

Prithipal Singh Etc vs State Of Punjab & Anr. Etc on 4 November, 2011

Equivalent citations: 2012 AIR SCW 594, 2012 (2) AIR JHAR R 630, AIR 2012 SC (CRIMINAL) 333, (2011) 50 OCR 1021, (2011) 4 RAJ LW 3666, (2011) 4 CURCRIR 182, (2011) 3 UC 2177, (2012) 1 CHANDCRIC 227, (2011) 4 DLT(CRL) 417, (2012) 76 ALLCRIC 680, 2011 ALLMR(CRI) 3931, (2012) 2 JCR 199 (SC), 2012 (1) SCC 10, (2011) 12 SCALE 411(2), (2012) 110 ALLINDCAS 68 (SC), (2011) 4 CRIMES 259, 2012 (1) SCC (CRI) 1, (2012) 1 UC 328

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 523-527 of 2009

Prithipal Singh Etc.

...

Appellants

Versus

State of Punjab & Anr. Etc.

...Respondents

WITH

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. All the above appeals have been preferred against the common judgment and order dated 8.10.2007 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal Nos.

864-DB of 2005, 2062-SB of 2005, 2073-SB of 2005, 2074-SB of 2005, 2075-SB of 2005 and order dated 16.10.2007 in Crl. R.P. No. 323 of 2006, whereby the High Court has dismissed the appeals of the appellants filed against the conviction and sentences awarded to them by the Additional Sessions Judge, Patiala, in Sessions Case No. 49-T of 9.5.1998/30.11.2001 vide judgment and order dated 18.11.2005, whereby he had convicted Jaspal Singh, DSP -

appellant in Criminal Appeal No. 528 of 2009 and one Amarjit Singh, ASI, under Sections 302/34 of Indian Penal Code, 1860 (hereinafter referred as 'IPC'), and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default of payment of fine, to further undergo Rigorous Imprisonment (hereinafter called 'RI') for five months. Both were also convicted under Section 120-B IPC and sentenced to undergo RI for five years and to pay a fine of Rs.2,000/-, in default of payment of fine, to further undergo RI for two months. They were further convicted under Sections 364/34 IPC and sentenced to undergo RI for seven years and to pay a fine of Rs. 5000/- each, in default of payment of fine, to further undergo RI for five months. They were also convicted under Sections 201/34 IPC and sentenced to undergo RI for two years and to pay a fine of Rs.2,000/-, in default of payment of fine, to further undergo RI for two months.

Prithipal Singh, Satnam Singh, Surinderpal Singh and Jasbir Singh, appellants, were convicted under Section 120-B IPC and sentenced to undergo RI for five years and to pay a fine of Rs.2,000/- each, and in default of payment of fine, to further undergo RI for two months. These four accused/appellants were also convicted under Sections 364/34 IPC and sentenced to undergo for seven years RI and to pay a fine of Rs.5,000/- each, in default of payment of fine, to further undergo RI for five months.

The High Court while dismissing the Criminal Appeals filed by appellants, allowed the Criminal Revision Petition No. 323 of 2006 filed by Smt. Paramjit Kaur (PW.2), wife of the deceased, vide order dated 16.10.2007 and enhanced the sentence of the four appellants from seven years RI to imprisonment for life under Section 364 IPC.

2. FACTS:

A. Shri Jaswant Singh Khalra, a human right activist, having allegiance to Shiromani

Akali Dal, was alleged to have been abducted from his residential house No. 8, Kabir Park, Amritsar, on 6.9.1995 at 1.00 O'Clock. Shri Rajiv Singh (PW.15) was present in the house of Shri Khalra at the time of abduction, Kirpal Singh Randhawa (PW.7) had seen appellants, namely, Jaspal Singh, DSP, Surinderpal Singh, Jasbir Singh and Satnam Singh alongwith other accused persons rushing through Kabir Park with the deceased Jaswant Singh Khalra inside a Maruti van.

B. Smt. Paramjit Kaur (PW.2) wife of the deceased, came to her house from the University, where she was working, on being informed by Rajiv Singh (PW.15). She made a search for her husband but in vain. She made a complaint on the same day at 4.00 PM making a statement to SI Baldev Singh at Kabir Park that her husband had been kidnapped at 1.00 O'Clock by some persons in police uniform in Maruti van of white colour bearing No. DNB-

5969. On the basis of the said statement, an FIR No. 72 (Ex.PA) was registered on 7.9.1995 at P.S. Islamabad, District Amritsar, at 9.30 AM under Section 365 IPC. However, no progress in investigation could be made and whereabouts of Jaswant Singh Khalra could not be known.

C. Smt. Paramjit Kaur (PW.2), wife of the deceased, filed Criminal Writ Petition No. 497 of 1995 before this Court, wherein this Court vide order dated 5.11.1995 transferred the investigation to the Central Bureau of Investigation (hereinafter referred as 'CBI').

The CBI registered R.C.No. 14/S/95/SCB-I/Delhi dated 18.12.1995 (Ex.PO) under Sections 365, 220 and 120-B IPC.

In spite of best efforts made by the CBI, whereabouts of said Jaswant Singh Khalra could not be traced. Even an award of Rs.1 lakh was announced for anyone giving information regarding his whereabouts.

D. Kulwant Singh (PW.14) in his statement recorded by the CBI under Section 161 Cr.P.C. revealed that he had been detained in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'NDPS Act') on 4.9.1995 by the police officials of Police Station Jhabal. Shri Jaswant Singh Khalra was also brought to the said Police Station on 6.9.1995 and Shri Khalra had disclosed his identity to the said witness and told him that he was not knowing as to why he had been brought to the police station by the appellants Satnam Singh and Jaspal Singh, DSP.

E. After completion of the investigation, the chargesheet was filed in the court of Special Judicial Magistrate (CBI Cases), Patiala, against the appellants and other accused persons under Sections 120-B, 365 and 220 IPC. The matter was committed to Sessions Court. It was revealed before the Sessions Judge that there was some evidence that Jaswant Singh Khalra had been murdered by the appellants and other accused persons secretly and his dead body had been thrown in the canal near Harike at midnight just after Diwali in the year 1995. So, the prosecution was directed to file supplementary report under Section 173 (8) of Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.').

F. It was on 2.3.1998, i.e., after filing of the charge-sheet that Kuldip Singh (PW.16) revealed the facts to the CBI (New Delhi Office) in respect of abduction and murder of Jaswant Singh Khalra.

Kuldip Singh (PW.16), made voluntary statement to the CBI that he was a privy to all that happened with Shri Jaswant Singh Khalra from the time he was brought to the Police Station, Jhabal till his death. He was Special Police Officer (hereinafter called 'SPO') attached to Satnam Singh, SHO, Police Station Jhabal, and was promised to be inducted into the Punjab Police permanently. Shri Jaswant Singh Khalra had been detained in a room in Police Station Jhabal and the witness had been assigned the duty by Satnam Singh, SHO, to serve him meals etc. He had been directed to keep the matter most secret and not to disclose anything to anybody. He had been serving the meals to Shri Khalra who had become very weak and fragile and was having scratch marks on his body. After 4-5 days, Ajit Singh Sandhu, SSP, Jaspal Singh, DSP, alongwith his bodyguard Arvinder Singh came in a Maruti car without having any registration number at 7.00 PM. After sometime, Satnam Singh, SHO, Jasbir Singh, SHO and Prithipal Singh also came in another Maruti car. They all went to the room where Shri Khalra had been detained and Ajit Singh Sandhu, SSP, asked him to stop his activities. Shri Khalra was beaten by them and, thereafter, they left the said place. After about 3 days of the said incident, in the afternoon, Satnam Singh, SHO, had taken Shri Khalra alongwith the said witness to Taran Taran at the residence of Ajit Singh Sandhu, SSP. Some high officials of police including the then Director General of Police, Punjab, came there and they talked to Shri Jaswant Singh Khalra in a closed room. After sometime, Shri Khalra was brought back to Jhabal Police Station. On one day, at about 7.00 PM, Jaspal Singh, DSP, came there with his bodyguard Arvinder Singh and after sometime, Surinderpal Singh, Jasbir Singh and Prithipal Singh also came. They all went to the room where Shri Jaswant Singh Khalra had been detained and started beating him.

The witness had been asked to bring hot water. As he went out of the room for arranging the same, he heard slow noise of gun firing twice. The life of Shri Khalra came to an end. His dead body was kept in a dicky of the van while blood was oozing from his body.

All of them including the witness went in three cars to village Harike. The dead body of Shri Khalra was thrown in the canal and all three vehicles came back to the rest house of village Harike.

Subsequently, at about midnight, the witness alongwith some appellants came back to police station Jhabal. He could not reveal the incident to anybody because of fear till Ajit Singh Sandhu, SSP, was alive as he was apprehending about the safety of his own life in case he discloses the gruesome murder of Shri Khalra committed by the police.

G. The prosecution examined 22 witnesses to prove its case against the appellants and other accused persons. The defence also examined 12 witnesses to rebut the allegations of the CBI. Learned Additional Sessions Judge, Patiala, vide judgment and order dated 18.11.2005 convicted all the appellants and some other accused persons under Sections 364/34 IPC and convicted the appellant Jaspal Singh and one Amarjit Singh under Sections 302/34 IPC and under Sections 201/34 IPC and awarded the sentences as mentioned hereinabove.

H. Being aggrieved, the other accused Amarjit Singh filed Criminal Appeal No. 863-DB of 2005 and other appellants filed the criminal appeals as mentioned hereinabove. Smt. Paramjit Kaur (PW.2) filed Criminal Revision No. 323 of 2006 for enhancement of the sentences of the four appellants.

I. All the matters were heard together. The High Court vide its impugned judgment and order dated 8.10.2007 acquitted Amarjit Singh, however, the conviction of other appellants was maintained.

Notices were issued to the four appellants for enhancing the sentences awarded to them while dismissing their appeals. On 16.10.2007, the High Court enhanced the sentence of four appellants, namely, Satnam Singh, Surinderpal Singh, Jasbir Singh and Prithipal Singh from seven years RI to life imprisonment.

Hence, these appeals.

3. Shri Sushil Kumar, learned senior counsel appearing for the appellants in Crl. Appeal Nos. 523-527/2008, has submitted that in the instant case, an FIR had been lodged under Section 365 IPC without naming any person. The charge-sheet was filed under Sections 365/220 read with Section 120B IPC and the sanction dated 19.8.1996 had been obtained by the prosecution from the Competent Authority to prosecute the accused persons under Sections 365/220 read with Section 120B IPC. The appellants stood convicted under Section 364 read with Section 34 IPC and were awarded 7 years RI each. In case, the appeals of these appellants had been dismissed by the High Court, there was no justification for enhancing the punishment in exercise of the power under Section 386(e) Cr.P.C. The High Court committed error in observing that it was a fit case for enhancement of punishment though charges had never been framed for the offences providing more rigorous punishment. In case, there had been no material at the time of framing of the charges for a more serious offence, the High Court erred in enhancing the punishment suo motu. The prosecution witnesses failed to identify the abductors. Moreover, there had been inordinate delay in investigation and thus, there were a lot of improvements and manipulations in the record.

4. Shri Jaspal Singh, learned Senior counsel appearing for appellant Jaspal Singh, DSP, contended that none of the alleged eye-

witnesses, namely, Paramjit Kaur (PW.2), Rajiv Singh (PW.15) and Kirpal Singh (PW.7), witnesses of first part of incident, i.e., kidnapping of Jaswant Singh Khalra from his house, is a reliable witness, for the reason, that Paramjit Kaur (PW.2) was examined in the court after 8 years of occurrence and, first time, she had named the appellant Jaspal Singh as one of the persons whom she had seen present outside her house on 6.9.1995, i.e., the date of kidnapping, but she could not furnish any explanation as to why the appellant had not been named in the FIR lodged on 6/7.9.1995. She deposed that she had disclosed the entire incident to Shri D.R. Bhati, D.I.G., who was not examined in the court. She did not even name the appellant in the writ petition filed under Article 32 of the Constitution of India, 1950 (hereinafter called as 'Constitution') before this Court. She did not name the appellant when her statement was recorded by the CBI on 2.1.1996 under Section 161 Cr.P.C. Rajiv Singh (PW.15) filed affidavit in the writ petition before this Court, however, he also did not name the appellant. His statement was recorded by the CBI on 6.2.1996, but he did

not name the said appellant. Material improvements/contradictions exist between his statement in the court and before the CBI under Section 161 Cr.P.C. He had also accompanied Paramjit Kaur (PW.2) when she met Shri D.R. Bhati, D.I.G. but he has not stated before the CBI that he had accompanied her. Kirpal Singh (PW.7) also did not disclose in his statement under Section 161 Cr.P.C. the name of the appellant or any other person.

So far as the second part of the incident is concerned, i.e., detention of Shri Jaswant Singh Khalra, Kulwant Singh (PW.14) is the only material witness. No reliance could be placed on his evidence as he has been an opium addict and mostly spent his time in jail. He is a criminal and had escaped from judicial custody while he stood convicted in a case under the NDPS Act. He did not name the said appellant for years together and disclosed the same first time while his statement was recorded in court. No explanation could be furnished by the prosecution why the witness had not named the appellant Jaspal Singh, DSP when his statement was recorded by the CBI under Section 161 Cr.P.C.

So far as the third part of the incident, i.e. elimination of Jaswant Singh Khalra is concerned, Kuldeep Singh (PW.16) has been described as a star witness of the incident. His deposition requires corroboration for various reasons. The said witness had strong grievances against the police officers in general and the accused persons in particular. There is nothing on record to show that he had been appointed permanently or temporarily as Special Police Officer (hereinafter called 'SPO') and had been assigned the duty of bodyguard to Satnam Singh, SHO. His conduct throughout the proceedings could not be above board. He lodged several complaints giving different versions. One of the complaints had been against the complainant herself. Therefore, the question of reliance on his deposition does not arise. More so, Kuldeep Singh (PW.16) has been an accomplice in the crime and over and above, he being a solitary witness, his evidence cannot be relied upon without corroboration. Jaspal Singh, DSP, appellant had been charged under Sections 302/34 IPC alongwith two others. In case of discharge of one by the trial court and acquittal of other co-accused of the said charges by the High Court, question of convicting the appellants under Sections 302/34 IPC could not arise. Kuldeep Singh (PW.16) had never disclosed any name for long-long time. The dead body of Shri Jaswant Singh Khalra was not recovered. The appeals have merit and deserve to be allowed.

5. On the other hand, Shri Mohan Jain, learned ASG, Ms. Kamini Jaiswal and Shri R.S. Bains, learned counsel appearing for respondents, have submitted that the facts of the case do not warrant any interference by this Court with the impugned judgment. There are concurrent findings of facts. The witnesses were reliable under the facts and circumstances of the case. Most of the witnesses have rightly identified the appellants in court. Their testimonies corroborate with each other and are important to comprehend the chain of events. The eye-witness had always been threatened by the appellants who happened to be the police officials. The eye-witness had falsely been implicated in serious criminal cases. There had been FIR against Paramjit Kaur (PW.2) and Kirpal Singh Randhawa (PW.7). In fact, the offence could be unearthed because of directions issued by this Court in the writ petition filed by Smt. Paramjit Kaur (PW.2). The High Court was justified in enhancing the punishment so far as the appellants other than Jaspal Singh, DSP are concerned considering the gravity of the offence committed by them. The Police Force in India has always been known for its notorious activities. Recovery of the dead body in a crime is not a condition precedent for conviction. Once the case of abduction by the appellants stands proved, the burden of proof is

shifted on the respondents to disclose as what happened to Shri Jaswant Singh Khalra. The appeals lack merit and are liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

LEGAL ISSUES:

POLICE ATROCITIES :

7. Police atrocities in India had always been a subject matter of controversy and debate. In view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrong-doer is accountable and the State is responsible if a person in custody of the police is deprived of his life except in accordance with the procedure established by law. However, when the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of the State. Latin maxim *salus populi est suprema lex* - the safety of the people is supreme law; and *salus reipublicae suprema lex* - safety of the State is supreme law, co-exist. However, the doctrine of the welfare of an individual must yield to that of the community.

The right to life has rightly been characterised as "'supreme' and 'basic'; it includes both so-called negative and positive obligations for the State". The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths.

The State must protect victims of torture, ill-treatment as well as the human rights defender fighting for the interest of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences psychologically. The problems of acute stress as well as a post-traumatic stress disorder and many other psychological consequences must be understood in correct perspective. Therefore, the State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency/police force.

8. In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provide for protection of all rights to every individual. It inhibits illegal detention. Torture and custodial death have always been condemned by the courts in this country. In its 113th report, the Law Commission of India recommended the amendment to the Indian Evidence Act, 1872 (hereinafter called "Evidence Act"), to provide that in case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that period. Onus to prove contrary is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of custodial crimes.

(Vide: Dilip K. Basu v. State of W.B. & Ors., AIR 1997 SC 3017;

N.C. Dhoundial v. Union of India & Ors., AIR 2004 SC 1272; and Munshi Singh Gautam (D) & Ors. v. State of M.P., AIR 2005 SC

402).

9. This Court in Raghubir Singh v. State of Haryana, AIR 1980 SC 1087 while dealing with torture in police custody observed:

"We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturesome poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome of fences against them as has happened in this case. Police lock-up if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order."

10. Similarly, in Gauri Shanker Sharma etc. v. State of U.P. etc., AIR 1990 SC 709, this Court held :

"....it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case.

.....The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency."

11. In Munshi Singh Gautam (Supra), this Court held that peculiar type of cases must be looked at from a prism different from that used for ordinary criminal cases for the reason that in a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence. The Court observed as under:

"6. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues....."

7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case,often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable. In the ultimate analysis society suffers and a criminal gets encouraged.....The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with."

(See also: State of Madhya Pradesh v. Shyamsunder Trivedi & Ors., (1995) 4 SCC 262).

12. In The State of U.P. v. Mohd. Naim, AIR 1964 SC 703, State of U.P. filed an appeal before this Court for expunging the following remarks made by the Allahabad High Court:

"That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force." ".....Where every fish barring perhaps a few stinks, it is idle to pick out one or two and say that it stinks." This Court held that such general remarks could not be justified nor were they necessary for disposal of the said case. The Court expunged the aforesaid adverse remarks. (See also: People's Union for Civil Liberties v. Union of India & Anr., AIR 2005 SC 2419).

Undoubtedly, this Court has been entertaining petition after petition involving the allegations of fake encounters and rapes by police personnel of States and in a large number of cases transferred the investigation itself to other agencies and particularly the CBI.

(See : Rubabbuddin Sheikh v. State of Gujarat & Ors. (2010) 2 SCC 200; Jaywant P.Sankpal v. Suman Gholap & Ors. (2010) 11 SCC 208; and Narmada Bai v. State of Gujarat & Ors., (2011) 5 SCC 79).

13. Thus, in view of the above, in absence of any research/data/ material, a general/sweeping remark that a "substantial majority of the population in the country considered the police force as an institution which violates human rights" cannot be accepted.

However, in a given case if there is some material on record to reveal the police atrocities, the court must take stern action against the erring police officials in accordance with law.

SCOPE OF SECTION 386(e) Cr.P.C.

14. In *Eknath Shankarrao Mukkawar v. State of Maharashtra*, AIR 1977 SC 1177, this Court held :

"6. We should at once remove the misgiving that the new Code of Criminal Procedure, 1973, has abolished the High Court's power of enhancement of sentence by exercising revisional jurisdiction, suo motu. The provision for appeal against inadequacy of sentence by the State Government or the Central Government does not lead to such a conclusion. High Court's power of enhancement of sentence, in an appropriate case, by exercising suo motu power of revision is still extant under section 397 read with Sec. 401 Criminal Procedure Code, 1973, inasmuch as the High Court can "by itself" call for the record of proceedings of any inferior criminal court under its jurisdiction. The provision of Section 401 (4) is a bar to a party, who does not appeal, when appeal lies, but applies in revision. Such a legal bar under Section 401 (4) does not stand in the way of the High Court's exercise of power of revision, suo motu, which continues as before in the new Code."

15. In *Surendra Singh Rautela @ Surendra Singh Bengali v.*

State of Bihar (Now State of Jharkhand), AIR 2002 SC 260, this Court reconsidered the issue and held:

"It is well settled that the High Court, suo motu in exercise of revisional jurisdiction, can enhance the sentence of an accused awarded by the trial Court and the same is not affected merely because an appeal has been provided under Section 377 of the Code for enhancement of sentence and no such appeal has been preferred."

(See also: *Nadir Khan v. The State (Delhi Administration)*, AIR 1976 SC 2205; *Govind Ramji Jadhav v. State of Maharashtra* (1990) 4 SCC 718; and *K. Pandurangan etc. v. S.S.R. Velusamy & Anr.* AIR 2003 SC 3318).

16. In *Jayaram Vithoba & Anr. v. The State of Bombay*, AIR 1956 SC 146, this Court held that the suo motu powers of enhancement under revisional jurisdiction can be exercised only after giving notice/opportunity of hearing to the accused.

17. In view of the above, the law can be summarised that the High Court in exercise of its power under Section 386(e) Cr.P.C. is competent to enhance the sentence suo motu. However, such a

course is permissible only after giving opportunity of hearing to the accused.

EVIDENCE OF AN ACCOMPLICE - Not put on trial:

18. An accomplice is a competent witness and conviction can lawfully rests upon his uncorroborated testimony, yet the court is entitled to presume and may indeed, be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless the evidence is corroborated in material particulars, which means that there has to be some independent witness tending to incriminate the particular accused in the commission of the crime. (Vide:

Rameshwar S/o Kalyan Singh v. The State of Rajasthan, AIR 1952 SC 54; and
Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637).

19. In K. Hasim v. State of Tamil Nadu, AIR 2005 SC 128, this Court examined the issue while taking into consideration the provisions of Section 133 read with Section 114 Illustration

(b) of the Evidence Act and held that the provision of Section 114 Illustration (b) embodies a rule of prudence cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. The legislature in its wisdom used the word 'may' and not 'must' and, therefore, the court does not have a right to interpret the word 'may' contained therein as 'must'. The court has to appreciate the evidence with caution and take a view as to the credibility of the evidence tendered by an accomplice. In case evidence of an accomplice is found credible and cogent, the court can record the conviction based thereon even if uncorroborated.

The Court further explained that the word "corroboration" means not mere evidence tending to confirm other evidence. Firstly, it is not necessary that there should be an independent corroboration of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the accomplice, should in itself be sufficient to sustain conviction. All that is required is that, there must be some additional evidence rendering it probable that the case of the accomplice is true and it is reasonably safe to act upon it.

Secondly, the evidence on record must reasonably connect or tend to connect the case with the crime by confirming in some material particular the testimony of an accomplice. Thirdly, the circumstances involved in the case must be such as to make it safe to dispense with the necessity of corroboration, though, such evidence may be merely circumstantial evidence to show connection of the case with the crime.

(See also: Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420).

20. The issue was again considered by this Court in Chandran alias Manichan alias Maniyan & Ors. v. State of Kerala, (2011) 5 SCC 161, wherein the Court had an occasion to appreciate the evidence of a person who had not been put on trial, but could have been tried jointly with accused and found his evidence reliable in view of the law laid down by this Court in Laxmipat Choraria & Ors. v. State of

Maharashtra, AIR 1968 SC 938. The Court held as under:

"78. The argument raised was that this evidence could not be taken into consideration and it would be inadmissible because this witness, though was an accomplice he was neither granted pardon under Section 306 CrPC nor was he prosecuted and the prosecution unfairly presented him as a witness for the prosecution. The contention is clearly incorrect in view of the decision of this Court in Laxmipat Choraria (supra). While commenting on this aspect, Hidayatullah, J. observed in AIR para 13 that there were a number of decisions in the High Courts in which the examination of one of the suspects as the witness was not held to be legal and accomplice evidence was received subject to safeguards as admissible evidence in the case. The Court in Laxmipat Choraria (supra) held:

"13. On the side of the State many cases were cited from the High Courts in India in which the examination of one of the suspects as a witness was not held to be illegal and accomplice evidence was received subject to safeguards as admissible evidence in the case. In those cases, Section 342 of the Code and Section 5 of the Oaths Act were considered and the word 'accused' as used in those sections was held to denote a person actually on trial before a court and not a person who could have been so tried... the evidence of an accomplice may be read although he could have been tried jointly with the accused. In some of these cases the evidence was received although the procedure of Section 337 of the Criminal Procedure Code was applicable but was not followed. It is not necessary to deal with this question any further because the consensus of opinion in India is that the competency of an accomplice is not destroyed because he could have been tried jointly with the accused but was not and was instead made to give evidence in the case. Section 5 of the Oaths Act and Section 342 of the Code of Criminal Procedure do not stand in the way of such a procedure."

21. In view of the above, the law on the issue can be summarised to the effect that the deposition of an accomplice in a crime who has not been made an accused/put to trial, can be relied upon, however, the evidence is required to be considered with care and caution. An accomplice who has not been put on trial is a competent witness as he deposes in the court after taking oath and there is no prohibition in any law not to act upon his deposition without corroboration.

ACCUSED NAMED FIRST TIME IN THE COURT :

22. In Rudrappa Ramappa Jainpur & Ors. v. State of Karnataka, AIR 2004 SC 4148, this Court considered the issue at length and held that in case the witness does not involve a particular accused in a crime at the time of recording his statement under Section 161 Cr.P.C., and names him first time in his deposition in the court, the accused becomes entitled to benefit of doubt.

A similar view has been re-iterated in State represented by Inspector of Police, Tamil Nadu v. Sait alias Krishnakumar, (2008) 15 SCC 440.

PERSON CHARGED UNDER SECTION 302/34 IPC

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OTHER ACCUSED PERSONS STAND ACQUITTED :

23. In *Prabhu Babaji Navle v. State of Bombay*, AIR 1956 SC 51, this Court held that it is impossible to reach a conclusion that the appellant/accused shared the common intention with other co-accused in case other accused stand acquitted, unless it is shown that some other unknown persons were also involved in the offence. It is permissible in law to charge an accused in the alternative for being shared the common intention with another or others unknown, but even then the common intention would have to be proved either by direct evidence or by legitimate inference.

24. In *Sukhram v. State of Madhya Pradesh*, AIR 1989 SC 772, this Court re-iterated the similar view observing that in case a co-accused is acquitted giving the benefit of doubt the other accused would also be entitled to acquittal.

(See also: *Madan Pal v. State of Haryana*, (2004) 13 SCC 508; and *Koppula Jagdish alias Jagdish v. State of A.P.* (2005) 12 SCC 425).

25. This Court in *Sanichar Sahni v. State of Bihar*, AIR 2010 SC 3786, while considering a similar situation and considering the earlier judgments of this Court, particularly in *Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116, *State of A.P. v. Thakkidiram Reddy & Ors.*, AIR 1998 SC 2702; *Ramji Singh & Anr. v. State of Bihar*, AIR 2001 SC 3853; and *Gurpreet Singh v. State of Punjab*, AIR 2006 SC 191, held that in case the charges have not properly been framed unless it is established that the accused persons were in any way prejudiced due to the errors or omissions in framing the charges against them, the appellate court may not interfere with conviction. The accused/appellant has to establish that he was not informed as what was the real case against him and that he could not defend himself properly. Intervention by a superior court on such technicalities is not warranted, for the reason that conviction order, in fact, is to be tested on the touchstone of prejudice theory.

A Three-Judge Bench judgment of this Court in *Lok Pal Singh v. State of M.P.*, AIR 1985 SC 891, observed that such argument is irrelevant in case the involvement of the accused is proved beyond reasonable doubt.

EVIDENCE OF THE SOLE EYE-WITNESS :

26. This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-

honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. (See: *Vadivelu Thevar v. The State of Madras*, AIR 1957 SC 614; *Sunil Kumar v. State Govt. of NCT of Delhi*, (2003) 11 SCC 367; *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150; and *Bipin Kumar Mondal v. State of West Bengal*, AIR 2010 SC 3638).

27. EXTRAORDINARY CASE:

Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass unconventional order keeping in mind that extraordinary fact situation requires extraordinary measures. In *B.P. Achala Anand v. S. Appi Reddy & Anr.*, AIR 2005 SC 986, this Court observed:

"Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by Courts, transforms into justice."

Thus, it is evident that while deciding the case, the Court has to bear in mind the peculiar facts, if so exist, in a given case.

28. CORPUS DELICTI - Recovery of :

In *Mani Kumar Thapa v. State of Sikkim*, AIR 2002 SC 2920, this Court held that in a trial for murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of the death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. There are a number of possibilities where a dead body could be disposed of without any trace, therefore, if the recovery of the dead body is to be held to be mandatory to convict an accused, in many a case, the accused would manage to see that the dead body is destroyed to such an extent which would afford the accused complete immunity from being held guilty or from being punished. What is, therefore, required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead body may not be traced. (See also: *Ram Chandra & Anr. v. State of Uttar Pradesh*, AIR 1957 SC 381; *Ashok Laxman Sohoni & Anr. v. The State of Maharashtra*, AIR 1977 SC 1319; and *Rama Nand & Ors. v. The State of Himachal Pradesh*, AIR 1981 SC 738) Therefore, in a murder case, it is not necessary that the dead body of the victim should be found and identified, i.e. conviction for offence of murder does not necessarily depend upon corpus delicti being found. The corpus

delicti in a murder case has two components - death as result, and criminal agency of another as the means. Where there is a direct proof of one, the other may be established by circumstantial evidence.

29. BURDEN OF PROOF UNDER SECTION 106 In State of West Bengal v. Mir Mohammad Omar & Ors.

etc. etc., AIR 2000 SC 2988, this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

(See also: Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404; Sucha Singh v. State of Punjab, AIR 2001 SC 1436; and Sahadevan @ Sagadevan v. State rep. by Inspector of Police, Chennai, AIR 2003 SC 215)

30. INVESTIGATION OF THE INSTANT CASE:

In the instant case, the incident occurred on 6.9.1995. In spite of the fact that the matter had been brought to the notice of the superior authorities, no action was taken by the police at all. Ultimately, the complainant, Smt. Paramjit Kaur (PW.2) who could not even know whether her husband was alive or dead and, if alive, where he had been and none of the higher authorities in administration helped her or disclosed the whereabouts of her husband, approached this Court by filing a Habeas Corpus Petition i.e. Writ Petition (Crl.) No. 497 of 1995. As no information could be furnished by the State about the whereabouts of Shri Jaswant Singh Khalra, this Court transferred the investigation to the CBI. The CBI during the course of investigation, realised that it was not possible to conduct the investigation fairly and properly unless some of the police officers involved in the case were transferred from the districts of Amritsar and Taran Taran. Thus, the CBI requested this Court to issue direction to transfer Jaspal Singh, DSP, Taran Taran, Surinderpal Singh, SHO, Satnam Singh, SHO. This Court vide order dated 15.3.1996 directed the Director General of Police, Punjab, to transfer the said officials out of those districts with a further direction that they should not be posted in adjoining districts also. This Court further directed the State Administration to provide full protection/security to all the witnesses who were assisting the CBI in the investigation.

31. The order dated 22.7.1996 passed by this Court reveals that the CBI in its interim report informed this Court that 984 dead bodies had been cremated as 'Lavaris' in the district Taran Taran alone and a large number of innocent persons had been killed by the police for which there was sufficient material to register criminal cases against the police officials. This Court directed the CBI to register the criminal cases for causing such heinous crimes.

Considering a large number of cremations done as 'Lavaris', this Court asked the people at large to furnish information/material to the CBI so that the matter may be investigated properly. While passing the order dated 7.8.1996, this Court had taken note that Kulwant Singh (PW.14), a convict under the NDPS Act, was detained in Amritsar jail and the CBI had expressed certain doubts regarding his involvement in the said case. This Court directed the Jail Superintendent, Amritsar to file an appeal on behalf of Kulwant Singh (PW.14) before the High Court.

It may be pertinent to note here that the appeal filed before the High Court was allowed and Kulwant Singh (PW.14) was acquitted vide order dated 8.12.1997.

32. Order dated 7.8.1996 further reveals that there was sufficient material to prosecute Ajit Singh Sandhu, SSP, District Taran Taran, Ashok Kumar, DSP and Jaspal Singh, DSP and it was made clear that in spite of the fact that the CBI was continuing further investigation regarding the whereabouts of Jaswant Singh Khalra, it could not be known upto 7.8.1996 as to whether he was alive or not.

The State of Punjab was directed to pay a sum of Rs.10 lacs as an interim compensation to complainant Smt. Paramjit Kaur.

33. This Court in its order dated 28.8.1996 took note of the fact that the witnesses had been provided protection/security of Central Reserve Police Force/Border Security Force and counsel appearing for the State assured the Court to grant necessary sanction under Section 197 Cr.P.C., if so required for the prosecution of the police officials. The investigation was monitored by this Court. This Court's order dated 12.12.1996 reveals that according to the CBI, it was about 2097 bodies which had been cremated as unidentified and the press note issued by Shri Khalra in this respect was found to be correct.

It was in view of the above orders passed by this Court from time to time and monitoring the case for years together, the investigation conducted by the CBI could be completed.

INSTANT CASE:

34. The case requires to be examined by taking into consideration the aforesaid facts and settled legal propositions.

35. According to the prosecution, Shri Jaswant Singh Khalra was a human rights activist and had been General Secretary, Human Rights Wing of Shiromani Akali Dal. He had been working on abduction and cremation of unclaimed/unidentified bodies during the disturbed period in Punjab, particularly in districts Amritsar and Taran Taran. The police had been eliminating the young

persons under the pretext of being militants and was disposing of their dead bodies without maintaining any record and without performing their last rites. Shri Jaswant Singh Khalra raised the voice against the same. The local police did not like it and hatched a conspiracy to abduct him and in furtherance of that criminal conspiracy, he had been abducted by the local police officials on 6.9.1995 about 9.00 a.m. from his residence and after keeping him in the illegal detention, killed him and thrown his body into a canal in Harike area.

36. After investigating the matter in pursuance of orders passed by this Court, the CBI filed charge-sheet on 13.10.1996 in the court of Magistrate at Patiala against nine police officers, wherein the main accused was Ajit Singh Sandhu, the then SSP of Taran Taran District. However, the trial court vide order dated 25.7.1998 framed the charges against eight persons, namely, Ashok Kumar, Satnam Singh, Rachpal Singh, Jasbir Singh, Amarjit Singh, Surinderpal Singh, Prithipal Singh and Jaspal Singh, DSP. Charges could not be framed against Ajit Singh Sandhu, SSP, for the reason that he committed suicide before framing of the charges. The charges had been that all of them agreed to abduct and eliminate Shri Jaswant Singh Khalra. Thus, all of them stood charged under Section 120-B IPC. All of them were charged under Sections 364 read with 34 IPC.

Three of them, namely, Jaspal Singh, DSP, appellant, Amarjit Singh and Rachpal Singh, as a result of criminal conspiracy, committed murder of Shri Khalra. Thus, they were charged under Sections 302 read with 34 IPC. Further for causing the corpus of Shri Jaswant Singh Khalra disappeared with the intention of screening themselves from legal punishment, the said three persons were charged under Sections 201 read with 34 IPC.

During the course of trial, Ashok Kumar died, Rachpal Singh was discharged before his statement under Section 313 Cr.P.C.

could be recorded as no incriminating material appeared against him. Amarjit Singh has been acquitted by the High Court. Thus, we are concerned with only remaining five appellants.

37. There are concurrent findings of facts by two courts that all the appellants are guilty of abducting Shri Jaswant Singh Khalra with an intent to eliminate him. The findings so recorded are based on appreciation of evidence which had been recorded after eight years of the incident. In spite of the best efforts of this Court, and passing order after order in the Writ Petition for Habeas Corpus, it could not be known as to whether Shri Jaswant Singh Khalra was dead or alive. Had this Court not issued directions and transferred the case to the CBI for investigation, perhaps the mystery of death of Shri Jaswant Singh Khalra could not have surfaced. There is sufficient evidence on record to show that the appellants and other co-accused remained posted in the districts of Taran Taran and Amritsar and they stood transferred from those districts only on the directions of this Court as the CBI had pointed out that it would not be possible to conduct a fair investigation till the appellants and other co-accused remain posted in those two districts. The witnesses had been threatened and implicated in false cases. They could muster the courage to speak only after getting proper security/protection under the orders of this Court passed in the Writ Petition filed by the complainant Smt. Paramjit Kaur Khalra.

38. Sufficient material has been placed before the courts below as well as before this Court to show that Shri Jaswant Singh Khalra was a human rights activist and had raised the voice against Shri Ajit Singh Sandhu, the then SSP of Taran Taran District, about the killing of innocent persons and cremation of thousands of unidentified bodies unceremoniously. Ajit Singh Sandhu directly and indirectly tried that Shri Khalra could desist from exposing the illegal activities of the police in those districts. However, he did not deter and therefore, there was a motive on behalf of the police department to kidnap and make him understand the consequence that he would face and, ultimately, to eliminate him. Shri Khalra persisted in pursuing the truth and fighting for human rights. The motive of the accused police officers to abduct and kill Shri Jaswant Singh Khalra comes out clearly from the testimonies of Smt. Paramjit Kaur (PW.2), Justice Ajit Singh Bains (PW.5), Satnam Singh (PW.6), Satwinderpal Singh (PW.8), Jaspal Singh Dhillon (PW.11), Surinderpal Singh (PW.12), Rajiv Singh (PW.15) and K.S.Joshi (PW.19). Some of these witnesses had deposed that Shri Khalra had been receiving death threats in reference to his investigations into illegal encounters and cremations. There is nothing on record to discredit the testimonies of either of these witnesses in this regard, rather their testimonies had been consistent with each other and inspired confidence.

39. The accused had been identified correctly in the court by various witnesses. Smt. Paramjit Kaur (PW.2) identified Jaspal Singh, Surinderpal Singh and Jasbir Singh; Kirpal Singh Randhawa (PW.7) identified Satnam Singh; Kulwant Singh (PW.14) identified Jaspal Singh and Satnam Singh; Rajiv Singh (PW.15) identified Jaspal Singh, Satnam Singh and Prithipal Singh; and Kuldip Singh (PW.16) identified Jaspal Singh, Satnam Singh, Surinderpal Singh, Jasbir Singh and Prithipal Singh.

40. Smt. Paramjit Kaur (PW.2) had testified that she had been threatened by the accused persons on telephone for pursuing the case of her missing husband. Punjab Police officials persistently made attempts to exert undue pressure on the witnesses throughout the investigation and trial. The police also registered fake criminal cases against Smt. Paramjit Kaur (PW.2), Kirpal Singh Randhawa (PW.7), Kulwant Singh (PW.14) and Rajiv Singh (PW.15). Kikkar Singh (PW.1) turned hostile because of threats in spite of the fact that he was provided sufficient security and protection. Kirpal Singh Randhawa (PW.7) and Rajiv Singh (PW.15) had been involved in a case allegedly threatening to implicate the witnesses in a rape case.

Kirpal Singh Randhawa (PW.7) was falsely enroled in a rape case in the year 2004. The police implicated Rajiv Singh (PW.15) in four cases during the trial. He had been detained in July 1998 for allegedly forming a terrorist organisation, which was subsequently found to be totally fake on investigation by other agency. Kulwant Singh (PW.14) had been falsely involved and convicted in a case under NDPS Act, who was subsequently acquitted by the High Court. It may also be pertinent to mention here that in the said case, the appeal could be filed before the High Court only on the direction issued by this Court while entertaining the criminal Writ Petition filed by Smt. Paramjit Kaur (PW.2).

41. Kuldip Singh (PW.16) kept quiet till Ajit Singh Sandhu, SSP, committed suicide. He had been changing his version during the investigation as well trial of the case. He had also filed complaint against Smt. Paramjit Kaur (PW.2) allegedly paying him a sum of Rs.50,000/- as a bribe for deposing against the police authorities.

Kuldip Singh (PW.16) was SPO and Bodyguard of Satnam Singh, SHO, accused/appellant. He was having several grievances against the police officers in general and accused persons in particular. His narration recorded regarding detention of Shri Khalra by the police did not get any corroboration from any corner including record of police station, log books of police vehicles. No employee/person of the place where Shri Khalra had been detained or from the guest house where his body was taken before throwing away in the canal, has been examined to corroborate the testimony of Kuldip Singh (PW.16). There are some improvements also in his deposition in the court from statements recorded under Section 161 Cr.P.C.

However, all these issues/aspects have been considered by the courts below and taking into consideration the entire fact-

situation in which the incident had taken place and whereabouts of Shri Khalra could not be known in spite of the best efforts of this Court, case of the prosecution cannot be brushed aside. The Court has to take into consideration the ground realities referred to hereinabove, particularly that it is very difficult to get evidence against the policemen responsible for custodial death.

In a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence. "Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues"

In view of the persistent threats hurled by the accused and other police officials to the complainant and witnesses throughout the investigation and trial, variation in his version from time to time is natural. However, it can be inferred that deposition to the extent of illegal detention, killing and throwing away the dead body of Shri Khalra, can safely be relied upon as the same stand corroborated by other circumstantial evidence and the deposition of other witnesses. As we have referred to hereinabove, there is trustworthy evidence in respect of abduction of Shri Khalra by the appellants; as well as his illegal detention.

42. In view of the law referred to hereinabove, same remains the position in case a solitary witness deposed regarding the illegal detention and elimination of Shri Jaswant Singh Khalra.

43. Most of the appellants had taken alibi for screening themselves from the offences. However, none of them could establish the same. The courts below have considered this issue elaborately and in order to avoid repetition, we do not want to re-

examine the same. However, we would like to clarify that the conduct of accused subsequent to the commission of crime in such a case, may be very relevant. If there is sufficient evidence to show that the accused fabricated some evidence to screen/absolve himself from the offence, such circumstance may point towards his guilt.

Such a view stand fortified by judgment of this Court in *Anant Chintaman Lagu v. The State of Bombay*, AIR 1960 SC 500.

44. Both the courts below have found that the accused/appellants have abducted Shri Jaswant Singh Khalsa. In such a situation, only the accused person could explain as what happened to Shri Khalsa, and if he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered. All the accused/appellants failed to explain any inculpatory circumstance even in their respective statements under Section 313 Cr.P.C. Such a conduct also provides for an additional link in the chain of circumstances. The fact as what had happened to the victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given some explanation. In such a fact-situation, the Courts below have rightly drawn the presumption that the appellants were responsible for his abduction, illegal detention and murder.

45. Shri Jaspal Singh, learned senior counsel appearing on behalf of Jaspal Singh, DSP, appellant, has vehemently submitted that only three persons had been charged under Sections 302/34 IPC. Rachpal Singh stood discharged by the trial court before recording his statement under Section 313 Cr.P.C., and Amarjit Singh has been acquitted by the High Court. Law does not permit to convict Jaspal Singh, appellant, alone for the offence punishable under Sections 302 read with 34 IPC in view of law referred to hereinabove.

The arguments so advanced seem to be very attractive but cannot be accepted for the reason that the case is required to be considered in the factual backdrop mentioned hereinabove. This Court has consistently held that even otherwise "it is possible for the appellate or the revisional court to convict an accused for offence in which no charge was framed unless the Court is of the opinion that the failure of justice could be, in fact, occasioned. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him, were explained to him clearly and whether he got a fair chance to defend himself." The Court cannot lose sight of the fact that Jaspal Singh, appellant, had also been charged and convicted under Sections 364/34 IPC alongwith all other appellants. He was not arrayed as a party/respondent in the Criminal Revision filed by Smt. Paramjit Kaur (PW.2), complainant for enhancement of punishment as he had already been given life imprisonment for the offences punishable under Sections 302/34 IPC. Had he been acquitted for the said offences and convicted under Sections 364/34 IPC, his sentences could also have been enhanced by the High Court as it so happened in the cases of other accused/appellants. In addition thereto, admittedly, at the initial stage of the proceedings, main accused had been Ajit Singh Sandhu, SSP, who committed suicide before framing of the charges. Jaspal Singh, DSP, appellant, cannot succeed on mere technicalities. In view of the provisions of Section 464 Cr.P.C., and in the peculiar facts of this case, this argument is not worth acceptance.

Be that as it may, the contention raised on behalf of Jaspal Singh, DSP, appellant, does not require further consideration in view of judgment of this Court in *Lok Pal Singh* (supra), wherein a similar contention stood rejected.

46. Undoubtedly, the charges had been framed prior to the statements recorded by Kuldeep Singh (PW.16) and in such a fact-

situation, the trial court ought to have altered the charges, but it failed to do so. The offence proved against the appellants has been abducting Shri Khalra so that he could be murdered. The High Court is justified in enhancing the punishment particularly in the peculiar facts of this case.

The court cannot be a silent spectator where the stinking facts warrant interference in order to serve the interest of justice. In the fact-situation of a case, like instant, if the court remains oblivious to the patent facts on record, it would be tantamount to failure in performing its obligation under the law.

47. After appreciating the evidence on record, and considering the judgments of the courts below, we approve their following conclusions:

(i) Jaswant Singh Khalra, being a human right activist, had taken the task to expose the mis-deeds of police in Districts Amritsar and Taran Taran killing innocent people under the pretext of being terrorists and cremating them without any identification and performing any ritual.

(ii) The Police authorities did not like such activities of Shri Khalra and tried to desist him from the same. Shri Khalra was being threatened over the telephone by the police officials.

(iii) Jaswant Singh Khalra informed a large number of persons about the threats and being watched by unidentified suspicious persons, who had been wandering around his house and had been followed by such elements.

(iv) Jaswant Singh Khalra was able to generate public pressure against the police authorities which was a source of anger and pressure upon the police.

(v) Ajit Singh Sandhu, SSP, hatched a conspiracy with appellants and some other police personnel to abduct Jaswant Singh Khalra and eliminate him or to put him in danger of being murdered.

(vi) At the time of abduction, the accused did not permit Jaswant Singh Khalra even to change his clothes. One of the witnesses, namely, Rajiv Singh (PW.15) was pushed away .

(vii) Rajiv Singh (PW.15) immediately informed various persons including Smt. Paramjit Kaur (PW.2) and Justice Ajit Singh Bains (PW.5) about the incident of kidnapping.

(viii) In spite of the best efforts made by Smt. Paramjit Kaur (PW.2), wife of the deceased and others particularly, Rajiv Singh (PW.15) who went from pillar to post,

whereabouts of Jaswant Singh Khalra were not made known to them.

(ix) The police authorities did not cooperate in helping the complainant, though the witnesses had named the persons involved in the abduction of Shri Khalra.

(x) Report (Ex.PA) dated 6.9.1995 submitted by Smt. Paramjit Kaur had not properly been recorded by the SHO Police Station, Islamabad. The version therein had been different from what she had reported. It so happened because of connivance of police officials.

(xi) The accused in the case had been high police officials and there was every possibility that statement of the complainant Smt. Paramjit Kaur (Ex.PA) had not been recorded as reported by her.

(xii) Before approaching this Court by filing a Habeas Corpus Writ Petition, Smt. Paramjit Kaur (PW.2) had approached the National Human Rights Commission at New Delhi in respect of the incident.

However, she was advised to approach this Court.

(xiii) This Court passed several orders in a writ petition filed by Smt. Paramjit Kaur, wife of the deceased, but whereabouts of Jaswant Singh Khalra could not be known and in view thereof, investigation of the case was transferred to the CBI.

(xiv) In spite of transfer of the investigation of the case to the CBI, the Punjab police officials did not cooperate with the CBI and were not lending proper support in conducting the investigation. The police officials of Punjab united in an unholy alliance as their colleagues were involved and the case was going to tarnish the image of Punjab police. The witnesses named the police officials in their statements before the CBI and they identified the accused persons in the court.

(xv) In order to find out the whereabouts of Shri Khalra, the CBI made public appeal by putting his photographs in electronic media.

A large number of posters having his photograph had been affixed on the walls of the cities particularly in Taran Taran, Majitha and Amritsar and made a declaration that person giving information about him, would be rewarded with a sum of Rs.1 lakh.

(xvi) The witnesses were so scared/terrified of the action of the police atrocities/criminal intimidation that they could not muster the courage to reveal the truth. The witnesses could not name the accused while filing affidavits in this Court in the writ petition.

(xvii) The appellants and other accused police officials attempted to prevent the testimony of the witnesses by threatening, harassing and involving them in false criminal cases and physical intimidation. A large number of false documents had been created by one of the witnesses because

of police threats and fear put by the accused.

(xviii) The witnesses had been acquitted by the courts as they had falsely been involved in criminal cases of a very serious nature. This was so done only to prevent them to support the prosecution. The witnesses suffered with criminal intimidation at the hands of the police officials. Even the complaints filed by the witnesses against other witnesses had been found to be false.

(xix) The depositions made by the witnesses in the court had been consistent with their statements recorded under Section 161 Cr.P.C.

(xx) The depositions of all the witnesses including Kulwant Singh (PW.14) and Kuldip Singh (PW.16) are worth acceptance in spite of all the discrepancies pointed out by the accused/appellants.

(xxi) All the accused had taken the plea of alibi to show that none of them was present at the place of occurrence on the relevant date.

However, none of them could successfully prove the same and the plea of alibi taken by them was found to be false. This points towards their guilt.

(xxii) Charges had been framed prior to recording the statements of Kuldip Singh (PW.16) and in such a fact-situation the trial court ought to have altered the charges.

(xxiii) Sufficient evidence is available on record in respect of abduction of Shri Jaswant Singh Khalra and the witnesses, particularly, Smt. Paramjit Kaur (PW.2), Rajiv Singh (PW.15) and Kirpal Singh Randhawa (PW.7) have identified the appellants as the persons who have abducted Shri Khalra. Kulwant Singh (PW.14) has deposed about his illegal detention in Police Station Jhabal. In such a fact-situation, the burden shifts on the respondents to disclose as what happened to Shri Jaswant Singh Khalra.

(xxiv) Though the dead body of Shri Jaswant Singh Khalra could not be recovered from the canal as the investigation commenced after a long time, recovery of the dead body is not a condition precedent for conviction of the accused for murder.

48. Police atrocities are always violative of the constitutional mandate, particularly, Article 21 (protection of life and personal liberty) and Article 22 (person arrested must be informed the grounds of detention and produced before the Magistrate within 24 hours). Such provisions ensure that arbitrary arrest and detention are not made. Tolerance of police atrocities, as in the instant case, would amount to acceptance of systematic subversion and erosion of the rule of law. Therefore, illegal regime has to be glossed over with impunity, considering such cases of grave magnitude.

49 In view of the above, we do not find any reason to interfere with the well reasoned judgment and order of the High Court. The facts of the case do not warrant review of the findings recorded by the courts below.

50. The appeals lack merit and are accordingly dismissed.

.....J. (P. SATHASIVAM)J. (Dr. B.S. CHAUHAN) New
Delhi;

November 4, 2011