all of them should help him. This declaration was made in the presence of Ranjit Singh. However, according to the Trial Court, the said declaration would not lead to the inference that the it was made immediately prior to the incident, or that it had direct nexus with the incident resulting in the murder of Baba Gurbachan Singh.

(13) According to the Trial Court, appellant Ranjit Singh, in order to achieve the object to kill Baba Gurbachan Singh, secured his initiation and joined the Nirankari Mission. He did 'Seva' and attended 'Satsang'. He started working as a carpenter in the carpentry workshop inside the Bhawan. He also worked outside as a carpenter for some of the Nirankar is. He donated a sum of Rs 100.00 that was due for his first eight days work in February, 1980. He borrowed tools and brought logs of wood for sawing and grooving etc. in the carpentry workshop while working

outside. On some occasions he stayed at the guest house inside the Nirankari Bhawan. He did all this for winning over the confidence of the Nirankaris and for avoiding suspicion against his movement with tools and logs of wood in and around the Bhawan. For the execution of his plan, he tried in vain to obtain from PW-91 Harjinder Singh chloroform and also a gun to kill Baba Gurbachan Singh. Ultimately, he got prepared at the workshop of Bada Gian Singh a log like wooden box (Ex. P-1) that was used for committing the crime. He borrowed from PW-12 Ajit Singh carpentry workshop's, 10 inch long Screw Driver (Ex. P-3) which was suitable for opening up the box (Ex. P-1) and for unscrewing the iron grill that was fixed in the window of the bathroom attached to room No. 14. He also managed to get fire arms, ammunition and hand-grenades that were actually used in the commission of the crime. He did all this while posing as a Nirankari.

(14) Further, the Trial Court found that on the fateful day, i.e. 24th April, 1980, Ranjit Singh was present and was seen moving along with his companion whom he introduced as his maternal uncle's son (Mama Ka Ladka) in and around the Bhawan. At about 4.30 p.m., he came to the carpentry workshop. He was having with him a noose prier (Ex. P-4). He had a talk with PW-12 Ajit Singh and took from him the 10 inch long screwdriver (Ex. P-3), representing that he needed it for fixing rollers in the Almirah, which he had earlier prepared, at the house of PW-11 Pritpal Kaur. In the adjoining auto workshop, he also had a word with PW-39, Darshan Uppal. Then PW-3 Niranjan Singh saw him and his companion climbing down the stairs near room No. 14. Thereafter he visited the house of PW-11 Pritpal Kaur and went away from there as the rollers that were to be fixed in the almirah were not available. At each of these places he was seen along with his companion, with the screw driver (Ex. P-3) and noose prier (Ex. P-4) in his hand. At about 6.30 to 7.00 p.m., near the Bhawan the appellant was noticed sitting with a beam of wood at the culvert and his three other Sikh companions had taken water from PW-22 Vidyawanti outside her house. At about 7.00 to 7.30 p.m. Ranjit Singh and his young companion came to the canteen in the Nirankari School compound. He had in his hand a screw driver. Here, PW-21 Janki Devi served them water. About 8.30 p.m., just at the rear gate of the Bhawan, outside her house, PW-19 Damodari saw Ranjit Singh and his companion carrying a log of wood. She had a talk with him. At about 9.30 p.m., PW-26, Naresh Kumar saw

Ranjit Singh and his companion at the staircase leading to room No. 14. Then, at about 10.00 p.m., when PW-15 Anoop Kumar came there to wash his shirt, he found that Ranjit Singh was inside the bathroom attached to room No. 14. After Anoop Kumar used the bathroom, he noticed Ranjit Singh and his companion standing outside. Just before the incident took place, at about 10.00 p.m. to 10.15 p.m. caretaker PW-35 Kulwant Singh also met Ranjit Singh and his companion near room No. 14. Ranjit Singh asked him if he could stay back in the Bhawan if he did not get the bus that night. Kulwant Singh told him that he had no objection to it. Soon after the incident, PW-8 Savitri Devi and PW-6 Harbhajan Singh saw Ranjit Singh with a gun on his shoulder and his companion bare-footed running in the back lane.

(15) The Trial Court also held that the wooden box (Ex. P-1), screw driver (Ex. P-3), the noose prier (Ex. P-4), a naked sword (Ex. P-2), one pair of brown colour shoes, a bed sheet, a shirt and other pieces of cloth were seized by PW-143SI Ramesh Pal Singh from Room No. 14 vide seizure memo Ex. PW-3/A. 6 empty cartridges also found lying on the floor near the window inside room No. 14 and various articles recovered from other places were taken into possession by separate seizure memos. The Trial Court further found that all the bullets used in the commission of the crime were fired from one .30 carbine through the front window of room No. 14 and that the 2 hand-grenades also were thrown from the balcony on the first floor into the courtyard. After he was seen running in the back lane, appellant Ranjit Singh absconded. Besides, the appellant's failure to offer any Explanation in his examination under Section 313, Cr.P.C. with regard to the circumstances appearing in the evidence, has been taken as additional circumstance against him.

(16) Further, the learned Trial Court has found that F.I.R. No. 395/80 Ex. PW-149/A was duly recorded, It was not ante dat

(17) Since the occurrence that caused the death of Baba Gurbachan Singh and Pratap Singh and hurt to PW-141 Kuldip Singh Walia is not in dispute, and no one present on the spot actually saw or recognised the assailant(s) the main question for decision would be whether the appellant Ranjit Singh was involved in the

commission of the crime. In this sense, this is a case for decision on the basis of circumstantial evidence.

(18) The principles of law relating to appreciation and evaluation of circumstantial evidence are now well settled. Some of the decisions of the Supreme Court are: *Naseem Ahmed v. Delhi Administration* 1974 Cri .L.J. 617, *Khashaba Maruti Shelke v. The State of Maharashtra*, : [1974]1SCR266 , *Dharam Das Wadhvani v. State of Uttar Pradesh*, : 1974 CriLJ1249 , *Mohan Lal Pangasa v. The State of U.P.*, AIR 1974 SCC 1144 , *Malkhan Singh & Another v. The State of Uttar Pradesh*, : 1975 CriLJ32 , *Shankerlal Gyarsilal Dixit v. State*, 1981 Scc (Cri.) 315, *State of Maharashtra v. Champalal Punjaji Shah*, 1981 Scc (Cri.) 672, *Sharad Birdichand Sarda v. State of Maharashtra*, : 1984 CriLJ1738 , *Ashok Kumar Chaterjee v. State of Madhya Pradesh*, 1989 Scc (Cri.) 566, *Padala Veera Reddy v. State of Andhra Pradesh and Others*, : AIR 1990 SC79 , *Kishore Chand v. The State of Himachal Pradesh*, 1990 Cri .L.J. 2289 , *State of U.P. v. Ashok Kumar Srivastava*, 1992 Scc (Cri.) 241, *Ram Kumar v. State of U.P.*, 1992 Scc (Cri.) 297, and *Gautam Maroti Umale v. State of Maharashtra*, 1994 Scc (Cri.) 1721, *Balwinder Singh v. State of Punjab*, : 1996 CriLJ883 .

(19) In *Naseem Ahmed (supra)* the law was explained as follows:

10.'This is a case of circumstantial evidence and it is, therefore, necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by dear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. In *Sharad Birdichand Sarda (supra)*, five cardinal principles described as 'Panchsheel' were laid down as the conditions that must be fulfilled before a case against an accused can be said to be fully established. They are :

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be'

established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved.

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. In *Ashok Kumar Srivastava (supra)* the Supreme Court recommended a cautious approach in appreciating circumstantial evidence and explained the kind of 'hypothesis' that must be negated on evidence to secure conviction of the accused in the following terms:

'THIS Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favor of the accused must be accepted. The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be.....'

In *Gautam Maroti limale, (supra)* it was observed as follows :

'IT is well settled that in a case of circumstantial evidence, the prosecution has to prove each of the circumstances and circumstances so proved should form a complete chain to bring home the guilt of the accused and they should be inconsistent with his innocence and also exclude every other hypothesis, however,

remote.'

Here, the reference to 'every other hypothesis' is not to be taken in absolute terms. It really alludes to and means reasonable hypothesis and that too arising out of the evidence on record, and not every conceivable hypothesis. The requisite standard of proof in cases of circumstantial evidence came up for consideration before this Court in *State v. Ashok Kumar & Anr.*, 1995 (1) Crimes 683 and it was observed that the standard to be adopted must be reasonable and not fantastic. It was clarified that circumstantial evidence must be inconsistent with every rationale hypothesis of innocence of the accused. It is not required to be inconsistent with every imaginable or conceivable hypothesis of innocence.

(20) The test of incriminating conduct of the accused has been amplified in *Malkhan Singh & Am. v. The State of Uttar Pradesh*, 1975 Cri .L.J. 32, *Shankerlal Gyarsilal Dixit v. State*, 1981 SCC(Cri.) 315, *State of Maharashtra v. Champalal Punjaji Shah*, 1981 Scc (Cri.) 672, *Kishore Chand v .The State of Himachal Pradesh*, 1990 Cri .L.J. 2289 and *Ram Kumar v. State of Uttar Pradesh*, 1992 Scc (Cri.) 297 in respect of certain matters that are somewhat similar in the present case and would be taken up for discussion later.

(21) The incriminating circumstances on the basis of which guilt of the appellant is sought to be established by the prosecution are enumerated below:

1. There was long standing enmity between Akalis and Nirankaris. On 13.4.1978 (Baisakhi day) there was a fight amongst them at Amritsar in which many Akalis and Nirankaris were killed. Thereafter, there was a general atmosphere of hatred towards Nirankaris created by poisonous speeches made by Bhinderwala and his followers. This was aggravated by acquittal of the Nirankari Baba and 60 other Nirankaris on 4.1.1980 in the Amritsar case.

2. A conspiracy was hatched between January, 1980 to April, 1980, to liquidate Nirankari Chief, Baba Gurbachan Singh.

3. Ranjit Singh, Chota Gian Singh, (acquitted), Bada Gian Singh (P.O.), Charanjit Singh (acquitted) and others were active members of Baba Deep Singh Ranjit

Akhara where Sikhs were trained in martial arts. They were staunch Akal is and anti Nirankar is.

4.. After the acquittal of Nirankari Baba on 4.1.1980, Chota Gian Singh (since acquitted) had spoken to PW-40 Kishori Lal that this time Nirankari Baba had been saved but a brave man had been born to be head him.

5.To gain confidence of Nirankar is, Ranjit Singh joined Nirankari Mission in February, 1980 through the good offices of PW-24 Onkar Singh and Dr. Des Raj.

6.As a Nirankari, Ranjit Singh started working in the Carpentry Workshop in the Nirankari Bhawan. He worked with PW-12 Ajit Singh and PW-36 Suresh Kumar. He also did some Sewa and donated Rs. 100.00 . He entrenched himself in the Bhawan.

7.In March and April, 1980 Ranjit Singh worked outside the Bhawan also with Nirankar is i.e. at the house of PW-11 Prit Pal Kaur and at the restaurant of PW-16 Narender Singh and thus he gained their confidence He was considered a devoted person, called 'MahaPurush amongst Nirankar is.

8.When Ranjit Singh was working at places outside the Bhawan, he used to take implements and tools from Carpentry Workshop on several occasions and he also used to bring logs and beams of wood from outside for grooving in the Carpentry Workshop. Thus, he could get tools from the Carpentry Workshop without any suspicion and he had an easy and unhindered entry into the Bhawan bringing logs and beams of wood.

9.While feigning as a Nirankari and working as a carpenter, Ranjit Singh was making plans to kill Baba. He stayed in Room No. 24 in the Guest House, opposite residence of Babaji, for one week from 17.2.1980 to 24.2.1980.

10.Ranjit Singh had expressed his intention during February-March, 1980 to PW-91 Harjinder Singh more than once that he would kill Nirankari Baba. He had asked for chloroform and a Revolver for that purpose from PW-91 Harjinder Singh because the latter was working in a hospital and his father had a licensed Revolver.

11. In an Akhara meeting, on the occasion of a Path on Friday, Chota Gian Singh (acquitted) had told the Akhara members that they should be happy to know that Ranjit Singh would bring honour to the Akhara and would kill Nirankari Baba and all should render help.

12. Ranjit Singh also told PW-91 on 21.4.1980 that he would receive a happy news by Friday about Nirankari Baba and the murder was committed on 24.4.80.

13. On 24.4.1980 at about 4 or 4.30 p.m. Ranjit Singh along with a young companion aged about 21 years (wearing Kurta and Pyjama and green turban and having a scanty beard) came to the Carpentry Workshop inside the Bhawan. At that time, he had with him a nose prier (Ext. P-4) and he took from PW-12 Ajit Singh in the presence of PW-36 Suresh Kumar a screw driver (Ext. P-3) for the purpose of fixing rollers in an Almirah, which Almirah he had earlier prepared for PW-11 Prit Pal Kaur, and rollers remained to be fixed.

14. At about the same time, in the adjoining Motor Workshop, Ranjit Singh and his companion met PW-39 Darshan Uppal and had a talk with him. There, Ranjit Singh was seen having the green handle screw driver (Ext. P-3) and a nose prier (Ext. P-4).

15. That at about the same time, PW-3 Niranjan Singh also saw Ranjit Singh and his companion coming down stairs from the first floor stairs near room-No. 14. At that time Ranjit Singh was having in his hand a screw driver of green colour (Ext. P-3).

16. At about 5 p.m. Ranjit Singh with his companion went to the house of PW-11 Pritpal Kaur. There, Ranjit Singh had nose prier Ext. P-4 and screw driver Ext. P-3 with him.

17. At about 6.30 to 7 Pm Ranjit Singh was seen near the culvert opposite the house of PW-22 Vidyawanti. He was accompanied by the youngman described earlier and two other Sardars i.e. three companions. Three of them, excluding Ranjit Singh, took water from Vidyawanti outside her house when PW-87 Tarsern Singh, who was a boy of 9/10 years at that time was also there. At that time Ranjit

Singh kept sitting on the culvert with a log of wood, which was the log-like box (Ext. P-1).

18. At about 7.00 to 7.30 PM Ranjit Singh and his young companion took water at the Canteen situated on a corner in the Nirankari School. They were served water by PW-21 Janki Devi and Ranjit Singh at that time had the screw driver Ext. P-3 in his hand.

19. At about 8.30 p.m. Ranjit Singh and his young companion were seen by PW-19 Damodari Devi taking a log of wood (Ext. P-1) inside the Bhawan through the rear gate of the Bhawan.

20. At about 9.30 Pm PW-36 Suresh Kumar saw Ranjit Singh and his young companion at the stairs of the Bhawan which lead to Guest House Room No. 14 on the first floor.

21. At about 10 p.m. Ranjit Singh was present inside the bath room attached to room No. 14, When PW-15 Anoop Kumar knocked at the door of the bath room, after sometime Ranjit Singh came out. Anoop Kumar washed his shirt in the bathroom and when he came out, he again saw Ranjit Singh and his companion standing outside at the balcony.

22. That at about 10 Pm to 10.15 Pm PW-35 Kulwant Singh, care-taker saw Ranjit Singh and his companion near Room No. 14 and Ranjit Singh asked him if he could stay in the Bhawan that night if he got late. Kulwant Singh responded that there was no objection in his staying during the night.

23. That, during the period between 4 p.m. and 10.15 p.m., while meeting or talking to various persons namely PW-12 Ajit Singh, PW-3 Niranjan Singh, PW-39 Darshan Uppal, PW-II Pritpal Kaur, PW-21 Janki Devi, PW-26 Naresh Kumar and PW-35 Kulwant Singh, who all knew Ranjit Singh very well, Ranjit Singh introduced his young companion as his maternal uncle's son (Mama Ka Ladka).

24. Room No. 14 was un-allotted and there was no guest staying in it that night. It was locked from outside before the incident and remained so locked even after the shooting; but the door connecting it with the adjoining bathroom, which was kept

open for common use, was found tampered with and opened for getting access to the room through the bathroom from the Verandah outside.

25. There was a fixed schedule of Babaji to go to Paharganj and he used to come back almost at the same time on every Thursday.

26. At 10.30 p.m., when Babaji's convoy arrived and he and Pratap Singh got down from their respective cars, six bullets of .30 Carbine were fired from room No. 14 through a broken glass of the window of room No. 14 which opened towards the balcony and which was just opposite the residence of Babaji. Babaji and Pratap Singh were hit by one bullet each and they were killed. Kuldip Singh Walia (Public Witness -141) was critically injured and his wife also got a superficial grazing injury.

27. All the bullets fired from room No. 14, that hit Babaji and Pratap Singh, were shot from a single weapon, which was i.e. .30 Carbine. The bullet heads found near the residence of Babaji and one underneath the railing in front of room No. 14 were also .30 Carbine bullet shots fired from the same weapon.

28. Two hand grenades were also thrown from the balcony and two men were seen running towards the bath room attached to room No. 14.

29. Immediately thereafter, Ranjit Singh with a gun on his shoulder, along with his companion was seen by PW-8 Savitri Devi and PW-6 Harbhajan Singh running away through the back service lane towards the Yamuna river embankment known as the 'Bandh'.

30. When the police reached and inspected the spot, they found the grill on the back window of the bath room attached to room No. 14 opened ajar, like the leaf of a door, nails ripped off from three sides, dangling on one side. They also found, within reach from the window, a rainwater pipe landing into the back lane.

31. On 25.4.1980 the Investigating Officer recovered screw driver Ext. P-3 and noseplier Ext. P-4 lying near the log of wood which was in fact a box Ext. P-1 containing a naked sword Ext. P-2.

32.Ranjit Singh could not be found at his residence on 25.4.1980. A thorough search was made. Different parties were sent to different places including Amritsar, Ludhiana and Durg (M.P.), but he was not found. Warrants of his arrest were issued. He was declared P.O. He absconded for 3' years and was ultimately arrested on 23.11.1983.

33.In his examination under Section 313, Cr.P.C., Ranjit Singh refused to explain the incriminating circumstances appearing in evidence against him.

(22) Now, in appeal, there are certain facts and circumstances that are no longer in dispute. Straightaway, the same may be noted. They are, (i) There was enmity between Akal is and Nirankar is. A fight among them had taken place at Amritsar on 13th April, 1978. In that case Baba Gurbachan Singh and other Nirankar is were acquitted on 4th January, 1980 (ii) Sant Jamail Singh Bhinderwala used to make inflammatory speeches against Nirankar is and he had given a call for be-heading the Nirankari Baba, (iii) Appellant Ranjit Singh was a staunch Akali and active member of Baba Deep Singh Ranjit Akhara, (iv) Appellant Ranjit Singh had joined and started working as a carpenter in and outside the Nirankari Bhawan during the relevant period. (v) He, Along with a companion, was present in the Bhawan on 24th April, 1980, (vi) Baba Gurbachan Singh and some others in three cars and a motor cycle reached the courtyard in front of the residence of Baba Gurbachan Singh at about 10.30 p.m.; (vii) On arrival of the convoy shots were tired, which caused the death of Baba Gurbachan Singh and Pratap Singh and caused hurt to PW-141 Kuldip Singh Walia.(viii) Two hand grenades were also thrown, which did not explode; and (ix) Lastly, appellant Ranjit Singh was arrested by PW-163 B.R.Puri on 23rd November, 1983.

(23) Mr. Randhawa, learned Counsel appearing for the appellant contended that prosecution version of the case is false. The F.I.R. Ext. PW-149/A was concocted, it was recorded after deliberation, ante-dated and ante-timed. The investigation was biased and tainted for falsely implicating Ranjit Singh in the commission of the offence. Seizure memo Ext. PW3/A was fabricated for showing recovery of certain incriminatory articles from room No. 14 . Screw driver Ext. P-3 was tampered with. Prosecution witnesses, especially those who have deposed about the presence of

Ranjit Singh in and outside the bath room adjoining Room No. 14 just before the occurrence, recovery of screw driver. Noose prier and Box from room No. 14, the identification thereof, and the escape of Ranjit Singh through the back lane, were got-up and their statements under Section 161, Cr.P.C. were recorded after pre-meditation. Case diary not handed over promptly to the C.B.I. and it was made up by the local police. Daily Diary of the Investigating Officer was suppressed and was not forthcoming at the time of trial. The crime was committed in a different manner by some other men who were let off. Evidence was suppressed, which was inconsistent with the prosecution version and consistent with innocence of the appellant, i.e., about finger prints and photographs taken from room No. 14, the iron grill allegedly removed from the window of the bath room attached to room No. 14, and a run-away motor-cycle. The charge of conspiracy was defective and involvement of the appellant in the same has not been established. The circumstances alleged to incriminate the appellant have not been proved by clear and cogent proof on record. In any event, the chain of incriminating circumstances is neither complete nor conclusive for leading to the sole inference consistent with the guilt of the appellant.

(24) First of all, taking up the plea that the Fir was fabricated, ante-dated and ante-timed, Mr. Randhawa contended that it affects credibility of the entire prosecution case. According to him, this plea would be evident from five factors. First, PW-1 Gobind Singh, whose information Ex. PW-1/A was treated as the Fir Ex. PW-1 49/A was not present at the time of the occurrence on the spot. Secondly, the Rukka Ex. PW-1/A was not in the handwriting of PW-143 Si Ramesh Pal Singh whereas the scribe was not examined as a witness and the daily diary (Roznamcha) of the Police Station was not produced. Thirdly, the special report was not sent forthwith to the Magistrate as required under Punjab Police Rule 24.5(1) and Section 157, Cr.P.C. Fourthly, copy of the Fir Ex. PW-149/A was not attached to either of the two inquest reports in respect of Baba Gurbachan Singh and Pratap Singh Ex. PW-54/C and Ex. PW-54/A respectively, as it should have been so done if the Fir was then in existence. Fifthly, particulars of material facts that must have been known i.e. (i) the name and description of appellant Ranjit Singh, (ii) the articles that were found in room No. 14, and (iii) escape of the assailants through the back lane; and (iv) other details were not mentioned in the

FIR. In support of his plea, he has relied upon Ram Kumar Pande v. The State of M.P., 1975 Cri .L.J 870 , Maharaj Singh v .State of U.P., 1994 Scc (Cri.) 1390, Gurdev Singh and Ors. v. The State, 1963 Plr 409, Shankar Lal Gyarsilal Dixit v. State of Maharashtra, 1981 Scc (Cri.) 315, Babu Poojari v. State of Kamataka, Jt 1992 (5) Sc 572, and Chandmal and Am. v. State of Rajasthan, : 1976 CriLJ679 .

(25) According to the prosecution, on 24th April,1980 at about 10.49 p.m. information was received from the Pcr at Police Station Kingsway Camp that a 'Sadhu' was firing shots in the Nirankari Mandir, which was recorded in the daily diary Ext. PW-143/DA. On the basis of this information, PW-143 Si Ramesh Pal Singh Along with PW-37 Constable Jai Kishan left for the spot which is at a distance of about 3 kms. from the police station. Si Ramesh Pal Singh, on enquiry after arrival at the Bhawan found that the information about a 'sadhu' firing was not correct and PW-I Gobind Singh, who was present, gave him information about the incident that had occurred at 10.30 p.m. The information given by Gobind Singh was reduced in writing Ex. PW-I/A. Si Ramesh Pal Singh then sent it to the police station through PW-37 Constable Jai Kishan at 12.50 a.m. vide Ex. PW-143/A for the purpose of registration of the case, with a request that a special report may be sent to the higher officers. Consequently, formal Fir Ex. PW-149/A was registered at 1.15 a.m. on 25thApril,1980.Endorsement made by Asi Dharam Singh at the bottom of Ex.PW-143/ A shows that the original writing Along with police file was sent through the bearer constable Jai Kishan back to the spot. A copy was also handed over to him for delivering the same to the complainant. Further, it was recorded:

'THE special report is being sent to the higher authorities through Narinder Singh Constable No. 823 by means of motor-cycle. The crime team and the Dog Squad have been informed.'

Reverting to the scene of occurrence, it appears that PW-149 Sho Dalbir Singh reached the spot at 1.00 a.m. and took over the investigation from Si Ramesh Pal Singh. He received the police file and other papers sent by the police station. Senior officers of the Delhi Police and also crime team, Cfsi team and Dog Squad reached the spot. Sho Dalbir Singh sent PW-143 Si Ramesh Pal Singh Along with

the Dog Squad to track down the assailants. On his return, on instructions of Sho Dalbir Singh, Si Ramesh Pal Singh prepared the inquest report Ex. PW-54/C on the body of Baba Gurbachan Singh, which was lying in the courtyard of the Bhawan and the inquest report Ex. PW-54/A on the body of Pratap Singh at Lnjp hospital. Thereafter, Sho Dalbir Singh got prepared by Si Ramesh Pal Singh site plans Ex. PW-143/E and Ex. PW-143/F. Various articles were also seized from room No. 14, attached bathroom, Verandah, stair case, courtyard and the back lane of Bhawan vide seizure memos Ext. PW-3/A, Ext. PW-3/B, Ext. PW-3/C, Ext. PW-3/D, Ext. PW-3/J, Ext. PW-3/K, Ext. PW-3/L and Ext. PW-3/M.

(26) During the trial, PW-1 Gobind Singh reiterated the details of the occurrence mentioned in the Fir Ext. PW-149 /A. In his lengthy cross-examination also, he gave minor details which he could not have done if he was not present at the time of the incident on the spot. In his cross-examination, a suggestion was given to him that he came to know about the incident when he was in Ghaziabad and he reached the spot only at 3.30 a.m. and his statement was recorded early in the morning on the next day. PW-2 Kishan Pal, driver of the Mercedes car confirmed the presence of PW-1 Gobind Singh while going for 'Satsang' to Paharganj, return from there as well as on the spot at the time of the incident on 24th April, 1980. As against the suggestion given to PW-1 Gobind Singh, a different suggestion was made to PW-2 Kishan Pal that Gobind Singh had gone away from Ghaziabad to Jullunder, that he was contacted there, and that nobody was prepared to lodge a report till arrival of Gobind Singh at Delhi. PW-3 Niranjan Singh confirmed the presence of Gobind Singh on the day of incident even earlier at 4.00 p.m. in his cross-examination. PW-15 Anoop Kumar had stated in his cross-examination that immediately after the firing he had seen Babaji's car parked by the side of Chabutara, Babaji's body was lying at a distance of about two and half feet from the left headlight of the car and Pratap Singh by the side of left front door of car at a distance of about six feet from Babaji. Some other persons were also standing there. He added: 'Gobind Singh Bhaiyaj was one of them.' PW-141 Kuldip Singh Walia is not a Nirankari. He and his wife Shiv Darshan Kaur had come to the Bhawan at about 10.20p.m. for meeting Baba Gurbachan Singh. He has given a correct description of the sequence of events, including arrival of the motor code and the incident of firing. He was himself critically injured. His presence on the

spot cannot be doubted. He too affirmed the presence of Gobind Singh on the spot and that he was sitting in the car in which Baba Gurbachan Singh had arrived. He gave minute details about the vehicles in the convoy and the position of different persons sitting in those cars. PW-149 Sho Dalbir Singh explained that in April, 1980 he was working as Sho Police Station, Kingsway Camp. On the night between 24th April, 1980 and 25th April, 1980 Si Ramesh Pal Singh had sent the Rukka to the Police Station and on receiving information he rushed to the Nirankari Bhawan, which was in his jurisdiction, and took over investigation of the case. Si Ramesh Pal Singh remained associated with him throughout the investigation. Many people had assembled in the courtyard outside the residence of Baba Gurbachan Singh. Gobind Singh, complainant was also present. This was at 1.00 a.m. Thereafter, he went on to explain that the Dog Squad reached the spot by 1.30 a.m. He instructed Si Ramesh Pal Singh to follow handler of the dog and thereafter directed him to perform various other functions. In the witness-box, PW-143 Si Ramesh Pal Singh also remained steadfast and maintained that PW-1 Gobind Singh was present when he first arrived and that the oral information given by him was reduced to writing Ex. PW-1/A, which was attested by him, and the same was forwarded to the police station for recording the FIR. On a combined reading of all this evidence, it is manifest that PW-1 Gobind Singh got recorded what he had seen. His presence at the time of occurrence and giving the information Ext. PW-1 /A on the spot are firmly established.

(27) It is no doubt true that the Rukka Ex. PW-I/A is not in the handwriting of PW-143 Si Ramesh Pal Singh. He had stated in his examination-in-chief that it was scribed by some constable of his staff on his dictation and that PW-I Gobind Singh signed it in his presence and he himself attested it. The veracity of this statement cannot be doubted merely because the witness was unable to give the name of the particular constable who had scribed the Rukka. More important than the name of the scribe is the fact that the information about commission of the offence was given by PW-I Gobind Singh and the same was reduced to writing at the stated time and place. This is corroborated by the statement of PW-37 Constable Jai Kishan. He stated that he reached the spot Along with Si Ramesh Pal Singh at about 11.15 or 11.30 p.m. Si Ramesh Pal Singh gave him Rukka Ex. PW-I /A and he took it to the Police Station where it was recorded as the formal FIR. So far as

the daily diary (Roznamcha) in which the substance of the First Information was entered at the police station, is concerned, it is noted in the Trial Court order dated 8th August, 1991 that the same was destroyed on 31st July, 1985 under direction of the Dcp (North) since it was five years old record. In the given circumstances, no adverse inference can be drawn from the non production of the daily diary.

(28) Special report is required to be sent forthwith to the Magistrate under Section 157, Cr.P.C. It has to be submitted through the superior officer, who may give to the Investigating Officer such direction as he may think fit, and then transmit the same without delay to the Magistrate under Section 158, Cr.P.C. Punjab Police Rule 24.5 also requires that the Fir shall be sent to the Magistrate immediately. Delay, if any, in sending the special report would no doubt be a factor to show subsequent deliberation. But delay by itself would not be a ground for drawing such an inference. Unless deliberation is established, non sending or delay in sending the special report to the Magistrate would be of no significance. In the present case, no name of any accused is mentioned in the FIR. With regard to other vital facts, namely, firing from the side of room No. 14, throwing of hand grenades and the names and nature of injuries caused to the different persons, there is no controversy. If the complainant or the police wanted to implicate anyone nothing prevented them from giving the name. Rather, not mentioning the name of the accused would rule out deliberation and inspire confidence that the complainant was not out to implicate the accused. See Ramdas and Anr. v. State of M.P., 1993 Cri .L.J. 164 and Liyakat Mian and Ors. v. State of Bihar, 1973 Cri. L.J. 584 . The very fact that the name of the accused was not mentioned in the Fir is a strong circumstance which excludes the possibility of any motive for causing delay or not forwarding copy of the Fir to the Magistrate. In such a case, there would be no need to suspect mala fides as held in The Public Prosecutor, High Court of A.P. Hyderabad v. Ash Mohammed, 1981 Cri. L.J. 646 (Andhra Pradesh). Moreover, in Ex. PW-143/A dispatched at 12.50 a.m. by PW-143 Si Ramesh Pal Singh to the Duty Officer, Police Station, Kingsway Camp, it was specifically stated: 'Special report may be sent to the higher officers.' Steps taken at the police station endorsed below Ex. PW-143/ A mentioned that on the basis of the Rukka prepared and sent by Si Ramesh Pal Singh Fir No. 395/80 had been recorded and it was stated at the end: 'The special report is being sent to the higher authorities

through Narinder Singh Constable No. 823 by means of motor-cycle. The crime team and Dog Squad have been informed.' Obviously, PW-143 Si Ramesh Pal Singh as well as the concerned officer at the Police Station were fully conscious and aware of the requirement of sending special report through superior officers under the Punjab Police Rules Chapter 24 Rule 5 as well as Sections 157 and 158, Cr.P.C. Additionally, the tail- piece of the said endorsement is divisible into three parts; firstly, sending of the special report; secondly, information given to the crime team; and thirdly, information given to the Dog Squad about the reported incident. It is clear from the testimony of PW-143 Si Ramesh Pal Singh and PW-149 Sho Dalbir Singh that the crime team, the Cfsi team as well as the Dog Squad had reached the spot and swung into action promptly around 1.30 a.m. This obviously was the outcome of the steps taken at the Police Station that are mentioned in the endorsement. There is no reason to believe that the first part also was not pursued. On the other hand, there is a presumption that the common course of business has been followed and official acts have been regularly performed by the police in the present case also under Section 114 of the Evidence Act. Merely because evidence of actual transmission of the special report to the Magistrate has not been placed on record, no adverse inference can be drawn that the special report was not sent or it was sent late or that it was deliberately held back for manipulating the FIR.

(29) Learned Counsel for the appellant contended that PW-143 Si Ramesh Pal Singh had sent the two inquest reports at about 4.30 a.m. with whatever documents he was having with him, but a copy of the Fir was not attached with it because the Fir was not ready up to that time. This, according to him, was the second external check laid down in *Meharaj Singh v. State of U.P.*, 1994 Scc (Cri.) 1390 which was important to determine whether the Fir was lodged at the time it is alleged to have been recorded. Ex. PW-54/C is the first inquest report in respect of Baba Gurbachan Singh. The second one is Ex. PW-54/A in respect of Pratap Singh. Admittedly, no copy of the Fir or Rukka was attached with either of these two reports. It emerges from the statement of PW-143 Si Ramesh Pal Singh and PW-149 Sho Dalbir Singh that on return from the Police Station PW-37 Constable Jai Kishan had given the Rukka and copy of the Fir Along with the police file to Sho Dalbir Singh, who had already arrived and taken over investigation of the

case on the spot, and not to Si Ramesh Pal Singh. Sho Dalbir Singh had directed Si Ramesh Pal Singh to conduct the inquest proceedings. He prepared each of the two inquest reports in the presence of PW-54 Khem Raj Chadha and Gopal Singh Premi who signed the same as witnesses.

(30) Punjab Police Rule 25.31 read with Rule 35 requires that upon receipt of information of unnatural death of any person the Investigating Officer shall draw up an inquest report. Such report shall state the apparent cause of death, give a description of any mark or marks which may be found on the body and describe the manner in which and the weapon with which such marks appear to have been inflicted. The documents that shall form part of such report are enumerated in Rule 25.35(4) as follows:

(A) The plan of the scene of death, (b) The inventory of clothing, etc. (e) A list of the articles on and with the body, if the body is sent for medical examination. (d) A list of articles sent for medical examination, if any.

(31) There is no statutory requirement making it necessary for the Investigating Officer to attach a copy of the Fir or the Rukka with the inquest report. It has been explained in *Podda Narayana & Others v. State of Andhra Pradesh*, : AIR 1975 SC1252 , *Hukam Singh & Others v. State of Rajasthan* 1977 Cri .L.J. 639, *Basit Ali and Anotiler v. State of Madhya Pradesh*, 1976 Cri. L.J. 776 and *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*, 1991 SCC(Cri.)916, that proceedings for inquest under Section 174, Cr.P.C. have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or unnatural death and if so what is the apparent cause of the death. The question regarding the details, as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is beyond the ambit and scope of proceedings under Section 174, Cr.P.C. It was pointed out in *Babu Poojari v. State of Kamataka*, Jt 1992 (5) Sc 572 that inquest report is not evidence by itself.

(32) In the present case, inquest report of Babaji Ex. PW-54/C was prepared at about 3.30 a.m. It was supported by statements of the witnesses PW-54 Khem Raj Chadha and Gopal Singh Premi Ex. PW-54/D and Ex. PW-54/DI respectively. The

report in respect of Pratap Singh Ex. PW-54/A was prepared at Lnpj Hospital at about 5.00 a.m. on 25th April, 1980 and that too was supported by statements Ext. PW-54/B & Ext. PW-54/BI. Every document in each of these two sets mentioned correct particulars of the case, namely, Fir No. 395/80. The cause of death by firing and the Nirankari Bhawan as the place of occurrence was given in each of the inquest reports. Moreover, application and brief facts Ex. PW-143/B Ex. PW-143/C & Ex. PW-143/D were sent by PW-143 Si Ramesh Pal Singh to PW-38 Dr. Bharat Singh for autopsy Along with the body of Baba Gurbachan Singh. Each of these applications contained the Fir number and also the fact that Gobind Singh had made a statement on the basis of which the case was registered. In view of the very fact that Fir number and other particulars of the case are set out in these various documents, it cannot be said that the Fir was not in existence at the time of the preparation of the inquest reports merely because a copy of the Fir was not attached.

(33) The decision in the case of Meharaj Singh v. State of U.P., 1994 Scc (Cri.) 1390, cited by the learned Counsel for the appellant is clearly distinguishable on facts. In that case occurrence was shown at 11.30 a.m. and the Fir was found to have been ante-timed and shown to be recorded at 12.45 p.m. and the accused persons were named in it. The Court held that the three eye-witnesses and the first informant were unreliable. They were created witnesses. They were not believed for various reasons. The Court held that even the incident did not take place at 11.00 a.m. or 11.30 a.m. as alleged by the prosecution, but much earlier. In paragraphs 13 and 15 of the judgment a number of reasons have been given for holding that the Fir was ante-timed. In the present case, however, we find no such element for drawing an inference that the Fir was not in existence up to the time when the inquest reports were prepared or that it was ante-timed. That decision is based upon its own peculiar facts. It is not applicable to the facts and circumstances of the present case.

(34) Next, let us take up the plea that important facts about the description of the assailants and their escape through the back lane and regarding the articles found in room No. 14 must have been known to PW-1 Gobind Singh, but the same were not mentioned in the F.I.R. and its effect. In Pattipati Venkaiah v. State of Andhra

Pradesh,1985 Scc (Cri.) 464 it has been explained that the Court should not start with the presumption that the Fir was false or fabricated. On the contrary, there is a presumption under Section 114 Illustration (e) of the Evidence Act that official acts have been regularly performed. Moreover, in Arumugam Solathirayar v. Ponnalagu Pandarar and Others, 1958 Cri. L.J 385, Bhopat Singh Kishan Singh v. The State of Maharashtra : 1973 CriLJ343 , Ramnath and Others v. State of M.P., 1984 (1) Cri 61 and Jagtar Singh v. State of Punjab & Others,1988 Cri. L.J 866, it is laid down that the Fir is not the beginning and ending of every case. It is not expected to contain all the details. It is only a complaint to set in motion the machinery of law. It is only at the investigation stage that all the details can be gathered and filled up. The Fir is not an Encyclopedia.

(35) With regard to the name and description of the assailant(s), Mr. Randhawa argued that PW-I Gobind Singh claimed that he saw 'two persons' standing in the balcony, who ran towards the bath room attached to room No. 14; and in his earlier statement Ext. PW1/A, with which he was confronted, he neither specified the number of persons nor did he give their description; whereas appellant Ranjit Singh and his companion could be easily identified and described by their prominent turbans as sikhs, and some of the prosecution witnesses, present on the spot, knew appellant Ranjit Singh and PW-26 Naresh Kumar had even seen him and his companion just one hour earlier near the stair-case leading to room No. 14. Moreover, information about the articles found in room No. 14 and that two sikhs had escaped through the back lane was not given in the FIR. It was contended that information about these aspects was deliberately suppressed and not given in the Fir for some ulterior motive. We find no substance in this plea.

(36) It is no doubt true that in the information Ext. PW1/A, given by Gobind Singh it was recorded that he had seen some persons standing in the balcony and running towards the bath room and in Court he deposed that 'two persons' were there. In these two statements, there is no contradiction, though it may well be said that he made an improvement upon his previous statement about the number of persons. He emphatically stated in his cross-examination: 'Nobody told me before I made my statement to the police that he knew the assailants. At that time nobody also told me about the description of those assailants.' Among the others who were

present on the spot, Public Witness 2 Kishan Pal had stated that he also saw two persons in the balcony of room No. 14 and they were running. He was the driver of the Mercedes car from which Babaji had got down. He heard the sound of shots being fired from the side of room No. 14 and saw Babaji falling down. Then, he noticed that 'something solid' (handgrenade) had fallen in the courtyard. It was only there after that he looked up towards room No. 14 and saw two persons from their 'back side' running away. In the given sequence of events, it would be wrong to infer that he must have noticed that those two persons were Sikhs and also to presume that he would have conveyed this information to PW-1 Gobind Singh. The next witness PW-3 Niranjan Singh was in the Fiat car, which was behind the car of Babaji. When he was getting down from the car, he heard the bang which he thought was the sound of some cracker. He glanced in that direction and noticed 'a flash coming out from the side of room No. 14'. He did not even claim to have seen anyone there. So far as Public Witness 26 Naresh Kumar is concerned, at 9.30 p.m., he did meet Ranjit Singh and his companion near the stair-case. Later, when the incident took place, he saw Babaji coming out of the car, and just then, he heard some sound like a cracker or bang followed by 5 to 7 such sounds. These sounds came from the direction of room No. 14. Some particles of cement fell on his face. He saw Babaji while falling down. Then, he felt that the sound was of shots being fired. He too did not claim to have seen at that time any one near room No. 14. According to him, he got perplexed and ran away towards the workshop and did not even look that side. Although PW-3 Niranjan Singh and PW-26 Naresh Kumar knew appellant Ranjit Singh, yet on the basis of their evidence, we are unable to accept the argument that either of them must have seen the two Sikhs and recognised appellant Ranjit Singh and further more that they must have told PW-I Gobind Singh about it before his statement Ext. PW1 /A was recorded.

(37) So far as the articles that were lying in Room No. 14 are concerned, the same were seized vide memo Ex. PW-3/A at the time of inspection of the said room and other places in the morning on the next day after 8.30 a.m. Nobody had paid attention to the articles which were found lying in Room No. 14 and there was no occasion for information about the same being recorded in the Fir Ex. PW.143/DA at night on 24.4.1980 at 10.49 p.m.

(38) Similarly, with regard to the escape of the assailants through the back lane, the Fir was recorded. It appears from the statement of PW-39 Darshan Uppal that he was told by Surender Sethi and some others that there was an attack on Babaji and that two Sikhs had escaped through the back lane. He, then Along with some others, rushed to the back lane, where they met Channi and Jog Raj, and thereafter they went out in a black Fiat Car No. MHM-7343 in search of the assailants in the area at the back of the Bhawan, but in vain. Thus, it appears that the rumour that two Sikhs had escaped through the back lane was floating around.

(39) It has come in the evidence of PW-8 Savitri Devi that on 24.4.1980 she was on the roof top of her house, which is the fifth house located at the back of the Bhawan, at about 10.45 p.m., when she heard the sound of firing of bullets from the side of the Bhawan. She peeped down towards the small lane at the back of her house and saw two men, who were coming from the side of the Bhawan and running through the back lane. The taller man was having a gun on his shoulder and both were running towards the Bandh. She too went to the Bhawan. There she told the police officials that she had seen two men running away through the back lane. But, at that time, the police officials merely asked her to give her name and address so that they could contact her afterwards. Thereafter, her statement was recorded by the police on the following day at about 12.00 or 12.30 p.m. This finds corroboration from the statement of PW-149 Sho Dalbir Singh, who had reached the Bhawan and took over investigation of the case at about 1.00 a.m. He deposed that when he reached the spot many people had already gathered there. He made enquiries from them but did not record their statements at that time. He named PW-8 Savitri Devi also as one of them. It has also come in his evidence that he recorded statements of eight persons, including PW-8 Savitri Devi immediately after deployment of the dog squad, crime team and the Cfsi team, preparation of the inquest reports, inspection of the scene of occurrence and the surrounding areas as well as preparation of the site plan and recovery of the articles found in the courtyard, Room No. 14, bathroom attached to it and the back lane.

(40) It is thus, clear that the information about the articles that were found lying in room No. 14 and the escape of the assailants from the back lane was not known

to PW-1 Gobind Singh up to the time when his information Ext. PW-1/A was reduced into writing and the Fir was recorded. Hence, there was no question of incorporating the same in the FIR. Rather than advancing the plea of omission of the material information from the Fir, all this would go to establish that the F.I.R. was neither ante-dated nor ante-timed.

(41) Moreover, there is ample positive evidence available on record to rule out the plea there was prior consultation, deliberation or delay in recording the F.I.R. It may be recalled, at the risk of repetition, that on receiving information Ext. PW143/DA from the P.C.R., the police party had immediately reached the Bhawan and after enquiring about the 'Sadhu' PW-143 S.I. Ramesh Pal Singh got the information given by PW-I Gobind Singh reduced into writing and sent the Rukka to the police station for recording the F.I.R. The time spent between the occurrence at 10.30 p.m. and commencement of recording of the Rukka has, thus, been accounted for. Further, it has come in the deposition of PW-143 S.I. Ramesh Pal Singh that it took him about 45 minutes in recording the information Ext. PW1/A, which is in Hindi running into 3-4 pages, and then recording the note Ext. PW143/ A and dispatched it through Public Witness 37 Constable Jai Kishan to the Police Station at 12.50 a.m. This information given by PW-I Gobind Singh Ext. PW1/A started at 12.05 a.m., and it took about 45 minutes, which is quite reasonable time, for completing the exercise and sending the Rukka to the Police Station at 12.40 a.m. Then, it appears from the statement of PW-I 49 Sho Dalbir Singh that immediately on receipt of the Rukka, he left the police station and reached the spot at about 1 a.m. At the police station, F.I.R.No. 395/80 was recorded at 1.15 a.m. Thereafter, PW-37 Constable Jai Kishan brought the Rukka and the formal Fir Ext. PW143/A back to the Nirankari Bhawan and gave the same to Sho Dalbir Singh. Public Witness 37 Constable Jai Kishan has testified that on 24th April, 1980 he had accompanied Public Witness 143 Si Ramesh Pal Singh to Nirankari Bhawan, reaching there at about 11.15 or 11.30 p.m.; Rarnesh Pal Singh gave him Rukka Ext. PW1/A; he took it to Police Station, Kingsway Camp and handed over the Rukka to the Duty Officer Asi Dharam Singh who recorded the formal FIR; he then brought back the original Rukka and copy of the Fir to the Nirankari Bhawan. This evidence, therefore, has to be accepted. Also as discussed earlier, in pursuance of the steps taken at the police station on the basis

of the F.I.R., the Crime Team and the Dog Squad did arrive and start promptly their part of the investigation work on the spot. Further, particulars of the F.I.R. were properly noted in each of the numerous documents that were prepared in the course of investigation. All this would firmly establish the fact that the F.I.R. was duly recorded at the stated time.

(42) In view of the foregoing discussion, we are satisfied that PW-1 Gobind Singh had given full information, as much as he knew, about the incident, the same was reduced to writing Ext. PWI/A and was re-produced and recorded in the F.I.R. Ext. PW149/A. Also that the F.I.R. was duly recorded at the stated time and that the same was neither delayed nor ante-dated or ante-timed. We find no substance in the plea that the F.I.R. was fabricated for falsely implicating the appellant. On the contrary, no ulterior motive can be attributed to the prosecution, especially when the accused was not named in the F.I.R.

(43) Additionally, regarding the F.I.R., it was contended that the Nirankar is themselves did not report the crime for some ulterior motive, and that the F.I.R. was not duly proved on record.

(44) In the facts and circumstances of the case, in our view, no adverse inference can be drawn merely because the Nirankar is themselves did not give information of the crime. Baba Gurbachan Singh, Pratap Singh, Kulwant Singh Ahluwalia and his wife were injured. The first two collapsed there and then. At once, the body of Baba Gurbachan Singh was shifted to the Verandah in front of his residence. Immediately, after giving him water he was taken to Tirath Ram Hospital. Pratap Singh was taken to Lnjp Hospital and Kuldip Singh Walia and his wife to Hindu Rao Hospital. Thus, it is evident that the first anxiety of everyone present on the spot was to save the life of Babaji and Pratap Singh who were badly wounded, and to provide medical aid to the other victims, who too were injured; rather than rush the police station. This was quite natural. It has been so held in *Krishna Pillai Sree Kumar & Another v. State of Kerala*, 1981 Scc (Cri.) 669, *Pattipati Venkaiah v. State of Andhra Pradesh*, 1985 Scc (Cri.) 464, *Gurnek Singh & Another v. State of Punjab*, 1989 Scc (Cri.) 70 and *Kanhiya Lal & Others v. State of Rajasthan*, 1990 Scc (Cri.) 168.

(45) It is proved by the evidence of PW-1 Gobind Singh and PW-2 Kishan Pal that it took them 20 minutes to carry Babaji from Nirankari Bhawan to the Tirath Ram Hospital. 30/40 minutes were spent there, arranging for a stretcher and calling the doctor, who examined and declared him dead and in obtaining the death certificate. Then, his body was brought back to the Nirankari Bhawan. In the meanwhile, the Pcr had informed the local police station and the police party had arrived. It has come in the evidence of PW-I Gobind Singh that on his reaching back at Nirankari Bhawan from hospital he gave the information Ext. PW-I /A, which was recorded after about 10-15 minutes. What could be the ulterior motive for the Nirankar is themselves not reporting the crime? Nothing. None has been pointed out.

(46) Learned Counsel for the appellant argued that at the time when the police party arrived at the Bhawan the version was that the incident was due to inter-se enmity of the Nirankar is, but the complainant was given sufficient time to think over and his statement was recorded the next day giving a different story for embarrassing the Akal is. This argument is based upon the belief that the F.I.R. was ante-dated and ante-timed, which has earlier been discussed and rejected. Moreover, there is no cogent evidence on record to show that internal enmity was anyone's version at that time. We find no substance in this argument also.

(47) On the question of proof of the F.I.R., it was feebly contended that Asi Dharam Singh was the best person to prove it, but he was not produced as awitness. We find no force in it. The name of Asi Dharam Singh had not been suppressed. It has come in the evidence that he was the one who had recorded the F.I.R. PW-149 Sho Dalbir Singh deposed that he had seen Asi Dharam Singh signing and writing when he was working under him. He identified the signatures of Asi Dharam Singh on the formal F.I.R. Ext. PW149/A. It was, therefore, not necessary for the prosecution to produce Asi Dharam Singh also as a witness to prove the F.I.R. His non-examination does not in any way affect the prosecution case as the recording of the F.I.R. has been duly proved by other evidence in accordance with law. In taking this view, we are supported by the decision in State of UP. v. Vinod Kumar and Udai Bhan Singh, 1992 Scc (Cri.) 505. In any event, this is too frail a plea for throwing out the prosecution case.

(48) Learned Counsel for the appellant argued that investigation of the case was not fair and it was tainted. Top dignitaries of the Government and the highest ranking officers of the police department had converged at the place of occurrence. So, in order to please the Nirankaris, the Investigating Officers were bound to toe the given line. Alternative hypotheses inconsistent with the guilt of the accused Ranjit Singh were not properly investigated. Two of such hypotheses were: (i) the involvement of a 'Sadhu' or some one, dressed as a Sadhu, even a Nirankari, which is evident from the unexplained recovery of the .12 bore empty cartridge fired from the courtyard and its pellets etc. found in the garage under room No. 14; and (ii) the involvement of five persons, including one Harcharan Singh, who were carrying arms and ammunition, intercepted by the police around the same time when the incident took place, driving away to Punjab in a Matador Van bearing Registration No. HRF-8517. The Investigating Agency also suppressed extenuating evidence of, among others : (i) the guard posted at the front gate of the Bhawan, who could depose about the entry and exit of the persons and vehicles actually involved in the commission of the crime; (ii) finger prints picked up from various articles and places in room No. 14; (iii) the iron grill of the window inside the bathroom attached to room No. 14; (iv) photographs of the scene, including the state of things, inside room No. 14 and in the adjacent bathroom; and (v) Daily Diary Roznamcha of the local police station. The Case Diary in respect of initial stage of investigation by the local police was fabricated and that is why handing over the same to the Cbi was delayed. The Investigating Agency even tampered with the screw driver Ex. P-3 by engraving on it the distinctive letter 'N', which was planted along with the other incriminating articles to show that the same were found inside room No. 14; and the recovery thereof from that room vide Seizure Memo Ex. PW3/A was false. Moreover, in order to placate the Nirankaris, false evidence was created; all Nirankaris, who were interested persons, were conveniently propped up as material witnesses; and the false version of Akali conspiracy, incriminating the appellant Ranjit Singh in the commission of the crime, was set up. Reliance was placed upon *C. Cheltappan & Others v. State of Kerala*, : 1979 CriLJ1335, to contend that one tainted evidence cannot be used to corroborate another tainted evidence; and on *Amin Chand & Ors. v. Crown*, 1948 Cri. L.J. 522, 1994 (2) Cri.R 103 and *Amin Chand & Ors. v.*

State, 1958 Cri. L.J. 462 for the plea that if bona fides of the manner and method of investigation is assailed, it effects credibility of the substantive evidence also. There is no quarrel with the proposition of law based upon the decisions cited by Mr. Randhawa. But, in the facts and circumstances of the present case, for the reasons that follow, we find no substance in the plea that investigation was unfair or tainted.

(49) It has come in the evidence of PW-4 Mangal Sain that high ranking police officers had arrived at the place of occurrence and that in the morning on 25th April, 1980 the Prime Minister had come to the Nirankari Bhawan for condolence. This, by itself, however, would not be sufficient for drawing the inference that the investigating officers went out of the way, fabricated evidence, for appeasing the Nirankar is. There is no evidence placed on record that would go to show that the investigating officers or the other authorities were interested in placating the Nirankar is or falsely implicating the Akal is in general and Ranjit Singh in particular. We find nothing strange about the visit of high ranking police officers or other high dignitaries and even the Prime Minister at the place of occurrence, especially in view of the fact that the revered head of the Nirankari Mission, who held an important position in public life, had been assassinated. The investigating agency, in such a situation, would rather be impartial and fair. Investigation is presumed to be fair, unless it is proved otherwise. So, let us proceed to deal with the enumerated factors to find out whether the presumption is displaced in the present case.

(50) According to Mr. Randhawa, the first extenuating hypothesis is that a Sadhu or some one dressed as a Sadhu was involved in the assault and he managed to escape through the front gate of the Bhawan. This hypothesis, according to him, would completely demolish the prosecution case of Akali conspiracy and the involvement of Ranjit Singh, but it was not properly investigated. This plea is sought to be raised on the basis of the Pcr message recorded in Daily Diary Ex. PW-143/ Da that a Sadhu was firing; two books namely 'Avtar bani and 'YugPurush published by the Nirankari Mandal; and recovery of the .12 bore empty bullet cartridge Ex. D-1, wads and pellets Ex. D-3/1 to 11 & Ex. D-2/1 to 21, fired from the double barrel gun that was ultimately recovered from Kundan Singh. He urged: (i)

that Asi Lal Singh, who had transmitted the message Ex. PW-143/DA from the Pcr to Police Station, Kingsway Camp about firing by a Sadhu was not examined; (ii) that no effort was made for explaining the movement of one motor cycle that may have been used by the assailant for his escape; (iii) that the guard posted at the front gate, who could depose about the in and out movement of the unaccounted motor cycle, was not produced as a witness; and (iv) that no effort was made to find out from Kundan Singh the circumstances in which his double barrel gun was used for firing a shot in the courtyard inside the Bhawan on the fateful day.

(51) The fantasy of a Sadhu firing germinated from the information Ext. PW-143/ Da received from the Police Control Room and recorded in the Daily Diary at the Kingsway Camp Police Station at 10.49 p.m. It reads thus:

'SH.Lal Singh A.S.I, has in-formed from the P.C.R. that a Sadhu is firing in Nirankari Mandir situated at Nirankari Colony. Some officer may please be sent. On receipt of the aforesaid telephonic information a report was entered into the Roznamcha. The copy of report having been prepared separately was handed over to Sh.Ramesh Pal Singh Si who Along with Constable Jai Kishan left for the spot.'

This version of the case was sought to be developed through the cross-examination of PW-141 Kuldip Singh Walia, PW-143 S.I. Ramesh Pal Singh and PW-149 Sho Dalbir Singh. It would, therefore, be useful to advert to the relevant part of testimony of each of these witnesses.

(52) PW-141 Kuldip Singh Walia, in his examination-in-chief, deposed that he was residing at Ludhiana for the last about 20 years. He had applied for Congress Party's ticket for contesting the Assembly election for the State of Punjab from Ludhiana Constituency. He came to Delhi on 24th April, 1980 to meet Gobind Singh and Babaji to muster their support in the election because there were quite a large number of Nirankari voters in the constituency. He and his wife reached Nirankari Bhawan for meeting Babaji at about 10.20 p.m. Since Babaji was expected to return soon, he and his wife sat down on the Dari spread near the Thad a waiting for him outside his residence in the Nirankari Bhawan. When the motorcade of Babaji arrived every one stood up. Further, the witness proceeded to

give an account of arrival of the motorcade as well as the occurrence. In his cross-examination, he emphatically denied the defense suggestion of his having seen a 'Sadhu' riding a motor cycle behind the car of Babaji.

(53) PW-143 S.I. Ramesh Pal Singh, on receipt of the message Ext. PW-143/DA, reached the Nirankari Bhawan. He found a crowd of people gathered outside the residence of Baba Gurbachan Singh in the courtyard inside the Bhawan. He has stated in his examination-in-chief that he recorded the information Ext. PW-1 /A given by PW-1 Gobind Singh and forwarded the rukka Ext. PW-143/ A to Kingsway Camp, Police Station for recording the formal FIR. In his cross-examination, he has stated that after reaching the spot, he made enquiry about the story of firing by a sadhu and it was found to be incorrect.

(54) PW-149 Sho Dalbir Singh, in his cross-examination, was given a suggestion that evidence of involve pent of a Sadhu in the firing was suppressed, which was denied.

(55) Mr. Kaira, learned Counsel for the State (CBI) contended on the other hand that there was no Sadhu involved in the firing; that the possibility of a wrong or misleading message being given by someone, for misguiding the police, cannot be ruled out in a case of conspiracy; that the origin of the information and particulars of the person who may have given the information to Asi Lal Singh at the police control room were not known and no question about it was put to the Investigating Officers in their cross-examination; and that the information about the Sadhu firing in the Nirankari Bhawan was verified by PW-143 Si Rarnesh Pal Singh and the same was ruled out. In these reasons given by Mr. Kaira, we find considerable force.

(56) Immediately on arrival at the Nirankari Bhawan, PW-143 Si Ramesh Pal Singh made enquiry about involvement of the Sadhu and found this part of the information given in Ext. PW-143/DA incorrect. Moreover, PW-141 Kuldip Singh Walia is not a Nirankari. He had come from Ludhiana on the fateful day and reached the Bhawan just a few minutes before the occurrence took place. He has given a vivid account of the occurrence. He himself and his wife were both critically injured in the firing. His presence on the spot at the time of firing is thus

established beyond doubt. He, was an independent witness. He was not interested in falsely supporting the prosecution case or in implicating anyone in the case. Irrespective of the confusion appearing in his deposition about the number of motor cycles or the placement thereof in the motorcade, which would be discussed in greater detail a little later, his testimony totally wipes out the defense version of a sadhu riding any motorcycle and the involvement of a Sadhu in the firing. The suggestions made to PW-143 S.I. Ramesh Pal Singh and PW-149 Sho Dalbir Singh are really of no avail. Each of them stoutly denied and refuted the suggestions that evidence of the reported involvement of a Sadhu in the firing was in any way suppressed.

(57) No adverse inference can be drawn against the prosecution for non production of Asi Lal Singh. He was posted at the Police Control Room (P.C.R.). He had transmitted the information to Kingsway Camp Police Station, which was registered as Ext. PW-143/DA. It is not the case in defense that Asi Lal Singh was present at the place of occurrence or that he had any information relating to the commission of the offence or that he was the informant, as envisaged under Section 154 of the Cr.P.C. The information Ext. PW-143/DA could not be treated and the same was not treated as the FIR. It was only a message transmitted by one Police Officer to another Police Officer, which was duly entered in the daily diary of the police station. In these circumstances, Asi Lal Singh cannot be said to be a necessary witness for proving any material fact. In our opinion, evidence of Asi Lal Singh was not essential for the just decision of the case.

(58) The second limb of the argument of Mr. Randhawa that someone dressed as a Sadhu was involved in the firing, is equally illusory. This part of the case was sought to be spun around the evidence of PW-I Gobind Singh. In his examination-in-chief he had deposed that two books, namely, 'Avtar Bani and 'Yugpurush were published by Nirankari Mandal and that the followers of Sant Bhinderwala felt offended by these two books. He explained that the Nirankar is worship the living Guru but the followers of Bhinderwala were against it. This was one of the various factors mentioned by the witness in support of the charge of conspiracy. In his cross-examination, the authentic version of the book 'Avtar Bani' was required to be produced and the same was taken on record as Ext. PW-1/DD. An attempt was

made to demonstrate that the said book 'Avtar Bani' caused annoyance to Hindus and members of other communities also as different religions were sought to be ridiculed. For this reason, it was contended that anyone, belonging to the Hindu or any other community, dressed as a Sadhu may have committed the crime.

(59) It has come in the evidence of PW-1 Gobind Singh that Nirankari Baba Gurbachan Singh was not the author of either of the two controversial books and that he had written only one book, namely, 'Meri Aawaz'. The book 'Avtar Bani' was written by Baba Avtar Singh and 'Yugpurush' by someone else. Irrespective of the interpretation and effect of different portions of the said book, no one except the fanatics among the Akal is and in particular Sant Bhinderwala and his followers objected to it. Be that as it may, even assuming that someone belonging to any other community was annoyed by what was written in any of the said books, the pertinent question is whether anyone dressed as a Sadhu was involved in the firing. This vital question, in the light of the foregoing discussion, especially in view of the evidence of PW-141 Kuldip Singh Walia and PW-143 Si Ramesh Pal Singh, would still have to be answered in the negative.

(60) Mr. Randhawa's argument about the so called unaccounted motor cycle used by the Sadhu or someone dressed as a Sadhu for making good his escape may now be taken up for discussion. This piece of his argument arises out of the confusion sought to be created on the basis of the deposition of PW-141 Kuldip Singh Walia regarding the position of the motor cycle in front of Babaji's car or behind it in the convoy. But, the confusion is eliminated by the testimony of PW-2 Kishan Pal, which clearly shows that there was no motor cycle behind the car of Babaji.

(61) PW-141 Kuldip Singh Walia, in his statement recorded in Court li years after the event, tried to recall the number of vehicles and the sequence in which they arrived in the motorcade. In his examination-in-chief he stated that first of all two motor cyclists came in and then the cars behind them. He was confronted with two portions of his statement Ext. PW-141 /DA and Ext. PW-141 /DB made to the police under Section 161, Cr.P.C. In his earlier statements, there was no mention made about two motor cycles preceding Babaji's car. What was mentioned was

that behind the car of Babaji there was another car and behind that car there was a motor cycle and behind the motor cycle there was still another car. In other words, he had earlier stated that there was one motor cycle that was behind the car that was following the car of Babaji, and behind the motor cycle there was another car. The witness was somewhat confused about the number of vehicles and the relative position in which they were arranged in the convoy. Nevertheless, in his earlier statement, he had talked about only one motor cycle and not two motor cycles. Notwithstanding all this, what is of greater importance is his categorical answer that no motor cycle was driven by a Sadhu or any one wearing clothes like a Sadhu.

(62) In any event, in the evidence of PW-2 Kishan Pal there is no ambiguity on this subject. Being the driver of the car in which Baba Gurbachan Singh had travelled all the way from Paharganj to the Nirankari Bhawan, he was obviously the best person to depose about the composition and the arrangement of the vehicles in the convoy. He very categorically stated that there was only one motor cycle that was leading the motorcade; and following the motor cycle was Volkswagen car and following that car was his Mercedes car and then there was a fiat car at the tail-end. In this context, the omission in his case diary statement Ext. PW-2 /DA of the motor cycle ahead of the convoy of cars, in our opinion, is of little consequence.

(63) Combined reading of the testimony of the two witnesses, namely, PW-2 Kishan Pal and PW-141 Kuldip Singh Walia makes it amply clear that there was only one motor cycle driven by 'Kaka', which was ahead of the motorcade; and that there was no Sadhu nor anyone else dressed like a Sadhu on any motor cycle, who may be said to have made good his escape through the front gate out of the Bhawan.

(64) Next, we come to the argument that the guard posted at the front gate, who could depose about the entry and exit of all persons and vehicles actually involved in the crime, was not examined as a witness. This argument is really a corollary of the earlier discussed plea of the involvement of a Sadhu, or some one dressed as a Sadhu, riding a motor cycle. In the light of the earlier discussion on this aspect,

nonexamination of the guard would not lead to any adverse inference against the prosecution case. So, this plea also is rejected.

(65) The last limb of the argument that no effort was made to find out from Kundan Singh the circumstances in which his double barrel gun was used, is based upon the recovery of the 12 bore empty bullet cartridge Ext. D-1 and the wads and pellets there of Exts. D-3/1 to 21. It may be noted straightaway that the prosecution made an application for examining Kundan Singh as a witness soon after discovery of his double barrel gun and its examination by the Cfsi, resulting in the report Ext. Public Witness 163/DX, which establishing that .12 bore empty cartridge Ext. D-1, wads and the pellets Exts. D/1 to 11, Exts. D 2/1 to 21 recovered from the Courtyard underneath room No. 14 were relatable to the shot fired from that very gun. If allowed to be examined as a prosecution witness, at least through his cross-examination, all the facts would have come out relating the circumstances in which his gun was used, his own whereabouts at the relevant time, and every other aspect required by the accused in defense. But, the application for recording his evidence as a prosecution witness was opposed tooth and nail, and the same was rejected by the Trial Court by order dated 13.12.1991. therefore, the appellant would not be allowed to make capital out of non-production of that witness.

(66) In any event, possibility of use of Kundan Singh's double barrel gun in the actual commission of the crime is completely ruled out by the evidence on record. Only one shot was fired from that gun. This is established by the recovery of only one empty cartridge Ext. D-1 and its wads and pellets Exts. D-2/1 to 21 and Exts. D-3/1 to 11. The direction in which the shot was fired and the line of fire is established by the spot from where the .12 bore empty cartridges was found, that being the point where it would have been ejected, and the distribution and location of the relatable wads and pellets. This would make a line that goes to show that the .12 bore double barrel gun shot was fired from the Courtyard towards the garage underneath room No. 14, which was in a different direction far away from the victims of the assault, who fell to 30 bore carbine bullets fired downwards into the Courtyard from room No. 14 on the first floor of the guest house opposite the residence of Baba Gurbachan Singh.

(67) On the other hand, it is proved by the evidence on record that room No. 14 was the place from where the lethal assault was launched; that the victims were hit by bullets fired from a .30 Carbine; and two hand grenades also were thrown from the balcony in front of the bath room attached to room No. 14 into the Courtyard.

(68) The basic fact that room No. 14 was the place from where the deadly attack was launched and the fact that two men were seen running from the balcony towards the bath room attached to room No. 14 are established by the ocular evidence of PW-1 Gobind Singh, PW-2 Kishan Pal, PW-3 Niranjana Singh, PW-26 Naresh Kumar and PW-55 Jairam Dass Arya who were all present in the Courtyard at the time of occurrence. Their testimony is fully supported by the recovery of various articles including several pieces of ammunitions, from room No. 14 and other places on the first floor shown in site plan Ext. PW-I 43/E and those recovered from the Courtyard in front of the residence of Baba Gurbachan Singh shown in site plan Ext. PW143/F.

(69) The direction and the line of fire, from room No. 14 on the first floor slanting down towards the target in the Courtyard, has been established by co-relating the location and inter-se position of various articles recovered from the said area of operation; and by the collective examination of various holes found in the clothes of the victims and the location and the nature of injuries inflicted on the victims explained in detail by the Ballistic Expert PW-164 Roop Singh. The said expert witness had also developed and depicted the trajectory of possible line of fire in clear and simple terms on the scale graph Ext. PW-164/B. All this is further corroborated by the recovery of two hand grenades and certain parts thereof also found on the spot.

(70) Only empty cartridge shells of .30 caliber Exts. P-26 to P-31 were recovered from room No. 14; but, all the bullet-heads fired from the same weapon and a number of other pieces and fragments of bullets were found embedded in the body of Babaji's car or recovered from different places in the Courtyard on the ground floor. Similarly, bullet marks found on the wall outside the residence of Babaji would lead to the same inference of firing from room No. 14 on the first floor slanting down into the Courtyard on the ground floor.

(71) Most of the pieces of ammunition used for the deadly assault and the make of the weapon used for firing the same were identified by the Investigating Officers and the Experts who were produced as prosecution witnesses. It has also been established by the Cfsi Report Ext. PW-I 63/B that all the six empty cartridge cases Ext. P-26 to Ext. P-31 were fired from a single .30 Carbine. The three fired bullets, jackets/bullet heads Exts. P-16, P-17 and P-19 recovered from the Courtyard were of .30 Carbine cartridges fired from a single weapon and various other pieces, including those marked as Exts. P-12, P-13 and P-18/1 to 6, also recovered from the Courtyard, were in mutilated/torn and incomplete condition and the same could be projectiles of the fired bullets. The Ballistic Expert PW-164 Roop Singh confirmed these conclusions in Court. He also explained, on the basis of the shape and size of the holes found in the clothes (Ext. P-39) of deceased Pratap Singh and in the clothes (Ext. P-48 and Ext. P-49) of deceased Baba Gurbachan Singh, that the holes could have been caused by a .30 Carbine bullets, and that the location and the line drawn by joining the holes on each piece of clothing was slopping down indicating a downward slope of the line of fire in the straight standing position of each of the two deceased. In respect of the clothes of injured Kuldip Singh Walia, he testified that the holes could have been caused by a single bullet that entered through the back, got fragmented in the body, and portions of its fragments exited through the holes on the front side; but, no opinion regarding the type and the caliber of the bullet and other details could be given. In cross-examination, he categorically ruled out the plea that any of the holes on clothings of the victims or the wounds found upon the bodies of the two deceased could be caused by pellets of .12 bore cartridge. Specifically, with reference to the location, shape, size and other features of the wounds given in the post-mortem report of deceased Baba Gurbachan Singh, and deceased Pratap Singh, he firmly ruled out any possibility of such wounds, being caused by pellets of .12 bore cartridge fired from any double barrel gun.

(72) The place of assault is further established by recovery of two hand grenades. One thrown into the Courtyard and the other flung into the staircase. Safety pin (Ext. P-57) was recovered from the Verandah outside bath room attached to room No. 14, whereas the striker liver (Ext. P-58) of the grenade was found lying near the unexploded grenade in the Courtyard. This also would show that the hand

grenade, after plucking the safety pin, was thrown from the first floor and the liver with the grenade flew to some distance and fell down in the Courtyard.

(73) Thus, it is conclusively established that the shots that hit the victims were fired from only a single weapon, which was .30 Carbine, from room No. 14; that the two hand grenades also were thrown from the balcony and that two men were seen running from the balcony towards the bath room attached to room No. 14, which was the place from where the crime was committed.

(74) Next, it was contended by Mr. Randhawa that another hypothesis suppressed by the prosecution was the involvement of five persons including one Harcharan Singh, who were carrying arms and ammunition and were going to Punjab by the Matador Van bearing registration No. HRF-8517, which was intercepted soon after the incident. But, those persons were let off by the police.

(75) Information about the occurrence was promptly flashed out on wireless at night on 24th April, 1980. Soon thereafter, the said Matador Van was intercepted by the officials of Tilak Marg Police Station. On suspicion, arising from questioning the occupants of the van, all five of them were detained for further investigation. Search of the van yielded arms and ammunition, which were taken into possession. A .30 bore carbine was also recovered at the instance of one of those five persons. The arms and ammunition, included .12 bore gun, .315 rifle and .30 carbine, recovered from them were deposited in the Malkhana as case property vide entry Ext. PW-143/DD, as deposed by PW-149 Sho Dalbir Singh. This information, according to Mr. Randhawa, was suppressed by the prosecution and it came out only when the Malkhana register was produced in Court.

(76) Mr. Randhawa also laid stress upon the name of Harcharan Singh, who was one of the five persons and urged that they were the persons named who had stayed in room No. 14 at the Nirankari Bhawan on 22nd April, 1980. For determination of this point, it is necessary to advert to the testimony of PW-35 Kulwant Singh. According to this witness, on 22.4.1980, Harchand Singh Ex-M.L.A., Raj Kishan and 4 others visited Nirankari Bhawan and stayed in room No. 14 till 8 a.m. or the following day. Thereafter, Jagat Ram, Mla and 4 others stayed in the same room on the next day.

(77) Examination of the guest register Ext. PW-9/A shows that the last entry dated 22nd April, 1980 made in it was regarding occupation of room No. 14 in the name of Harchand Singh. Obviously, that being the last entry in the register, there was no entry made on 23rd April, 1980 that would show that room No.'14 was vacated by the previous occupant at 8.00 a.m. and the same was later on occupied by Jagat Ram Mla and four others on 23rd April, 1980, nor that they had vacated the room at 8.00 a.m. on 24th April, 1980, as orally deposed by PW-35 Kulwant Singh.

(78) Mr. Kaira, on the other hand, explained that the said matador van HRF-8517, the occupants thereof and the arms and ammunition recovered from them, were released as the initial suspicion of their involvement in the commission of the crime was dispelled on interrogation of those five persons and they were found to be innocent. It has come in the cross-examination of PW-163 B.R.Puri, the Chief Investigating Officer, who deposed on the basis of information gathered from the case diary of Police Station Tilak Marg that those five persons were interrogated till 25th April, 1980, that the Investigating Officer of Police Station, Kingsway Camp was also associated in the interrogation by officers of Police Station, Tilak Marg, and that after checking their antecedents and taking their particulars and finger prints they were set free on 26th April, 1980. The finger prints of these five persons did not tally with those taken from the window pane on the spot. It was also found that the arms recovered from them were licenced. Moreover, CfsI report dated 17th May, 1980 Ext. PW-163/0 established that these weapons did not match the material found from the place of occurrence and that there was no nexus between these arms with the commission of the offence in this case. Moreover, on the application of Harcharan Singh, which furnished his credentials, the fire arms were returned under orders of the concerned Magistrate dated 9th June, 1980. In this view of the matter, S.I. Mahesh Chand from the Crime Branch, who deposited the said arms and ammunition in the malkhana, and S.I. Arjun Singh, who had initially detained these five persons, were not material witnesses and no adverse inference can be drawn from their non-production as prosecution witnesses.

(79) With particular reference to Harcharan Singh, it is significant to note that PW-35 Kulwant Singh had clearly named and described the person who stayed in

room No. 14 on 22nd April, 1980 as Harchand Singh, Ex-MLA. In cross-examination, he even asserted that he personally knew Harchand Singh, Ex-MLA and that in his statement made before the Cbi under Section 161, Cr.P.C. he had also given the name Harchand Singh, Ex-MLA. For mixing up the name Harcharan Singh and Harchand Singh, the witness was confronted with his earlier statement Ext. PW-35/ Da portion A to A wherein the name is written as Harcharan Singh, Ex-MLA. It is well established in law that the confronted portion of an earlier statement recorded under Section 161, Cr.P.C. cannot be treated as substantive piece of evidence. The substantive piece of evidence is the one that is deposed in Court. The confronted portion may, however, be used to show that the witness is a liar or that he was making embellishment in his evidence. That is not the case here. The name given by the witness in Court in his examination-in-chief as well as in his cross-examination was Harchand Singh, Ex-MLA. A mistake made by the Police Officer, that too by recording the phonetically similar name Harcharan Singh instead of Harchand Singh, cannot be said to be embellishment or a lie told by the witness in Court. It was not the case of the defense and not even a suggestion was made to this or any other witness that Harcharan Singh, the person who was traveling with four others in the matador van, was an Ex-MLA; nor that he was the very same person who had actually stayed two days earlier in the Nirankari Bhawan; nor even that Harchand Singh, who had stayed in room No. 14, was not an Ex-MLA. In any event, the particulars of both the persons, Harchd Singh, Ex-MLA, who stayed in the Nirankari Bhawan on 22nd April, 1980 and Harcharan Singh, who was one of the five persons traveling in the matador van on 25th April, 1980, were available but no effort was made to call either of them as a witness in defense. thereforee, we find that the muddle sought to be created on the basis of the name of Harcharan Singh, being one of those five persons who were carrying licenced arms when they were traveling to Punjab at an odd time by the said matador van that day, is really of no help to the accused.

(80) In the light of the foregoing discussion, it is clear that matador van number HRF-8517, the five persons traveling by it, and the arms and ammunition recovered from them were not connected with the commission of the crime. This much is clearly established, inter-alia, by the Cfsi report dated 17th May, 1980 Ext. PW-163/ 0. The challan in this case was filed much later, after completion of

investigation, on 20th February, 1984. Naturally, no mention of this subject was made in it.

(81) therefore, it is found that the two alternative hypothesis sought to be raised in defense about involvement of a Sadhu and that of the five persons intercepted by the police while going to Punjab in the matador van, were in fact explored; and after it was found that there was no substance in the same, further investigation on those lines was dropped. Nothing about the same has been suppressed and there is nothing found in either of the hypotheses that may be said to be inconsistent with the guilt of the accused Ranjit Singh.

(82) Further, learned Counsel for the appellant urged that extenuating evidence of finger prints was suppressed, which would be easily available on various things in room NO. 14, and no CfsI Expert was produced as a witness with regard to finger prints. Even otherwise, the absence of evidence of finger prints, he contended, would go to show that accused Ranjit Singh had not handled any of the incriminating articles said to have been found in room No. 14, and that he was not present there.

(83) As against this, Mr. Kaira, learned Counsel for the Cbi contended that finger prints can be lifted only from a surface which is dusty, polished or glazed. The finger print should be of the whole of the finger and not part of finger and it should also be discernible for testing similarities. For example, a screw driver is generally used by the pressure of the palm and by rotation, and noose prier by grip, and thus full finger prints would normally not come. On the other objects also there was only a remote chance of finger prints being discernible, he explained. Only one of the finger prints lifted from a window pane was discernible, which did not tally with the thumb marks of Ranjit Singh. So, no Finger Print Expert was produced as a witness. This, he urged, would not rule out the involvement of Ranjit Singh in the commission of the crime.

(84) It would be appropriate to advert to the cross-examination of PW-143 Si Ramesh Pal Singh, PW-149 Sho Dalbir Singh and PW-163 B.R.Puri, on which reliance has been placed by learned Counsel for both the sides. The testimony of PW-143 Si Ramesh Pal Singh, however, is not of much help. All that he said was

that he did not remember if the Cfsi team had lifted any finger prints. Since he was busy preparing inquest report of Baba Gurbachan Singh and thereafter had left for Lnjp Hospital for preparing the inquest report of Pratap Singh and was attending to various other tasks, naturally, he was in no position to depose about the activities of the Cfsi team, who were working inside room No. 14.

(85) PW-149, Sho Dalbir Singh, after arrival at Nirankari Bhawan, it may be recalled, had gone around the place for inspection. He had also inspected room No. 14. He had noticed a finger print on the window pane. While preparing site plan of the said room Ext. PW-143/E, he recorded note 'F' in respect of that finger print and in the same note reference was also made to 'empty' lying on the ground inside the room. Of course, he was unable to say if comparison of that finger print was got done from any other finger print of the accused. He also gave the reason why he was not in a position to say so and the reason was that the investigation was transferred to CBI. With regard to the broken pieces of glass panes, which could show finger prints, he explained that there was a glass pane in broken condition and near that glass pane he had noticed a finger print on another glass pane. In other words, the finger print noticed by him was on the glass pane which was intact and the same was near another glass pane in broken condition. He proceeded further to explain that there were no broken glass pieces lying inside the room or outside the room. He clearly explained the position regarding the glass pane on which the finger print had been noticed and ruled out the suggested availability of any broken glass pieces with other finger prints lying inside or outside the room. By making note 'F', he had clearly indicated on the site plan Ext. PW-143/E the location of the glass pane on which he had noticed the finger print.

(86) PW-163 B.R. Puri, the Chief Investigator of the Cbi visited the scene of occurrence after the Cbi had taken over the investigation on 27th April, 1980. At that time Sho Dalbir Singh, who was earlier in charge of the investigation, was not with him. So, the question of his discussing anything with Dalbir Singh about the activities of the Cfsi team did not arise. He had, however, studied the investigation file. He was cross-examined in bits and pieces regarding finger prints. Thus, an effort was made to introduce the defense that a number of finger prints were lifted from different places and objects inside room No. 14. Reference to 'finger prints' in

plural in his deposition would not justify the inference that finger prints were found or lifted from several articles or places in room No. 14. More than one print taken for purposes of thorough analysis and study also would be stated in plural form although the same may relate to the one and only one finger print that was found on the window pane. This becomes more clear from further examination of this witness, where he explained that on 27th April, 1980 he had noticed 'one finger print at the window pane' and that he had learnt that the same had already been lifted by the Cfsi expert. He stoutly refuted the suggestion that a number of finger prints from various things in room No. 14 were lifted. He remained steadfast and maintained that only one decipherable finger print was lifted from the window pane.

(87) The above discussion clearly shows that learned Counsel for the accused erroneously presumed that a number of finger prints were available on the articles found lying inside room No. 14 and that the same had been lifted. There is no evidence on record to justify such a presumption. Besides one fingerprint found on the glass pane of window of room No. 14, there was no finger print on any other article that was discernible and lifted. It is pertinent to note that no specific question was put to the witnesses in their cross-examination as to whether finger prints were discernible on any of the other objects, as was argued at the Bar.

(88) In our considered view, Mr. Kaira was justified in contending that the Investigating Officers are expected to secure Expert technical assistance and advice, whenever such appears desirable in the course of an investigation, as they did in this case, in accordance with Rule 25.14 of the Punjab Police Rules. Evidence on the subject would be required only where the opinion of the Expert has any bearing upon the case. The finger prints lifted from the place of occurrence did not tally with the thumb impression of the appellant. This would not rule out the possibility of it being the finger print of his companion, who was also there with him and is absconding. The same was neutral evidence in relation to the appellant. It was, therefore, unnecessary for the prosecution to cite any Expert as a witness. In these circumstances, want of discernible finger prints from various articles or places in room No. 14 and non-examination of Cfsi Expert as witnesses would neither amount to suppression of material evidence nor lead to an adverse

inference against the prosecution so as to exonerate the appellant.

(89) Next, learned Counsel for the appellant urged that the iron grill fixed on the rear window of the bathroom attached to room No. 14, through which the assailants are alleged to have escaped, was taken away by the Cfsi team on 25th April, 1980. But, it was suppressed and not produced as it would definitely bear finger prints of the real culprit(s) and not of the appellant. In order to sustain this plea, he contended that the evidence of PW-163 B.R.Puri that he saw the grill on 26th and 27th April, 1980 was false and that he got sent letter dated 5th May, 1980 Ext. PW-108/F to the Cfsi to create false evidence. But, for the reasons given hereinafter, we find no substance in it.

(90) The fact that the iron grill was there in the morning on 25th April, 1980 is well established. PW-3 Niranjana Singh deposed that the police was examining it. Both PW-143 Si Ramesh Pal Singh and PW-149 SHO Dalbir Singh deposed that they had noticed the grill. Site plan Ext. PW-143/E shows its place at 'C' and the corresponding note describes the same as 'window at back with grill loosened & opened'.

(91) The questions that arise for determination, however, are: (a) What was the state in which the iron grill was found in the morning on 25th April, 1980? (b) Whether it was at all removed thereafter? and (c) Whether its non production in Court would exonerate the appellant? The answer to these questions clearly emerges from the evidence of PW-1 Gobind Singh, PW-3 Niranjana Singh, PW-4 Mangal Sain, PW-143 Si Ramesh Pal Singh, PW-149 SHO Dalbir Singh and PW-163 B.R. Puri. This oral evidence is supported by the recovery of six twisted nails Exts. P-20/1 to 6, found lying underneath the bathroom window in the back lane, vide seizure memo Ext. PW-3/M, read with site plan Ext. PW-143/E, letter dated 5th May, 1980 Ext. PW-108/F, seizure memo dated 14th May, 1980 Ext. PW-163/DA, Malkhana Register entry No. 204 Ext. PW-158/A, and Cfsi report dated 25th August, 1980 Ext. PW-108/G.

(92) The state in which the window grill was found on inspection of the bathroom was indicated at the earliest opportunity on 25th April, 1980 at the place marked 'C' and described in the corresponding foot note 'C' in site plan Ext. PW-143/ E as

'loosened & opened'. This cryptic note contemporaneously made on the spot, has been explained in detail by prosecution witness PW-149 and PW-163 in their respective depositions in Court. Composite reading of the evidence of PW-143 Si Ramesh Pal Singh, PW-149 Sho Dalbir Singh & PW-163 B.R. Puri clearly brings out the fact that the nails by which the iron grill was fixed in the window frame had been ripped off by use of force from three sides, it was hanging loose with only one or two remaining nails holding it on one side, just like the leaf of a door ajar.

(93) The ripped-off state of the iron grill is further explained by the recovery of six nails Exts. P-20/1 to 6 underneath the bathroom window in the back lane. That is the place where the nails would normally be found when the same are levered off the grill from the window frame by anyone standing inside the bathroom. The same were taken into possession, Along with certain other articles vide seizure memo Ext. PW-3 /M. This is amply borne out from the deposition of PW-3, PW-4 and also PW-143, PW-149 & PW-163. However, it may be noted that in the deposition of the latter set of witnesses, namely, PW-143, PW-149 & PW-163 there was a little mix up in the nails being described as screws. This discrepancy, in the present context, is of no significance. With the lapse of a long period of time between the event and recording of evidence in Court, it is not strange. Indeed, PW-143 described the very same things as nails at one place and as screws at another. Moreover, PW-149 did clarify that the iron grill was held on one side by nails and not screws. In any event, the identity of the articles is clearly described in seizure memo Ext. PW-3/M as nails. The attesting witnesses, namely, PW-3 and PW-4 made no mistake about it, and the nails were also produced and proved on record as Exts. P-20/1 to 6.

(94) On the next question whether the iron grill had at all been removed on 25th April, 1980 or thereafter, the deposition of PW-163 is very clear He has stated that he visited the spot on 26th and 27th April, 1980 and on both of these days the grill was found hanging on one or two nails on one side of the bathroom window frame. He asserted that on inspection of the state in which he found the window grill he did not take it into possession and that the local police and the CfsI Experts had also not removed it at any time. However, when he took the stand that he did not consider it necessary to take it into possession, he was confronted with the

request that was made for removal of three things, namely, the bathroom window's wooden frame, the iron grill, and the window glass pane from room No. 14, vide letter dated 5th May, 1980 Ext. PW-108/F. The effort to show that the was giving false evidence was made on the basis of only one of the three items, namely the window iron shutter panel with the glass pane from room No. 14, having been removed and taken into possession vide seizure memo Ext. PW-163/DA, which was deposited in Malkhana Register Ext. PW-158/A vide entry No. 204 and was also the subject matter of CfsI report Ext. PW-108/G; whereas the other two items, namely, window wooden frame of the bathroom and the iron grill, did not find mention in any of the subsequent three documents despite the fact that the request for taking over all the three items had been made in the letter Ext. PW-108/F. This argument of Mr. Randhawa, on proper appreciation of the steps taken by the Investigating Agency and the documentary evidence, would fall to the ground.

(95) A good investigator is expected, inter-alia, to explore with care all possibilities for detecting accurately the means, manner and method employed for committing the crime, for objectively using all the available material for finding out the real person(s) suspected to be involved in commission of the crime and finally for establishing the guilt of the accused on trial in Court. Naturally, in the process, he would pursue only such clues as would take him in the light direction and give up those that would lead him nowhere. This is what PW-163 B.R. Puri did in this case. He had noticed some scratches on the said window frame and marks on the iron grill, which was found ripped off from three sides. He also had in mind the screw driver and noose prier that were recovered from the adjoining room No. 14. In these circumstances, he explored the likely use of the screw driver for loosening the iron grill. This is apparent from request No. (ii) made to the CfsI by the letter Ext. PW-108/F.

(96) The CfsI is an independent expert agency and knows its job best. It is not under the control of the CBI. It appears from the CfsI report Ext. PW-108/G that the Expert gave opinion on two other queries about use of the screw driver and the noose prier on certain other objects but made no comment upon query No. (ii) posed in the referral letter Ext. PW-108/F. This supports the plea advanced by Mr.

Kaira that the said query No. (ii) was impracticable.

(97) In the light of the above discussion, the deposition of PW-1 63 and the stand taken by him in Court that he did not consider it necessary to take the iron grill into possession, in pursuance of the requirement initially stated in letter Ext. PW-108/F, appears to be correct and reasonable. He has satisfactorily explained that in pursuance of the letter Ext. PW-108/F only the iron window leaf with the glass pane bearing one finger print was taken into possession from room No. 14, vide seizure memo Ext. PW-163/DA, and deposited in Malkhana vide entry No. 204 in register Ext. PW-158/A; and that the wooden window frame and the iron grill from the bathroom were not removed as he did not consider it necessary to take the same into possession for preservation and production in Court.

(98) Moreover, Mr. Kaira explained that the iron grill was a fixture and no Investigator would ordinarily remove it from the scene of crime, unless it is required to be preserved, as in a case where incriminating finger prints may be available on it, for comparison and demonstration in Court. Thus it is found that the evidence of PW-163 B.R. Puri is consistent with the documentary evidence on record; it is natural and reasonable; and it inspires confidence in the conduct of investigation.

(99) The suggestions given to PW-163 B.R. Puri in his cross-examination, that there was no grill on the bathroom window on 26th or 27th April, 1980, on the basis of which the defense plea has been raised, were comprehensively refuted by the witness. . He not only denied the suggestions but asserted that he tried to see if he could pass through the window after drawing the grill to one side and he was able to do so. The suggestions that Police Station, Kingsway Camp officials had seized the grill or that CfsI Experts had taken it away on 25th April, 1980 and that he was informed about it, were also denied. The further suggestion that he got falsely recorded request for removal of the iron grill in letter dated 5th May, 1980 Ext. PW-108/F to make a show as if the grill had not been removed by that time was also repelled. Rather, he asserted that the letter was genuine, the grill had not been removed by that time, and it was wrong to suggest that the letter had not been pursued.

(100) So far as pursuing the request made in letter Ext. PW-108/F is concerned, it is obvious that initially the Chief Investigating Officer PW-163 B.R. Pun did think of exploring the possibility of proving that the scratches and marks noticed on the bathroom window frame and the grill were made by the screw driver Ex. P-3 and noose prier Ex. P-4; but later he gave it up as unnecessary. This is consistent with the CfsI report Ext. PW-108/G. It is in this context that PW-163 B.R. Puri denied the suggestion that he did not pursue the request made in Ext. PW-108/F and maintained that he did not consider it necessary to take the grill into possession. We find no contradiction in the documents on record and the stand taken by the witnesses in Court.

(101) Further, with regard to the possibility of finger prints appearing on the grill, the availability of discernible finger prints has been earlier discussed in great detail and nothing more about it need be said here. An attempt was also made to show that the bath room window was too small in size for the appellant to pass through it and escape into the back lane, which is wholly imaginary and is not supported by the evidence on record. PW-1 Gobind Singh has stated the dimensions of the bath room window i.e. 3' or 4 ft. in length and 1' ft. in width. The suggestion that the size of the bath room window was 1' x 1 ft only was refuted. Accused Ranjit Singh present in Court was shown to him and he stated that the accused 'is well-built up.' The cross-examination was left at that point. But, on the basis of this statement, the plea was raised at the time of the hearing of the appeal that the appellant could not pass through the bath room window. It was not even put to the witness in cross-examination as to whether the accused Ranjit Singh, could pass through the bath room window. Merely because he is a well built up person, would not imply that he could not pass through the bath room window. Keeping in view the dimensions stated by PW-I Gobind Singh, probability of the appellant passing through the bath room window in crouched position sideways cannot be ruled out. Moreover, PW-143 Ramesh Pal Singh had stated that the grill had been forced open on one side 'to make a passage to pass through' the window. PW-163 B.R. Puri stated that he himself tried to see if he could pass through the window after drawing the grill to one side and he was able to pass. At the time of examination of both these witnesses PW-143 Ramesh Pal Singh and PW-163 B.R. Puri, the accused was present in Court but no question was put to either of them about the

possibility of his passing through it.

(102) The evidence on record, particularly, the state of the iron grill in which it was found, does not suggest improbability of the appellant escaping through the bath room window and going down the water pipe and running away through the back lane. Moreover, there is no cogent reason given as to why the Investigating Officer would falsely show the state of the grill or remove it. There appears to be no justification for presuming that the Investigating Officer would go about fabricating evidence in order to rope in the appellant. Each of the witnesses, who deposed, particularly, PW-163 B.R. Puri was thoroughly cross-examined and the credibility of none of them could be shaken. For the reasons discussed above, we are unable to hold that any effort was made by the Investigating Agency or the Investigating Officer to create or give false evidence on this aspect of the case also. Non-production of the iron grill in Court would, therefore, not exonerate the appellant.

(103) Next, Mr. Randhawa contended that a large number of photographs were taken on the spot whereas only 11 of them were produced, which do not depict any of the articles said to have been recovered from room No. 14, or the condition of the bath room window grill. Moreover, the photographer who took the photographs was also not produced. Otherwise, the defense would have asked him questions about the various incriminating articles. In these circumstances, he urged, that an inference should be drawn that recovery of the incriminating articles was false. He raised this argument on the basis of the evidence of PW-1 Gobind Singh, PW-3 Niranjana Singh, PW-2 Kishan Pal, the request made by Baba Gurcharan Singh, Advocate, who was appearing for some of the other accused persons in the Trial Court for supply of the photographs other than those eleven given earlier, the statement in that regard made by the Public Prosecutor, subsequent supply of four additional photographs during the trial and the evidence of PW-143 Ramesh Pal Singh and PW-149 Dalbir Singh.

(104) PW-1 Gobind Singh, PW-3 Niranjana Singh and PW-2 Kishan Pal have affirmed that photographs were taken on the spot, but they did not know about the objects of which photographs were taken. The inability of these witnesses to say

so is quite understandable. On inspection of room No. 14 and the attached bath room, the Investigating Officer had noticed things that created suspicion of commission of the offence by use of that place by the assailants. Naturally, no one was allowed to come inside till completion of the job entrusted to the CfsI Experts. PW-3 Niranjan Singh and PW-2 Kishan Pal knew that photographs were being taken but they were unable to give particulars of the photographed articles. After the CfsI team had completed its task, PW-3 Niranjan Singh and PW-2 Kishan Pal joined in the exercise of recovery of the various articles. That is the time when they were present inside room No. 14 and the articles were taken into possession vide seizure memo Ext. PW3/A, which is attested by each of these two witnesses. Among the Police Officers, PW-143 Ramesh Pal Singh was busy with the preparation of inquest reports elsewhere. So, he stated that he did not know if the CfsI team took any photographs inside room No. 14.

(105) PW-149 Daibir Singh was present at the time when the CfsI Experts were doing their job inside room No. 14. He did point out to the photographer the window pane on which the finger print was noticed and he also suggested that a photograph be taken to show location of the window of room No. 14 from outside.

(106) The presence of PW-3 Niranjan Singh and PW-2 Kishan Pal inside the room at the time of recovery of the seized articles is established by the evidence on record. Both of them had attested the seizure memo Ext. PW3/A. 'The presence of PW-149 Inspector Dalbir Singh is not even disputed.

(107) Since the prosecution was relying upon li photographs only, the copies thereof were duly produced in Court and supplied to the accused at the commencement of the trial. However, on request made by Counsel for some of the accused persons, the Public Prosecutor took up a reasonable and fair stand. He did in fact supply four additional photographs to the accused and made a statement that those were the only remaining photographs in power and possession of the C.B.I. He clarified that the prosecution was not relying upon those four photographs, but at the request of Counsel for the accused the prosecution had produced them. It, is so recorded in the order of the Court dated 14.12.1988.

(108) On inspection of the attached bath room and room No. 14, site plans Exts. PW143/E & F were prepared. The articles found inside room No. 14 were seized by the Investigating Officer as required under section 102, Cr.P.C. Of course, certain photographs were taken. But, it would be wrong to assume that the police would not have seized those things without their photographs being taken. Merely because the recovered articles were not photographed, the other evidence on record regarding seizure of the articles cannot be discarded. We find no convincing reason why the Investigating Agency would falsely plant any thing inside room No. 14 or misrepresent the state in which the bath room window grill was found.

(109) In view of the above discussion, we find that the deposition of the prosecution witnesses and the stand taken by the Public Prosecutor in Court in respect of the photographs was cogent, without embellishment, natural and truthful. Non-availability of photographs of the articles found lying in room No. 14 or of the window grill hanging loose in the adjacent bath room, merely on the conjecture that such photographs must have been taken, as against sufficient oral and documentary evidence of recovery of the articles from room No. 14 and the state of the bath room grill, would not render the prosecution version unreliable. For the very same reasons, non-production of the photographer as a witness was not fatal to the prosecution case. In these circumstances, the plea of suppression of material evidence and adverse inference to be drawn against the prosecution, is without foundation and the same is rejected.

(110) Further, Mr. Randhawa urged that adverse inference should be drawn against the prosecution for its failure to produce Daily Diary of the case for 24.4.1980 and 25.4.1980 of Police Station, Kingsway Camp. Mr. Kalra, on the other hand, explained that the said Daily Diary was destroyed on 31.7.1985 along with various other records of the Police Station in normal routine. This happened because the investigation of the case was transferred from the local police to the C.B.I. The former did not realise that the said record would be required for production in Court and the latter did not ask for it. Thus, the Daily Diary was not preserved, and this lapse had occurred. It is significant to note that there was no accused named in the F.I.R. and the presence of the witnesses named therein is

not in dispute. No prejudice has been caused to the defense by destruction of the said Daily Diary in the present case. In these circumstances, no delinquency would be attributed to the prosecution agency and the prosecution case would not fail on this ground.

(111) Moreover, Mr. Randhawa urged that the case diary in respect of initial stage of investigation by officers of Police Station, Kings Way Camp was fabricated and ante-dated to cover up delay in recording statements of witnesses under Section 161, Cr.P.C., and the same were not recorded till 27.4.1980. This argument is spun out of a discrepancy in the testimony of Sho Dalbir Singh (Public Witness - 149) and that of B.R. Puri (Public Witness -163). The former stated that investigation and the entire case diary was handed over to the C.B.I, on 26.4.1980, whereas the latter testified that Sho Dalbir Singh handed over the same to him on 27.4.1980. On the other hand, Mr. Kaira explained that on transfer of investigation to the C.B.I., Regular Case No. 2/ 1980 CIU(A) Ext. PW163/A was registered by the C.B.I, on 26.4.1980 at 2.25 p.m., and thereafter investigation was entrusted to B.R. Puri (Public Witness -163). Same day, he visited the local police station as well as the place of occurrence. But, Sho Dalbir Singh was not there at that time. On 27.4.1980, he again visited the Nirankari Bhawan. That day, as he had earlier sent a message and Sho Dalbir Singh brought the case file and handed it over to him. This discrepancy in the statement made by Sho Dalbir Singh (Public Witness -149), according to Mr. Kaira, is on account of lapse of memory, as he was deposing in Court li years after the event.

(112) On a careful perusal of the evidence of PW-143 and PW-149, two material facts emerge out. They are: that Ramesh Pal Singh (Public Witness -143) scribed the statements of witnesses recorded under Section 161, Cr.P.C; and that he also scribed the case diary at the dictation of Sho Dalbir Singh (Public Witness -149). It is also significant to note from the statement of Sho Dalbir Singh that the recoveries were effected till 1.30 p.m. on 25.4.1980 and there after statements of some of the witnesses were recorded under Section 161, Cr.P.C. He has named seven persons whose statements were so recorded. Out of these seven persons, Bhagi Bai was not examined as a witness in Court. Others were Niranjan Singh (Public Witness -3), Mangal Sen (Public Witness -4), Savitri Devi (Public Witness -

8), Ajit Singh (Public Witness -12), Anoop Kumar (Public Witness -15) and Kulwant Singh (Public Witness -35). Apart from those named by him, there was another witness Kishan Pal (Public Witness -2) whose statement was also recorded on 25.4.1980. This is borne out of the statement of Ramesh Pal Singh (Public Witness -143). Each of these prosecution witnesses has stated that his or her statement was recorded on 25.4.1980. Every one of them was thoroughly cross-examined but no question was put nor any suggestion was made to any of them that their respective statements were recorded later or were ante-dated. No such question or suggestion was put even to Ramesh Pal Singh (Public Witness -143), who had actually scribed those statements. A composite suggestion, however, was made to Sho Dalbir Singh (Public Witness -149), which consisted of three parts: firstly, that he recorded the statements of the witnesses much later; secondly, that he did so on the suggestion of C.B.I, officers; and, lastly, that he ante-dated them. The whole of the suggestion was refuted.

(113) Suffice it to note that the local police is entirely an independent establishment and not under the control of the C.B.I. As such, the suggestion that anything irregular would be done by the Delhi Police officials, at the instance of the C.B.I., after transfer of the investigation, is too far-fetched. Even otherwise, the suggestion was contrary to the evidence already considered above and even more of it that would be discussed hereafter.

(114) It is pertinent to note that the statement of Kishan Pal (Public Witness -2) was recorded not only on 25.4.1980 but also on 26.4.1980. Likewise the statement of Ajit Singh (PW-12) was not only recorded on 25.4.1980 but also on 26.4.1980 and that of Kulwant Singh (Public Witness -35) on 26.4.1980 and his supplementary statement was recorded further on 3.5.1980. If at all the statements of these witnesses were to be recorded later and not on 25.4.1980 and to be ante-dated, there would have been no need for recording their statements over again on the aforesaid subsequent dates. Moreover, Niranjana Singh (Public Witness -3), Mangal Sen (Public Witness -4), Savitri Devi (Public Witness -8) and Ajit Singh (Public Witness -12) were confronted in the course of their cross-examination by putting to them their respective statements recorded under Section 161, Cr.P.C. being Ext. PW3 /DA, Ext. PW4/DA, Ext. PW8/DA and Ext. Public Witness 12/DA,

each dated 25.4.1980. This line of reasoning gets further support from the cross-examination of Kishan Pal (PW-2) as he was confronted with not only his statement Ext. PW2/DB dated 25.4.1980 recorded by Sho Dalbir Singh (Public Witness -149) on 25.4.1980 but also by the statement Ext. PW2/DA recorded by B.R. Puri (Public Witness -163) on 7.6.4.1980. Kulwant Singh (Public Witness -35) was also confronted with his earlier statement recorded under Section 161, Cr.P.C. Ext. PW35/DA, which was recorded by the C.B.I, on 3.5.980. He was not even confronted With his earlier statement recorded on 25.4.1980 or that recorded on 26.4.1980. It has come out clearly in his evidence that his statement was recorded by the Delhi Police on 25.4.1980. Then, it appears from the evidence of Munshi Ram (Public Witness -57), who was posted as Inspector in the Crime Branch at the relevant time that he had taken into possession from Amarjit Singh one guest register of the Nirankari Bhawan vide memo Ext. PW9/B, which bears the signatures of Kulwant Singh (Public Witness -35) at Point D. From all this intrinsic evidence available on record, it is established that the statements of the said witnesses were recorded on 25.4.1980 as deposed by Ramesh Pal Sigh (Public Witness -143) and Sho Dalbir Singh (Public Witness -149).

(115) We may note, however, that during the cross-examination of Apt Singh (PW-12) it has come that he met the local police at about 9 or 9.30 a.m., he remained with the police for about 20 minutes and during that period the police showed him the screw driver (Ex. P-3) and recorded his statement. Mr. Kaira explained that Ajit Singh (Public Witness -12) was called and orally asked about the screw driver during the course of inspection, before seizure of the articles found in room No. 14 in the forenoon, and that his formal statement under Section 161, Cr.P.C. was recorded only thereafter. In any event, what is material for purposes of the present discussion is not the time or the sequence but the date on which recovery was effected and statement of the said witness recorded. On this aspect, deposition of both PW-143 Ramesh Pal Singh and PW-149 Sho Dalbir Singh is clear and consistent with that of Ajit Singh (Public Witness -12) to the effect that his statement was in fact recorded on 25.4.1980.

(116) Now, take up for discussion the question whether the case diary was actually handed over on 26.4.1980 or on 27.4.1980. Diary of proceedings of

investigation is required to be maintained under Section 172, Cr.P.C. It postulates that the officer making investigation shall day by day enter his proceedings of the investigation in the diary, setting forth, inter alia, the time at which he begun and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation. Rule 25.18 read with Rule 25.54 of the Punjab Police Rules (applicable to Delhi) enjoin that statements recorded by the Investigating Officer under Section 161, Cr.P.C. shall not form part of the case diary prescribed by Section 172, Cr.P.C., but shall be recorded separately and attached to the case diary. The rules require the Investigating Officer to enter a list of the statements, indicating the number of pages in each statement, in the diary. Moreover, after examining any person orally or recording a statement under Section 161, Cr.P.C. he shall make a brief note of the fact in the case diary. The deposition of Sho Dalbir Singh (Public Witness -149) with regard to handing over of investigation and the entire case diary have to be properly appreciated in the light of these statutory provisions.

(117) PW-149 Sho Dalbir Singh was the Officer-in-charge of investigation of the case till the same was taken over by the C.B.I, on 26.4.1980. Even in the morning on 26.4.1980, certain steps were taken in connection with investigation of the case by him and under his direction. For example, Munshi Ram (Public Witness -57) seized the guest register of Nirankari Bhawan vide memo Ext. PW9/A. He also recorded the statement of Receptionist Amarjit Singh (Public Witness -9) and Caretaker Kulwant Singh(PW-35). Likewise, Si Mahesh Chand recorded the statement of Kuldip Singh Walia (Public Witness -141) and his wife Smt. Shiv Darshan Kaur. The C.B.I, came into the picture only after registration of R.C.No. 2/80 CIU(A) Ext. PW163/A on 26.4.1980 at 2.25 p.m.

(118) Investigation is the act of examining, search or enquiring into the facts and circumstances of a case. It is not a tangible thing capable of being physically handed over or taken over as such. On the basis of order made by the Government, the case was transferred to the C.B.I, and it was entrusted to B.R. Puri (Public Witness -163) to make investigation. Being so authorised, after registration of the case Ext. PW163/DA, B.R. Puri (Public Witness -163) took up the investigation and visited Police Station, Kingsway Camp as well as the place of

occurrence, namely Nirankari Bhawan on 26.4.1980. On reaching the police station, he contacted Acp Narender Singh. The file of the case was not there. He did not see any document at the police station as the Investigating Officer namely Sho Dalbir Singh (Public Witness -149), who was having the case file, was not there. Then, he went to the Nirankari Bhawan, where he recorded the statement of Kishan Pal (Public Witness -2). Obviously, on 26.4.1980 B.R. Puri (Public Witness -163) went to the police station and to the Nirankari Bhawan without giving prior intimation of his visit to Sho Dalbir Singh (Public Witness -149) or any other person at Police Station, Kingsway Camp. Next day, on 27.4.1980, however, he again visited Nirankari Bhawan, when Sho Dalbir Singh (Public Witness -149) brought the file and handed it over to him as he had earlier sent the message. In his cross-examination, however, no question was put to him as to whether he gave prior intimation to anyone of his visit to the police station or the Nirankari Bhawan on 26.4.1980, nor as to the whereabouts of Sho Dalbir Singh or any other member of his investigation team. Otherwise, he could have explained the same. Regarding his visit on 26.4.1980, his cross-examination stopped at getting the answer that he did not see any document or register at the police station. No question was put as to whether he had even asked for the same. Then, in respect of his visit on 27.4.1980, he did explain that he had earlier sent a message and it was in pursuance of that message that Sho Dalbir Singh (Public Witness -149) brought the case file to the Nirankari Bhawan and handed it over to him that day.

(119) Mr. Randhawa tried to exploit the statement of Sho Dalbir Singh (Public Witness -149), who stated that he had handed over the entire case diary and all documents to the C.B.I, when the investigation was transferred to it on 26.4.1980. But, we find no force in it. It is clear from the evidence of Ramesh Pal Singh (Public Witness -143) and that of Sho Dalbir Singh (Public Witness -149) that statements of various witnesses were actually recorded on 25.4.1980 and the other steps that were taken by them in the course of investigation even in the morning of 26.4.1980. Further, the testimony of Kishan Pal (PW-2), Niranjan Singh (Public Witness -3), Mangal Sen (Public Witness -4), Savitri Devi (Public Witness -8), Ajit Singh (PW-12), Anoop Kumar (Public Witness -15) and Kulwant Singh (Public Witness -35) that their respective statements were recorded on 25.4.1980 remained unchallenged.

Moreover, investigation of the matter was taken up by C.B.I, only after registration of the case on 26.4.1980 in the afternoon at 2.25 p.m. The deposition of B.R. Puri (Public Witness -163) on this aspect is very much more lucid, natural and cogent. For the very same reasons, we find considerable force in the Explanation given by Mr. Kaira that the statement of Sho Dalbir Singh (Public Witness -149) to the limited extent of his giving the date 26.4.1980, when the entire case diary and all other documents relating to the investigation of the case were handed over to the C.B.I., was an obvious discrepancy caused by lapse of memory, as he was deposing in Court 11 years after the event and that too without refreshing his memory by reference to the case diary, whereas the same were actually handed over to B.R. Puri (Public Witness -163) on 27.4.1980.

(120) Even otherwise, there is a presumption in favor of official acts having been regularly performed and the common course of investigation having been followed by the police in the present case in accordance with the statutory provisions made in Rule 25.18 and Rule 25.54 of Punjab Police Rules and Section 172(1), Cr.P.C. There is no material available on record to rebut that presumption under Section 114 of the Indian Evidence Act. therefore, the plea sought to be raised by Mr. Randhawa, that statements of all those witnesses recorded in the case diary by the Investigating Officers of Police Station, Kingsway Camp were ante-dated, fabricated or that the same would taint the entire investigation in the present case, is rejected.

(121) Next, Mr. Randhawa argued, (i) that the seizure memo Ext. PW-3/A, showing recovery of the screw driver Ext. P-3, noose prier Ext. P-4 and the wooden box Ext. P-1 from room No. 14, was concocted; (ii) that the screw driver Ext. P-3 was tampered with by engraving on it the distinctive letter 'N'; and (iii) that the recovery witnesses PW-3 Niranjjan Singh, PW-4 Mangal Sain and PW-12 Ajit Singh were got up and their statements under Section 161, Cr.P.C. were recorded after premeditation; (iv) that Letter 'N' was also inserted in two entries Ext. PW-158/B made in the Cbi Malkhana Register Ext. PW-158/A in respect of sample tools of the carpentry workshop, for linking up the screw driver Ext. P-3 and the accused Ranjit Singh with the commission of the crime; and (v) that the seal of 'RPS' affixed on the parcel containing the screw driver Ext. P-3 and the noose

prier Ext. P-4 vide seizure memo Ext. PW-3/A was changed. The argument of Mr. Rahdhawa is based upon three factors. First, the fact that the distinctive letter 'N' was not mentioned in the description of the screwdriver Ext. P-3 in the seizure memo Ext. PW-3/A. Secondly, insertion of letter 'N' in the entries Ext. PW-158/B made in the Cbi Malkhana register Ext. PW-158/A, in respect of the sample tools, namely, two steel hammers Ext. P-23 & Ext. P-24 and one screw driver Ext. P-25, taken from the carpentry workshop of the Nirankari Bhawan on 27.4.1980. Thirdly, the fact that the screw driver Ext. P-3 and the noose prier Ext. P-4, taken into possession, and put in a parcel with the seal of 'RPS' vide seizure memo Ext. PW-3/A, were found packed in a parcel bearing the seal 'CFSL' when produced in Court.

(122) Before proceeding to deal with the aforesaid line of defense, it may be noted that recovery of the wooden box Ext. P-1, screw driver Ext. P-3 and noose prier Ext. P-4 from room No. 14, has a vital bearing upon connection of the appellant sought to be established with the commission of the crime on the basis of the earlier mentioned series of incriminating circumstances No. 13 to 19. Just to make it more lucid, it may be recalled that according to the prosecution, on 24.4.1980 at about 4.00 p.m. /4.30 p.m. when the appellant Along with his companion came to the carpentry workshop, he was having the noose prier and he took from PW-12 Ajit Singh the 10' long screw driver engraved with letter 'N' in the presence of PW-36 Suresh Kumar. Immediately thereafter, the duo met PW-39 Darshan Uppal in the adjoining motor workshop and at that time the appellant was carrying green handle screw driver and a noose prier. Soon thereafter, PW-3 Niranjan Singh also saw the appellant having a screw driver of green colour in his hand, coming Along with his companion down stairs from the first floor near room No. 14. Then, the appellant and his companion went to the house of PW-11 Pritpal Kaur at about 5 p.m., ostensibly for fixing rollers in the Almirah that he had earlier prepared, and there too he was having a screw driver and a noose prier. Between 6.30 p.m. and 7.00 p.m., the appellant, his companion, and two other Sikh gentlemen, were seen in the vicinity, near the culvert opposite the house of PW-22 Vidyawati, just outside the Bhawan, where the three others took water and he kept sitting on the culvert with a log of wood. Public Witness 87 Tarseen Singh added that a log of wood was lying near him. From there, on the way back to the Bhawan, at about 7 p.m. to

7.30 p.m., PW-21 Janki Devi noticed in the hand of the appellant a screw driver with a handle of green colour, when she served water to him and his companion at the canteen situated at the corner of the Nirankari School. On reaching the rear gate of the Nirankari Bhawan, at about 8.30 p.m., PW-19 Damodari Devi saw appellant and his companion carrying through the rear gate into the Nirankari Bhawan the box Ex. P-1, which looked like a log of wood. The further movements of accused Ranjit Singh and his companion near about room No. 14 covered by circumstances No. 20,21& 22, are testified by other witnesses. PW-36 Suresh Kumar saw Ranjit Singh and his companion at the staircase leading to room No. 14 at about 9.30 p.m. PW-15 Anoop Kumar deposed to the presence of Ranjit Singh inside the adjoining bathroom and his companion lurking nearby on the balcony. Finally, just before arrival of the motorcade of deceased Nirankari Baba, between 10 p.m. and 10.15 p.m., PW-35 Kulwant Singh saw Ranjit Singh and his companion near room No. 14. The witness even had a conversation with accused Ranjit Singh at that place. It is the continuous chain of these circumstances, and recovery of the incriminating articles, i.e. the box looking like a log of wood (Ext. P-1), the screw driver (Ext. P-3) and the noose prier (Ext. P-4) found lying inside room No. 14, that clearly implicate the appellant in the commission of the crime.

(123) This aspect of the case, can be conveniently put into three different stages of investigation. First, on 25.4.1980 inspection of room No. 14, verification of the articles found lying therein, seizure of those articles vide memo Ext.PW-3/A & memo Ext. PW-3/B, recording of the statements of witnesses under Section 161, Cr.P.C., and deposit of the seized articles in Malkhana of Police Station, Kingsway Camp vide entries made in the Malkhana Register collectively Ext. PW-143/G. The second stage would take into account recovery of sample tools, namely, two steel hammers Ext. P-23 & Ext. P-24 and one screw driver Ext. P-25 from the carpentry workshop, and the deposit thereof in C.B.I. Malkhana vide entries No. 1,2 & 3 Ext. PW-158/B in register Ext. PW-158/A on 27.4.1980. The third stage would cover the evidence relating transfer of the earlier seized articles from Malkhana of Police Station, Kingsway Camp to the Cbi Malkhana, where the same were deposited vide entries at Serial Nos. 8 to 34 collectively Ext. PW58/E in the Register Ext. PW-158/ A on 30.4.1980. it would also cover the reference made by Cbi to Cfsi for Expert opinion on various articles of the case property, and the reports submitted

by the CfsI Experts. It would be appropriate, therefore, to take up the points of arguments of Mr. Randhawa, and marshal the relevant evidence for discussion in this very sequence stage by stage.

(124) In respect of the first stage, the relevant witnesses are PW-3 Niranjan Singh, PW-4 Mangal Sain, PW-12 Ajit Singh, PW-39 Darshan Uppal, PW-143 Si Ramesh Pal Singh and PW-149 Sho Dalbir Singh. They testified, inter alia, that on 25.4.1980 wooden box (Ext. P-1), six screws (Ext. P-11/1 to 6), screw driver (Ext. P-3), noose-prier (Ext. P-4), shoes (Ext. P-5/1 & 2), Parna (Ext. P-6), handkerchief (Ext. P-7), piece of cloth (Ext. P-8), bed sheets (Ext. P-9), shirt (Ext. P-10) and sword (Ext. P-12) were recovered from room No. 14 vide seizure memo Ext. PW-3/A. It has also come in the evidence of the said witness that at the time of seizure, the screwdriver (Ext. P-3) had a marking of 'N' and number 727 engraved on it. They also testified that six empty cartridges, which were found lying on the floor near the window inside room No. 14, were also seized vide memo Ext. PW-3/B. These two seizure memos recorded not only particulars of the articles taken into possession but also described the position and the places where they were found lying, besides recording that on the various parcels seal of 'RPS' was affixed.

(125) The relative position of the various articles that were found inside room No. 14 has been described in detail by these witnesses also. For purposes of the present discussion, it is sufficient to note that the wooden box (Ext. P-1) was lying on a cot, the naked sword (Ext. P-2) was inside the box, the screw driver (Ext. P-3) was lying near the box and the noose prier (Ext. P-4) also nearby under the cot. The recovered articles were checked before taking them into possession. These witnesses had noticed letter 'N' engraved on the screw driver Ext. P-3.

(126) PW-149 Sho Dalbir Singh has deposed that on discovering letter 'N' engraved on the screw driver, he called Ajit Singh from the carpentry workshop and enquired from him about it. In his cross-examination he has asserted that Ajit Singh was called sometime between 9 to 9.30 a.m. This is confirmed by PW-12 Ajit Singh, who also corroborated the evidence of PW-4 Mangal Sain, PW-143 Si Ramesh Pal Singh and PW-149 Sho Dalbir Singh that the screw driver was shown to him outside room No. 14. Besides, PW-12 Ajit Singh as well as PW-3 Niranjan

Singh and PW-39 Darshan Uppal have deposed to the significance of letter 'N' and explained that the tools of the carpentry workshop were marked as such for the sake of identification. The suggestion given in cross-examination only to PW-4 Mangal Sain that the seizure memos were signed by him at the police station was categorically denied.

(127) PW-3 Niranjan Singh has testified that on 25.4.1980, after inspection of the place of occurrence, he and PW-4 Mangal Sain were associated in the recovery of not only the articles found in room No. 14 and the adjoining bathroom but also those taken into possession from the Court yard and other places up to about 1.30 p.m. PW-143 Si Ramesh Pal Singh has stated that he scribed, on dictation of Inspector Dalbir Singh, statement of witnesses Niranjan Singh, Mangal Sain, Ajit Singh, Kulwant Singh, Bhagi Bai and Savitri Devi under Section 161, Cr.P.C. after 1.30 p.m. up to about 5 p.m. In respect of PW-I 2 Ajit Singh, PW-149 Sho Dalbir Singh has explained that only enquiries about the screw driver were made from him in the morning and his statement was recorded after 1.30 p.m. on 25.4.80.

(128) Moreover, PW-143 Si Ramesh Pal Singh has stated, in his cross-examination, that he had taken the articles in sealed parcels to Police Station, Kingsway Camp and deposited them there in the Malkhana at about 5 p.m. Further, he has explained that the seizure memo was shown to H.C. Iara Chand, who made entries in the Malkhana register according to the description of the articles recorded in the seizure memo, as per entries made in his presence, which were collectively marked Ext. PW-143/G.

(129) Thus, it is proved by the evidence on record that the various articles, including wooden box (Ext. P-1), screw driver (Ext. P-3) and the noose prier (Ext P-4) were recovered and taken into possession from room No. 14, put into parcels and sealed vide memo Ext. PW-3/A and Ext. PW-3/B around 9.30 a.m., and the same were deposited in the Malkhana at about 5 p.m. on 25.4.80.

(130) The plea of Mr. Randhawa that the screw driver Ext. P-3 was tampered with by engraving on it the distinctive letter 'N' is really based upon the suggestion given to PW-143 Si Ramesh Pal Singh that all the articles were taken away by the Cfsi Expert, who returned some of them on the next day, and the same were

sealed and the seizure memo was concocted on 26.4.1980. Further, he argued that if letter 'N' was actually engraved and noticed by the witnesses at that time, when the screw driver is stated to have been taken into possession, mention thereof would certainly have been made in the seizure memo Ext. PW-3/A.

(131) 'THEREFORE, the evidence regarding existence of distinctive letter 'N' on screw driver Ext. P-3 at the time of recovery, needs a little more elaborate discussion. PW-143 Si Ramesh Pal Singh has deposed that the screw driver had engraved on it letter 'N' and also there was engraved on it number '727'. On being asked if he had made a note of whatever he saw engraved on the screw driver, he explained that he had made a note in the case diary, but only the number '727' was mentioned at Serial No. 2 in the seizure memo Ext. PW-3/A. The only other question put to him was whether he had asked H.C.Tara Chand to record in the Malkhana register that the screw driver Ext. P-3 had engraved on it letter 'N'. He answered it in the negative and clarified that H.C.Tara Chand merely copied description of the articles from the seizure memo. Likewise, PW-149 Sho Dalbir Singh also stated that the screw driver Ext. P-3 had engraved on it letter 'N' and also number '727'. The direct evidence of these two members of the investigation team, in respect of existence of letter 'N' engraved on the screw driver Ext. P-3 at the time of its recovery, is unassailable.

(132) The two recovery witnesses, namely, PW-3 Niranjana Singh and PW-4 Mangal Sain also deposed to the existence of letter 'N' engraved on the screw driver Ext. P-3. Even in cross-examination, PW-3 Niranjana Singh confirmed that the letter 'N' was distinctively visible, albeit the number '727' was not so much prominent, on the screw driver Ext. P-3. On the statement of this fact, instead of putting to him his earlier statement recorded under Section 161, Cr.P.C., he was sought to be confronted with Seizure Memo Ext. PW-3/A, in a bid to show that his statement about letter 'N' was an after-thought. Seizure Memo, which was attested by him, was not the previous statement of the witness. It cannot be taken as proper contradiction for discounting his evidence of this fact. Indeed, he stoutly refuted the suggestions that letter 'N' was got engraved later, and that letter 'N' was not there on the screw driver Ext. P-3 at the time of its recovery and on that account it was not mentioned in the Seizure Memo Ext. PW-3/A.

(133) PW-4 Mangal Sain also, in his cross-examination confirmed that the screw driver Ext. P-3 was taken into possession from inside room No. 14. He too stated that the letter 'N' was in bigger size and was quite prominent as compared to the number '727' inscribed on it, whereas in the recovery memo Ext. PW-3/A there is no mention of letter 'N' while the number '727' was mentioned. He was confronted with his statement Ext. PW-4/DA recorded under section 161, Cr.P.C., where letter 'N' is not mentioned. To this limited extent, in the evidence of this particular witness only, it may be said that there was an embellishment.

(134) PW-12 Ajit Singh, deposed that at about 4 p.m. on 24.4.80 accused Ranjit Singh had taken from him the 10' long screw driver and even at that time letter 'N' was engraved on it. He testified that the screw driver Ext. P-3 with letter 'N', that was shown to him in Court, was the same one that was taken by the appellant. In his cross-examination, he explained that on 25.4.80, when he was called at about 9 or 9.30 a.m' the Police Officers who were standing outside room No. 14, showed him the screw driver. He told them that it had been taken by the appellant from him in the evening on the previous day. At that point of time, no writing work was done in his presence and no document was got signed from him. He remained standing with the Police Officers for about 20 minutes outside room No. 14 and when he came away PW-3 Niranjn Singh and PW-4 Mangal Sain were still there.

(135) It is firmly established by the evidence of PW-3 Niranjn Singh and PW-12 Ajit Singh that the letter 'N' engraved on the screw driver Ext. P-3 was in existence at the time when it was taken by the appellant from PW-12 Ajit Singh, and it was very much there when the screw driver Ext. P-3 was recovered from room No. 14 vide memo Ext. PW-3/A on 25.4.80. What was recorded in the Seizure Memo Ext. PW-3/A was description of the screw driver Ext. P-3. It is not to be mistaken as a previous statement of PW-3 Niranjn Singh or PW-12 Ajit Singh. Confronting these witnesses with the said memo Ext. PW-3/A, where letter 'N' was not mentioned, would not lead to the conclusion that there was any embellishment made in their statements in Court so as to discount the probative value of their direct evidence on this aspect.

(136) No doubt letter 'N' engraved on the screw driver (Ex. P-3) was a distinctive mark of identification and the Investigating Officer (Public Witness 143) omitted to mention it in the seizure memo Ex Public Witness 3/A. It must also be borne in mind that on the screw driver Ex. P-3, there was also inscribed the number '727', which was noted in the Seizure Memo Ex. PW3/A. At that point of time, real significance of the letter 'N' or that of the number '727' could not be properly comprehended. It was only later investigation that revealed the distinctive identity and special significance of the letter 'N' as against that of the number '727'. In such a situation it cannot be said that omission of the letter 'N' and mention of the number '727' as the distinctive mark in the Seizure Memo Ex. Public Witness 3/A was wholly unreasonable as to be fatal. At best, this omission may be termed as an irregularity in preparing the seizure memo Ex. Public Witness 3/A; but this circumstance would neither vitiate the seizure of the screw driver Ex. P-3 nor would it lead to the conclusion that the investigation was unfair. As a result of an irregularity in preparing the seizure memo, the Court would examine carefully the evidence regarding the seizure and no other consequence would follow. In the facts and circumstances of the present case, we are of the considered view that the aforesaid omission in the seizure memo Ex. Public Witness 3/A did not affect the veracity of the witnesses examined in support of the prosecution case.

(137) The statements of PW-3 Niranjana Singh, PW-4 Mangal Sain and PW-12 Ajit Singh, among other witnesses, were recorded by PW-143 Si Ramesh Pal Singh on the dictation of PW-149 Sho Dalbir Singh, after completing inspection and recovery of articles found at the place of occurrence, after 1.30 p.m. and the recording of the statements was completed by 5 p.m. on 25.4.80 itself. Soon thereafter, all the recovered articles of case property were deposited in the Malkhana of Police Station, Kingsway Camp vide memo Ext. PW-143/G. In this time frame, taking the weight of the cogent evidence of witnesses, consistent with the documentary evidence on record, we find no substance in the plea taken on behalf of the accused that the witnesses PW-3 Niranjana Singh, PW-4 Mangal Sain and PW-12 Ajit Singh were got up or that their statements were recorded after premeditation. For the very same reasons, we find no substance in the plea based upon the suggestion given to PW-143 Si Ramesh Pal Singh that the Cfsi Expert had taken away all the articles and returned some of them the next day and the

same were thereafter put into parcels and sealed, and that the seizure memo Ext. PW-3/A was concocted on 26.4.1980. Here, we may note, at the cost of repetition that PW-143 Si Ramesh Pal Singh was busy with inquest proceedings and did not even know about the activities of the CfsI Experts, when they were inside room No. 14. On the other hand, PW-149 Sho Dalbir Singh was there with the CfsI team and no such suggestion or question was put to him.

(138) Now, regarding the second stage, the argument hinges upon insertion of letter 'N' in entry No. 1 and 2 Ext. PW-158/B made in the Cbi Malkhana register Ext. PW-158/A, which is really of no significance. These entries relate to the sample tools, namely, two steel hammers Ext. P-23 & Ext. P-24 and one screw driver Ext. P-25 collected from the carpentry workshop of Nirankari Bhawan on 27.4.1980. PW-3 Niranjan Singh, PW-4 Mangal Sain, PW-12 Ajit Singh, PW-1370.P.Chhatwal have deposed that the said three tools were taken from PW-12 Ajit Singh vide memo Ext PW-3 / N, which bears signatures of PW-3 Niranjan Singh at point 'A', PW-4 Mangal Sain at point 'B', PW-12 Ajit Singh at point 'C' and PW-137 O.P. Chhatwal at point 'D'. Each of them stated that the said three tools had letter 'N' engraved on them when the same were taken into possession. PW-137 O.P. Chhatwal, in his cross-examination, agreed that the letter 'N' engraved on these three tools was in different sizes. He refuted as incorrect the suggestion that he got engraved letter 'N' on the three exhibited tools sometime after they were taken into possession and asserted that the engraved letter existed when he seized those tools on 27.4.1980.

(139) PW-158 Kailash Chander, In-charge of Cbi Malkhana, stated that Dsp Chhatwal of Cbi had brought and deposited with him the three articles in respect of which he made the entries at Serial Nos. 1 to 3 Ext. PW-158/B in the Malkhana register Ext. PW-158/A on 27.4.1980.

(140) The three entries Ext. PW-158/B read as follows:

S. Date of Date and By whom Crime No. Details of No. Entry place of seized or year and Property deposited name of S.P.E. Office 1. 27.4.80 Ajit Sh. O.P. RC2/80 (1) One steel hammer Singh Chhatwal Ciua of 1 Lb with wooden s/o Sarwan Dy.S.P. handle of red colour Singh, r/o1 CBU/SIC/ (words Steel Hero) Nirankari

New Delhi letter engraved 'N') Colony, Delhi 27.4.80 2 (1) One steel hammer 3/4 Lb with wooden handle of brown colour Word 3/4Lb letter engraved 'N' 3 (3) One screw driver of about 14 inches length with red plastic handle Gedore India are written & figure 749 also written on it. We have carefully examined with the aid of a magnifying glass the handwritten entries Ext. PW-158/B made in the original Malkhana Register Ext. PW-158/A. The handwriting is immature. The alphabets and words are stretched out and not quite uniform. It is not a free flowing handwriting. It shows that the author was not fully conversant with English language. It appears that in entry No. 1 the sign of opening and closing brackets have been inserted before and after the words 'words Steel Hero', small alphabet 'n' has been struck off and above it the word 'letter' was inserted and at the end, after the word 'engraved', capital alphabet N in single inverted commas was added. Likewise, in entry No. 2, it appears that the word 'letter' was inserted above small alphabet 'n', which was scored out, and after the word 'engraved' capital alphabet N was added within single inverted commas at the end. At both places, small alphabet 'n' is elongated with its leading and trailing flourish stretched outwards, more so in the former as compared to the later entry.

(141) The argument under discussion is sought to be developed by learned Counsel for the accused on the basis of the statement made by PW-158 Kailash Chander in his cross-examination, which is reproduced below :

Q.Is it correct that in these entries No. 2 there are corrections made regarding the letters and word found engraved on the hammer?

A.Yes, there are such corrections as while making the entries I was not able to read properly the engraved wordings either from the hammers or from the recoveries memos so I kept the space blank in the entry and I took the register to Shri O.P. Chhatwal who has deposited this property. Shri Chhatwal then recorded the engraved wording in the register himself.

It is incorrect to suggest that the changes have been made later on in the register or that the word 'N' was not engraved on any hammer deposited with me. In the entry No. 3 about the screw driver I recorded whatever I could read on the article i.e. screw driver after comparing it with the writing on the recovery memo.

(142) Thus, PW-158 Kailash Chander has fully explained the circumstances in which he took the Malkhana register after recording the said entries to Mr. O.P. Chhatwal for confirmation, who made the corrections. This Explanationn has to be appreciated in the light of the fact that the letter 'N' engraved on each of the three sample tools was in different sizes, as stated by PW-137 O.P. Chhatwal. Moreover, letter 'N' manually engraved upon these articles with the aid of a chisel or other similar instrument, looks different from that when written on paper. The two parallel vertical strokes and the diagonal one in between are not perfectly connected. Further, if the article is held vertically it would be read 'N' and if the same be held horizontally, it would be mistaken as 'Z.' The probability of such an engraved figure not being properly deciphered by someone like Public Witness 158 Kailash Chander, who was unfamiliar with the context, cannot be ruled out. The corrections made the entries more specific. It may also be noted that Entry No. 3 in respect of the sample screw driver was not even touched. On this screw driver also letter 'N' was engraved but the author had recorded the 'figure 749' for it's distinguishing description. No change was made in this entry. Surely, if the intention was to fabricate evidence, the very same letter 'N' would have been inserted here too. What is more important is the fact deposed by PW-3 Niranjana Singh, PW-4 Mangal Sain and PW-137 O.P. Chhatwal that the said three tools had letter 'N' engraved on them when the same were taken into possession. This is consistent with the contemporaneously prepared Seizure Memo Ext. PW-3/N, where it is so recorded. Since the letter 'N' was already there in the memo Ext. PW-3/N, the entries in the Register and the corrections therein made later at the time of deposit of these articles in the Cbi Malkhana would be insignificant for the purpose of appreciating the evidence for proof of this particular fact.

(143) In any event, the three tools separately entered at Serial Nos. 1, 2 & 3 in Ext. PW-158/B are not those alleged to have been used in connection with the commission of the offence. These are only sample tools collected by the Investigating Officer from the carpentry workshop of the Nirankari Bhawan in view of statements of the witnesses recorded on 25.4.1980, already discussed earlier, indicating that letter 'N' was engraved upon the tools of the carpentry workshop in order to distinguish the same from those of the motor work shop. The said sample tools corroborate oral evidence of those witnesses to this limited extent. The

suggestion given to PW-137 O.P. Chhatwal that he got engraved letter 'N' on the three exhibited tools 'sometime after the alleged seizure' is too vague and far fetched. Apart from the fact that there is nothing on record to show when was the letter 'N' engraved upon these tools, it is highly improbable that the Investigating Agency would make any such effort to engrave the letter 'N' on these sample tools, especially when they are not connected with the commission of the offence. In our opinion, it would be unreasonable to let imagination fly that far.

(144) Lastly, in relation to the third stage, the smoke-screen of alleged tampering of the seal affixed on the parcel of the recovered articles, sought to be created by Mr. Randhawa, gets completely wiped out on systematically going through the wholly integrated chain formed by the exhibited documents on record, namely, Ext. PW3/A, Ext. PW3/B, Ext. PW143/G, Ext. PW158/E, Ext. PW164/A, Ext. PW108/ H, Ext. PW108/F, Ext. PW108/G, Ext. PW108/J and Ext. PW163/B, which convincingly explain the change of the seal of 'RPS' to that of 'CFSL'.

(145) The Note appended to the seizure memo dated 25.4.1980 Ext. PW-3/A shows that the articles described at Serial Nos. 1, 2 and 3 i.e., the wooden box, the screw driver and the noose prier were wrapped up in a piece of cloth and PW-143 Ramesh Pal Singh had sealed the parcel with his seal of 'RPS'. On the same day i.e. 25.4.1980, PW-143 Ramesh Pal Singh deposited all the articles that were recovered from the place of occurrence in the Malkhana of Police Station, Kingsway Camp. In the Malkhana Register the wooden box, the screw driver and the noose prier are mentioned in Entry Nos. 15(1), 15(2) and 15(3) respectively, among other entries, collectively marked Ext. PW143/G. On 30.4.1980, as deposed by PW-158 Kailash Chander and PW-163 Shri B.R. Puri, Inspector S.P. Sinha of CBI collected the case property from Malkhana, Police Station, Kingsway Camp and deposited the same in the Cbi Malkhana. The seals on all the parcels were checked and the same were intact. The said three articles were entered in the Cbi Malkhana Register Ext. PW158/A at S.No. 25(1), 25(2) and 25(3), among the other recovered articles at S.Nos. 8 to 34 collectively marked Ext. PW158/E.

(146) Cbi sent various articles in parcels marked 'A' to 'V' mentioned in the list Ext. PW164/A to the Cfsi for examination and report on Point Nos. 1 to 24 vide letter

dated 3.5.1980 Ext. PW-108/H. List Ext. PW164/A item No. 22 records that the parcel containing the wooden box bearing the seal of 'RPS' was marked 'V'. By the forwarding letter Ext. PW108/H Point No. 24, Cbi sought opinion of the Cfsi if there were any identifiable tool marks, finger and thumb impressions on the contents of the parcel marked 'V'. At the end of this letter, it was recorded that the specimen of the seals used on parcels which were sealed by the Delhi Police were not available with the CBI. By another letter dated 5.5.1980 Ext. PW108/F, Cbi sought opinion of the Cfsi Expert on the questions specified therein. Question No. (iii) was framed to ascertain if the screw driver contained in parcel 'V' had been used in fixing or unfixing the screws on the box or if there were any marks of this screw driver anywhere on the box. In Question No. (iv) request was made to examine and give opinion if the nose prier also contained in parcel 'V' had been used in unscrewing a nut which was recovered from the bath room adjoining room No. 14 and the same was contained in a separate parcel 'W'.

(147) The vital fact recorded in the List Ext. PW164/A, enclosed with letter Ext. PW108/H, that the parcel containing the wooden box marked 'V' was bearing the seal of 'RPS' is further confirmed by the next document Ext. Public Witness 108/G which is the report dated 25.8.1980 of PW108 Dr. S.R. Singh, Senior Scientific-cum-Assistant Chemical Examiner of the CFSL. This report, under the heading: 'Description of parcel(s) and condition of seals' clearly records the finding: 'Received one sealed parcel bearing the seal impression of 'RPS' which was intact'. The next heading is of the description of articles contained in the various parcels. Parcel 'V' is then further described in the following terms: Parcel V: It is a sealed wooden log box (received from Ad Ball/CFSL with reference to case CFSL-80/F-1632) containing exhibits marked V2, V3, V4 and V5 in Physical Division. Exbt.V2 It is a screw driver of about 10' length with green plastic handle. Exbt.V3 It is a metallic, old nose prier of about 7' length. Exbt. V4 These are 5 metallic screws (taken out of Exbt. V5 of about 1' length out of these 4 are complete and one is half broken. Exbt.V5 It is a wooden log box having numerous circular striations within it.' Under the next heading of Result of Examination, the report records opinion on Question Nos. (iii) and (iv) raised in CBI's letter dated 5.5.1980 Ext. PW108/F in the following terms:

'1.Regarding Query No. III: The screw driver marked Exhibit No. V2 is strong enough to unscrew the screws marked Exhibit No. V4.'

It may be emphasised, even at the cost of repetition, that this CfsI report dated 25.8.1980 Ext. PW108/G establishes beyond doubt two facts. They are, firstly, that parcel 'V', containing the wooden box into which were packed the screw driver and the noose prier, was received with seal of 'RPS' intact; and secondly, that Ext. V2 and Ext. V3 were marked by the CfsI for purposes of identification of the screw driver and the noose prier respectively for Expert opinion.

(148) EXT. PW108/J is another report of PW-108 Dr. S.R. Singh dated 9.9.1980. This report is submitted on a separate reference made on the contents of the very same parcel 'V' received by him from the Ballistic Division, bearing the seal impression of CfsI Cbi, Ball, DIV., New DELHI. Under the heading Description of articles contained in the parcel(s)' in this report, it is recorded as follows:

'PARCELNo. V: It is a sealed wooden log box that contains the following exhibits: (i) A sword marked Exbt-V1 having one edge sharp and other blunt with pointed end. (ii) A screw driver marked Exbt.V2 of about 10' length with green plastic handle. (iii) A noose-prier marked Exbt.V3 of about 7' length.' Then, in a Note, it is recorded that the contents of the parcel marked 'V' were packed properly and kept in wooden log marked 'V' and the same was sealed separately with the seal of Sso Phy CfsI Cbi, New Delhi and was returned to the forwarding authority. Thereafter, under the heading 'Result of Examination', opinion is recorded regarding Query No. 24 (Point No. 24 stated in letter dated 3.5.1980 Ext. PW108/H) in these words: 'A manual punch of letter N was found on the screw driver Mark V.2'

(149) Last in the series of these documents is the CfsI Report dated 10.4.1981 Ext. PW163/B. Here, under the heading description of parcels and condition of seals it is recorded as follows:

'TWENTY two sealed parcels marked 'A' to 'V'. The seals of the parcel were intact and tallied with the specimen seals.'

UNDER the next heading, description is given of articles contained in various parcels 'A' to 'U'. Thereafter a Note is made in three parts, which is reproduced below:

'NOTE(1) Five parcels marked I, J, L, M and R and three parcels marked O.P & V were sent to and examined in the Biology and Finger-Print Divisions respectively of this Laboratory. (2) Six parcels marked H, K, N, Q, S and T and two parcels marked V and D have also been examined in the Biology and Physics Divisions respectively of this laboratory. (3) Two .30 carbine-bullets were test-fired in the laboratory on the Pant of parcel H of deceased Pratap Singh and the two holes created on its back were marked No. 1 & 2 by me.' In this report, references made to the seals on the parcel, and the specimen seals in Clauses (1) and (2) of the Note, obviously, elude to the seal mentioned in the report of PW-108 Dr. S.R. Singh dated 25.8.1980 Ext. PW108/G and another dated 9.9.1980 Ext. PW108/J already discussed hereinabove.

(150) As a result of the foregoing discussion, it clearly emerges that there is a wholly integrated chain formed by the aforesaid four sets of documents that show the movement of the incriminating articles, particularly, the wooden box, the screw driver and the noose prier that were recovered from room No. 14 on 25.4.1980 ending up with the CfsI Report dated 10.4.1981.

(151) It is thus established, on combined analysis and reading of contents of the documentary evidence on record, that the said incriminating articles were recovered, packed into parcels, and sealed by PW-143 Ramesh Pal Singh with his seal 'RPS'. The said seal remained intact when the articles were deposited in Malkhana of Police Station, Kingsway Camp and then transferred to Cbi Malkhana; and the very same seal was intact when the concerned parcel was marked 'V' and forwarded by the Cbi to the CFSL. There, the seal 'RPS' was removed for examination of the articles for Expert opinion; and then the screw driver, the noose prier and the wooden box were marked for purposes of identification as V2, V3 and V5 respectively by the CFSL. After examination of the same, they were put back into a parcel marked 'V', which was returned by PW-108 Dr. S.R. Singh with his seal Sso Bhy CfsI to the Ballistic Division of CfsI as per his

report dated 9.9.1980 Ext. PW108/J. Thereafter, the CfsI Report dated 10.4.1981 Ext. PW163/B comprehensively dealt with the various articles of the case property contained in parcels 'A.' to 'V' and explained the position of parcel 'V' in Note Nos. 1 and 2 set out above. It was at this stage that the seal of CfsI was affixed on various parcels and the same were returned to the CBI.

(152) Consequently, on production in Court of such of the articles as were sent by the Cbi to the CfsI for Expert opinion, the parcels and articles contained therein were found to be bearing the seal of CFSL. This convincingly explains the change of the seal of 'RPS' affixed on the parcel into which the wooden box was packed up containing the screw driver and the noose prier on 25.4.1980. The said parcel, when produced in Court, was found to be bearing the seal of CfsI and the screw driver and the noose prier were found placed inside the wooden box in envelopes marked V2 and V3 respectively. Change of the seal, thus, stands fully explained. The plea sought to be advanced by Mr. Randhawa that the seal was tampered with is rejected.

(153) We would now take up for discussion the substantive charge of conspiracy to kill Baba Gurbachan Singh punishable under Section 120B, Indian Penal Code . and the first head of the additional charge of his murder punishable under Section 302,I.P.C. read with Section 120B, Indian Penal Code . In the course of hearing before us, certain findings recorded by the Trial Court, indicated in paragraph 23 (supra), and the supporting evidence on record, have not been assailed. For ready reference and composite discussion of the conspiracy charge (s), the relevant facts, which are not in dispute, are recapitulated below:

(A)There was long standing enmity between the Akal is and Nirankar is. (b) In the Amritsar case, where 13 Sikhs were killed in a fight that took place on 13.4.1978, the Nirankari Chief Baba Gurbachan Singh and other Nirankar is had been acquitted by the Court on 4.1.1980. (e) Several inflammatory speeches were made by Sant Bhinderwala exhorting assassination of the Nirankari Chief. (d) Appellant Ranjit Singh was a staunch Akali and active member of Baba Deep Singh Ranjit Akhara. He and other members of the Akhara were constantly indulging in anti Nirankari activities in 'Delhi. (e) Appellant Ranjit Singh joined the Nirankari Mission

and started working as a carpenter in the Nirankari Bhawan. (f) Appellant Ranjit Singh was present Along with a companion in the Nirankari Bhawan Complex from about 4 p.m. up to about 10.30 p.m. on 24.4.1980. (g) On 24.4.1980 at about 10.30 p.m. at the Nirankari Bhawan, arms, ammunition and hand-grenades were used, and by shots fired from .30 Carbine Baba Gurbachan Singh was murdered.

(154) Now, the relevant findings that have been challenged by the parties in appeal, are succinctly put below:

(1) Appellant Ranjit Singh killed Baba Gurbachan Singh, in pursuance of the conspiracy: (2) Chota Gian Singh (since acquitted) knew of the intention of Ranjit Singh to kill Baba Gurbachan Singh and that he had declared in the course of a routine Friday Path of the Akhara, in the presence of Ranjit Singh, that Ranjit Singh would bring the head of the Baba etc. But, the evidence on record was not sufficient to establish that Chota Gian Singh was a party to the conspiracy and the declaration made by him would not lead to the inference that murder of the Baba had any proximate and direct nexus with it: (3) The evidence on record did not establish that Ranjit Singh had obtained 'material or help' from Jarnail Singh Bhinderwala nor that he had any 'definite connection' with Sant Bhinderwala.

(155) Mr. Randhawa, learned Counsel for the appellant has challenged the above noted first finding and also the first part of second finding. On the other hand, Mr. Kaira, learned Counsel for the respondent-State has challenged correctness of the above-noted second half of the second finding and the whole of the third finding of the Trial Court.

(156) The challenge raised by Mr. Randhawa is based upon the following five points:

(1)The charge of conspiracy framed against appellant Ranjit Singh Along with 'others known or unknown' was improper and consequently the trial and his conviction based upon it is bad.

(2) The prosecution case of conspiracy against the appellant qua both the charges must fail, especially if someone other than appellant Ranjit Singh and Kabul Singh

(P.O.) was involved in committing murder of Baba Gurbachan Singh.

(3) With the acquittal of Chota Gian Singh and Charanjit Singh, the basic charge of conspiracy had totally failed and it would not survive in respect of the appellant alone.

(4) There are inherent improbabilities in the case of conspiracy sought to be set up by the prosecution, such as: (i) open declaration made by Chota Gian Singh during the routine Akhara Path on Friday that Ranjit Singh was going to kill the Baba; (ii) disclosure by the appellant to PW-91 Harjinder Singh on 18.4.1980 that he had met the Saints on the Baisakhi day (13th April, 1980) at Amritsar and that the arrangements had been made; (iii) disclosure made by the appellant to PW-91 Harjinder Singh on 21.4.1980 that he would be getting a happy news about the Nirankari on the following Friday; and (iv) announcement made by Sant Bhinderwala, just three days preceding the actual occurrence of the crime on 24.4.1980, in his speech at Yamuna Nagar, Haryana, that within 2/3 days they will achieve their aim and Nirankari Baba would be murdered. According to Mr. Randhawa, it is highly improbable for any member of a conspiracy to declare or disclose in advance the plan or particulars of the acts proposed to be done in pursuance of the criminal conspiracy

(5) There is no material available on record to justify the finding that Chota Gian Singh had made the declaration in the presence of the appellant that he (Ranjit Singh) was going to kill the Nirankari Baba.

(157) Mr. Kaira demolished the first four points of challenge raised by Mr. Randhawa and justified the correlative findings of the Trial Court. But, he conceded the fifth point. Moreover, he proceeded to challenge the finding that the declaration made by Chota Gian Singh that the appellant was going to kill Baba Gurbachan Singh had no proximate and direct nexus with the crime. He also challenged the finding regarding the material or help said to have been obtained by the appellant from the Sant and his connection with Sant Jarnail Singh Bhinderwala, for committing the crime in pursuance of the conspiracy for killing Baba Gurbachan Singh.

(158) The motive and object stated in the charge was to avenge the killing of 13 Sikhs at Amritsar by liquidating the Nirankari Chief Baba Gurbachan Singh, who Along with others had been acquitted in the Amritsar case by the Court of District & Sessions Judge, Kamal, Haryana vide order dated 4.1.1980. Thus, the motive was reprisal for the killing of Sikhs in Amritsar. Feeling aggrieved by the acquittal of Baba Gurbachan Singh and others by the Court of Sessions, rather than accepting the verdict of the Court, which had become final, the appellant took law into his own hands and joined in the conspiracy to do or cause to be done illegal acts for achieving the object of liquidating Baba Gurbachan Singh.

(159) The specific illegal act attributed to the appellant was that he Along with Kabul Singh (PO) secured entry in the Nirankari Bhawan and that on 24.4.1980 at about 10.30 p.m. he Along with the said Kabul Singh (PO), in pursuance of the said conspiracy, committed murder of Baba Gurbachan Singh by intentionally causing death by firing shots from a .30 Carbine.

(160) Straightaway, in view of the earlier noted undisputed facts, certain questions arise for consideration. They are, among others: why did appellant Ranjit Singh join the Nirankari Mission; and what was he up to on 24.4.1980, when he Along with a young companion, who is alleged to be Kabul Singh (PO), was going about from place to place in the Nirankari Bhawan Complex from 4 p.m. to 10.30 p.m? The answer is obvious. He did so in pursuance of the criminal conspiracy to commit the murder of Baba Gurbachan Singh.

(161) The law on conspiracy has been succinctly stated in Black's Law Dictionary (6th Edition) at page 310 in the following terms:

'CRIME of conspiracy is distinct from the crime contemplated by the conspiracy (target crime).....'

'A conspiracy may be a continuing one, actors may drop out, and others drop in; the details of operation may change from time to time' the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose.'

(162) Section 120A, Indian Penal Code envisages a crime to commit an offence coupled with some act done by one or more parties to the crime in pursuance thereof. Section 120B provides for punishment of criminal conspiracy.

(163) The first charge narrates that Ranjit Singh Along with two of the acquitted accused persons and three absconders Bada Gian Singh, Dalbir Singh and Kabul Singh and 'others known or unknown' agreed to do or cause to be done illegal acts, to wit, avenge the killings of 13 Sikhs in Amritsar by liquidating Baba Gurbachan Singh by arranging arms, ammunitions and hand grenades and by other enumerated acts; that Ranjit Singh Along with Kabul Singh (PO) secured entry into the Nirankari Bhawan, Delhi; and that he and all others committed the offence of criminal conspiracy punishable under Section 120B, IPC.

(164) . The other charge is that Ranjit Singh on 24th day of April 1980 at about 10.30 p.m. at Nirankari Bhawan, Delhi, Along with Kabul Singh (PO), in pursuance of the said conspiracy (the word 'said' eludes to the criminal conspiracy dealt with under earlier mentioned first head of charge) did commit murder of Baba Gurbachan Singh by firing shots from a .30 Carbine and thereby committed an offence punishable under Section 302 read with Section 120B, IPC.

(165) Section 218, Cr.P.C. requires that for every distinct offence of which any person is accused, there shall be a separate charge. If, upon considering the material on record, the Court is of the opinion that there is ground for presuming that the accused has committed an offence, the Court shall frame in writing a charge against the accused under Section 240, Cr.P.C. For the purpose of framing a charge. Section 476, Cr.P.C. postulates that the form set forth in the Second Schedule may be used. In the present case, the relevant form would be Form No. 32 (II)(ii) set forth in the Second Schedule and the charges of conspiracy and murder were framed in accordance with that form.

(166) Even otherwise, no objection against framing of the charges was raised on behalf of the appellant at any earlier stage in the proceedings during the trial. Moreover, learned counsel for the appellant has been unable to show that failure of justice has in fact been occasioned by any error, omission or irregularity in the order framing the charge. thereforee, the finding of conviction on the basis of the

said charges and the order of sentence passed by the learned Trial Court are not liable to be reversed in appeal and the same are saved by the express provision made under Section 465, Cr.P.C.

(167) So far as Point No. 2 is concerned, the plea that someone else was involved in the murder of Baba Gurbachan Singh has been ruled out, and all other hypotheses sought to be set up have earlier been discussed at great length. For those very reasons, which need not be repeated here, we find that case of the prosecution against the appellant Ranjit Singh is squarely covered by the said two charges.

(168) On Point No. 3, in respect of the separate charge of conspiracy under Section 120B, Ipc, it is no doubt true that two other accused persons namely Chota Gian Singh and Charanjit Singh have been acquitted. But, merely for that reason, it cannot be said that the charge has totally failed and would not survive for conviction of the appellant alone.

(169) This plea has been raised by Mr. Randhawa on the basis of two decisions of the Supreme Court, namely, *Topandas v. State of Bombay*, 1956 Cri. L.J. 138 and *Bimbadhar Pradhan v. State of Orissa*, 1956 Cri. L.J. 831, which are clearly distinguishable. In the first case, there were in all four persons alleged to be parties to the conspiracy, out of them, three were acquitted. In that context, it was observed that one person alone cannot be convicted for the offence of conspiracy under Section 120B, Indian Penal Code and that if only one accused person remains after acquittal of others, the charge of conspiracy as a whole would fail. Likewise, in the second case there was no allegation or evidence that any other persons, known or unknown, though not placed on trial, were involved in the conspiracy. The ratio of those cases is not applicable here. In the present case, apart from Chota Gian Singh and Charanjit Singh, there were other persons, named and unnamed, known and unknown, who were alleged to be involved in the conspiracy. Some of them are still absconding.

(170) Conviction of the appellant is based upon findings recorded by the Trial Court, inter alia, in paragraph 338 of the impugned judgment. He and his young companion Kabul Singh (P.O.) were together. The two of them had joined hands in

the commission of the crime and the circumstances show that they had agreed with each other to do so. It is also pertinent to note that the charge of conspiracy under Section 120B, Indian Penal Code is based upon the involvement of Bada Gian Singh (P.O.), Dalbir Singh (P.O.) and Kabul Singh (P.O.) respectively named therein, and 'other known or unknown' persons also, and not only Chota Gian Singh and Charanjit Singh, who have been acquitted. The case of the said three named absconders and the 'other known or unknown' persons, alleged to be parties to the conspiracy, was not subject matter of trial. thereforee, we do not consider it appropriate to comment upon or deal with the arguments sought to be advanced before us by learned Counsel for the appellant to show the kind of material on record, or the existence or non-existence thereof, in relation to those other persons In the present appeal. Suffice it to say, however, that the facts and circumstances duly proved by the evidence on record establish beyond doubt the involvement of two or more persons, including the appellant, in the commission of the crime so as to sustain the charge of criminal conspiracy against the appellant.

(171) It is beyond the pale of controversy that the appellant was a staunch Akali, a marksman, well-skilled in martial arts, an active member of Baba Deep Singh Ranjit Akhara. He and other members of the Akhara were constantly indulging in anti Nirankari activities. Soon after acquittal of Nirankari Baba vide order dated 4.1.1980 in the Amritsar case, he infiltrated into the rank and file of Nirankar is and started working on the plan to kill the Nirankari Baba. On the fateful day i.e. 24.4.1980, he and his companion were seen moving around from place to place, including the area near room No. 14, within the Nirankari Bhawan Complex. He was seen carrying a noose prier (Ext. P-4) to begin with and then a screw driver (Ext. P-3) also in his hands. Later, he Along with his companion and two other Sikhs was also noticed sitting on the culvert on the public road opposite the house of PW-22 Vidyawanti with a log of wood, which was the box Ext. P-I. Thereafter, at about 8.30 p.m., with the help of his young companion, he was seen carrying the log like box of wood (Ext. P-I) through the rear gate into the Nirankari Bhawan. The duo were there once again in the close vicinity of room No. 14 from about 9.30 p.m. till about 10.30 p.m., when the deadly shots were fired from room No. 14 by a .30 Carbine and two hand grenades were also thrown. Immediately thereafter, the appellant and his companion made good their escape. The wooden box (Ext. P-I)

which was carved out to look like a log of wood was found, among other articles, inside room No. 14. In the light of these, among other facts and circumstances, we find ourselves unable to reach any conclusion except one that two or more persons were involved in the criminal conspiracy and that in pursuance thereof the appellant was involved in committing the murder of Baba Gurbachan Singh.

(172) The principle of criminal liability for the offence of conspiracy does not depend upon the necessity to convict a requisite number of persons. It depends upon consideration of facts beyond reasonable doubt which make such a principle applicable. In other words, it is not essential that more than one person should be convicted of the offence and Section 120B, Indian Penal Code would be invoked where the Court is in a position to find that two or more persons were actually concerned in the commission of the substantive offence of criminal conspiracy or that of the crime contemplated by the conspiracy (target crime). In applying this principle of law, we are fortified by the observations made in paragraphs 9 and 19 of the judgment of the Supreme Court in *Brathi Alias Sukhdev Singh v. State of Punjab*, 1991 SCC (Cri.) 203.

(173) thereforee, the plea that the separate charge of conspiracy would fail on the acquittal of Chota Gian Singh and Charanjit Singh, or that the charge relating conspiracy and murder of Baba Gurbachan Singh would fail, and would not survive against the appellant alone, must be rejected.

(174) Next, we take up for discussion Point No. 4, raised by Mr. Randhawa for discounting the facts mentioned therein, on the gOod that the same are inherently improbable and should not be believed.

(175) The first three facts arise out of the deposition of PW-91 Harjinder Singh. He was the ace witness of the prosecution on the charge of conspiracy.

(176) The evidence of PW-91, Harjinder Singh shows, inter alia, that he was an Akali. Like the appellant, he was an active member of Baba Deep Singh Ranjit Akhara, of which his maternal uncle Gurcharan Singh Saberwal was the Secretary. He knew the appellant since 1978. He deposed that he and the accused Chhota Cyan Singh (since acquitted) Along with other members of the

Akhara had participated in demonstrations against Nirankari Samagams in the year 1979 in Delhi.

(177) According to PW-91, there used to be a Path of the members of the Akhara on every Friday and during one such Path Chhota Cyan Singh and Bada Cyan Singh (P.O.) were also present. At that time, Chhota Cyan Singh declared that all members would be happy to know that the appellant was going to do something to bring good name for the Akhara, he would bring the head of Nirankari Baba and all of them should render help. He further testified that in February, 1980 while he was working in Kalawati Saran Hospital for carrying out electric pipe fittings, the appellant informed him about his infiltration into the rank and file of the Nirankar is after obtaining 'Gian' from Dr. Desh Raj. He also added that on two occasions the appellant had asked him to procure chloroform from the said hospital so that he may administer it to the guards of the Nirankari Baba and then to kill him. But he did not get it. Once, the appellant had asked him for his father's revolver for the same purpose as he knew shooting by gun. It has also come in his evidence that the appellant had absented himself from the Longer at Majnu ka Tila on Baisakhi day on 13.4.1980. On being questioned by him about his absence, he told him that he had gone to Amritsar to meet the Salnts and the arrangements had been made. He further deposed that on 21.4.1980 the appellant met him at his workshop and complained to him that he had not helped him in any manner but he would be getting a happy news by the next Friday in respect of Nirankar is. That was the last meeting between him and the appellant

(178) The material facts that emerge out of the evidence of Harjinder Singh PW-91 are:

(A) Incensed by strong anti Nirankari feelings, the appellant had developed the intention to kill Nirankari Baba Gurbachan Singh; (b) In order to achieve the said object, the appellant had secured his initiation and sneaked into the Nirankari Mission; (c) Posing as a Nirankari, the appellant had entrenched himself in the Nirankari Bhawan; (d) For execution of his plan to kill Babaji, the appellant tried in vain to obtain from him (Public Witness -91) chloroform and also a revolver; (e) In a routine Akhara Path meeting on a Friday, Chhota Cyan Singh (acquitted) had

declared that all members of the Akhara would be happy to know that Ranjit Singh would bring honour to the Akhara and would kill Nirankari Baba and all should render help; (f) Appellant Ranjit Singh had told him on 18.4.1980 that he had gone to Amritsar and met the Saints on the Baisakhi day (13.4.1980) and that the arrangements had been made; (g) On 21.4.1980 the appellant met him (Public Witness -91) in his workshop and told him that he would be getting a happy news by Friday in respect of Nirankar is and that was the last meeting with the appellant.

(179) Learned Counsel for the appellant has strenuously urged before us that being aware of the conspiracy to kill the Nirankari Baba, Harjinder Singh (Public Witness - 91) clearly knew that it was an unlawful act for him to help the appellant in killing the Baba and thus he played an active part in furtherance of the ostensibly agreed criminal objective and this makes him participles criminis. He further contended that this witness was a habitual offender because of his involvement in several criminal cases and he had been coerced by the Cbi to depose against the accused as is evident from his letter Ext. DW1/B and application Ext. DW1/C dated 18.5.1992 sent from the jail to the learned Trial Court and as such he is a tainted witness.

(180) Before dealing with the objections of the learned Counsel for the appellant in respect of the evidence of this witness, we may dispose of the argument that Harjinder Singh PW-91 was an accomplice.

(181) Conspiracy has been defined in Section 120A of the Indian Penal Code as an agreement to do art illegal act or a lawful act by illegal means. According to this definition, an essential ingredient of the offence of criminal conspiracy is that the accused should agree that a course of conduct be pursued, which he knows must involve the commission of the offence by one or more of the parties to the agreement. But, beyond the mere fact of agreement the necessary means read of the crime is, in our opinion, established if it is shown that the accused intended to play some part in furtherance of the criminal purpose, which the agreement intended to achieve. It appears from the evidence of Harjinder Singh PW-91 that although he knew that the appellant was nursing the intention to kill Babaji but he did not agree and did not help him in any manner to effectuate that purpose.

Nothing has been elicited in his cross-examination to show that this witness had agreed that Nirankari Baba be killed or that he had done anything to lend assistance for the commission of the crime. The mere fact that this witness did nothing to expose or frustrate the criminal purpose of the appellant, does not bring him in the category of an accomplice. However, bearing in mind his passive role in the whole affair, we would deal with his testimony as akin to that of an accomplice, making the Court circumspect and look for corroboration of his testimony for acceptance. In other words, what is required is some additional evidence rendering it probable that the story narrated by Harjinder Singh PW- 91 has a ring of truth and is reasonably safe to act upon.

(182) It is a matter of common experience in the Criminal Courts that the terms of 'conspiracy' are hardly ever susceptible of proof. In such cases, direct evidence is scarcely available. It is the circumstantial evidence and the conduct of the accused persons which are to be taken into consideration for adjudicating upon the truthfulness or otherwise of the prosecution case.

(183) As stated earlier, learned Counsel for the appellant has attempted to assail the testimony of this witness on the ground that he was wanted in a murder case at Gurdaspur and was declared a proclaimed offender and he had changed his name from Gurdev Singh to Apt Singh, and further that he had been coerced by the Cbi to depose against the appellant Ranjit Singh and as such he was a tainted witness. The Trial Court has discussed the evidence of this witness in great detail and found that there is sufficient evidence on record to corroborate his testimony. However, the Trial Court has doubted the evidence of this witness about the information given to him by the appellant about his meeting with Sant Bhinderwala at Amritsar and the arrangements made by him. We will discuss this aspect of the matter a little later.

(184) The Trial Court on the basis of the testimony rendered by PW-1, PW-2, PW-4, PW-43 and PW-44 has found that there was long standing enmity between Akal is and Nirankar is and since the year 1978 there was general atmosphere of hatred and hostility against the Nirankar is and particularly against the Nirankari Baba Gurbachan Singh that was whipped up by Sant Jarnail Singh Bhinderwala

and his followers. The Trial Court has also held that after 13th April, 1978 episode, Sant Bhinderwala made several rabble rousing speeches against Nirankar is and exhorted killing of Baba Gurbachan Singh. The Trial Court has also held that the appellant was a staunch Akali and was a member of Baba Deep Singh Ranjit Akhara and Harjinder Singh PW-91 was also the member of the said Akhara.

(185) The evidence of Dsp C.B.I. N.P. Singh (Public Witness 142) shows that on 20.5.1980 he had seized three registers vide seizure memo Ex Public Witness 140/A from the accused Gyan Singh. The seizure memo Ext. Public Witness 140/A was attested by Swaran Singh PW-140 as President of the said Akhara. On this point the testimony of N.P. Singh Pw 142 finds sufficient confirmation from the evidence of Inspector R.S. Dhankar Pw 150. Signatures of the appellant appear in the Akhara Register Ext. PW140/B. This fact has been established from the evidence of Hand Writing Expert S.C. Mittal PW-126 vide report Ext. Public Witness 126/Y. Specific questions were put to the appellant in his examination u /Section 313, Cr.P.C. with regard to these circumstances, but he refused to offer any Explanationn, whatsoever, about his membership of Baba Deep Singh Ranjit Akhara as well as his signatures in the said registers. These signatures in the said registers of Baba Deep Singh Ranjit Akhara provide sufficient corroboration to the testimony of Harjinder Singh PW-91 that the appellant was a member of the said Akhara.

(186) It will be useful at this stage to refer to the evidence of PW-1, PW-2, PW-4, PW-43 and PW-44, who have deposed that since the year 1978 there was general atmosphere of hatred and hostility against the Nirankar is and particularly against the Nirankari Baba Gurbachan Singh that was whipped by Sant Jamail Singh Bhinderwala and his Akali followers. According to these witnesses after the 30th April, 1978 episode Sant Bhinderwala made several inflammatory speeches and exhorted killing of Baba Gurbachan Singh. In June, 1978, he declared that the day was not far off when Baba Gurcharan Singh would be beheaded and his head hung at the Darshni Deory of the Golden Temple at Amritsar. Declarations made by him that Nirankar is should not be allowed to hold their samagams, creating ill-will and inciting violence in the minds of Akal is against Nirankar is were also published in various newspapers like Daily Ajit, Hind Samachar, Kamboz, Pratap,

Vir Pratap and Punjab Kesari Ext. PW-63/B-1 to B-11, Ext. PW-63/B-1 and B-2, Ext. Public Witness 64/ B-1 and Ext. Public Witness 50/A. These newspapers were seized by D.S.P. Ved Prakash Choudhary Public Witness 122 vide seizure memos Ext. Public Witness 61/A, Public Witness 63/A, Ext. Public Witness 122/A, Ext. Public Witness 63/C, Ext. Public Witness 63/A, Ext. Public Witness 115/A. It has come in the evidence of Prem Verma Public Witness 124 that on 21-4-1980 Sant Jamail Singh had made a speech at Gurdwara Santpura, Yamuna Nagar declaring that within 2/3 days they will achieve their aim and Nirankari Baba would be murdered. Kuldip Raj PW-90 and Ram Krishan PW-97 deposed that on that day they had seen Jatha of Sant Bhinderwala moving in Yamuna Nagar. It is undisputed that on the night between 24th and 25th April, 1980 Nirankari Baba was shot dead in the Nirankari Bhawan at Delhi.

(187) It is significant that a suggestion had been made during the cross examination of P.W.2 that there was 'tussle and rift' between Nirankari Baba and Sant Bhinderwala. This suggestion was denied by Public Witness .2. Nevertheless, this suggestion can be pressed into service for lending assurance to the prosecution case that there was old rivalry between Nirankaris and followers of Sant Bhinderwala. We may clarify here that suggestions made in the cross examination of prosecution witnesses cannot be used to fill in the gaps in the evidence of prosecution and such suggestions cannot take the place of legal evidence, but on the facts and circumstances of a particular case they can be used to lend assurance to the case of the prosecution.

(188) It has also come in the evidence of Kishori Lal Public Witness .40 that the accused Chhota Cyan Singh (since acquitted) was the President of Baba Deep Singh Ranjit Akhara. After acquittal of Nirankari Baba on 4.1.1980 in the Amritsar case, Chhota Cyan Singh had told him that although the Nirankari Baba had been acquitted in that case, but a brave man 'has been born' to kill him. This statement of Chhota Cyan Singh is relevant to show inter alia, his state of mind. It has not been disputed before us that after acquittal of Nirankari Baba in the Amritsar case, an attempt was made at his life at Durg (M.P.) also. This circumstance read along with the contemporaneous declarations made by Sant Bhinderwala and the aforesaid statement of the accused Chhota Gyan Singh clearly show that the Akali

faction led by Sant Bhinderwala was after the life of Nirankari Baba.

(189) Harbhajan Singh (Public Witness -13) claims to be known to the appellant, Chhota Gyan Singh, Charanjit Singh and Avtar Singh. According to him, they were active members of Baba Deep Singh Ranjit Akhara and they had been arranging processions on behalf of the Akhara. He had acquaintance with these persons as they were living in vicinity of his residence. He further testified that whenever he arranged Nirankari Satsang in the colony, these persons used to create trouble. According to him, when he noticed the appellant working with Ajit Singh, (Public Witness -12) in the carpentry workshop of the Bhawan in February, 1980, he warned Ajit Singh about the appellant, but Ajit Singh assured him that Ranjit Singh had embraced Nirankari faith through Dr. Desh Raj Nirankari and put him at ease. The learned Additional Sessions Judge has believed his evidence with regard to the membership of the appellant, Bada Gyan Singh (P.O) Chhota Gyan Singh and Charanjit Singh of Baba Deep Singh Ranjit Akhara. The learned Sessions Judge has assigned valid reasons for accepting this evidence and we are not inclined to take a different view.

(190) In addition to this, there is the evidence of Ajit Singh PW-12, who deposed that in February, 1980, the appellant started working with him in the carpentry workshop inside the Nirankari Bhawan and he had told him that he had embraced Nirankari faith under the influence of Dr. Desh Raj. He further testified that the appellant had also informed him that he was expert in Gatka, sword playing and rifle shooting and he would never miss a target even if it was a small coin and that he learnt that skill from Baba Deep Singh Ranjit Akhara. Thus the evidence of Harbhajan Singh (Public Witness -13) and (Public Witness -12) corroborates the evidence of Harjinder Singh Public Witness .91 that the appellant was an active member of Baba Deep Singh Ranjit Akhara and was also a sharp shooter.

(191) It has also come in the evidence of Ajit Singh PW-12 that appellant used to attend the Nirankari Sangat early morning and that after joining the carpentry workshop he had donated Rs. 100.00 saying that he had come to Bhawan to render free Seva. Further, his evidence shows that the appellant had also started working in the houses of some of the Nirankar is. This finds confirmation from the

evidence of Kamajjit Singh PW-33, Kulwant Kaur PW-34 and Prit Pal Kaur PW-11. It is apparent that the appellant did all this for winning over the confidence of the Nirankari and for avoiding suspicion against his movements inside as well as outside the Nirankari Bhawan. Thus, the evidence of Harbhajan Singh Public Witness .13 read along with other circumstantial evidence amply corroborates the evidence of Harjinder Singh Public Witness .91 that the appellant had developed the definite intention to kill Nirankari Baba and in order to achieve the said object he joined the Nirankari Mission; started working as a carpenter in the carpentry workshop and in the houses of the Nirankari and thus entrenched himself in the Nirankari Bhawan.

(192) Public Witness 91 Harjinder Singh has also testified that the appellant was friendly with Bada Gyan Singh (PO). On this point also, his testimony gets sufficient confirmation from Kishori Lal (Public Witness -40) who deposed that even on the day of the occurrence, the appellant was at the house of Bada Gyan Singh.

(193) On the question of accessibility of Bhinderwala to the appellant, the evidence discussed above clearly shows that after acquittal of Nirankari Baba in the Amritsar case, Sant Bhinderwala had exhorted Akalis to kill the Nirankari Baba. It is the evidence of Prem Verma (P.W.124) that on 21.4.1980 Sant Bhinderwala had made a speech at Gurdwara Sant Pura, Yamuna Nagar, Haryana, debaring that within 2 /3 days they will achieve their aim and Nirankari Baba would be murdered. It has also come in the evidence of Public Witness .163 B.R. Puri that after the murder of Nirankari Baba, Sant Bhinderwala had paid a visit to the house of the appellant, who was at that point of time absconding. It is in this context that we have to consider the testimony of Harjinder Singh PW-91 that the appellant had informed him about his meeting with the Sant at Amritsar and also about the arrangements made with the help of Sant Bhinderwala.

(194) Learned Counsel for the appellant has contended that for certain parts of the story told by Harjinder Singh Public Witness .91, no corroborative evidence at all has been produced. These parts chiefly relate the requests made by the appellant to Harjinder Singh for procuring chloroform and a revolver to kill the Nirankari Baba. It is natural that no corroborative evidence for such details would

beavailable. What has to be seen is whether there is sufficient corroborative evidence of essential points relating to the conspiracy and confident corroborative evidence with regard to the accused's determination to kill the Nirankari Baba. It is not necessary that the story of such a witness should be corroborated in every detail. When it is established that testimony of Harjinder Singh (Public Witness - 91) finds corroboration on material points implicating the appellant, the Court can safely come to the conclusion as to the truth of the whole story, even on some of the uncorroborated points.

(195) Another criticism of the learned Counsel for the appellant about this witness is that he was involved in some criminal cases and he was also in police custody at the time of his examination before the Court and, therefore, the Cbi may have coerced him to give the much needed support to the prosecution story. This criticism has been rejected by the Trial Court on valid grounds. Harjinder Singh (Public Witness 91) has admitted that he was arrested by the police in connection with some criminal cases. He also admitted that he was detained by the police from 26.4.80 to 28.4.90 and then he was taken by Cbi and detained for 7/8 days. His statement was recorded by the Cbi on 28.4.80. But, it has to be borne in mind that when his statement was recorded before the Trial Court he was not under detention. It has come in his cross-examination that the day before he appeared as witness in the Trial Court, he had gone away from his house and stayed during the night at Tri Nagar and that he had informed his wife accordingly. It is apparent that in order to avoid harassment at the hands of the accused persons, he left his house a day earlier to his examination in the Trial Court. Indeed, this witness had emphatically denied the defense suggestion that he had been coerced by the Cbi to make a false statement against the accused.

(196) We may point out that no hard and fast rule could be laid down about appreciation of evidence and each case has to be decided on the facts as they stand in a particular case. As noted earlier, this witness has admitted pendency of two criminal cases against him. But, merely on this ground his testimony would not be rejected, specially when he was examined during investigation without undue delay, and then in the Trial Court who had the advantage of watching his demeanour. Moreover, this witness was cross examined at great length by the

learned defense Counsel. But, nothing significant could be brought out in order to demolish his basic and substantial evidence given in the examination-in-chief. Similarly, nothing has been elicited in his cross-examination on the basis of which it could be inferred that he is not a truthful witness. We may also add here that persons with bad antecedents are not necessarily untruthful witnesses.(State of Punjab v. Wassan Singh, 1981 Scc (Cri.) 292.

(197) Learned Counsel for the appellant has further contended that the fact that Harjinder Singh (Public Witness -91) was coerced by the Cbi to depose against the appellant, is borne out from his letters Ext. DW-I/B & Ext .DW I Chand also from the evidence of his wife Gurmeet Kaur (DW-1). The evidence of Gurmeet Kaur (DW1) was of negative character. She was examined primarily to substantiate the defense plea that Harjinder Singh (Public Witness -91) was coerced by the Cbi to depose against the accused persons. She attempted to insinuate that the Cbi had picked up her husband three days before his evidence in the Trial Court and she gave a telegram to Patiala House Court about it. Curiously enough, she claimed to have sent the telegrams to the Patiala House Court, which was not even the place of sitting of the Trial Court, despite the fact admitted by her that she 'knew in which Court the case was going on'. Even if so, no such telegram has been proved. She has nowhere stated in her evidence that after the alleged abduction of her husband (Public Witness -91), she had lodged any report at the concerned police station or made any complaint to any Court, which in the normal course of human conduct and action, she was supposed to do. She does not say that it was for any hesitation or reluctance that she did not approach the police or the Court. Moreover,we have already noted the evidence of Harjinder Singh (Public Witness 91), who had explained that a day before his examination in the Trial Court, he had gone away from his house and stayed during the night at Tri Nagar. Indeed, in his cross-examination he asserted that he was not taken by the Cbi on the previous day or during the past one or two months. Thus, the version of Gurmeet Kaur (DW-I) runs counter to that of Harjinder Singh (Public Witness 91) on this aspect.

(198) Further, Gurmeet Kaur (DW 1) stated that her husband, while he was in jail in May, 1992, had given the letter Ext. Dw I/B to her father, and an unknown

person also delivered to her a letter of Harjinder Singh, which is Ex. Dwi /C. She introduced these documents in her examination-in-chief, recorded on 22.5.1992, in the following words:

'.....MYfather had also gone to meet Harjinder Singh in jail. Harjinder Singh had given a letter to my father. That was on the last Monday. That letter is Ext. DWI/B. I identify the writing of Harjinder Singh and also his signature on it. About a week back one person came to me at my house. I do not know who he was. He told me that he had been sent by Harjinder Singh from jail. He gave a letter to me. I asked my son to get prepared photostat copy of that letter as I have to give photostat copy to a person whose name I had forgotten. My son Gurnam Singh got prepared photo copies of that letter and sent the copies somewhere but I do not know where he sent them. The letter Ext. Dwi /C is in the writing of my husband Harjinder Singh and it was sent by my son Gurnam Singh. This letter is also signed by my husband Harjinder Singh in English language but I do not know English....'

(199) It is alleged in Ext. DW-I /B that Cbi had forced Harjinder Singh to make a statement against the accused persons. In Ex. Dw I/C it is stated that he (Public Witness -91) was also asked to prevent his wife DW-I from appearing as witness in defense. Copies of these letters purport to be sent through the Superintendent of the Jail and addressed to various authorities and Courts. But, there is no evidence led to prove dispatch or receipt of the same.

(200) In her cross-examination, Gurmeet Kaur (DW-I) was confronted with certain applications and reports DW-I /PX-1 to DW-I /PX-5. These were moved by Harpnder Singh PW-91 and Gurmeet Kaur, DW-I for police protection as threats were given to them by the accused persons and their associates. It was stated by Harjinder Singh in the application DW-I /PX-3 dated 22/10/91 addressed to the Superintendent (CBI) that some of the associates of the accused persons were trying to coerce his wife to stand as a defense witness for demolishing his testimony in the case. A similar application also dated 22.10.1991 Ext. DW-I /PX-4 was addressed to the Sho, Tilak Marg. Ext. DW1/PX-1 signed by Gurmeet Kaur was addressed to the Superintendent of Police stating that the appellant's brother Gurcharan Singh had threatened her. Ext. Dwi /PX-2 is the application dated

27.3.92 again written by Harjinder Singh (Public Witness -91) to the S.P.. Cbi for protection as the accused were threatening to kill him. Gurmeet Kaur (DW 1) has denied her signatures as well as her husband's signatures on these applications.

(201) It is also significant that during her cross-examination, she was confronted with certain entries and signatures of her husband (Public Witness -91) in the visitors' book of Cbi office on 30.9.91, 22.10.91, 24.10.91, 4.11.91, 18.11.91 and 27.3.92. She has denied her husband's signatures against these entries also. These entries clearly reveal that her husband (Public Witness -91) had visited the office of the Cbi on the aforesaid dates. The entry at Seriall No. 17 shows that on 23.10.91 Gurmeet Kaur (DW-I) had herself visited the office of the CBI. On being confronted with the said entry, she disowned her own signatures also against that entry. It appears to us that the visitors' book was maintained and the entries had been made in the regular course of official business. We find no reason to reject this evidence. Instead of explaining the purpose.of her visit to the office of the Cbi on 23.10.91, she has totally denied her visit. This circumstance also affects her credibility. The whole pattern of evidence of Gurmeet Kaur (DWI) smacks of artificiality and this compels us to discard her evidence as wholly unreliable.

(202) The application Ext. Dwi /PX 6-3 is dated 22/10/91 and the application DWI/PX-2 is dated 27/3/92. These applications, read in conjunction with the entries in the visitors' book of Cbi, clearly show that Harjinder Singh PW-91 and Gurmeet Kaur DW-I had visited the office of the Cbi to complain against the accused persons and their associates about threats held out to them. This circumstance, to a great extent, probablises the case of the prosecution that even before his examination in the Trial Court, Harjinder Singh (Public Witness -91) was under tremendous pressure from the accused persons to resile from the statement given by him during investigation and to depose in the Trial Court in their favour. It is significant that the suggestion made to Harjinder Singh (Public Witness -91) in his cross-examination that he had been coerced by the Cbi to depose against the accused, was denied. His statement u/Section 161, Cr.P.C. was recorded by the Investigating Officer without delay. Nothing could be elicited in his cross examination which would cast any reasonable doubt upon genuineness and voluntary character of his statement on oath and credit worthiness of this witness.

(203) It needs to be highlighted that it has come in the evidence of Si Varinder Kadian (DW-3) that the accused Gyan Singh used to accompany Gurmeet Kaur, (DW-I) to meet Harjinder Singh (Public Witness -91) when he was in police custody in Police Station, Kirti Nagar in connection with the criminal case registered against him under Sections 170/420/511, IPC. Further, Mahabir Singh (DW-4) Asst. Superintendent Jail has admitted in his evidence that Harjinder Singh (PVV -91) was lodged in Jail No. 3 and so was the appellant. Accused Charanjit Singh was also there in Jail No. 3. This clearly shows that the accused persons, including the appellant, had opportunities of influencing him (Public Witness -91) after his statement was recorded before the Trial Court.

(204) Taking an overall view of the circumstances outlined in the discussion herein before, we are of the opinion that it is quite likely that it was at the behest of the accused persons that Harjinder Singh (Public Witness -91) and Smt. Gurmeet Kaur (DWI) felt compelled to bring up the plea of involuntary character of the evidence of Harjinder Singh (Public Witness -91) after 14 months of his examination in the Trial Court.

(205) We find nothing on record to impeach the probity of Harjinder Singh (Public Witness -91) as a truthful witness. His evidence recorded in Court was such as to accord with the ordinary course of events and human nature.

(206) Now, we proceed to discuss the challenge raised by Mr. Randhawa on the ground of improbability of each of the earlier noted three facts deposed by Harjinder Singh (Public Witness -91).

(207) First, we take up the declaration made by Chota Gyan Singh that the appellant was going to kill the Baba. PW-91 has testified that this declaration was made during a routine Friday meeting, described as 'Path', at the Akhara. It has also come in evidence that the Akhara was being run by staunch Akal is for imparting training and practicing martial arts. It was the hot-bed of anti Nirankari activities. Its members were regularly organising demonstrations and disrupting Nirankari functions. Its members used to hold meetings (Path) on every Friday. Obviously, those meetings were meant, inter alia, for exchanging views, drawing up plans and giving instructions to members for transaction of business. This

particular meeting was attended by those alleged to be involved in the conspiracy and few other members. This was the occasion when Chota Gyan Singh had declared that all members would be happy to know that the appellant was going to do something to bring good name for the Akhara, he would bring the head of the Nirankari Baba, and all of them should render help. PW-91 was present at this meeting. Later, he has testified, the appellant did call upon him to help and get chloroform and his father's revolver to kill Babaji. In these circumstances, keeping in view the brazenly nefarious anti Nirankari activities of members of the Akhara, we find nothing inherently improbable in the fact that Chota Gyan Singh made the said declaration at the in-door meeting of the Akhara, so as to disbelieve this part of the deposition of Harjinder Singh (Public Witness -91).

(208) Simultaneously, let us also consider the challenge raised by Mr. Kaira to the finding of the Trial Court regarding nexus between the dedication made by Chota Gian Singh and the crime. In this context, two questions arise, which have to be answered. First: whether the declaration attributed to Chota Gian Singh would be admissible in evidence against the appellant? Secondly: whether the said declaration had proximate nexus to the commission of the crime?

(209) Accused Chota Gian Singh was given benefit of doubt and acquitted by the Trial Court on the charge of conspiracy. His acquittal has not been challenged by the State in appeal and has become final. It is true that ordinarily a statement attributed to a co-accused person would not be admissible as substantive evidence against another accused in the same trial. But, an exception to the general rule has been made in respect of things said or done by a conspirator under Section 10 of the Evidence Act. It has been held in *S.H. Jhabwala and Others v. Emperor* : AIR1933 All690 , that in Section 10, 'anything said' would include the statements made, speeches, delivered or dedication made. In a case where two or more persons have conspired together to commit an offence anything said by any one of such persons in reference to their common intention is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

(210) In order to bring the case within the ambit of Section 10 of the Evidence Act, Mr. Kaira contended that the evidence against co-accused Chota Giar, Singh can be considered for invoking against the convicted appellant his constructive criminality, and for that purpose it was open to him to show to the Court infirmity in the acquittal of co-accused Chota Gian Singh without a challenge to his acquittal in the appeal. We find this argument of Mr. Kaira well founded.

(211) In a similar situation, in *Brathi @ Sukhdev Singh v. State of Punjab*, 1991 SCC (Cri.) 203 (supra), the Supreme Court has explained the law in the following terms:

'THE powers of the Appellate Court in dealing with an appeal against an order of conviction are defined under Section 386(1)(b) of the Code of Criminal Procedure, 1973 corresponding to Section 423(l)(b) of the Code of 1898. In the matter of appreciation of the evidence the powers of the Appellate Court are as wide as that of the Trial Court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. In *Sunder Singh's case* 1962 (2) CrLJ 290 (supra), this Court has held that the provisions of Section 423(1)(a) do not create a bar against the Appellate Court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented on behalf of the other accused who are convicted. In considering the evidence as a whole, the Appellate Court may come to the conclusion that the evidence against the person acquitted was also good and need not have been discarded. When several persons are alleged to have committed an offence in furtherance of the common intention and all except one are acquitted, it is open to the Appellate Court to find out on a reappraisal of the evidence that some of the accused persons have been wrongly acquitted, although it could not interfere with such acquittal in the absence of an appeal by the State Government The effect of such a finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality'.

Further, paragraph 10 at page 212 it is observed as follows:

' ON reexamination of the evidence the Appellate Court is free to reach its own conclusion which may be contrary to the one reached by the Trial Court while acquitting the co-accused. It can certainly come to an independent finding that evidence against the acquitted accused was satisfactory and would not have been discarded. On the basis of such a finding, the Appellate Court does not proceed to disturb the order of acquittal which has become final. It can certainly consider the impact of its conclusion on the case of the appellant before it.'

(212) Mr. Kalra is entitled to assail findings of the Trial Court regarding the declaration made by Chota Gian Singh, notwithstanding finality attached to his acquittal, for showing its impact on the prosecution case against the appellant in the present case. Thus, it is open to this Court, to review the whole evidence and reach its own conclusion, which may be contrary to the one reached by the Trial Court while acquitting co-accused Chota Gian Singh, and come to an independent finding that the evidence against the acquitted accused was also good and should not have been discarded. In doing so, this Court would not proceed to disturb the order of acquittal of co-accused Chota Gian Singh, which has become final. But we can certainly consider its impact on the case of the appellant before us. In other words, notwithstanding acquittal of co-accused Chota Gian Singh, it is open for us to review the evidence on record about the declaration made by him for examining its impact on the conviction of the appellant and altering the finding regarding proximate nexus of that declaration with the crime.

(213) Now, we come to the pertinent question of the period when the declaration was made and its proximate nexus in point of time with the actual commission of the crime.

(214) The Trial Court has recorded the finding, while accepting the statement of PW-91 that the declaration was made by Chota Gyan Singh, that it would not lead to the inference that the said declaration was made immediately prior to the incident or that the shooting had direct nexus with that declaration. The discussion and the findings recorded in paragraph Nos. 316 and 340 of the impugned judgment show that it was primarily for want of the definite date or month when the

said declaration was made that the Trial Court gave benefit of doubt and acquitted Chota Gian Singh on the charge of conspiracy.

(215) Mr. Kalra urged that in a case of conspiracy exact month and date are not material. In the very nature of such a case, what is relevant is the period during which the concerned parties may enter into the conspiracy to commit the offence or act in pursuance thereof. In the present case, the period when the declaration was made can be fixed on reading the statement of PW-91 Harjinder Singh as a whole. Further, he contended that PW-91 Harjinder Singh had deposed about various relevant facts and events that had taken place in a chronological order. The period when the Path was held is a relevant fact and the same can be established on the basis of cumulative effect of the evidence of the witness and other connecting facts and circumstances of the case in accordance with the principles laid down in Sections 3 to 9 of the Evidence Act. According to him, the period of time during which the said declaration was made stands sufficiently established on the sequential reading of the statement of the witness in the context of the charge of conspiracy, whereas the Trial Court has taken a very narrow, unreasonable and pedantic view.

(216) Perusal of the statement of PW-91 Harjinder Singh does show that it runs in a chronological sequence, narrating relevant facts and events starting from the time when he joined the Akhara in 1978. He deposed, inter alia, about the conduct of the appellant in the year 1979, when elections were held for Gurudwara Prabhandhak Committee. Mr. Kalra has brought to our notice a notification issued under the Delhi Sikh Gurudwara Managing Committee Act, 1971 for showing that the said election was held on 28.10.1979. This notification is not on record. But, as he has rightly pointed out, judicial notice of it can be taken under Section 57 of the Evidence Act. Thereafter, comes the statement about the declaration. It is then followed by the statement of events that took place in February, 1980, when the appellant asked him to get chloroform and his father's revolver. It is unnecessary to refer to the other facts deposed by the witness. Suffice it to say that the statement about the declaration made by Chota Gian Singh finds place after narration of the facts related to the Gurudwara elections held on 28.10.1979 and prior to the events that had taken place when the witness was working in the

Kalawati Saran Hospital in the month of February, 1980.

(217) The charge of conspiracy relates to a specific period 'between January, 1980 and April, 1980'. Here, it is pertinent to note, at the risk of repetition, that it was the acquittal of Baba Gurbachan Singh Along with other Nirankar is in the Amritsar case on 4.1.1980 that the feeling of reprisal and retribution was inflamed, which was the immediate cause that led to the conspiracy to commit the offence of murder by liquidating Baba Gurbachan Singh. It is in this context of the charge and the specified period between January, 1980 and April, 1980 that the statement of PW-91 Harjinder Singh in respect of the relevant fact of the declaration made by Chota Gian Singh has to be appraised in evidence.

(218) A clear indication of hatching the conspiracy for liquidating Baba Gurbachan Singh and the time thereof is found in the evidence of PW-40 Kishori Lal, who stated that after Babaji's acquittal Chota Gian Singh had told him that Babaji was acquitted but a brave man was born to be-head him..

(219) Even otherwise, the terms in which the declaration was made by Chota Gian Singh leaves no manner of doubt that there was in existence by that time the conspiracy to commit the murder of Baba Gurbachan Singh. The declaration also shows that preparations were being made to act in pursuance of the criminal conspiracy. Further, it establishes the identity of appellant as the person who was going to do something to bring laurels to the Akhara and kill the Baba. Moreover, the declaration connects certain members of the Akhara to the object of the criminal conspiracy. The deposition of PW-91 Harjinder Singh explains in a logical sequence that it was after the said declaration was made that Ranjit Singh told him that he had already infiltrated into the ranks of the Nirankar is and asked him to get chloroform from the Hospital where he was working in February, 1980.

(220) In the light of the foregoing discussion, there is no escape from the inference and it necessarily follows that the said declaration was made by Chota Gian Singh in pursuance of the conspiracy, within the period specified in the charge, in immediate proximity of the acts done by the appellant constituting a chain of incriminating events, and it had a direct nexus to the actual commission of the crime on 24.4.1980.

(221) therefore, we find merit in the challenge raised by Mr. Kalra to the above noted second half of the second finding of the learned Trial Court. Since acquittal of Chota Gian Singh has not been challenged in appeal, we would not comment upon it and make it clear that we have gone into the evidence regarding the declaration, in the light of the observations made in Brathi's case (supra), for considering its impact on the case of only the appellant before us. Notwithstanding the acquittal of Chota Gian Singh, we would alter the finding of the learned Trial Court in respect of the declaration made by Chota Gian Singh; and hold that the evidence of PW-91 Harjinder Singh is sufficient to draw the inference that the said declaration had proximate and direct nexus with the commission of the crime, and that it lends support to the other evidence on record for proving the existence of the conspiracy as well as for the purpose of showing that the appellant was a party to it.

(222) Next, PW-91 Harjinder Singh has deposed that on the day of Baisakhi i.e. 13.4.1980 the appellant did not attend Lungarat Majnu Ka Tila. On 15.4.1980, when they met, he inquired from the appellant the reason for not attending Lungar on the eve of Baisakhi. He replied that he had gone to Amritsar and as such did not come there. Then, on 18.4.1980 the appellant again came and met him in his workshop. . That day, he disclosed that he had met the Salnts at Amritsar and the arrangements had been made.

(223) Mr. Randhawa, learned Counsel for the appellant urged that the statement of PW-91 Harjinder Singh about Ranjit Singh meeting the Salnts on Baisakhi day namely 13.4.1980 at Amritsar should be disbelieved as the same was contrary to the evidence of PW-12 Ajit Singh, who had deposed that Ranjit Singh had told him that he could not attend the Baisakhi Smagam as he had gone to Agra; whereas PW-16 Narinder Singh and PW-17 Mohan Singh had stated that the appellant was present in the 'Satsang' at the Nirankari Bhawan in Delhi on 13.4.1980.

(224) On the other hand, Mr. Kaira, learned Counsel for the respondent-State contended that the statement of PW-91 Harjinder Singh finds corroboration from the evidence of PW-17 Mohan Singh and PW-18 Mahinder Singh, who deposed that the appellant was not coming to work and so they went to his house on

10.4.1980 and there they were told by his brother that he had gone to Punjab.

(225) In our opinion, the argument advanced by Mr. Randhawa would cut no ice. He was unable to reconcile the difference between the statement of PW-12 Ajit Singh, who claimed that Ranjit Singh had told him that he had gone to Agra, and that of PW-16 Narinder Singh and PW-17 Mohan Singh, who had stated that Ranjit Singh was present at the Satsang held at Nirankari Bhawan in Delhi on 13.4.1980. There was no possibility of the appellant attending the Baisakhi Satsang in Delhi and then going away to Agra, as PW-12 Ajit Singh had testified that the appellant had told him that he had gone to Agra, where his brothers-in-law were residing, that he had taken wine, as a result of which, he fell sick there; and that was the reason why he could not attend the Baisakhi Smagam at Delhi. In any case, the statement of PW-12 Ajit Singh leaves no manner of doubt, specially in view of the said clarification, that the appellant was certainly not in Delhi on the Baisakhi day 13.4.1980. Besides, Mr. Randhawa had no comment to offer on the statement of PW-17 and PW-18 about the information given to them by the appellant's brother on 10.4.1980, three days preceding Baisakhi, that Ranjit Singh had gone away to Punjab.

(226) As explained by Mr. Kaira, for avoiding any suspicion and misleading PW-12 Ajit Singh, who was a Nirankari, the appellant may well have mentioned Agra instead of Amritsar as the place where he had actually gone on the Baisakhi day. Moreover, we find merit in his plea that the testimony of PW-91 about the appellant having gone to Amritsar finds sufficient corroboration from the depositions of PW-17 and PW-18 suggesting that he had actually gone to Punjab. It is also significant to note that these statements of PW-17 and PW-18 were not even challenged in cross-examination.

(227) therefore, the plea of Mr. Randhawa that we should disbelieve the statement of PW-91 Harjinder Singh that the appellant told him that he had gone to Amritsar, met the Salnts there and the required arrangements had been made on 13.4.1980, which was the Baisakhi day, cannot be accepted.

(228) Likewise, in the facts and circumstances of the case, we find nothing strange and no improbability in the deposition of PW-91 Harjinder Singh that the appellant

met him and told him on 21.4.1980 that he would get the 'happy news' about the Nirankar is by the following Friday.

(229) As earlier discussed, it is apparent from the evidence of PW-91 Harjinder Singh that he had known Ranjit Singh very well since 1978. It is also clear from his evidence that the appellant used to freely discuss with him plans for achieving the object of killing Baba Gurbachan Singh and that the two of them were meeting each other quite frequently. Keeping in view the close association between PW-91 Harjinder Singh and the appellant, the probability of the latter confiding in the former and frankly disclosing to him the developments that were brewing for fulfillment of the object of the said conspiracy cannot be ruled out. Moreover, the content and tenor of the deposition of PW-91 Harjinder Singh appear to be quite natural. In the absence of any evidence on record to show the contrary, we are unable to accept the bald and imaginary plea of Mr. Randhawa that it would be highly improbable for any member of the conspiracy to give out such incriminating information about commission of the crime to any other person, like PW-91 Harjinder Singh, who did not actually participate in the execution of the conspiracy. Since PW-91 Harjinder Singh appears to us to be a witness akin to an accomplice, we have put material parts of his evidence to strict test and found the same sufficiently corroborated by the other evidence and trustworthy. therefore, the general plea of improbability raised by Mr. Randhawa for challenging probative value of the earlier noted three facts that have been deposed by PW-91 Harjinder Singh, is rejected.

(230) Next, the fact that Sant Bhinderwala had forecast in a meeting held at Gurudwara Santpura, Yamuna Nagar, Haryana, just three days before occurrence of the crime, that Nirankari Baba would be murdered has been proved by PW-124 Prem Verma. He was the editor, printer, publisher as well as the proprietor of 'Kamboj Hindi Weekly' newspaper having its registered office in Yamuna Nagar, Haryana. A report published in his newspaper about it is Ext. PW-50/A. Moreover, in Court he had stated that three days before 24.4.1980 (which was date of murder of Nirankari Baba) he had heard the speech of Sant Bhinderwala at Gurudwara Santpura, Yamuna Nagar. In his speech, Sant Bhinderwala had stated that within 2-3 days they would achieve their aim and Nirankari Baba would be murdered. In

his cross-examination, a suggestion was made that PW-124 was asked by the Cbi officers and the Nirankar is to publish the report Ext. PW-50/A. That was, of course, refuted. But the veracity of the statement of the witness that he had heard the speech was not challenged. It was not even suggested in his cross-examination that he was not present or that Sant Jamail Singh Bhinderwala did not make the said announcement in his speech at the meeting held in the local Gurudwara at Yamuna Nagar. The evidence of PW-124 Prem Verma about the presence of Jarnail Singh Bhinderwala at Yamuna Nagar at the relevant time is corroborated by PW-102 Gyan Singh and PW-123 Amolak Singh. Even otherwise, in the light of the evidence on record about the various venomous public declarations and inflammatory speeches made by Sant Jamail Singh Bhinderwala, it appears that he was a dare-devil and a ruthless campaigner. thereforee, the evidence of PW-124 Prem Verma cannot be discounted merely on the ground that it was highly improbable for Bhinderwala to if take such a daring forecast.

(231) As a result of the above discussion on point No. 4, we find no merit in the argument sought to be advanced by Mr. Randhawa that PW-91 Harjinder Singh was a tainted witness or that the evidence in respect of any of the facts noted there under was so inherently impossible as to be disbelieved.

(232) Point No. 5 urged by Mr. Randhawa was frankly conceded by Mr. Kaira. Indeed, the observation made in paragraphs 316 and 340 of the impugned judgment that Chota Gyan Singh made the said declaration in the presence of Ranjit Singh is not borne out from the evidence on record. But, this by itself would not weaken the evidence of the fact that the declaration was made nor the incriminating impact of it against the appellant under Section 10 of the Evidence Act.

(233) Regarding the connection between the appellant and Sant Jamail Singh Bhinderwala, the findings and discussion are contained in paragraphs 320, 321 and 322 of the impugned judgment of the trial Court. According to Mr. Kalra, Sant Jamail Singh Bhinderwala was the principal conspirator. He had made arrangements for the arms and ammunitions for execution of the conspiracy, and there was clear connection between the appellant and Sant Jamail Singh

Bhinderwala in the consummation of the crime. In order to substantiate his plea, he contended that there is ample evidence on record to show, inter alia, that there was bitter enmity between Akalis and the Nirankaris fanned and fuelled by Sant Jamail Singh Bhinderwala, who had been regularly making venomous speeches since 1978 exhorting assassination of the Nirankari Baba. The appellant was a staunch Akali, a member of Baba Deep Singh Ranjit Akhara and involved in anti Nirankari activities. He had himself disclosed to PW-91 Harjinder Singh that he would behead Baba Gurbachan Singh and that he had met the Saints at Amritsar and the arrangements for execution of the conspiracy had been made. This was corroborated by other evidence on record to show that the appellant had gone to Amritsar. Three days before the occurrence, Bhinderwala had actually forecast murder of the Nirankari Baba. Moreover, after the occurrence and before the arrest of Ranjit Singh, during the time when he was absconding, on 4.4.1982 Sant Jamail Singh Bhinderwala had come along with his Jatha to Delhi and visited the house of the appellant. The combined effect of these various circumstances, particularly the disclosure made by Ranjit Singh to PW-91 Harjinder Singh about his meeting the Saints at Amritsar and arrangements having been made, according to Mr. Kalra, lead to a strong inference that there was a nexus between the appellant and Sant Jamail Singh Bhinderwala.

(234) The learned Trial Court discounted the evidence regarding enmity between the Akalis and the Nirankaris, earlier attempts made on the life of the Nirankari Baba, and the various speeches and declaration made by Sant Jamail Singh Bhinderwala, on the specious ground that all such events had taken place in the year 1978. With regard to the speech at the meeting held in Yamuna Nagar three days before the day of occurrence, the Trial Court found that PW-124 Prem Verma had no reason to make a false statement in this respect and that Sant Jamail Singh Bhinderwala might have made such a speech, yet it went on to observe: 'But, that would not show any definite connection between him and Ranjit Singh'. The evidence of PW-91 Harjinder Singh, about the disclosure made by the appellant that he had met the Saints at Amritsar and that the arrangements had been made, was also brushed aside with the following observations:

'.....LAmunable to act on the evidence of Harjinder Singh that Ranjit Singh had remarked to him that he had met 'the Salnts' and that 'arrangements had been made' and that this remark mean reference to Sant Jamail Singh Bhinderwala, I am unable to accept that assertion without any definite proof, which is lacking'.

(235) Regarding the visit of Sant Jamail Singh Bhinderwala to the house of the appellant, PW-163 B.R-Puri had stated that he had seen Sant Jamail Singh Bhinderwala when he was alive, and that on 4.4.1982 he came to Delhi with his Jatha and went to the house of the appellant at Jagatpuri, Delhi. This was during the period when the appellant was absconding. He was arrested later on 24.11.1983. The evidence of PW-163 has been discarded by the Trial Court by observing:

'FIRSTLY, his statement does not say he himself saw Jamail Singh in the house. Secondly, this is not a circumstance when Jamail Singh was not an accused of conspiracy'.

(236) In our opinion, the discussion in the impugned judgment shows that rejection of the evidence point by point, in isolation, torn out of the overall context, without taking into consideration the cumulative effect of all the relevant circumstances, is unjustified and the conclusion reached by the Trial Court on this score is not correct.

(237) Ordinarily, a conspiracy for doing any illegal act is hatched in secrecy. Such an agreement can be proved either by direct evidence or by circumstantial evidence or by both. It is a matter of common experience that direct evidence to prove conspiracy is rarely available. thereforee, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. When some acts are proved to have been committed and it is shown that they were so committed in pursuance of an agreement to which the accused is a party, inference from such proved circumstances may be drawn, when no other reasonable Explanationn is forthcoming to believe and prove the existence of the conspiracy and also to prove complicity of the accused in it, although the other parties to the conspiracy by whom some acts were done were strangers to him and although some acts done by the others may have taken

place before he joined the conspiracy. All the members of the conspiracy need not even know each other. A member must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. It is also not necessary that each member of the conspiracy must know the details of the conspiracy. If foundation material is there, anything said, done or written by one of the conspirators in reference to their common intention is a relevant fact as against each of the persons believed to be so conspiring, for the purpose of proving the existence of the conspiracy and also for proving that any such person was a party to it. The requirement of reasonable ground to believe that two or more persons have conspired together to commit an offence does not contemplate strict proof of the relevant facts and prima-facie evidence thereof would be enough for the purposes contemplated under Section 10 of the Evidence Act. Indeed, the illustration given under Section 10 of the Evidence Act amply explains the requirement thereof. Since it is not possible to lead direct evidence, the charge of conspiracy may well be proved by drawing reasonable inferences from various relevant facts in the context of the facts and circumstances of each case. These principles of law are amply borne out from various decisions of the Supreme Court of India. It would be sufficient, however, to cite just a few of them, namely; *Bimbadhar Pradhan v. State of Orissa*, 1956 Cri L J.831, *Sardul Singh Caveeshar v. State of Bombay*, 1957 Cri. L.J. 1325, *Badri Rai and Another v. State of Bihar*, : 1958 CriLJ1434 , *Major E.G. Barsay v. State of Bombay*, 1961 (2) Cri. L.J. 828, *R.K.Dalmia and Others v. Delhi Administration*, 1962 (2) Cri. L.J. 805, *Bhagwan Swarup V. State of Maharashtra*, 1965 (1) Cri.LJ. 608: AIR 1965 Sc 682, *Mohd. Hussain Umar Kochra etc. v. K.S. Dalipsinghji and Another* : 1970 CriLJ9 , *Yash Pal Mital v. State of Punjab*, 1978 Cri.L.J. 189, *Shivanarayan Laxminarayan Joshi and Others v. State of Maharashtra & Others*, : 1980 CriLJ388 , *Mohamad Usman Mohammad Hussain Maniyar and Another v. State of Maharashtra*, 1981 Cri.L.J. 588, *Kehar Singh and Others v. State (Delhi Administration)*, : 1989 CriLJ1 , I and *Ashok Kumar v. State*, 1995 Scc (Cri.) 217 : 1995 1 Cri 683.

(238) It is no doubt true that the period specified in the charge of conspiracy is sometime between January, 1980 and April, 1980, but that does not mean that the background evidence showing longtime enmity between Akal is and Nirankar is, the repeated fights between the two sects, venomous speeches and declarations

made by Sant Jamail Singh Bhinderwala and the anti Nirankari activities of members of Baba Deep Singh Ranjit Akhara, and in particular those involving the persons named in the charge, in respect of the period prior to that specified in the charge would be excluded from consideration as irrelevant. The evidence on record showing the state of things, especially the hostile disposition of the Akali followers of Sant Jamail Singh Bhinderwala, in relation to the Nirankar is in general and the Nirankari Chief Baba Gurbachan Singh in particular, during the period preceding the acquittal of Baba Gurbachan Singh and others in the Amritsar case are directly connected with the facts in issue specified in the charge of conspiracy. The same are relevant facts and have been duly proved by the evidence on record under Section 3 of the Evidence Act.

(239) The acquittal of Baba Gurbachan Singh and others in the Amritsar case on 4.1.1980 was the occasion or the immediate cause of the facts in issue, which constitute the charge of conspiracy. Moreover, those preceding facts and events are necessary to explain and introduce the charge of conspiracy in issue and the same also show the relation of parties by whom the earlier and the subsequent facts were transacted. The Trial Court, therefore, erred in discounting the probative value of all those facts, which were duly proved by the evidence on record, merely by observing: 'But that was in 1978'.

(240) It is pertinent to note that the Trial Court, even after rejecting the evidence in respect of the earlier period, immediately, in the very next sentence in paragraph 322 of the impugned judgment, did take the first step in the right direction by recording: 'The feeling must have been at high pitch against Nirankar is when the Court had given a verdict of acquittal.' But, it erred in stopping there and winding up the discussion on this relevant fact, which was the foundation of the charge, with the remark: 'But the evidence does not take us any further'. Such truncated approach applied in respect of relevant facts, which constitute the foundation of the prosecution case, appears to have misled the Trial Court into adopting unnecessarily restricted standard of proof of the prosecution case.

(241) Similarly, the evidence of PW-124 Prem Verma regarding the speech given by Sant Jamail Singh Bhinderwala at the meeting held at Gurudwara Santpura,

Yamuna Nagar, Haryana, just three days before assassination of Baba Gurbachan Singh, though believed to be true, was taken into consideration in isolation, torn out of the context of facts and circumstances proved on record, and brushed aside by holding that it 'would not show any definite connection between him (Sant Jamail Singh Bhinderwala) and Ranjit Singh'. No doubt, mere possibilities or suspicion would not take the place of proof, but every relevant fact proved on record must be appreciated in the context of other acceptable evidence on record for its proper appreciation and finding the cumulative effect thereof on the fact in issue. The evidence of PW-91 Harjinder Singh that the appellant told him that he had met the Salnts at Amritsar and that arrangements had been made cannot be rejected on the ground that it is 'without definite proof'. Here again, the learned Trial Court appears to have gone wrong.

(242) We may clarify a little bit of confusion likely to be caused by use of the common noun in plural number 'Salnts' by PW-91 in his deposition about Ranjit Singh's Baisakhi visit to Amritsar. In North India, in the common course of conversation in Punjabi language, casually spoken in day-to-day life, plural form is generally used for common nouns even to denote a particular person in singular. Having regard to the language of the accused and the witness, in translating and recording in English language the deposition of PW-91, use of the plural 'Salnts' should not be mistaken in the independent sense, as a collective noun, to denote jointly or severally a body of Salnts including or excluding Sant Jamail Singh Bhinderwala. In our opinion, the special context in which the accused related the relevant fact to the witness and that stated by the witness in Court, it clearly alludes to one and the only one particular person, namely, Sant Jamail Singh Bhinderwala.

(243) Lastly, evidence of PW-163 B.R-Puri regarding visit of Sant Jamail Singh Bhinderwala to the house of appellant Ranjit Singh also has been rejected by the learned Trial Court on flimsy grounds. The witness had categorically stated that he had seen Sant Jamail Singh Bhinderwala when he was alive. He said so because Bhinderwala was reported to have died at the time when the witness was deposing in Court. Further, he specified the date, namely, 4.4.1982, when Bhinderwala had come to Delhi with his Jatha and visited the house of appellant Ranjit Singh at

Jagatpuri, Delhi. Obviously, the witness said so on the basis of his personal knowledge. In any event, this part of the evidence of the witness was not even challenged in his cross-examination. Rejection of this piece of evidence on the ground that the witness did not say in so many words that he had himself seen Sant Jamail Singh Bhinderwala inside the house of appellant Ranjit Singh is too flimsy. The second ground that this would not constitute an incriminating circumstance because Sant Jamail Singh Bhinderwala was not an accused in the case is also unsustainable. In a case of criminal conspiracy, as the one in hand, some of the known or unknown conspirators may be absconding, or, for whatever reasons, not challaned for trial. But, that would not defeat the prosecution case as against the accused person on trial.

(244) As discussed in great detail earlier, failure to put up Bhinderwala or any one else for trial would not absolve the appellant of criminality on the charge of conspiracy. Needless to repeat that in a case where there is a reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by anyone of such persons in reference to their common intention is a relevant fact as against each of the persons believed to be so conspiring for the purpose of proving the existence of the conspiracy as well as for the purpose of showing that any such person was a party to it under Section 10 of the Evidence Act.

(245) The subsequent conduct of Sant Jamail Singh Bhinderwala visiting the house of appellant Ranjit Singh, especially on 4.4.1982, when Ranjit Singh was absconding, is a relevant fact to show that there was definite connection between Sant Jamail Singh Bhinderwala and Ranjit Singh. The admissibility of this evidence and the inference drawn there from would not be defeated by the fact that Sant Jamail Singh Bhinderwala was not one of the accused persons put on trial on the charge of conspiracy in the present case.

(246) According to Mr. Kalra, as per the case of the prosecution, Sant Jamail Singh Bhinderwala was the moving spirit and principal conspirator. He was very much alive at the time when the challan was put up in Court for trial. A significant and substantial role was attributed to him in the police report submitted to the

Court on completion of the investigation under Section 173, Cr.P.C. We are informed by Mr. Kalra that Sant Jamail Singh Bhinderwala was reported to have died much later. When asked why Sant Jamail Singh Bhinderwala was neither arrested, nor put up as an accused for trial in the case, Mr. Kaira frankly conceded his inability to give any Explanation whatsoever except that the Government developed 'cold feet'. Notwithstanding that lapse or omission, in view of the earlier discussion on the law of conspiracy, it would not affect the guilt of the appellant Ranjit Singh,

(247) In the light of the foregoing discussion, we find merit in the argument of Mr. Kalra and hold that there is sufficient evidence on record to prove that there was culpable connection between the appellant and Sant Jarnail Singh Bhinderwala and that the evidence on record showing the conduct and acts of Sant Jamail Singh Bhinderwala as well as things said and done by him are admissible in evidence against the appellant for the purpose of supporting his conviction on the charge of criminal conspiracy. The impugned findings of the learned Trial Court to the contrary are accordingly altered.

(248) Mr. Randhawa further contended that the material circumstances No. 19, 21 and 29 were not duly proved by the evidence on record. The evidence of PW-19 Damodari, PW-15 Anoop Kumar, PW-6 Harbhajan Singh and PW-8 Savitri Devi, produced for proving the said three circumstances should not be accepted as each of them was a Nirankari and interested witness. Besides, their statements were recorded after premeditation and undue delay. They were conveniently got-up witnesses for propping the prosecution case.

(249) It is true that PW-19 Damodari, PW-15 Anoop Kumar, PW-6 Harbhajan Singh and PW-8 Savitri Devi are all Nirankaris and residents of the Nirankari Colony. But, merely on this ground, they cannot be dubbed as interested witnesses and their evidence discarded.

(250) A witness may be called 'interested' only when he or she derives some benefit in seeing an accused person punished. Interested witnesses are not necessarily false witnesses, though the fact that those witnesses have personal interest or stake in the matter must put the Court on its guard that the evidence of

such witnesses must be subjected to dose scrutiny and the- Court must assess the testimony of each important witness and indicate the reasons for accepting or rejecting it and no evidence should be at once discarded simply because it came from interested parties. Being persons related or interested in the victims, prosecution witnesses would be the least disposed to falsely implicate the appellant or substitute him in place of the real culprit. Conviction can be founded even on the testimony of related or interested witnesses, if otherwise found to be reliable and free from infirmity. (1) State of Rajasthan v. Smt. Kalki & Another, 1981 Cri. L.J. 1012, (2) Mohinder Singhv. State (Delhi Administration), 1992 Scc (Cri.) 52, (3) Chander Mohan Tiwari & Another v. State of Madhya Pradesh, 1992 Scc (Cri.) 252, (4) State of U.P. v. Vinod Kumar (Dead) and Udai Bhan Singh, 1992 Scc (Cri.) 505, (5) Machhi Singh & Others, v. State of Punjab, Scc (Cri.) 681, (6) Sher Singh & Another v. State of Haryana, 1994 Cr.L.J. 1980, (7) Arjun & Others v. State of Rajasthan, : 1995 CriLJ410 , (8) Brijbasi Lal v. State of M.P. 1991 Scc (Cri.) 546.

(251) There is nothing on record to show that any of the prosecution witnesses, namely, PW-19 Damodari, PW-15 Anoop Kumar and PW-6 Harbhajan Singh, had any interest in protecting the real culprit and falsely implicating the appellant. Moreover, the chronology of events narrated and the factual conspectus recounted by each of them is unshakeable; and the intrinsic quality of their respective evidence compels us to implicitly rely on their testimony and accept the same. Inspire of the fact that these Public Witness have been subjected to intensive and incisive cross-examination, nothing tangible has been brought out for discarding their testimony. The recovery of certain incriminating articles by the police serve as strong pieces of circumstantial evidence for corroborating the testimony of these witnesses and implicating the appellant with the offence. The conclusion of the Trial Court based on evaluation of the evidence of these witnesses does not suffer from any illegality or manifest error or perversity. Further, on our independent analysis of the evidence, we see absolutely no compelling reason to brush aside the testimony of these witnesses and to take a contrary view.

(252) Mr. Randhawa argued that there was undue delay on the part of the Investigating Officer in recording the statements of these witnesses, namely, PW-

19, PW-15 and PW-6. According to him, the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the witnesses to be introduced; and this delay had to be taken as a factor undermining the prosecution case. He placed reliance upon decision of the Supreme Court in G.B, Patel v. State of Maharashtra : 1979 CriLJ51 to support his argument. But, in the facts and circumstances of the present case, we find no substance in it.

(253) The question of delay in examining a witness during investigation is material only if it is indicative or suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the investigating officer should be asked specifically about the delay and the reasons therefore. This is the ratio laid down by the Supreme Court in Ranbir & Others v. State of Punjab, 1973 Cri L.J. 1120. In a case of circumstantial evidence, the Investigating Agency is expected to make inquiries, gather valuable clues and make every effort to track down the witnesses. This requirement is clearly discernible from the observations made by the Supreme Court in Laxmiraj Shetty & Another v. State of Tamil Nadu : 1988 CriLJ1783 . No doubt, the Court has to sift the evidence and after a close scrutiny with care and caution come to a judicial conclusion as to credit-worthiness and reliability of the evidence of each of the prosecution witnesses. If the delay is explained and it be found that the testimony of the witnesses is natural, truthful and reliable, the same has to be accepted. Indeed, Mr. Kalra cited decision of the Supreme in the case of Ganeshlal v.State of Maharashtra, 1992 Cri LJ. 1545,where a delay of nearly 2' months in recording the statement of PW-6 was explained on the ground that the investigation did not proceed in the desired lines initially and only after PW-16 took over the investigation, he recorded the statement of PW-6; and that the evidence of PW-6 was found to be truthful and reliable, It was held that PW-6 being a natural witness, his evidence could not be doubted due to delay.

(254) In the present case, it may be recalled, the crime was committed at about 10.30 p.m. on 24.4.1980. S.I. Ramesh Pal (Public Witness -143) reached there at about 11.20 p.m. Immediately, he made enquiries from the inmates of the Bhawan about the incident and those injured. At about mid-night i.e., 12.00 to 12.50 a.m.

on 25.4.1980, he recorded statement of PW-1 Gobind Singh and sent the Rukka to the local Police Station, Kingsway Camp for registration of the FIR. PW-I 49 Sho Dalbir Singh also reached the spot at about 1.00 a.m. The Investigating Officers collected information and reports about the victims, who had been taken to different hospitals. They conducted inquest proceedings and sent the dead bodies for post-mortem, while the C.F.S.L. team was taking finger prints and photographs. They also took the Dog Squad, which led the Police party up to the embankment of river Yamuna through the back lane; inspected the scene of occurrence; prepared site plans; and recovered, seized and put into sealed parcels various articles found inside room No. 14, the attached bathroom, stair-case. Court-yard and the back lane. Simultaneously, the Bomb Disposal Squad was called for disposal of the hand grenades, and Jairam Dass Arya, who was also injured, was sent for medical examination. Then, the Investigating Officers recorded statements of the available witnesses who gave information, inter alia, about what they had seen at the time when the occurrence took place in their presence, and the screw driver Ext. P-3 bearing the letter 'N' recovered from room No. 14. The name of the appellant had surfaced after statement of PW-12 Ajit Singh was recorded in pursuance of the clue thrown up on recovery of the screw driver Ext. P-3. Thereafter, they recorded statements of witnesses who revealed movements of the appellant in the afternoon and the evening immediately preceding the incident. Among the witnesses, whose statements were recorded on 25.4.1980, PW-15 Anoop Kumar was the one who had seen the appellant inside the bath room attached to room No. 14 at about 10 p.m., and PW-8 Savitri Devi had seen two men, one of them having a gun, running away in the back lane immediately after the occurrence. Consequently, on 25.4.1980 itself, police parties were sent in search of Ranjit Singh to his house and various other places in and outside Delhi.

(255) On 26.4.1980, Investigating Team of the local police station seized the register Ext. PW9/A of allotment of Guest House rooms and statements of the Receptionist and Caretaker of the Guest House were recorded. The statement of other injured persons, namely, PW-141 Kuldip Singh Walia and his wife Shiv Darshan Kaur were also recorded. At that stage, information was received about transfer of investigation of the case to the C.B.I.

(256) C.B.I, registered Regular Case No. 2 /80 vide Ext. PW163/A and took over investigation in the afternoon on 26.4.1980. PW-163 B.R. Puri visited the Nirankari Bhawan and inspected the scene of crime. He examined and recorded the statement of PW-2 Kishan Pal. The C.B.I, team also went around the colony and collected information about the crime.

(257) On 27.4.1980, PW-163 B.R. Puri examined PW-12 Ajit Singh and recorded his statement. He also recorded statements of certain other witnesses about the movements of the appellant Along with his companion on the day of occurrence. PW-137 O.P. Chhatwal took into possession sample tools i.e. two hammers Exts. P-23, P-24 and one screw driver Ext. P-25 bearing letter 'N' from the carpentry workshop vide memo Ext. PW3/N.

(258) On 28.4.1980 PW-163 B.R. Puri examined some more witnesses about movements of the appellant Along with his companion from place to place in and around the Nirankari Bhawan on the day of occurrence, while PW-142 N.P. Singh examined PW-91 Harjinder Singh and recorded his statement under Section 161. Cr.P.C.

(259) Next day, on 29.4.1980, PW-163 B.R. Puri and PW-137 O.P. Chhatwal continued recording statements of certain other witnesses regarding movements of the appellant Along with his companion, and PW-138 R.P. Kapur recorded statements of PW-15 Anoop Kumar and PW-19 Damodari.

(260) On 30.4.1980, while some of the other members of the C.B.I. Investigating Team were busy attending to certain other aspects, PW-137 O.P. Chhatwal got on with another important series of witnesses who furnished information about presence of the appellant Along with his companion and two other Sardars, opposite the house of PW-22 Vidyawanti, where he was seen at about 6.30 to 7 p.m. sitting on the nearby culvert with a log of wood (box).

(261) On 1.5.1980 and 2.5.1980, PW-119 D.C. Sorari and PW-138 R.P. Kapur recorded statements of those witnesses who gave particulars of work recently done by the appellant as a carpenter in the houses and business establishments of some of the prominent Nirankar is inside and outside the Nirankari Bhawan.

Along-side, on 2.5.1980, PW-125 R.S. Chauhan recorded the statement of PW-6 Harbhajan Singh, who had seen the appellant running through the back lane, immediately after the incident.

(262) Investigation into various other aspects of the case was going on side by side and it continued for a long time even after 3.5.1980. But, that part is not relevant for purposes of the present discussion.

(263) The foregoing, discussion clearly shows that the statement of PW-15 Anoop Kumar was first recorded by PW-149 Dalbir Singh on 25.4.1980 and then by PW-138 R.P. Kapur on 29.4.1980; the statement of PW-8 Savitri Devi was also recorded by PW-149 Sho Dalbir Singh on 25.4.1980; the statement of PW-19 Damodari was recorded by PW-138 R.P. Kapur on 29.4.1980; and the statement of PW-6 Harbhajan Singh was recorded by PW-125 R.S. Chauhan on 2.5.1980. It may be added, in respect of PW-6 Harbhajan Singh, that he was not even available in Delhi from 25.4.1980 to 1.5.1980. It has come in his cross-examination that he had gone to Pithoragarh (U.P.) on 25.4.1980 at about 5 or 6 a.m. and came back on 1.5.1980 at night. His statement was promptly recorded on the very next day after he returned to Delhi on 2.5.1980.

(264) In the facts and circumstances of the case in hand, the order of priority and sequence adopted by the Investigating Officers for examining witnesses for the purpose of gathering valuable clues and evidence, was natural and proper; and it cannot be said that there was undue delay on the part of the Investigating Officers in recording the statement of any of these witnesses under Section 161, Cr.P.C.

(265) PW-149 Sho Dalbir Singh of local Police Station, Kingsway Camp had examined PW-15 Anoop Kumar, and PW-8 Savitri Devi, among other witnesses. He recorded their statement on 25.4.1980.

(266) PW-138 R.P. Kapur, Dsp, Cbi again examined PW-15 Anoop Kumar and recorded his statement Ext. PW-15/DA for the second time on 26.4.1980. On the same day, he also recorded the statement Ext. PW-19/DA of PW-19 Damodari.

(267) Both of these Investigating Officers, one from the local police station and the other belonging to C.B.I., were cross-examined at some length. But, neither of them was asked about any delay in examining PW-15 Anoop Kumar, PW-8 Savitri Devi, or PW-19 Damodari. Thus, the plea of delayed examination of these three witnesses has been raised in appeal without asking the concerned Investigating Officers about it and without laying the foundation for it.

(268) PW-125 R.S. Chauhan, who was working as Inspector, C.B.I., at that time, examined PW-6 Harbhajan Singh and recorded his statement on 2.5.1980, wherein he provided the clue regarding presence of Yog Raj in the back lane at the time when the appellant was seen running away. Consequently, R.S. Chauhan recorded the statement of Yog Raj also on 3.5.1980. He stated in his examination-in-chief that he had collected intelligence about the case during the period 26.4.1980 to 2.5.1980, located Harbhajan Singh and recorded his statement on 2.5.1980. In his extremely brief cross-examination, he explained that he had contacted the named witnesses at -their respective houses and then called them over to the Nirankari Bhawan, where he recorded their statements. He was not even asked whether he had tried to contact Harbhajan Singh before 2.5.1980 or whether Harbhajan Singh was at all available in Delhi during the period 26.4.1980 to 1.5.1980, when he had gone around collecting intelligence/information about the case. The reasons why further questions on these lines were not put to the witness are quite obvious. PW-125 R.S. Chauhan appeared as a witness and his examination-in-chief was recorded in Court on 1.5.1991. On request of counsel for the accused, his cross-examination was deferred on the ground that his name was not included in the list of the witnesses given to them by the Public Prosecutor for that day and that they had not prepared his cross-examination. Consequently, he was recalled for cross-examination on 3.5.1991. It is pertinent to note here that PW-6 Harbhajan Singh had appeared as a witness and his statement was recorded in Court much earlier on 12.4.1989 and 25.4.1989, when he was thoroughly grilled in cross-examination in depth and at length on the question of his seeing the appellant running away with a gun on his shoulder Along with his companion through the back lane towards the 'Bandh' immediately after commission of the crime. Explanationn of the absence of PW-6 Hiarbhajan Singh from Delhi and his non-availability for making the statement up to 2.5.1980 was

already there on record and fully known to the learned defense Counsel at the time of cross-examination of PW-125 R.S.Chauhan and that was the reason why he was not asked any questions about it. In these circumstances, the reason for examination of PW-6 Harbhajan Singh only on 2.5.1980 goes fully explained.

(269) The design in G.B. Patel's case (supra) cited by Mr. Randhawa is clearly distinguishable on facts. In that case alleged eye witnesses of the occurrence were produced, whereas it was found that a number of concomitant circumstances existed to suggest that the Investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye witnesses to be introduced. Firstly, there was delay in recording the FIR. Secondly, the natural order of priorities and sequences in which the Investigating Officer recorded the statements of witnesses was found to be reversed. The witnesses who claimed to have seen the commission of the crime and were easily available were examined later and precedence was given to the examination of even some of the formal witnesses. Thirdly, the Investigating Officer was specifically asked about the delay and the reasons therefore; but he was unable to explain the conduct in not promptly recording statements of the alleged eye witnesses first. Moreover, falsity of the Explanations given by the Investigating Officer was fully exposed. Fourthly, names of the alleged eye witnesses were not mentioned anywhere in the investigation records at the relevant time, which enhanced the suspicion that they had been introduced as eye witnesses at a late stage of the case.

(270) On the contrary, in the present case, as discussed above, the evidence on record shows no such circumstances as would go to suggest that the Investigating Agency was deliberately marking time with a view to decide about the shape to be given to the case. This is a case of circumstantial evidence. The dues and the evidence to prove the fact in issue as well as the relevant facts had to be collected. As noticed earlier, the Investigating Officers adopted the requisite order of priority and sequence for taking suitable steps immediately after the incident was reported. There was nothing shown from the investigation record that could justifiably arouse suspicion about any witness having been introduced after premeditation for filling up any lacuna in the case. The sequence in which the witnesses were examined and the dates on which their statements were recorded

are found to be consistent with the investigation records maintained in the normal course. The plea that the investigation records were ante-dated was not substantiated. In the earlier part of this judgment, after a thorough discussion, we have come to the conclusion that the investigation was not tainted. Moreover, the Investigating Officers, who recorded the statements of PW-15 Anoop Kumar, PW-8 Savitri Devi, and PW-19 Damodari were not even asked to explain the alleged delay. Whereas, the questions in this behalf put to PW-125 R.S.Chauhan, who recorded the statement of PW-6 Harbhajan Singh, did not at all support the suggestion of delay. Consequently, the plea of delay sought to be advanced by Mr. Randhawa fails.

(271) PW-19, Damodari, has deposed about circumstance No. 19. Her house is situated adjacent to the carpentry workshop at a distance of about 50 to 60 feet from the rear gate inside the Nirankari Bhawan. She knew the appellant and identified him in Court. She testified that he used to work in the carpentry workshop. She also had got a 'Paling' (bed) repaired by him in the year 1980. On 24.4.1980 he came to her house to talk to Ajit Singh (Public Witness -12), who was fitting up a cooler there at about 1 p.m. Further, she deposed that at about 8.15 or 8.30 p.m., when she was sitting in the Courtyard outside her house, the appellant along with one more person came there. She had a talk with him. In cross-examination, she testified that her statement was recorded by the Cbi after 4 or 5 days of the occurrence and that she had not made any statement to the police earlier, nor she had herself tried to contact the police for making the statement. She also revealed that deceased Baba Gurbachan Singh was the grandson of her husband's Taya' i.e. grandson of her husband's father's elder brother. She categorically denied as incorrect suggestions that the version given by her was cooked up later to support the prosecution case and that she neither saw the appellant in the Bhawan on the day of occurrence nor she ever knew him.

(272) The first two grounds of challenge, namely, that she was an interested witness and that there was undue delay in recording her statement under Section 161, Cr.P.C., have already been discussed in detail above. Suffice it to say that there is no material on record to show that she would derive any benefit in seeing the appellant punished. Being a person related to the victim, she would be the

least disposed to falsely implicate the appellant in the case. Further, in the light of the earlier discussion, from the order of priority and sequence of the clues to be taken up for investigation for tracing movements of the appellant on the day of occurrence, it is clear that her statement was recorded by PW-138 R.P.Kapur on 29.4.1980 in normal course, without undue delay.

(273) PW-19 Damodari was living in the house adjacent to the carpentry workshop, where the appellant used to work as a carpenter. He had earlier done some repair work in her house. She knew him very well. On 24.4.1980, at about 1 p.m., he had come to her house to meet Ajit Singh (Public Witness 12). Later, at the end of the day, at about 8.15 or 8.30 p.m., when she was sitting in the Courtyard outside her house, she saw him coming inside the Bhawan through the rear gate, which was at a distance of just about 50 to 60 feet from her house. It was indeed an odd hour for the carpenter to be there at that time. So, on seeing the appellant, she had a talk with him, during the course of which she observed his companion carrying a log of wood on his shoulders. From there, the appellant and his companion went walking towards the workshop. All this is quite natural.

(274) We have carefully scrutinised her testimony, which was tested by a thorough cross-examination. We find nothing strange, much less sufficient to arouse suspicion of foul play on the part of the Investigating Agency. There is no material on record to show that PW19 Damodari knew about the recovery of the dismantled box Ex. P-1 from room No. 14, or that the said box was so shaped as to look like a log of wood, or that the log wood, which she had observed the appellant's companion carrying on his shoulders, was used in commission of the crime. Obviously, without knowledge of the significance of all this, there was no occasion for PW- 19 herself to go or try to contact the police for making any statement. The investigating officer, on gathering and linking up various clues, stage by stage, reached her and recorded her statement in normal course, under Section 161, Cr.P.C. In these circumstances, we find no substance in the plea raised on the ground that the version testified by the witness was cooked-up to support the prosecution case or that it was false.

(275) The other suggestions also that the witness did not see the appellant in the Bhawan or that she never knew him, were rightly repelled by the witness. Since it is not even in dispute before us that the appellant was working as a carpenter in the Bhawan and that he was present and moving around in the area at the relevant time, it is not necessary for us to refer to the evidence produced to prove these facts, which is available in abundance on record. It may also be noted that deposition of this witness about the repair job done by the appellant in her house, and his visit to meet Ajit Singh at her place on the day of occurrence at about 1 p.m., has been left unchallenged.

(276) The contents and the tenor of the testimony of Public Witness 19 Damodari find corroboration with the other evidence on record in the context of the general substratum of the prosecution version regarding the presence and movements of the appellant along with his companion from place to place in the afternoon as well as the evening up to the time of commission of the crime in and around the Bhawan. For instance, let us take the reply given by the appellant to the question put to him by Damodari. For explaining his presence there at about 8.15 or 8.30 p.m., he told her that he had gone to the house of Kanwajit for repair of an almirah. The said Kanwajit Singh was examined as PW-33. His wife Prit Pal Kaur (Public Witness -11) was also produced. It has come in the evidence of PW-II that the appellant, along with his companion did go to her place earlier at 5 p.m. The true purpose of his visit to the house of Kanwajit and Prit Pal Kaur and what all the appellant did from 5 p.m. to about 8.30 p.m., need not be mentioned here. Yet, there is sufficient evidence available on record to prove his presence and movement during the interregnum between 5 p.m. and 8.15 p.m. in the close vicinity, at the culvert outside the Nirankari School, at a short distance of about 100 yards from the rear gate of the Nirankari Bhawan. PW-87 Tarsem Singh has testified having seen the appellant along with his companion and two other Sikhs outside the Nirankari School, where the appellant was sitting on the nearby culvert (Pulia) and one log of wood (Gelly) was lying near him at about 7 or 7.30 p.m. It has also come in evidence that the wooden box Ex. P/I, looking like a log of wood, recovered from room No. 14, was made at the workshop of Bara Gian Singh (PO). PW-64 Kasturi Lal, PW-84 Ghansham Dass, PW-85 Bhakt Bahadur, PW-108 S.R. Singh, PW-138 R.P. Kapur, PW-142 N.P. Singh and Public Witness 163 B.R. Puri

have deposed about it.

(277) The appellant and his companion were seen moving about at different places around room No. 14 inside the Bhawan in the afternoon and in the earlier part of the evening. At about 5 p.m. the two of them went out to the house of PW-II Prit Pal Kaur. Then they were seen near the Nirankari School. At about 6.30 to 7 p.m. Pw 87 Tarseen Singh saw the log of wood lying near the appellant. Then, he with his companion came back, through the rear gate, where Public Witness 19 Damodari saw them and talked to him at about 8.30 p.m. This is where she also noticed the appellant's companion carrying the log of wood. From there they proceeded towards the workshop and finally landed up at room No. 14. That is the place where the wooden box Ex. P-I was recovered after commission of the crime. In this context, the evidence of Public Witness 19 Damodari appears to be perfectly in consonance with the general substratum of the prosecution case.

(278) Capital was sought to be made on the ground that PW19 Damodari had stated in her examination-in-chief that the appellant's companion was carrying the log of wood on his shoulders, which was not so definitely mentioned in her Statement under Section 161, Cr.P.C. In her cross examination she had said: 'I did not state before the Cbi that I had got some vague idea that the companion of Ranjit Singh was carrying some log of wood on his shoulders.' When confronted with the portion marked D to Din her statement Ex. PW19/DA, it was found to be so mentioned. Let us now examine its effect. The witness knew the appellant. She had a brief talk with him. His companion was not known to her. She did not pay much attention towards the companion. In this situation, what she had stated during her examination under section 161, Cr.P.C. on 29.4.1980 appears to be quite natural. She did not recollect to have seen the appellant carrying anything but she did observe and candidly stated that she had some vague idea that the appellant's companion was carrying a log of wood on his shoulders. Her statement was made on the basis of recollection of what she had only recently seen. Obviously, the vague idea that she had then was about what the other man looked like. So, she had truthfully stated on 29.4.1980 that she did not look at the other man carefully and as such could not give his description. In Court also she was truthful about it when she said: 'I cannot give description of

that person'. But, there was no ambiguity in her earlier statement Ex. PW/DA and she was equally certain when she deposed in Court that the appellant's companion was carrying a log of wood on his shoulders. The vague idea was only about the identity of the other man; and not about the material facts deposed by the witness, namely, that the other man was carrying something and that thing was a log of wood; nor about the manner of carrying it, which was described by saying that the other man was carrying the log of wood on his shoulders. The variance between the previous statement EX.PW19/DA and the statement of the witness recorded in Court to this little extent, cannot be stamped as a contradiction of a material fact so as to brand her as a liar.

(279) Thus, on close scrutiny of the evidence of PW19 Damodari, we find it reliable and trustworthy and Circumstance No. 19 is fully established.

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