
(1992) 04 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 139-DBA of 1986

State of Haryana

APPELLANT

Vs

Rai Sahib and Others

RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 385(2), 386

Citation : (1993) CriLJ 636 : (1992) 101 PLR 693

Hon'ble Judges : V.K. Bali, J;Amrit Lal Bahri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.L. Bahri and V.K. Bali, JJ.—Before Dealing with the appeal on merits it is considered necessary to examine the legal position as to whether the appeal aforesaid could be taken up for final hearing in the absence of counsel for the accused-respondents, who, as stated, remained absent from the Court on account of a call given by Bar Association of the Punjab and Haryana High Court. It has been noticed that on account of such like calls very often the lawyers have started abstaining from the Courts.

2. It is not considered appropriate to make any comment on the genuineness of the cause for which the Bar Association/Associations may call upon their members to observe so-called strike by non-appearance in the Courts or as to whether such calls for strike could legally be given or not. As and when any such occasion would arise on the judicial side the question would be open to discussion. At this stage, suffice it to say that counsel have not appeared pursuant to a general call given by the Bar Association of which they are members and it may not be their intention or object that Courts should not be able to function and discharge the legal obligation of dispensation of justice as such but the result, however, shall be the same. The right of the Advocates for appearing in which they have been duly engaged by the litigants, is governed by provisions of the Advocates Act, 1961. Sections 29, 30 and 33 of the Act read as

tinder :-

"29. Advocates to be the only recognised class of persons entitled to practice law :-

Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates.

"30. Right of Advocates to practise:-

Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories of which this Act extends:-

(i) in all Courts including the Supreme Court ;

(ii) before any tribunal or persons legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

"33. Advocates alone entitled to practise :-

Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, or after the appointed day, be entitled to practise in any Court or before any authority or person unless he is enrolled as an advocate under the Act."

Prior to the enforcement of the Advocates Act, the control with respect to enrolment of Pleaders and thereafter as Advocates was with the High Court. However, after enforcement of the Advocates Act, such control now vests in the Bar Council. The Advocates are now enrolled by the Bar Council, who issues certificates of such enrolment which authorises such Advocates to practise in Courts and represent their clients in view of the aforesaid provisions of the Act. The Advocates have dual obligations in the matter of conducting cases in the Courts Firstly, the obligations is towards their clients who have engaged them. Such obligations are subject to the terms and conditions of the contractor authority given to the counsel (power of attorney). For non-appearance or negligently conducting or non-conducting the cases rights and remedies could be governed by such terms and conditions of the power of attorney. The other obligation of the Advocates is towards the Court as an Officer of the Court. An Advocate is considered an Officer of the Court to assist the Court in the matter of dispensation of justice. Such status of an advocate is recognised by passage of time by the Courts. Such obligation is moral. For not giving such assistance to the Courts, there would be no cause for any action against an advocate.

"Whereas non-appearance or negligent conduct or non-conduct may attract breach of conditions set out in the power of attorney, in which case the lawyers are answerable only to clients in appropriate proceedings that may be initiated

under the Advocates Act, their duty to appear in the Court as an officer of the Court with a view to assist dispensation of justice being moral alone leaving the Court no scope for insisting upon their attendance with a view to assist the Court and non-appearance of the lawyers for the last ab(c)ut a decade, for days and months together, resulting into complete chaos in administration of justice has compelled us to see as to what is the law in case lawyers do not appear. Before, however, the matter is tested on the anvil of Statute and the case law available on the point, it shall be useful to trace, although in brief, the advent of strikes in the legal profession and various resolutions and instructions that were passed by the High Court for either itself or for subordinate judiciary as also the alarming situation in which the whole system finds itself at present.

3. Strike by the lawyers for whatsoever reasons was practically unknown. In fact the concept of strike started and took its roots with a view to enforce legal and moral obligations from, the employer by a workman or labourer. Inasmuch as the lawyer has no master and no employer and continues to be engaged for self occupation and doing hard work, the concept of strike was totally unknown to this profession for a long time. However, in so far as we recollect in the recent past the first strike by the lawyers, even though for a day or so, was observed on the supersession of three Judges of Hon"ble Supreme Court way back in the year 1973. Thereafter, in so far as the States of Punjab and Haryana are concerned, the same being troubled States, strikes were observed on and off as and when some ghastly crimes were committed and such incidents being enormous, we would find a couple of strikes every month. Presumably for the reason that Courts have simply adjourned the cases and no adverse orders were passed, strikes in recent past are observed more often and small insignificant issues totally unconnected with legal profession have also started concerning the members of legal fraternity. Whereas in the district Courts, strikes are observed by the lawyers quite often and sometimes on small issues, in the High Court the situation was not that bad till the lawyers of this Court observed indefinite strike which continued for about two months on the issue of some atrocities committed on the lawyers of Tees Hazari Courts Delhi which matter was enquired by a Commission of Enquiry and there was lot of litigation in the matter. After noticing a disturbing new trend to resort to strike by the members of the Bar for any cause whatsoever resulting into serious hardship for the litigants, this Court issued detailed instructions on the subject to all the District and Sessions Judges in the States of Punjab and Haryana as also Chandigarh vide letter dated 20-3-1979, the relevant portion of which reads as under :-

"The passing of such resolutions and keeping away from Court by Advocates, in this manner, cannot, but amount to a denial of justice to the litigants. There is no provision of law which justified the Court in postponing cases merely on the ground that lawyers have decided to boycott proceedings or to go on strike. In these circumstances, the Hon"ble Chief Justice and Judges have observed that it is imperative that the Courts should follow the normal procedure prescribed by law and deal with cases according to law whether or not lawyers appear."

"I am, therefore, to request you that these instructions be brought to the notice of all the subordinate judicial officers working under your control for their guidance and strict compliance thereof."

The matter with regard to strike came up for consideration before the 9th Committee presided over by Justice Ujjagar Singh as he then was and following resolution was passed:-

"Resolved that too frequent strikes by the lawyers are hampering the judicial functioning of the Courts, resulting into not only serious hardships to the litigant public but also seriously eroding the credibility of the Judicial System as a whole. An appeal be made to the good sense of various Associations of the Lawyers to ponder over the matter of strike as a weapon to get their grievances redressed. In this regard they should also associate the High Court to formulate broadly the situation or the contingencies wherein their grouse may have some connection with the functioning of the Courts directly or indirectly when they may have recourse to this weapon. They should refrain from resorting to strikes for causes and grievances which are not even remotely connected with the functioning of the Courts or the conduct of the Judicial Officers."

4. The resolution quoted above as passed by the 9th Committee was considered by the Reforms Committee headed by the then Hon'ble Chief Justice and the following decision was taken :-

"Decided that the resolution adopted by the 9th Committee on item No. 3 may be circulated to all the Bar Associations in the States of Punjab, Haryana and the Union Territory of Chandigarh and in addition thereto to the Associations be informed that the High Court feels that if there is any particular grievance, which can be removed by the High Court, it may brought to its notice before resorting to any strike etc."

5. In pursuance of the decision of the Reforms Committee, once again detailed instructions were issued to all the District & Sessions Judges in the States of Punjab, Haryana and Union Territory of Chandigarh vide letter dated 17.10.1988. The relevant portion of the same reads as under:-

"Too frequent strikes by the lawyers are hampering the judicial functioning of the courts, resulting in not only serious hardships to] the litigant public, but also is seriously eroding the credibility of the judicial system as a whole. This may please be brought to the notice of the Bar Associations existing in your Sessions Division, with the request to ponder over the matter of strike as a weapon to get their grievances redressed. In this regard, they should also associate the High Court to formulate broadly the situation or the contingencies wherein their grouses may have some connection with the function-of the Courts directly or indirectly when they may have recourse to this weapon. They should refrain from resorting to strikes for causes and grievances which are not even remotely connected with the functioning of the Courts or the conduct of the Judicial Officers."

6. Thereafter on 22-2-1990 a conference of all the District & Sessions Judges in the States of Punjab, Haryana and Union Territory Chandigarh was convened in the High Court premises. The matter of strike was discussed threadbare. The view as to how best the Judicial Officers can act according to law and dispose of substantial work was also discussed. The conference was presided over by the Hon"ble Acting Chief Justice and the Judges of this Court also attended it. The operative part of the decision taken in the Conference read as under:-

"Thereafter, Hon"ble the Acting Chief Justice addressed the District Judges. His Lordship was pleased to advise them that within the legal framework they can dispose of substantial work according to law and take effective steps depending upon the situation in a district to break the strike by showing firmness as well as by using persuasive methods. His Lordship also directed. District Judges to call for work statements from the Judicial Officers in their district of the work done by them on each day of strike and examine the same, and in case District Judge is of the view that the work done by the Judicial Officer is inadequate or cannot be termed as substantial, he should send a report in this behalf to this Court alongwith his own views/ comments. However, so far as the work statement in respect of Additional District Judges is concerned, the District Judge should send the same to High Court for perusal of Hon"ble Judges without his comments."

7. The following guidelines were given to all the District and Sessions Judges vide letter of this Court issued on 4.4.1990: -

(1) The Judicial Officers can dispose of substantial work according to law. They should also take effective steps depending upon the situation in a Sessions Division by using persuasive methods etc

(2) The work statements of the Judicial Officers posted in your respective Sessions Divisions regarding the work done by them on each day of strike be called for and examined. In case you are of the view that the work done by the Judicial Officers is inadequate or cannot be termed as substantial, a report be sent to this Court in this behalf with your own views/comments.

(3) The work statement in respect of Additional District Judges should, however, be sent to this Court without your comments".

When the instructions, as referred to above, also did not yield the desired results, this Court reviewed the matter and revised instructions were issued on 10.8.1991 which besides providing other things, also provided as follows:-

".....The Hon"ble Acting Chief Justice and Judges have been pleased to decide that, in future, you should send the work done statements of the Judicial Officers during the strike days, only if their disposal for a month is less than the required norms".

8. When the aforesaid instructions did not yield any result and on the contrary on account of far more intensive strikes on myriad and varied reasons resulted into jamming the wheel of justice, this Court had convened a meeting of all the

Judges which was presided over by the Chief Justice for considering the matter and taking some action on 24.4.1992 but the matter has been postponed to be taken on some other date.

9. Before we proceed any further in the matter, it requires to be mentioned that in spite of instructions and resolutions passed by this Court the situation has not improved and has rather deteriorated, the main reason is that we have not set any example for subordinate Judiciary and have often adjourned the cases in similar situations. We have with us the list of dates on which the work was struck down by the lawyers in some districts of Punjab, Haryana and Union Territory of Chandigarh from July 1991 till date and it shall be useful to extract the same with a view to demonstrate that if it goes on like this any more, it will not take long time for the very judicial system to collapse.

ANNEXURE "B"

STRIKE BY THE ADVOCATES IN DISTRICT AMRITSAR.

Date

Reasons of Strike

17.7.91

District Bar Association Amritsar.

To condemn brutal killing of S. Sukhjinder Singh, Advocate, Sangrur.

17.7.1991

Bar Association, Ajnala

-do ?

18.7.1991

District Bar Association, Amritsar.

To avoid any untoward incident in the Court Compound.

22.7.1991

?do?

To condemn the arrest of Shri Pritpal Singh Advocate.

22.7.1991

Bar Association, Tarn Taran.

To condemn murderous attack on Shri S. K. Chopra, ADJ.

24.4.1991

?do?

Killing of Sikh Pilgrims in U.P.

25/26.7.91

?do ?

In view of Punjab "Bandh"

7.8.1991

-do-

To condemn the harassment of Advocates by the Police.

14.8.1991

District Bar Association, Amritsar.

In view of the Punjab `Bandh" Call by the District Organisation

25.8.1991 26.8.1991

? do?

In view of the deteriorating law and other situation.

7.8.1991

? do?

In protest against the arrest of S. Pritpal Singh.

8.8.1991

? do?

?do ?

8.8.1991

Bar Association, Ajnala

? do?

30.7.1991

District Bar Association, Amritsar

To condemn killing of S. Jassa Singh brother of Advocate Lakhwinder Singh.

2.8.1991

? do?

In view of the call of Bar Association, Nakodar.

19.9.1991

? do?

In view of deteriorating law order situation.

12.9.1991/ 13.9.1991

?do?

In protest against the kidnapping of an Advocate of Bhatinda.

11.9.1991

Bar Association, Tarn Taran.

To condemn the detention of Advocate Jaspreet Singh by Chandigarh Police.

12.9.1991

Bar Association, Tarn Taran

In view of City Closure.

13.9.1991

Bar Association Ajnala

In protest against the kidnapping of an Advocate of Bhatinda.

18.9.1991

District Bar Association Amritsar.

-do?

11.9.1991

? do?

To condemn the detention of Advocate Jaspreet Singh by Chandigarh Police.

21.8. 1991/ 22.8.1991

?do

In protest against Killing of an Advocate at Sangrur.

21.8.1991

Bar Association, Tarn Taran.

-do-

14.8.1991

Bar Association, Tarn Taran

In view of Punjab "Bandh".

6.9.1991/ 7.9.1991

District Bar Association, Amritsar.

In protest against deteriorating law and order situation.

3.9.1991

Bar Association, Ajnala

In view of the Call of "Bandh" of K. C. F. (Panjwar).

28.8. 1991/ 29.8.1991

-do-

To condemn the notice issued by D. P. Govt. against a particular community.

28.8.1991

Bar Association, Tarn Taran

In view of City Bandh Call.

18.8. 1991/ 19.8.1991

-do-

To condemn the kidnapping of an Advocate of Bathinda

29.9. 1991/ 1.10.1991

District Bar Association, Amritsar.

To condemn reversion policy in view of the City Bandh Call.

24.9.1991

Bar Association, Ajnala

To condemn the killing of Bus passengers.

3.10.1991 4.10.1991 5.10.1991

District Bar Association, Amritsar

To condemn Central Govt. for implementation of Mandal Report.

7.10.1991 8.10.1991 9.10.1991

?do-

In protest against the inhuman and condemnable act of the miscreants in religious places.

4.10.1991

Bar Association, Ajnala

To condemn Mandal Report.

14.10.1991

Bar Association, Tarn Taran

In sympathy with an Advocate on death of his brother.

7.10.1991

?do

In response to the Call given by Samrala Bar Association.

8.10.1991

Bar Association, Ajnala

To condemn Bomb Blast in Darbar Sahib, Tarn Taran.

16.10.1991 17.10.1991

District Bar Association, Amritsar

Because of deteriorating law and order situation.

18.10.1991 28.10.1991

? do-

In sympathy with the victims of earthquake.

4.10.1991

? do?

To protest against kidnapping of an Advocate.

1.10.1991

?do-

-do?

18.10.1991

Bar Association, Tarn Taran

Dushehra Festival.

24.10.1991

?do-

To condemn the kidnapping of an Advocate

26.10.1991

District Bar Association, Amritsar

?do?

7.11.1991/ 8.11.1991

Bar Association, Tarn Taran.

Kidnapping of an Advocate.

14.11.1991/

15.11.1991

District Bar Association, Tarn Taran

Interference in peaceful possession of premises of Shri P. C. Grover, Advocate.

28.10.1991

Bar Association, Ajnala

To condemn deteriorating law and order situation.

30. 10. 199 1/ 31.10.1991

District Bar Association, Amritsar

-do?

7.11. 1991

? do?

In view of the Call of Pb. &

8.11.1991

Haryana High Court, Bar Association.

22.11.1991

_do-

To condemn innocent persons at Bararke.

27.11.1991 28.11.1991

? do?

To protest against illegal detention of an Advocate.

29.11.1991 29.11.1991

Bar Association, Tarn Taran

On the Call of Bar Association, Moga, for creating post of ADJ at Sub Divisional level.

13.12.1991

-do-

-do-

10.12.1991

Bar Association, Ajnala

On Punjab Bandh Call

10.12.1991

Bar Association, Tarn Taran

? do -

17.12.1991 18.12.1991

District Bar Association Amritsar

To condemn the kidnapping of a son of DAG. Punjab.

17.12.91 to 18.12.1991

Bar Association Ajnala

In view of the Call of Moga Bar Association for creation of ADJ post at Sub-Divisional level.

17.12.91 to 21.12.1991

Bar Association, Tarn Taran

-do-

19.12.1991 20.12.1991 21.12.1991 4.12.1991

District Bar Association, Amritsar

Deterioration law and order situation.

23.12.1991

? do?

-do?

24.12.1991

?do-

In response to the Call of Moga Bar.

6.1 .1992 7.1 .1992

District Bar Association, Amritsar

In view of the deteriorating law and order situation.

6.1 .1992 7.1 .1992

Bar Association, Ajnala

As protest days.

7.1 .1992

Bar Association, Tarn Taran

In view of Punjab Bandh Call.

9.1.1992

District Bar Association, Amritsar

To condemn killing of innocent persons.

16.1.1992

?do?

To illegal detention of S. Amarjit Singh clerk of an Advocate.

10.1.1992

Bar Association, Tarn Taran

To condemn killing of innocent labourers in Sangrur District.

20.1.1991

District Bar Association, Amritsar

In response to the Call given of Ludhiana Bar Association.

23.1.1992 24.1.1992

?do-

In view of the alarming law and order situation.

21.1.1992

Bar Association, Ajnala

In response to the Call of Ludhiana Bar.

30.1.1992 31.1.1992

District Bar Association, Amritsar

In response to Call by Khalistan Liberation Force.

24.1.1992

?do?

In response to the Call of Ludhiana Bar.

5.2.1992 6.2.1992

-do-

In view of deteriorating law and order situation.

5.2.1992

Bar Association, Tarn Taran

To forcibly make Shri Kirpal Singh Advocate to withdraw from contest.

14.2.1992

Bar Association, Ajnala

To condemn negligence of police driver killing Shri D. L. Madan Advocate.

7.2.1992 8.2.1992

District Bar Association, Amritsar

To condemn interference of Pakistan in internal affairs of India.

11.2.1992 12.2.1992

-do-

In view of deteriorating law and order situation.

10.2.1992

Bar Association, Tarn Taran

To forcibly make Shri Kirpal Singh Advocate to withdraw from contest.

14.2.1992

District Bar Association, Amritsar

In view of deteriorating law and order situation.

20.2.1992 21.2.1992

?do?

? do-

24.2 1992 25.2.1992

?do-

? do-

25.2.1992

District Bar Association, Ajnala

To condemn killing of innocent persons.

26.2.1992 28.2.1992

?do-

?do-

STRIKE BY THE ADVOCATES IN BATHINDA DISTRICT

11.9.1991

District Bar Association, Bhatinda.

Protest against the kidnapping of Shri Ranbir Singh Mansha-hia, member of the Local Bar Association.

31.10.1991

-do-

To protest against the denial of S. C. P. and D. C. Bhatinda to meet the deputation of the Bar Association.

7.11. 1991

-do-

Reasons not mentioned.

3.10.1991

? do?

Re-joining of Indefinite strike in protest against the kidnapping of Shri Ranbir Singh Manshahia.

STRIKE BY THE ADVOCATES IN FARIDKOT DISTRICT

18.9.1991

District Bar Association, Faridkot.

To condemn the kidnapping of an Advocate of Bhatinda.

7.11.1991 8.11.1991

Bar Association, Gidder-baha.

To protest against manhandling of an Advocate at Hansi.

Since

25.9.1991

Bar Association Moga,

For the demand for creation of the Court of A.D.J., at Moga.

20.12.1991

Dirtrict Bar Association Fridkot.

The condemn killing of Sikh Pilgrim at Pilibhit and Bomb Explosion at Ludhiana.

9.12.1991

Bar Association, Gidder-baha.

In protest against withdrawal of the Court of Executive Magistrate, Gidderbaha.

9.1.1992

-do-

Due to untimely death of an Advocate of Muktsar.

21.1.1992

Bar Association, Muktsar.

For appointment of A. D. J. at Sub-Divisional Level.

STRIKE BY THE ADVOCATES IN GURDASPUR DISTRICT

14.1.1991

Bar Association. Pathan-kot.

To protest against the murderers assault on Shri Surinder Pal Singh Bhagowalia, Advocate, Batala.

12. 8. 1991

? do-

Reasons not mentioned.

16.8 1991

-do?

-do?

17.8.1991

?do-

-do-

13.8.1991

District Bar Association, Gurdaspur.

To protest against the murderers assault on Shri S. P. Sharma, Advocate.

14.8.1991

-do?

?do-

20.8.1991

-do?

To protest against the illegal confirmment of Shri Ashok Tiwari, Advocate.

21.8.1991 24.8.1991 30.8.1991

Har Association, Pathan-kot.

In view of the call given by the Bar Association, Gurdaspur.

8.8.1991 14.8.1991 16.8.1991 19.8.1991

Bar Association, Batala.

Reasons not mentioned.

21.8.1991

-do-

In view of the call given by the Bar Association, Gurdaspur.

27.8.1991 28.8.1991

Bar Association. Pathankot.

In view of the call of District Bar Association, Gurdaspur & Sangrur.

10.9.1991

-do-

In view of the call by the Punjab and Haryana Bar Association, Chandigarh.

12.9.1991

-do?

As per call of Bar Association of Shri Har Gobindpur Sahib.

14.9.1991 1.10-1991

? do-

Reasons not mentioned.

18.9.1991

District Bar Association. Gurdaspur.

To make protest against the Production of Shri Ranbir Singh Manshahia, Advocate of Bhatinda.

8.10.1991 9.10.1991

? do ?

To make protest against Bomb Blast in Darbar Sahib in Tarn Taran.

19.9.1991 20.9 1991 23.9 1991 24.9.1991

Bar Association, Batala.

Reasons not mentioned.

7.11.1991 8.11.1991

Bar Association, Pathan-kot.

In view of call of High Court, Lawyers, Chandigarh, Deteriorating Law and orders.

31.10.1991 16.11.1991 7.11.1991 8.11.1991

Bar Association, Batala.

Reasons not mentioned.

8.10.1991

-do-

In protest against Bomb Blast at Tarn Taran.

9.10.1991 16.10.1991

Bar Association, Pathan-kot.

To protest against killing passengers at Ludhiana.

18.10.1991 15.11.1991

-do?

Due to sad demise of Hon''ble Gurnam Singh, Retired Judge of High Court.

25.12.1991

? do-

Reasons not mentioned.

12.12.1991

?do?

To protest against the kidnapping of a son of D. A. G. Punjab,

10.12.1991

? do ?

? do ?

13.12.1991 16.12.1991 17.12.1991 18.12.1991 7.1.1992 14.1.1992

Bar Association Pathan-kot

For creation of the Court of ADJ at Sub Division level.

7.1.1992

District Bar Association Gurdaspur

On account of Punjab Bandb.

20.1.1992

? do-

To protest against excesses done by the police on Shri A. S. Sandhu, Advocate.

23.1.1992

Bar Association Pathan-kot

Due to tension in City.

5.2.1992

-do-

To condemn the arrest of some contesting candidates for Punjab Assembly.

3.2.1992 4.2.1992

District Bar Association Gurdaspur

To condemn the Lathi Charge on Akali Workers at Ludhiana.

30.1.1992

?do-

In view of the call of Punjab Bandh by the Militants.

3.1.1992 6.1.1992 10.1.1992 13.1.1992 17.1.1992 20.1.1992 21.1.1992 to
25.1.1992

Bar Association, Batala

Reasons not mentioned

24.1.1992 25.1.1992 26.1.1992

District Bar Association Gurdaspur

In support of the call of the Punjab Bandh given by the Militants.

10.2.1992 11.2.1992

Bar Association Patten-kot

For demand of establishment of ADJ post at Sub Division level.

12.2.1992 to 20.2.1992

?do-

To make protest against the worst Law and order situation in Punjab and killing of innocent features at Batala and Sangrur.

STRIKE BY THE ADVOCATES IN JALANDHAR DISTRICT

2.8.1991

District Bar Association Jalandhar

In view of the call given by the Bar Association Nakoda

3.9.1991

?do?

In respect of hooliganism and inaction of the police for not arresting the culprits.

4.9.1991

? do?

In view of the call given by the Bar Association, Gurdas-pur.

5.9.1991

?do?

Inaction of police for taking action against the culprits who trespassed in the house of Sh. J. S. Sodhi, Advocate and created hooliganism.

6.9.1991 & 7.9.1991

? do-

? do-

10.9.1991 & 11.9.1991

-do?

To condemn the arrest of Sh. Jaspreet Singh Gill, Advocate of Punjab & Haryana High Court Chandigarh.

10.9.1991 to 27.9.1991

? do-

Boycott of the Court of Shri P.S. Bajaj, CJM, Jalandhar.

27.9.1991

? do?

To discuss the requisition of the members of the Bar regarding beating of Advocate by Police.

14.10.1991

? do?

To show solidarity with the Haryana Lawyers.

18.10.1991

? do?

To celebrate Dushehra Festival.

22.10.1991 & 24.10.1991

-do?

To express sympathy with the members of the family who suffered great loss in U. P. earthquake and Ludhiana fire.

25.10.1991

? do?

To condemn the attitude of the Govt. in not tracing the whereabouts of Shri Ranvir Singh Manshahia, Advocate of Bhatinda.

8.11.1991

-do?

To condemn the killing of a lawyer of Gurdaspur and also in response to the strike observed by the High Court Bar Association.

11.11.1991

-do?

On account of sad demise of Hon"ble Mr. Justice I. S. Tiwana.

14.11.1991

? do?

Protest against the untoward behaviour of the Police towards Shri Madan Lal, Advocate.

29.11.1991

District Bar Association Jalandhar

In view of the call given by-various Organisations of All India.

16.12.91 to 21.12.1991

Bar Association, Nakodar

In response to a call for one week strike to maintain solidarity with the Sub-Divisional Lawyers for stressing their demands for posting of AD & SJ at Sub Division level.

7.1.1992

District Bar Association, Jalandhar

Due to Punjab Bandh and avoid inconvenience to the litigants.

20.1.1992

-do?

To deprecate non-action of the Govt of India on the package for Punjab.

23.1.1991

?do?

As Ekta Yatra was reaching on 23rd instant and many people likely to join the same.

27.1.1992 & 28.1.1992

? do?

To condemn the failure of the Admn. to provide adequate security to the Ekta Yatra and to condemn the killing of innocent persons in the Ekta Yatra.

Second half of 30.1.1992

- do?

As the mark of respect on the death of Shri ML. Gandhi.

11. 2. 1992

? do?

To show solidarity with the rest of the country and to con. demn the deteriorating law and order situation in Punjab.

10.2.1992

-do?

To condemn the murderous attack on Shri Bajaj, Advocate, Patiala and requested to provide protection to the lawyers.

14.2.1992

?do?

In view of call given by the Bar Association, Ferozepur.

15.2.1992

?do?

In view of the complaint of Sh. P. S. Kalsi, Advocate.

3.3.1992

-do-

In order to show solidarity with the Members of Bar Association, Nakodar.

STRIKE BY THE ADOCATES IN DISTRICT PATIALA

7.9.1991

District Bar Association, Patiala

To condemn the attack on Sh. Ram Kumar Goel, Advocate by Junior Doctors of Rajindra Hospital, Patiala.

3.9.1992 4.9.1992

Bar Association Fatehgarh Sahib

To protest against police harassment.

10.9.1991 11.9.1991

District Bar Association, Patiala

To condemn the "Police Raj" in Punjab.

12.9.1991

To support of Advocates of Fatehgarh Sahib and the arrest of an Advocate of Chandigarh.

18.9.1991

? do ?

To condemn the arrest of an Advocate.

18.9.1991

Bar Association, Fatehgarh Sahib

Call given by the Bar Counsel of Punjab and Haryana High Court.

19.9.1991

?do-

Punjab Bandh.

26.9.1991

District Bar Association Patiala

On account of the death of Sh. V. N. Bhatnagar, Advocate Patiala

26.10.91 to 31.10.1991

Bar Association, Fatehgarh Sahib

To condemn the arrest of S. Simranj t Singh Mann.

30.10.1991

?do?

To condemn the behaviour of Govt.

7.11.91 to 9.11.1991

? do-

On the call of Bar Association, Hansi.

11.11.1991

? do?

To express sympathy with the members of bereaved family of Mr. Justice I. S. Tiwana.

15.11.1991

-do?

To express their sympathy on the death of Justice Gurnam Singh.

16.11. 1991

-do?

To express their sympathy on the death of sad demise of Sh. K.L. Chopra, Judicial Magistrate.

22.11.1991

? do-

To condemn the inhuman behaviour of Police of Bassi Pathana.

23.11.1991

-do?

? do?

25.11.1991

?do-

-do-

10.12.1991

District Bar Association, Patiala

In view of `Punjab Bandh" call.

10.17.1991 13.12.1991

Bar Association Fateh-garh Sahib

In support of the agitation of Moga Bar Association and establishment of the Court of A.D.J. at Sub Division level.

16.12.91 to 21.12.1991

? do-

? do-

23.12.1991

Bar Association, Rajpura

Sad demise of the son-in-law of Sh. Mohinder Singh, Advocate.

16.1.1992 & 18.1.1992

Bar Association Fatehgarh Sahib

To condemn the killing of Sher Singh Domchheri by unknown persons and in view of the call given by Moga Bar Association.

22.1.1992& 23.1.1992

? do?

Call of Sub-Divisional level Committee.

24.1.1992

-do?

Call of the India Lawyers Association for handing (over Chandigarh to Punjab and also condemn the firing incident on Ekta Yatra.

10.2.1992

Bar Association Rajpura

Condemn the attack on the life of Sh S. K. Bajaj, Advocate, Patiala.

12.2.1992 &13.2.1992

-do?

Failure of Hon"ble High Court and Punjab Govt. to appoint Addl. District & Sessions Judge at Sub-Divisional level.

20.2.1992

-do?

Indefinite strike till the appointment of Addl. D. & S. J. in the Sub Divisional level.

25.2.1992

-do?

In view of the call given by Sub Division Bar Association every Wednesday & Thursday,

STRIKE BY THE ADVOCATES IN SANGRUR DISTRICT

25.7.1991 & 26.7.1991

District Bar Association, Sangrur.

Call for Punjab Bandh.

5.6.1991 & 6.6.1991

? do ?

Sad demise of Sh. N. S. Tiwana Addl. Dy. Commissioner, Sangrur and call of Punjab Bandh.

13.8.1991 & 14.8.1991

-do

Protest against the killing of Sh. G. B. Singh, Professor of Ranbir College, Sangrur and also due to Pb. Bandh.

21.8. 1991 & 22.8.1991

-do?

To condemn the brutal murder of Sh. Kewal Krishan. Advocate of Sangrur by some unidentified persons.

30.8.1991

?do- ?

To condemn the illegal detention of Mr. Jagmohan Singh, Advocate of Khanna Police.

3.9.1991 & 4.9.1991

?do ?

In view of Call of Punjab Bandh

11.9.1991

? do?

Protest against the illegal arrest of Sh. Jaspreet Singh, Advocate Chandigarh and the man handling of Advocates by the Police of Fatehgarh Sahib Bar Association.

12.9.1991 & 13.9.1991

? do-

To condemn the kidnapping of two Advocates of Bhatinda by unknown persons.

18.9.1991

-do?

Protest against the kidnapping of Mr. Ranbir Singh, Advocate

26.9 1991

? do?

In protest as no action has been taken against the guilty SHO who misbehaved with Sh. Jang Singh, Advocate.

8.10.1991

? do?

To condemn the incident of Bomb Blast in Darbar Sahib at Tarn Taran.

18.10 1991 & 19.10.1991

? do?

Deteriorating law and order situation in the Punjab particularly in the Sangrur District.

22.10.1991

?do?

To condemn the kidnapping of an Advocate Saranjit Singh, Amritsar by some unknown persons and condemn the Rudrepur incident.

28 10.1991

-do-

In protest against the brutal murder of Director, Health Deptt., Dr. Bachittar Singh.

6.11.1991 after lunch 7.11.1991 8.11.1991

District Bar Association

To condemn the kidnapping of two Advocates of Patiala Bar Association.

13.11.1991

District Bar Association Sangrur

Condole the death of father of Sh. R.K. Paul, Advocate.

14.11.1991 & 15.11.1991

-do?

To condemn the kidnapping of brother of Sh. Balram Dutt, Distt. Attorney, Patiala.

11.11.1991

?do?

Sad demise of Hon"ble Mr. Justice I. S. Tiwana.

20.12.1991

? do ?

To condemn the incident of Bomb Blast at Ludhiana.

7.1.1992

? do?

Call for Punjab Bandh.

8.1.1992

? do?

Untimely death of Sh. Gurjant Singh, A.D.A.I.

16.1.1992

Bar Association, Dhuri

In protest against the killing of the innocent persons in District, Sangrur.

24.1.1999

District Bar Association Sangrur

Call given by All India Lawyers Union regarding transfer of Chandigarh to Punjab immediately.

31.1.1992

-do?

In view of Punjab Bandh.

6.2.1992

-do?

To condemn the attack by some persons on Sbri GurvinderSingh? Dhillon, Advocate, Chandigarh.

5.2.1992

? do ?

To condemn the law and order situation prevailing in the State and also Bomb blast at Bus Stand, Sangrur.

8.2.1992 & 10.2.1992

? do?

Due to beginning and Bhog of Sh. Akhand Path in the Court complex as a mark of respect.

12.2.1992 to 15.2.1992

? do?

Keeping in view the election process.

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[Schedule relating to Strikes in Ambala, Bhiwani, Faridabad. Jind, Narnaul Rohtak, Sirsa, Sonapat, Karnal, Districts and Chandigarh-Ommitted. EDITOR]

10. In the situation that we are presently, our utmost anxiety and worry in the matter has compelled us to think as to whether strictly under the law, the Court can function without the assistance of lawyers. It may be mentioned here that our concern in the matter apart, we "would like to deal with the matter strictly in accordance with the provisions that govern the field.

11. CPC provides procedure to be followed in civil matters. Likewise Code of Criminal Procedure provides procedure to be followed in criminal cases. Section 303 provides for the accused to be represented by counsel of his choice. Section 385 and 386 of the Code of Criminal Procedure deal specifically in the matter of hearing appeals in criminal cases and are reproduced below :-

"385. Procedure for hearing appeals not dismissed summarily, -(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given-

(i) to the appellant or his pleader;

(ii) to such officer as the State Government may appoint in this behalf;

(iii) if the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant;

(iv) if the appeal is u/s 377 Or Section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the ground of appeal."

(2) The Appellate Court shall then send for the record of the case, if such record

is not already available in that Court and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

"386; Powers of the Appellate Court.-After perusing such record and hearing the, appellant or his pleader, if he appears, and the Public prosecutor if he appears, and in case of an appeal u/s 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may:-

... ..

12. The right of the accused to be represented by counsel of his own choice is a principle of natural justice to ensure fair trial to the accused. The same principle is enshrined in the aforesaid provisions in the matter of hearing appeals in criminal cases. The provision in Section 385(1) and Section 386, as reproduced above, are to be harmoniously construed in the context. Chapter XXIX of the Code of Criminal Procedure deals with appeals to be filed in criminal cases either against the orders of conviction or against the orders of acquittal. Section 381 provides for appeal to the Court of Session which are to be heard by the Sessions Judge or by the Additional Sessions Judge. Section 382 provides for the form of a petition of appeal Section 384 talks of dismissal of the appeal summarily. Sections 385 and 386 deal with the procedure for hearing appeals which are not dismissed summarily. Section 385 provides for causing notice of time and place of hearing to be given to the appellant or his pleader to such officer as the State Government may appoint. The records of case are to be sent for and parties are to be heard. Section 386 of the Cr. P. C., extract reproduced above, provides for perusal of the records and hearing the appellant or his pleader, if he appears and the Public Prosecutor, if he appears and then to decide the appeal. The phraseology used in section 385(2) of the Code that the appellate Court shall hear the parties after sending for the records if not already available, does not indicate that even if the parties or their counsel do not address the Court, the appellate Court would be debarred from deciding the appeal. "Hear the parties" as contemplated under sub-section (2) of Section 385 of the Code is to be read alongwith Section 386 that after an opportunity of hearing is afforded, the case would be taken up for hearing and if the appellant or his pleader appears and argues, the Court shall hear him. Likewise if the Public Prosecutor appears and argues, the Court will hear him as well and then dispose of the appeal according to law. The concept generally taken that no criminal case can be disposed of without hearing Counsel for the accused, of his choice, is limited to an extent that an opportunity must be given to the accused to have counsel of his choice represent him at the trial as well as at the appellate stage. If such a counsel appears then the Court would be duty bound to hear him, but it is not required that the criminal appeal in such cases must be adjourned if the counsel chooses not to appear or appears but does not argue. A duty is cast upon the appellate Court to decide the appeal when listed for hearing.

13. The cardinal principle that criminal justice should be administered without unnecessary delay is well recognised by Courts. As observed above, there are frequent calls for strikes by the lawyers. If the entire Court work is to be adjourned, only on the ground that the lawyers have decided to abstain from appearing in the Courts, the entire judicial system will fail. The Courts are to function in accordance with law. If the law requires, the case to be disposed of even without the assistance of the advocates, the Courts cannot shirk their responsibility by simply not deciding the cases in accordance with law. The Courts are to be controlled by the Presiding Officers themselves and such a control is not vested under any authority of law in the members of the Bar Association that as and when they would choose to abstain away from the Court the working of the Courts had to be stopped.

14. An idea of co-operation from the members of the Bar to be given to the judges in the matter of dispensation of justice is primarily for simple working of the Courts. But this principle cannot be reversed that the Judges must co-operate with the members of the Bar and stop discharging judicial functions as and when members of the Bar decide not to appear in Courts. Generally Courts do accommodate advocates when cases are called and prima facie some cause is shown for their non-appearance at the relevant time but such an indulgence granted on occasions cannot be claimed as a matter of right by members of the Bar by passing resolutions calling upon members of the Bar not to appear in Courts. As far as Courts are concerned they are to decide cases in accordance with law and while referring to the provisions of Sections 385 and 386 of the Code of Criminal Procedure we are of the firm view that the Appellate Court can hear appeals if notice of admission of the appeal had already been given, records had been received and where parties are represented by counsel, there is sufficient notice to them of hearing of the case when the case is shown in the list published. The Court is to peruse such records and hear the parties or their counsel if they appear and then decide the appeal.

15. The Supreme Court had the occasion to consider the scope of Section 422 of the Code of Criminal Procedure, 1898, in Mohammed Dastagir v. The State of Madras AIR 1966 S.C. 756, and observed at page 760 as under:-

"In the case before us it is perfectly clear that the High Court was intimated in the clearest terms that appearance had been entered on behalf of the appellant and two advocates of the High Court were representing him, one of them an eminent advocate of the Court. In deed, the High Court was requested not to issue any summons to the appellant because appearance had already been entered on his behalf. In spite of that the High Court issued notice u/s 422 to Mr. Ethiraj and Mr. Cassim. Even thereafter, the High Court took the precaution to intimate the Special Judge of Tiruchirapalli to inform the accused about the appeal filed against him. In these circumstances it can hardly be said that notice of the appeal had not been given to the appellant. Section 422 does not speak of the notice being served on the appellant. It states that notice is to be given to

the accused. If, as in the circumstances of the present case, the High Court is intimated that the accused has entered appearance and has notice of the appeal filed against him and the Court is requested not to issue any summons to him, it can hardly be said that notice of the appeal had not been given to the accused."

The only difference in facts of the cited case and the present one is that in the case in hand no request was made by the counsel that notice be not sent to the accused but that in our considered view shall not make any difference and principle of Section 422 of Old Code still stand complied with as the accused are represented.

16. In *Kunjamma Paru v. State and Anr.* AIR 1951 Tra. Coc 123, posting of the appeal published in the notice board as well as in the cause list alongwith name of Advocate was held to be sufficient compliance of Section 422 of the Old Code. Where the accused is not represented in appeal, notice has to be served upon him to appear in person to argue the case and the Court cannot of its own appoint any Pleader to represent him, as such a Pleader will not be of his choice. It was so observed in *Nathu Ram V. Godse v. The Crown* AIR 1949 E.P. 321.

17. Keeping in view the ratio of the decisions aforesaid and the provisions of Sections 385 and 386 of the Code of Criminal Procedure reproduced earlier, it would be seen:-

(a) that the word "hearing" means a case posted for hearing and the accused or counsel for accused-appellant and the Public Prosecutor, if appear, to be heard.

(b) If counsel for the accused or the Public Prosecutor choose not to appear, the Court can dispose of the appeal on merits after perusal of the records.

(c) "Representation of the accused by the counsel of his own choice" principle is applicable when the case is taken up for hearing and counsel of the choice of the accused is to be allowed to conduct the case. Such principle does not extend to hold that in the absence of counsel for the accused of his choice the appeal cannot proceed.

(d) It is the duty cast upon the appellate Court to dispose of the appeals promptly. Delay in the disposal of criminal cases has always been deprecated. It cannot be spelled out from perusal of Sections 385 and 386 of the Cr. P. C. that in the absence of counsel for the accused-appellant or accused-respondent appeal cannot be disposed of if notice of the hearing of the, appeal is given to the accused or his counsel. The Court is to decide the appeal on perusal of the records and hearing the counsel, if he appears.

(e) Posting of the case in the cause list is sufficient notice to the Advocate representing the accused in the appeal.

18. In the present case we have checked from the records that the accused are represented by counsel and since the case was listed for hearing, there is sufficient compliance of the provisions of Section 386 and after counsel for the

accused had put in appearance, they would have been heard. Since they have not come, we have perused the records, heard counsel appearing for the State of Haryana and dispose of the appeal as under.

19. Additional Sessions, Judge, Hissar, vide order dated September 14, 1985, recorded acquittal of the three accused; Rai Sahib, Bhaga and Mohanr alias, Manohari, who were charged u/s 302 read with section 34 of the Indian Penal Code. State of Haryana has come up in appeal.

20. Rai Sahib was charged under, section 302 of the Indian Penal Code for committing the murder of Inder Singh, husband Mohani accused in about last week of March 1984 in the area of village Chuli Bargrian. The other two accused Bhaga and Mohani were charge u/s 302 as with section 34 of the Indian Penal Code on this count. The case was registered on the statement of Balbir Singh real brother of the deceased Inder Balbir Singh in his statement narrated his version which is briefly as under:-

21. Inder, the deceased, owned 2? Killas of land. In 1971 he had brought a woman named Mohani (the accused) and kept her in his house as his wife. Inder had three sons and three daughters from Mohani. Inder and Bhaga accused had taken 12 Killas of land jointly on lease from Gram Panchayat of the village. Balbir Singh was having his clinic in village Bhaini Badshahpur. He is a Registered Medical practitioner and had started, residing there with his family. He had gone to village Dadupur and on return on March 31.4.1984, was informed by his wife Ram Devi that Bhaga (accused) had come from village Chuli Bagrian and was saying that Inder and Ranbir had gone to Delhi to purchase a flour-mill. Ranbir had come back and not Inder. Bhaga accused informed his wife that they had money i.e. Inder had taken Rs. 10,000/- by selling a "galsari" (a necklace) Bhaga had further stated, attributing to Ranbir that he would give four Killas of land and Rs. 2,000/- in cash for not making mention of Inder. Thus, Balbir.went, to village Chuli Bagrian and came to know that Mohani wife of Inder had left the house along-with children about 3 days earlier. His brother was thus reported to be missing for about 15 days. He apprehended that his brother was taken away with intention to commit his murder.

22. This statement was made on April 2, 1984 at about 1.05 p.m. at Bus Stand of Village Chuli Bagriari before Sub-Inspector Amrik Singh who was also S.H.O. of Police Station, Adampur. After registration of the case u/s 364 of the Indian Penal Code investigation was taken in hand. The dead body of Inder was recovered from his own house buried under the latrine on that very day. Post mortem was got conducted. Three injuries were found on the dead body which are reproduced below as stated by PW-1 Dr. Vinod Arora, who conducted post mortem on the dead body-

(1) There was incised wound on the left upper lip which was through and through and upper two left incisor were missing. Their sockets were empty. Skin-edges were dry and leathery with incised wound 3 cms. x 1 1/2 cm.

(2) Incised wound on the left side of neck extending just below the mastoid process to sternum through and through to the opposite side. Skin edges were dry and leathery. All the muscles were cut. There was soiling of the wound with mud and sand. Oesophagus and trachea were cut. Trachea was showing sign of decomposition. Intervertebral joint between 6th and 7th cervical vertebra was dislocated and completely separated. Spinal cord was not seen. The 7th cervical vertebra was fractured transversely, neck was only attached with skin and spinal muscles. Carotid vessels on both sides were also

(3) There was wound below the left eye of the size 4 1/2 cm. eye-ball was pierced and collapsed and on right side cornea was caved inside and eye-ball was soft. 23. The police recorded statements of several witnesses which included two eye-witnesses of the occurrence, namely, Rachhpal son of Inder and Rukmani daughter of Inder. Statement of Surjit Singh was also recorded who deposed about the statement of Mohani accused made to him. After completion of the investigation the three accused were put up for trial.

24. The medical evidence consists of the, statement of PW-1 Dr. Vinod Arora, who conducted post mortem on the dead body and the direct evidence of the two eye-witnesses PW-8 Rachhpal and PW-9 Rukmani, PW-5 Surjit Singh's evidence is to the effect that he was taken to the house by Mohani accused and informed in confidence that Inder was no more in the world and that his dead body was lying under the latrine. Surjit Singh was directed to come again after 3-4 days and then she would disclose about the matter in which Inder was put to death. Since Surjit had informed whatever was told by Mohani accused to PW-6 Badri, to corroborate his version Badri was produced-----PW-10 Ram Devi is wife of Balbir who supported version of Balbir as given in the First Information Report.

25. The three accused denied the prosecution allegations and pleaded innocence. Opportunity to lead defence evidence was afforded, however, no evidence in defence was produced.

26. The prosecution relied upon four types of evidence produced against the accused; medical evidence, eye-witnesses account, recovery of weapon of offence, and circumstantial evidence. At the outset it may be stated that no cogent evidence has been led by the prosecution to prove the motive for commission of the crime. The deceased Inder was husband of Mohani accused. She had borne six children from the loins of Inder. Some land was taken jointly by Inder and one of the accused namely, Bhaga. Though directly it is not suggested, however Balbir Singh PW-2 tried to point Mohani as a woman of ill-repute and loose virtues. In fact he wanted his sister-in-law to marry Inder and asked him to leave Mohani. Balbir Singh described Mohani as a woman brought by Inder and kept as his wife in this house. Balbir had to admit that six children; three sons and three daughters were born to Mohani. Whatever may be the purpose of Balbir and other prosecution witnesses to depose against Mohani accused, there appears no motive for Mohani or other co-accused to commit the murder of Inder. Assuming for the sake of argument that the other accused Rai

Sahib had some illicit relations with Mohani, that per se would not be any cause for committing the murder of Inder. Why Bhaga would join the other two accused for commission of murder of Inder is also not explained. Bhaga and Inder had jointly taken 12 Killas of land of Panchayat for cultivation. Thus it is a case, as projected by the prosecution of no motive for commission of the crime.

27. Proof of motive generally lends corroboration to the prosecution version. Motive may be known to the accused only but that is only one of the circumstances in the chain of evidence to be taken into consideration. It cannot either way to be construed to the credit or discredit of any of the parties. The other evidence produced has to be considered independently and appreciated.

28. Before the evidence of two alleged eye-witnesses is analysed it is considered appropriate to deal with the First Information Report lodged by Balbir Singh PW. Balbir Singh is brother of Inder deceased. He was residing in village Bhaini Badshahpur. He was informed by his wife that Bhaga (accused) had visited their house and informed that Bhaga and Inder had taken 12 Killas of land jointly and Inder and Ranbir had gone to Delhi to purchase a flour mill and Inder had not returned. His wife was suspecting, that is why Balbir visited village of Inder and came to know that Mohani alongwith her children had left the house in mysterious circumstances. Thus, he lodged the report that Inder was missing and taken away with intention to commit his murder. This would show that in fact report was lodged against Ranbir who is not one of the accused in the present case. During the trial when Surjit Singh PW came into the witness-box a story came on the surface that Mohani had taken him into confidence by taking him to her own house and pointed out the place where dead body of Inder was lying. Surjit Singh was asked to come again after few days and that she would disclose him as to how Inder was put to death. Surjit Singh contacted other persons in the village including Badri PW 6 and a messenger was sent to Balbir Singh brother of Inder. In fact Surjit Singh stated that he met Balbir Singh before he went to lodge the report. Balbir Singh PW 2 admitted it. This version of Surjit Singh clearly demolishes the version of Balbir Singh as given in the report. If Surjit Singh had met Balbir PW before the report was lodged, he must have disclosed him about the existence of the dead body in the house as well as involvement of Mohani accused. Either Surjit Singh did not meet Balbir Singh before the report was lodged or if he had met Mohani, he had not disclosed to him about the existence of dead body lying in her house, or the statement attributed to Mohani accused. Be that as it may, the statement made by Surjit Singh PW demolishes the prosecution story as projected by Balbir PW in the First Information Report

29. There is no reliable evidence to come to a firm view that the dead body recovered was, in fact, of Inder deceased. The prosecution witnesses identified the dead body as that of Inder because of an operational scar on the stomach. However, statement of Dr. Vinod Arora PW 1 completely rules out the existence of any surgical scar on the stomach of the dead body recovered. Otherwise the

dead body was recovered in the state of highly decomposed condition about 14-15 days after the alleged occurrence. According to the opinion of the doctor the time that elapsed between death and post mortem was of about 14 days. It was so mutilated that it could not be identified. It would be in the realm of suspicion that since the dead body was recovered from the house of Inder deceased, it must be that of Inder. However, if eye-witness account had been acceptable, it could in a far fetched manner be said that the dead body was that of Inder as after the crime it was Inder's dead body which was buried there.

30. There are two eye-witnesses of the occurrence produced by the prosecution; namely, PW-8 Richhpai and PW-9 Rukmani, son and daughter of Inder deceased. Both of them are aged about 11-12 years, respectively. No doubt these child witnesses are closely related to the deceased as well as to Mohani accused who is their mother and if the occurrence had taken place in their house itself, their presence ordinarily would be natural. Their evidence needs to be appreciated applying usual tests for other types of witnesses. The important factor to be noticed is that these eye-witnesses came on the scene after about 5-6 months of the occurrence. The explanation put-forth by the prosecution is that these witnesses were taken away from place to place by the two accused Rai Sahib and Mohani after the occurrence and further they were threatened by Rai Sahib. The situation is not such as has been projected by the prosecution. If some value is to be attached to the statement of Surjit Singh PW-5 that he was taken into confidence by Mohani a few days on or about April 1, 1984. The fact remains that for 3-4 days these children remained there attending the school, playing in the street, as stated by Richhpai PW-8. Further more, while going from place to place, they met different persons including the police. It was only after the arrest of Mohani accused on September 3, 1984 that these witnesses made statements to the police. Before that there was no clue with the police, as to how and where the occurrence had taken place. If these two child witnesses were in fact sleeping in the same court-yard where Inder was sleeping at the time of occurrence, they would have raised hue and cry. Rather they awoke on the shrieks of Inder, as stated by Richhpai PW-8. If that is so, there was no reason for the neighbours from the adjoining houses being not attracted to the scene of occurrence. During arguments it was suggested by the State Counsel that these witnesses, on account of severe shock on seeing their father being killed must have gone speechless (dumb). It may or may not be so, however, there is no evidence to this effect. According to Richhpai PW, when he woke up on the shrieks of Inder, he had seen him being held by the accused Mohani when Rai Sahib gave blow with the kassi hitting Inder. This indicates that Inder was first apprehended before he was attacked. The nature of the injury found on the neck probably could not be inflicted if Inder was in a standing position. The blow which hit the neck of Inder was with such magnitude of power that thereafter Inder would not have been in a position to speak. This is so, on account of the damage caused beneath injury of the neck. Such an injury could only be caused, if the case is looked from the human probability. While Inder was lying on the cot unaware of

being attacked and the single blow given with great force had hit his neck. If that is so, probably Inder would not have been in a position to raise any noise or shriek and the statements of the two child witnesses aforesaid that they wake up on hearing the shriek and (thereafter saw the accused holding Inder from different limbs when Rai Sahib gave the kassi blow, is an after-thought story. There is no guarantee that though presence of eye-witness on the spot may be probable that he had deposed truthfully in Court, particularly in the case of child witnesses, the possibility of their being influenced by the close relations and to extract tutored statements from them cannot be ruled out. If has come in the evidence that after the arrest of Mohani accused these two child witnesses are (putting up with their father's brother Balbir Singh PW-2 who is managing the land of the deceased. It may be that deceased's brother will not inherit to him in the presence of the widow or the children and even if the widow is held to be responsible for the murder of Inder, the two child witnesses, children of the deceased, would succeed. However, the fact cannot be lost sight, of that if Mohani's parental relations might have started managing the land whereas in the family the land was to be managed by Inder or his brothers. Be that as it may the influence of the prosecution witnesses with whom the two child witnesses are staying, in the facts of the present case, cannot be ruled out. Even though they have come to the Court to depose against their own mother, though as a matter of fact the major injury has been attributed to Rai Sahib having been caused with a kassi and the only part attributed to Mohani, mother of the two child witnesses, was only holding of the deceased from his limbs The conduct of the two child witnesses immediately after the occurrence, if they had actually seen the same, does not appear to be natural and probable According to them, after the occurrence, they had again gone to sleep. The same thing was said about Mohani.

31. Since the occurrence is alleged to have taken place during dead of the night, even if there was provision for light, the accused would not have put on the same to commit the crime. In the court-yard, apart from the accused and the deceased and the two minor children, there was no one else and they would not have put on light to get themselves identified. The evidence of the two child witnesses, that in the light they had identified the accused, is not believable.

32. Recovery of the kassi after 3 days of the arrest of Rat Sahib accused and that too from an open place is not considered corroborative evidence to record conviction of the accused or to connect Rai Sahib or others with the crime. It would not be safe to record conviction on the nature of the evidence produced in this case and it cannot be hold that appraisal of the evidence produced in the case by the trial Court was perverse to call for interference.

33. For the reasons recorded above, this appeal is dismissed.