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Capt. Bhagmal Retd. Vs.cbi

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Court : Delhi

Decided On : Dec-17-2018

Appellant : Capt. Bhagmal Retd.

Respondent : Cbi

Advocate for Def. : Mr. R. S. Cheema, Mr. D. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra, Ms. Smrithi Suresh

Advocate for Pet/Ap. : Mr. R. N. Sharma

Judgement :

$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 851/2013 & CRL.M.A. 6605/2018 CAPT. BHAGMAL RETD. ..... Appellant Through: Mr. R. N. Sharma, Advocate CBI versus ..... Respondent Through: Mr. R. S. Cheema, Sr. Advocate Mr. D. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. P. CORAM: JUSTICE S. MURALIDHAR JUSTICE VINOD GOEL

ORDER
1712.2018 1. By a common judgment passed today in Crl.A.1099/2013 (State through CBI v. Sajjan Kumar & Ors.) (certified copy placed below) and Connected Appeals, including the present one, this Court has partly allowed the CBIs appeal and dismissed the present appeal. The impugned judgment dated 30th April 2013 and order on sentence dated 9th May 2013 passed by the District & Sessions

Judge, North-east District, Karkardooma Courts in SC No.26/2010 is affirmed.

2. Additionally, in the connected appeal Crl.A.1099/2013 preferred by the CBI, the Appellant is further convicted and sentenced for the offence of criminal conspiracy punishable under Section 120B read with (i) Section 436 IPC, to RI for 10 years and fine of Rs. 1 lakh and in Crl.A. 851/2013 Page 1 of 2 default of payment of fine to undergo SI for 1 year; (ii) Section 153A (1) (a) and (b) IPC, to RI for three years; and (iii) Section 295 IPC, to RI for two years. All sentences, including those awarded by the trial Court, to run concurrently.

3. The appeal and the pending application are accordingly dismissed. S. MURALIDHAR, J.

VINOD GOEL, J.

DECEMBER17 2018 Crl.A. 851/2013 Page 2 of 2 $~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

29. h October 2018 Pronounced on:

17. h December 2018 + STATE THROUGH CBI CRL.A. 1099/2013 ..... Appellant Through: Mr. R. S. Cheema, Sr. Advocate with Mr. D. P. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. Mr. H. S. Phoolka, Sr. Advocate with Ms. Kamna Vohra and Ms. Shilpa Dewan, Advocates for Complainant Jagdish Kaur. Mr. Gurbaksh Singh, Mr. Jarnail Singh and Ms. Jasleen Chahal, Advocates for Complainant Jagsher Singh. versus SAJJAN KUMAR & ORS .....

... RESPONDENTS
Through: Mr. Amit Sibal, Sr. Advocate with Mr. Anil K. Sharma, Mr. S. A. Hashmi, Mr. Vinay Tripathi, Mr. Anuj Kumar Sharma, Mr. Ambar Bhushan and Mr. C. M. Sangwan, Advocates for R-1. Mr. Sandeep Sethi, Senior Advocate with Mr. Rakesh Vats and Mr. Jeetin Jhala, Advocates for R-2. Mr. R. N. Sharma, Advocate for R-3. Mr. Aditya Advocate (DHCLSC) with Mr. Avinash, Advocate for R-4. Mr. Vikram Panwar, Advocate with Vikram, Crl.A. 1099/2013 & Connected Matters

Page 1 of 203 Mr. Vikas Walia and Mr. Suyash Sinha, Advocates for R-5 and R-6. + BALWAN KHOKHAR CRL.A. 861/2013 & CRL.M.B. 1406/2018 ..... Appellant Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Rakesh Vats and Mr. Jeetin Jhala, Advocates. CBI + MAHENDER YADAV versus ..... Respondent Through: Mr. R. S. Cheema, Sr. Advocate with Mr. D. P. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. CRL.A. 715/2013 ..... Appellant Through: Mr. Vikram Panwar, Advocate with Mr. Vikas Walia and Mr. Suyash Sinha, Advocates. versus CENTRAL BUREAU OF INVESTIGATION ..... Respondent Through: Mr. R. S. Cheema, Sr. Advocate with Mr. D. P. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. + CRL.A. 851/2013 & CRL.M.A. 6605/2018 CAPT. BHAGMAL RETD. ..... Appellant Through: Mr. R. N. Sharma, Advocate versus Crl.A. 1099/2013 & Connected Matters Page 2 of 203 CBI + GIRDHARI LAL ..... Respondent Through: Mr. R. S. Cheema, Sr. Advocate Mr. D. P. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. CRL.A. 710/2014 Through: Mr. Aditya ..... Appellant Advocate (DHCLSC) with Mr. Avinash, Advocate. Vikram, versus STATE THROUGH CBI ..... Respondent Through: Mr. R. S. Cheema, Sr. Advocate Mr. D. P. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. + KRISHAN KHOKAR C B I CRL.A. 753/2013 ..... Appellant Through: Mr. Vikram Panwar, Advocate with Mr. Vikas Walia and Mr. Suyash Sinha, Advocates. versus ..... Respondent Through: Mr. R. S. Cheema, Sr. Advocate Mr. D. P. Singh, Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Manu Mishra & Ms. Smrithi Suresh, Advocates for CBI. CORAM: JUSTICE S. MURALIDHAR JUSTICE VINOD GOEL Crl.A. 1099/2013 & Connected Matters Page 3 of 203 Dr. S. Muralidhar, J.: JUDGMENT Contents

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 In the summer of 1947, during partition, this country witnessed horrific mass crimes where several lakhs of civilians, including Sikhs, Muslims and Hindus were massacred. A young poet, Amrita Pritam, who fled to this country with her two little children from Lahore was witness to the manifold tragedies during that perilous journey. She was moved to pen an Ode to Waris Shah in which she spoke of the fertile land of Punjab having sprouted poisonous weeds far and near and where Seeds of hatred have grown high, bloodshed is everywhere / Poisoned breeze in forest turned bamboo flutes into snakes / Their venom has turned the bright and rosy Punjab all blue. The killings would continue in the streets of Delhi. Thirty-seven years later, the country was again witness to another enormous human tragedy. Following the assassination of Smt. Indira Gandhi, the then Prime Minister of India, on the morning of 31st October 1984 by two of her Sikh bodyguards, a communal frenzy was unleashed. For four days between 1st and 4th November of that year, all over Delhi, 2,733 Sikhs were brutally murdered. Their houses were destroyed. In the rest of the country too thousands of Sikhs were killed. A majority of the perpetrators of these horrific mass crimes, enjoyed political patronage and were aided by an indifferent law enforcement agency. The criminals escaped prosecution and punishment for over two decades. It took as many as ten Committees and Commissions for the investigation into the role of some of them to be entrusted in 2005 to the Central Bureau of Investigation (CBI), 21 years after the occurrence. The present appeals arise as a result of the investigation by the

CBI into the killing of five Sikhs in the Raj Nagar Part I area in Palam Colony in South West Delhi on 1st and 2nd November 1984 and the burning down of a Gurudwara in Raj Nagar Part II. Six accused, including Sajjan Kumar a Congress leader who was a Member of Parliament at that time, were sent up for trial some time in 2010. Three years later, the trial court convicted five of the accused: three of them for the offences of armed rioting and murder and two of them for the offence of armed rioting. Sajjan Kumar stood acquitted by the trial Court of all offences. The convicted accused as well as the CBI appealed to this Court. Crl.A. 1099/2013 & Connected Matters Page 5 of 203 In the judgment that follows this Court has partly allowed CBIs appeal and reversed the acquittal of Sajjan Kumar. This Court has convicted him for the offences of criminal conspiracy and abetment in the commission of the crimes of murder, promoting enmity between different groups on grounds of religion and doing acts prejudicial to maintenance of communal harmony, defiling and destruction of the Gurudwara by burning. Further while affirming the conviction and sentences awarded by the trial court to the other five accused, this Court has additionally convicted and sentenced them for the offence of criminal conspiracy to commit the aforementioned crimes. The accused in this case have been brought to justice primarily on account of the courage and perseverance of three eyewitnesses. Jagdish Kaur whose husband, son and three cousins were the five killed; Jagsher Singh, another cousin of Jagdish Kaur, and Nirpreet Kaur who saw the Gurudwara being burnt down and her father being burnt alive by the raging mobs. It is only after the CBI entered the scene, that they were able to be assured and they spoke up. Admirably, they stuck firm to their truth at the trial. This Court is of the view that the mass killings of Sikhs in Delhi and elsewhere in November 1984 were in fact crimes against humanity. They will continue to shock the collective conscience of society for a long time to come. While it is undeniable that it has taken over three decades to bring the accused in this case to justice, and that our criminal justice system stands severely tested in that process, it is essential, in a democracy governed by the rule of law to be able to call out those responsible for such mass crimes. It is important to assure those countless victims waiting patiently that despite the challenges, truth will prevail and justice will be done. * * * * * 1. These appeals are directed against the judgment dated 30th April 2013 passed by the District & Sessions Judge, North-east District,

Karkardooma Courts, Delhi (trial Court) in SC No.26/2010 arising out of FIR No.RC- SI-1/2005/S0024 registered at PS Delhi Cantonment acquitting Sajjan Crl.A. 1099/2013 & Connected Matters Page 6 of 203 Kumar (Accused No.1: A-1) of the offences of criminal conspiracy and abetment while, at the same time, convicting Balwan Khokar (A-2), Mahender Yadav (A-3), Captain Bhagmal (Retd.) (A-4), Girdhari Lal (A-5), and Krishan Khokar (A-6). The trial Court convicted A-2, A-4, and A-5 for the offences punishable under Sections 147, 148, and 302 read with 149 IPC. A-3 and A-6 were convicted for the offences punishable under Sections 147 and 148 IPC. By the order on sentence dated 9th May 2013, they have been sentenced in the following manner: (i) For the offence punishable under Section 302 read with Section 149 IPC, A-2, A-4, and A-5 were sentenced to imprisonment for life along with payment of a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment (RI) for six months; (ii) For the offence punishable under Section 147 IPC, all five convicted accused were sentenced to two years' RI along with payment of a fine of Rs.1,000/- and, in default of payment of fine, to undergo RI for six months; (iii) For the offence punishable under Section 148 IPC, all five convicted accused were sentenced to three years' RI along with payment of a fine of Rs.1,000/- and, in default of payment of fine, to undergo RI for six months.

2. The Central Bureau of Investigation (CBI) has filed Crl.A.1099/2013 challenging the complete acquittal of A-1 and the acquittal of the other accused for the other charges framed against them. The complainant, Jagdish Kaur (PW-1), had also preferred Crl.A.850/2013 against the acquittal of A-1 which was subsequently withdrawn, with this Court Crl.A. 1099/2013 & Connected Matters Page 7 of 203 granting her liberty to address arguments in Crl.A.1099/2013.

3. The convicted accused, have filed separate appeals. Crl.A.861/2013 has been preferred by A-2, Crl.A.715/2013 by A-3, Crl.A.851/2013 by A-4, Crl.A.710/2014 by A-5, and Crl.A.753/2013 by A-6. Charges framed against A-1 4. Four articles of charge were framed against A-1. First, he was charged with having committed the offence of criminal conspiracy punishable under Section 120B read with Sections 147, 148, 302, 395, 427, 436, 449, 153A, 295, and 505 IPC on account of entering into an agreement, on or about 31st October 1984, with A-2 to A-6 as well as

Maha Singh, Santosh Rani @ Janta Hawaldarni, Ishwar Chand Gaur @ Chand Sharabi, Dharamveer Singh Solanki, Balidan Singh, Raj Kumar @ Rajaram (all since deceased), and other known and unknown persons including police personnel to commit the following acts: (i) Rioting, (ii) Rioting armed with deadly weapon, (iii) Murder, (iv) Mischief causing damage, (v) Mischief by fire with intent to destroy houses etc., (vi) House trespass in order to commit offence punishable with death, (vii) Dacoity, (viii) Promoting enmity between different groups on grounds of religion and doing acts prejudicial to maintenance of harmony, Crl.A. 1099/2013 & Connected Matters Page 8 of 203 (ix) Injuring or defiling place of worship with intent to insult the religion of Sikh community, and (x) Making statements conducing to public mischief.

5. Secondly, A-1 was charged with being a principal offender who abetted and instigated the aforementioned co-accused persons in the wake of the assassination of Smt. Indira Gandhi to commit, in pursuance of the aforementioned conspiracy, offences punishable under Sections 147, 148, 302, 395, 427, 436, 449, 153A, 295, and 505 IPC and thereby having committed the offence punishable under Section 109 IPC read with the aforementioned provisions of the IPC.

6. Thirdly, A-1 was charged with having delivered fiery/provocative speeches to the mob gathered at Raj Nagar, Palam Colony, Delhi Cantonment on 1st/2nd November 1984 and having instigated and promoted violent enmity against the Sikh community and disturbed harmony between the two religious groups/communities of the locality in retaliation of the assassination of Smt. Indira Gandhi, giving rise to feelings of enmity, hatred, and ill will between members of the non-Sikh and Sikh communities which was prejudicial to the maintenance of harmony and disturbed public tranquillity and was thereby guilty of committing the offence punishable under Section 153A IPC.

7. Fourthly, A-1 was charged with having publicly made a statement on 1st/2nd November 1984, to wit, by asking members of the Jat community to not leave any Sikh or any other person who had given shelter to Sikhs alive, inciting the mob gathered there by delivering fiery/provocative speeches Crl.A. 1099/2013 &

Connected Matters Page 9 of 203 and was thereby guilty of committing the offence punishable under Section 505 IPC. Charges framed against A-2 to A-6 8. Nine articles of charge were framed separately against the five other accused, viz. A-2 to A-6. Firstly, they were charged in a manner similar to A-1 with commission, on or about 31st October 1984, of the offence of criminal conspiracy punishable under Section 120B read with Sections 147, 148, 302, 395, 427, 436, 449, 153A, 295, and 505 IPC.

9. Secondly, they were charged with having been members of an unlawful assembly on 1st/2nd November 1984 in Raj Nagar, Palam Colony, Delhi Cantonment using force and violence in pursuance of the common object to loot, damage, and burn the properties of the Sikh community as well as to kill members of the Sikh community residing in the area in retaliation to the assassination of Smt. Indira Gandhi and were thereby guilty of commission of the offence punishable under Section 147 IPC. Thirdly, they were charged with commission of the aforementioned acts while being members of an unlawful assembly armed with guns, jellies, iron rods/pipes, lathis, kerosene oil, etc. and were thereby guilty of commission of the offence punishable under Section 148 IPC.

10. Fourthly, they were charged with having committed, while being members of the aforementioned unlawful assembly, the murders of Kehar Singh son of Dhyan Singh, Gurpreet Singh son of Kehar Singh, Raghuvinder Singh son of Gurcharan Singh, Narender Pal Singh son of Gurcharan Singh, and Kuldeep Singh son of Hardev Singh and were Crl.A. 1099/2013 & Connected Matters Page 10 of 203 thereby guilty of commission of the offence punishable under Section 302 read with Section 149 IPC. Fifthly, they were charged with committing mischief and causing loss and damage amounting to approximately Rs.3,30,000/- while being members of the aforementioned unlawful assembly and were thereby guilty of commission of the offence punishable under Section 427 read with Section 149 IPC.

11. Sixthly, they were charged with committing mischief while being members of the aforementioned unlawful assembly by setting fire to a place of worship, viz. the Raj Nagar Gurudwara, as well as the dwelling houses H.No.RZ-1/129 & RZ-15,

Shiv Mandir Marg, Raj Nagar, Palam Colony, New Delhi and were thereby guilty of the commission of the offence punishable under Section 436 read with Section 149 IPC. Seventhly, they were charged with having committed house trespass while being members of the aforementioned unlawful assembly by entering H.No.RZ-1/129 & RZ-15, Shiv Mandir Marg, Raj Nagar, Delhi Cantonment, which were the dwelling house of the five deceased persons, in order to commit the offence of murder which is punishable with death, and were thereby guilty of commission of the offence punishable under Section 449 read with Section 149 IPC.

12. Eighthly, they were charged with having committed dacoity while being members of the aforementioned unlawful assembly in H.No.RZ-1/129 & RZ-15, which belonged to the deceased persons, and were thereby guilty of commission of the offence punishable under Section 395 read with Section 149 IPC. Lastly, they were charged with destroying/damaging/ Crl.A. 1099/2013 & Connected Matters Page 11 of 203 defiling a place of worship, i.e. the Raj Nagar Gurudwara held sacred by the Sikh community, while being members of the aforementioned unlawful assembly with the common intention of insulting the Sikh religion and were thereby guilty of commission of the offence punishable under Section 295 read with Section 149 IPC. The prosecution case 13. The version of events put forth by the prosecution flows mainly from the depositions of three witnesses, viz. Jagdish Kaur (PW-1), Jagsher Singh (PW-6), and Nirpreet Kaur (PW-10).

14. PW-1, at the time of the incident, was a resident of H.No.RZ-1/129, Shiv Mandir Marg, Raj Nagar along with her husband, three daughters, and two sons. Her husband, Kehar Singh, was a gun-fitter in the EME Workshop No.505 in Delhi Cantonment. Her elder son, Gurpreet Singh, was 18 years old at the time and was completing his B.Sc.

15. Jagsher Singh (PW-6) lived with his brothers, Narender Pal Singh and Raghuvinder Singh, at H.No.RZ-15, Shiv Mandir Marg, Raj Nagar, Palam Colony, Delhi Cantonment. His cousin, Kuldeep Singh, also resided with them. Narender Pal Singh and Raghuvinder Singh were MES contractors working with the Air Force and the Airports Authority of India, mainly dealing in electric wiring, cable

laying, water supply, etc. Kuldeep Singh assisted them in their business from time to time. Harbhajan Kaur was the wife of Narender Pal Singh and Daljit Kaur was the wife of Raghuvinder Singh. Luckdeep Singh and Sandeep Singh were the sons of Raghuvinder Singh and were both toddlers at the time. PW-1 is the cousin of PW-6, Crl.A. 1099/2013 & Connected Matters Page 12 of 203 being the daughter of his fathers sister (bua).

16. PW-10 was the daughter of Nirmal Singh and Sampuran Kaur. She was around 16 years old at the time of the incident. Her family comprised her parents, herself, and her two younger brothers, Nirpal Singh and Nirmolak Singh. They all lived at RZ/WZ-241 Raj Nagar, Palam Colony which was located near the Raj Nagar Gurudwara. Raj Nagar Gurudwara incident and killing of Nirmal Singh 17. As already noted, in the forenoon of 31st October 1984, Smt. Indira Gandhi, the then Prime Minister of India, was assassinated by two of her Sikh bodyguards. According to PW-10, on that date, there were no untoward incidents in Raj Nagar except for a few stray ones here and there. She went on to depose that at around 6:30 pm, A-2 and A-6, who introduced themselves as the nephews of A-1, came to her residence to meet her father Nirmal Singh who ran a taxi stand at Anand Niketan and operated a transportation business. They asked that A-6 be employed as a driver by him. Nirmal Singh informed them that he had no vacancies at present but would inform them should any such vacancy arise.

18. PW-10 then stated that at around 2:30 to 3 am on 1st November 1984, the Granthi of the Raj Nagar Gurudwara came to their residence and informed her father, who was the President of the Gurudwara, that police personnel had come to the Gurudwara. When Nirmal Singh and his wife Sampuran Kaur went to the Gurudwara, the police personnel there informed them that they had been deployed to safeguard the Gurudwara as the situation at the time was not congenial to Sikhs. PW-10 deposed that she Crl.A. 1099/2013 & Connected Matters Page 13 of 203 herself went to the Gurudwara for morning prayers at around 5 to 5:30 am on 1st November 1984, at which time the police personnel were present there. She stated that during the prayers, the police personnel disappeared without any intimation. Thereafter, at around 7:30 to 8 am, a mob led by A-2, A-3, and the owner of one Mamta Bakery attacked the Gurudwara whilst armed with sariyas,

rods, subbal, jellies, etc. and raising slogans such as Indira Gandhi amar rahe and In sardaron ko maro, inhone hamari maa ko mara hai.

19. Apprehensive that the mob would dishonour the Guru Granth Saheb, PW-10 and her brother Nirmolak Singh rushed to the Gurudwara so as to pick up the Guru Granth Saheb. They were set upon by the mob but were able to escape its clutches. PW-10 stated that, as she and her brother were going towards their residence, A-3 and the owner of Mamta Bakery pointed to her and her brother and said to the mob, Isse maron, ye saap ka bachha hai. The mob followed them to their residence and caused damage to the walls and the gate of their house. Nirmal Singh and his wife came to the aid of their children.

20. Thereafter, PW-10 stated that some members of the mob set fire to a truck belonging to Harbans Singh. Nirmal Singh raised an alarm and upon hearing this, Harbans Singh came out of his house and put out the fire. She went on to state that the Sikh residents of the area defended themselves for 2 to 3 hours with the mob attacking from three sides before the police personnel reached there.

21. According to her, A-2, A-3, and A-6 then came to the spot and sought a Crl.A. 1099/2013 & Connected Matters Page 14 of 203 compromise. However, Nirmal Singh and the other members of the Sikh community did not agree to do so. The police personnel present asked both groups to reach a compromise and left the spot after taking away the kirpans from the Sikhs who had assembled there to defend their Gurudwara. Thereafter, Nirmal Singh went with A-2 and A-3 on a scooter. PW-10 stated that, apprehending danger, she ran behind the scooter and saw that they had stopped near the shop of one Dhanraj where a mob had gathered. There, A-2 purportedly said that he had brought with him the last remaining Sikh from the area, i.e. Nirmal Singh. The mob doused him in kerosene oil but they were unable to find any match sticks to set him on fire. At this time, one of the police personnel present there, Inspector Kaushik, allegedly shouted at the mob: Doob maro, tumse ek sardar bhi nahin jalta. He then gave a match box to A-6 who set fire to Nirmal Singh. When the mob started moving along, Nirmal Singh jumped in a nearby nala. Noticing that he was still alive, the mob returned and A-4 tied him to a telephone pole and he was again set on fire. He again

managed to jump in the nala. According to PW-10, the mob returned once again upon being told of this and A-2 began hitting Nirmal Singh with a rod while A-3 sprinkled some white powder (phosphorus) on him, causing burns. When someone shouted that Nirmal Singhs family should be killed as well, PW- 10 rushed back to her house where she found her mother lying unconscious. The house itself was burning and, according to her, the police personnel standing nearby did not help. With the help of one Santok Singh Sandhu who was serving in the Air Force, PW-10 and her family fled to the Air Force Station, Palam in an Air Force vehicle. Crl.A. 1099/2013 & Connected Matters Page 15 of 203 22. Therefore, from the deposition of PW-10, two incidents emerge. The first is the attack on the Raj Nagar Gurudwara in the morning of 1st November 1984 and the second, the killing of Nirmal Singh. However, it is pertinent to note at this stage that the killing of Nirmal Singh does not form part of the subject matter of these appeals.

23. Joginder Singh (PW-7) was also a resident of the area and has also deposed about the burning of the Raj Nagar Gurudwara. He stated that at around 7:30 am on 1st November 1984, he and his wife were exiting the Gurudwara when they saw a mob coming from the Mehrauli Road side. He identified A-2, A-3, A-4, A-6, one Raja Ram, and one Gulati as being members of the mob which was armed with lathis, rods, jellies, pipes, etc. He stated that he along with some other men from the Sikh community assembled in front of the Gurudwara armed with their kirpans when they heard that it was under attack. He then stated that the house of one Jasbir Singh was looted and the truck of Harbans Singh was burned. He deposed that the police came two hours later and took the swords of the Sikhs away. The mob led by A-2, A-3, and A-6 again came to the spot. He stated that A-2 and A-3, who were on a scooter, caught hold of Nirmal Singh and told him that they wanted to talk to him so as to settle the matter. Thereafter, PW-7 stated, they took Nirmal Singh away while he went back home.

24. Therefore, as regards the incident at and near the Raj Nagar Gurudwara, PWs 7 and 10 have identified A-2, A-3, A-4, and A-6 as being part of the mob which attacked and burned the Gurudwara. Murders at Shiv Mandir Marg Crl.A. 1099/2013 & Connected Matters Page 16 of 203 25. PW-1, the wife of Kehar

Singh and mother of Gurpreet Singh, deposed that on the morning of 1st November 1984, she had been told not to permit her husband or sons to leave the house as the atmosphere outside was unsafe and Sikhs were being attacked. On the advice of Gurpreet Singh, she took her three daughters and younger son Gurdeep Singh to the house of one of her neighbours, Ram Avtar Sharma (PW-3), where she found her cousin PW-6 also taking shelter.

26. PW-1 stated that at around 1:30 to 2 pm, a mob entered her house from all sides armed with sariyas, gaintis, and other lethal weapons. She stated that they pounced upon her son Gurpreet Singh and dragged her husband, effectively crushing his head, till he dropped dead. Her son, who had sustained injuries, ran some distance down the street before he was attacked again and set on fire. PW-1 has identified, from among the accused in the present case, A-2 as being part of that mob along with some others.

27. After shifting her sons body which was lying on the street back into her house with the help of PWs 3 and 6, PW-1 went to the nearby Police Post (PP) where the Assistant Sub Inspector (ASI) present allegedly said, Bhag yahan se, abhi to aur marenge, jab sab mar jaenge jo kuch hoga sabka ekattha hoga. She returned home at around 6 pm. Shortly thereafter, PW-3 turned her children out of his house due to his fear of being targeted by the mob. She hid her children under a blanket on the roof of her house and kept saying her prayers.

28. She went on to depose that a mob kept banging on the doors of the house of Rajni Bala (DW-2) throughout the night, asking for the Crl.A. 1099/2013 & Connected Matters Page 17 of 203 thekedars. PW-1 apprehended that this was in reference to her cousin brothers - PW-6, Narender Pal Singh, Raghuvinder Singh, and Kuldeep Singh. She stated that at around 7:30 am on 2nd November 1984, Narender Pal Singh jumped onto the street adjoining her house and was followed by Raghuvinder Singh and Kuldeep Singh. This was seen by one Dharamvir (a member of the mob which attacked her house) who raised an alarm that the thekedars were running away. Upon hearing this, A-4, A-5, and one Subedar Balidan Singh (Retd.) came along with a mob armed with lathis. PW-1 states that she saw that Narender Pal Singh was injured with lathi blows and then burned.

This, she stated, happened near her house. She also stated that she saw her other two cousin brothers, Raghuvinder Singh and Kuldeep Singh, being attacked and taken away by the mob. Fearing for the safety of herself and her children, she closed the door and stated that she did not see anything thereafter.

29. At around 9 am on 2nd November 1984, when she went to lodge a report at the PP, she saw that a public meeting was taking place which was attended by A-1 who was the local Member of Parliament (MP). She heard him declare, Sikh sala ek nahin bachna chahiye, jo Hindu bhai unko sharan deta hai, uska ghar bhi jala do aur unko bhi maro. She stated that she also heard the officer-in-charge of the PP ask members of the mob kitne murge bhun diye. She stated that at this point, she lost faith in humanity.

30. PW-6 had also deposed as to both these incidents of murders at Shiv Mandir Marg. He stated that on the morning of 1st November 1984, he and Crl.A. 1099/2013 & Connected Matters Page 18 of 203 his brothers were informed by DW-2 and others not to leave the house. He stated that DW-2 asked them to come to her house till such time as normalcy returned. Therefore, he and his family members went to her house.

31. He then stated that, at some stage, he returned to his house to park his motorcycle inside the house. He then claimed that, when returning to DW-2s house, he saw a mob coming from the direction of Palam Village heading towards Shiv Mandir Marg. He further claimed that the mob was raising slogans such as In Sikhon ko maro; in gaddaron ko maro; Hindustan mein ek sikh bhi jinda nahi bachna chahiyen. Not wanting to cross the road, he stated that he entered the house of PW-3.

32. Ten minutes later, he heard shrieks and loud voices from outside. He stated that, from the window above the bed in the room in which he was hiding, he saw the mob armed with lathis and sariyas enter the house of PW-1. He saw the mob drag Kehar Singh and Gurpreet Singh. He stated that Kehar Singh, who fell down inside the house itself, was being hit with iron rods. He further claimed that Gurpreet Singh, in a bid to rescue himself, ran towards a small street in front of the house. However, some members of the mob caught hold of him and beat him with

iron rods and killed him. He stated that he helped his cousin PW-1 move the body of Gurpreet Singh back into their house using a cot. He claimed that he thereafter remained in the house of PW-3 till 10 pm.

33. PW-6 further deposes that in the evening of 1st November 1984, the mob again came to his house, broke the gate, peeked inside, and thereafter Crl.A. 1099/2013 & Connected Matters Page 19 of 203 left having found the house empty. When he left the house of PW-3 at around 10 pm, he saw an Ambassador car which stopped at the turning onto Shiv Mandir Marg. He stated that 30-40 persons gathered around the car from which emerged A-1 who enquired as to whether they have done the work. Thereafter, it is stated, A-1 approached the house of PW-6 to inspect it and came back and told the assembled mob that they had only broken the gate of the thekedars house. One of the members of the mob then allegedly informed him that the thekedars are being saved by the Hindus only. Upon hearing this, A-1 is stated to have instructed the mob to burn the houses of the Hindus who were sheltering the Sikhs. He then left in his car.

34. After A-1s departure, the mob proceeded to loot and ransack the house of PW-6 and his brothers. They set fire to a motorcycle and a scooter and, ultimately, the house itself. The fire caused damage to the electric cables running above the house, causing the electricity to shut down. Thereafter, the mob went to the house of DW-2 and then to the house of PW-3, accusing them of sheltering Sikhs. The mob ultimately retreated but kept roaming in the area.

35. PW-6 then stated that at around 5 am on 2nd November 1984, PW-3 brought a car in order to rescue the three cousins of PW-1 under the cover of darkness but was unable to do so due to the mobs presence in the area. At around 6 am, PW-3 turned PW-6 out of his house, fearing for his own safety. PW-6 then stated that he went towards the gali where Gurpreet Singh was killed. There he saw a Sikh man wrapped in a woollen shawl Crl.A. 1099/2013 & Connected Matters Page 20 of 203 being chased by a group of people. The mob caught up with that man and started beating him with rods and then set him on fire. After the crowd dispersed, PW-6 was able to identify the man who had been killed as his brother Narender Pal Singh. He was able to do so by recognising his wristwatch.

36. PW-6 deposed that in a bid to save his other two brothers, he went through various streets till he reached Palam Colony Railway Gate. From there, he took a lift to Gopinath Bazar where he went to the house of Major Dhanraj Yadav, Garrison Engineer (East) (DW-1) who he knew, having worked under him as an MES contractor. He stated that DW-1 agreed to accompany him in his search for the other two deceased. They took a vehicle from the Parade Ground with 7-8 jawans from the Sikh Regiment and reached near PW-6s house in Raj Nagar around 10 am. PW- 6 stated that he enquired from PW-3 as to the whereabouts of his other two brothers. He was told that they too were killed at Dada Chatriwala Marg. PW-6 and DW-1 reached there and found the bodies of his two brothers, Raghuvinder Singh and Kuldeep Singh. He was able to identify them by their clothing.

37. PW-6 then deposed that he returned to the house of DW-2 and retrieved his bhabhis and two children from there and made them sit in the Army vehicle which had been brought by DW-1. He also retrieved PW-1, her younger son, and three daughters and made them sit in the vehicle. Thereafter, they all went to the Parade Ground. DW-1 took them to his house where they stayed for two nights. PW-1, however, decided to return Crl.A. 1099/2013 & Connected Matters Page 21 of 203 to Raj Nagar on the same evening, leaving her children with PW-6 at DW-1s house.

38. PW-1 was dropped by DW-1 at the PP Palam Colony in Raj Nagar at around 6 to 7 pm on 2nd November 1984. She stated that while waiting to lodge a report, she realised that the officer-in-charge of the PP was complicit with the mob and decided to leave. She went to her house and saw that 1000-watt bulbs had been installed in the neighbourhood, making it impossible for anyone to hide. Feeling unsafe, she started to walk down Mehrauli Road where she found a group of people sitting around a bonfire. She asked for Om Prakash, an employee of her husband. When he identified himself, she asked him if she could stay at his house to which he reluctantly agreed.

39. Having spent the night in Om Prakashs house, PW-1 returned to her house at around 8 am on 3rd November 1984. Thereafter, with the help of some people,

she cremated the bodies of her deceased husband and son. She then narrates that she was taken away from the area hidden in a police vehicle to PP Palam Colony where the in-charge, in the presence of Air Force personnel, recorded her report in a few lines and obtained her signatures on blank papers as he claimed he was short of time and would prepare the report later. PW-1 then went to Gurudwara Sadar, Delhi Cantonment. From there she went to the house of DW-1 where she spent the night with her bhabhis and children. The next morning, she returned to Gurudwara Sadar, Delhi Cantonment with her children. At 4 pm on 4th November 1984, PW-6 shifted PW-1 and her children to the Air Force Crl.A. 1099/2013 & Connected Matters Page 22 of 203 Gurudwara. She stayed there and then in Moti Bagh Gurudwara till 12th December 1984 when she left Delhi and went to Punjab. Inconclusive investigation and subsequent Commissions of Inquiry 40. Nothing appears to have come of the report lodged by PW-1 at PP Palam Colony. PW-6 also stated that his father, the late Gurcharan Singh, had filed a complaint with the police but no statement was recorded.

41. FIR No.416/1984 was registered at PS Delhi Cantonment on 4th November 1984 on the complaint of one Daljit Kaur who spoke about a mob of 400-500 people attacking her house on 1st November 1984 which resulted in injuries to her parents. There was another attack on her house on 2nd November 1984 in which her father was set on fire by the mob on the instigation of her neighbour, Mahender Sharabi. Several complaints pertaining to the killing of Sikhs and the burning and looting of their properties were clubbed with FIR No.416/1984. However, it appears that the investigation into the said FIR remained inconclusive.

42. On 25th March 1985, five charge sheets were filed by the Delhi Police based on the statement of Daljit Kaur. Thereafter, a series of Committees and Commissions were set up for the purpose of conducting inquiries into the circumstances surrounding the violence that took place in the aftermath of the assassination of the then Prime Minister, Smt. Indira Gandhi.

43. The Marwaha Committee headed by Mr. Ved Marwaha began recording the statements of victims as well as the police officers involved. However, before the said Committee could complete the exercise, the Central Crl.A. 1099/2013 &

Connected Matters Page 23 of 203 Government set up a one-man Commission under the Commissions of Inquiry Act 1952 (CoI Act) comprising Justice Ranganath Misra. The statements recorded by the Marwaha Committee were to be handed over and examined by the Justice Ranganath Misra Commission. But, for unexplained reasons, this was not done.

44. PW-1 submitted an affidavit dated 7th September 1985 before the Justice Ranganath Misra Commission (Ex.PW-1/A) in which she stated that her son and husband were killed by a mob on 1st November 1984. She described the mob as being well organised and named A-2 as being involved in the murders of her husband and son. She also named A-4 and A-5 as being part of the mob involved in the murders of her three cousin brothers.

45. According to the prosecution, although the above charge sheets ended in acquittals in 1986 itself, this was a mere eyewash as a result of manipulation, both by the Delhi Police and the prosecution. In 1992, the Jain-Aggarwal Committee in its report recommended, inter alia, further investigations into the cases concerning the attack on the house of Jasbir Singh and the incident involving the deaths of Kehar Singh, Gurpreet Singh, Narender Pal Singh, Raghuvinder Singh, and Kuldeep Singh.

46. In the matter of the attack on the house of Jasbir Singh, a supplementary charge sheet was filed on 26th February 1993 against four accused, viz. Sunil Tiwari @ Raju, Hukum Chand, Mangat Ram, and Balwan Khokar. This was tried as Special Case No.28/1993. However, that trial also ended in their acquittal by a judgment dated 30th April 1994. Crl.A. 1099/2013 & Connected Matters Page 24 of 203 47. Furthermore, there is also a statement attributed to PW-1 made before the Delhi Police on 20th January 1985. This statement was originally recorded in Urdu and therein she states that her son and husband were killed by a mob of 250-300 men but she could not identify any of the people who were part of the mob. She stated that she could identify them if they were brought before her. This statement has been denied by the CBI. At this stage it is pertinent to note that, according to the defence in the present case, PW-1 also allegedly gave a statement to the Special Riots Cell, Malviya Nagar on 31st December 1992 under

Section 161 Cr PC. This too, however, is disputed by the CBI. The Justice Nanavati Commission and subsequent investigation by CBI48 In May 2000, the Justice Nanavati Commission was constituted. Its report was submitted on 9th February 2005. PW-1, PW-10, and Sampuran Kaur (wife of the deceased Nirmal Singh) were among those who made statements before the Justice Nanavati Commission. The following excerpt from the report of the Justice Nanavati Commission speaks of the role of A-1 as under: Many witnesses have stated about the involvement of S/Shri Sajjan Kumar, Balwan Khokar, Pratap Singh, Maha Singh and Mohinder Singh in the riots in areas like Palam Colony, Tilak Vihar, Raj Nagar etc. It was alleged that the mobs indulging in riots were led by Shri Sajjan Kumar and Shri Balwan Khokhar and other Congress leaders. Police did not even record the complaints of the victims/witnesses against them. Instead complaints of losses were recorded by the Police. Other local persons who have been named by the witnesses as the persons who had taken a leading part in the attacks on Sikhs are Rohtas, Ram Kumar and Ved Prakash. Crl.A. 1099/2013 & Connected Matters Page 25 of 203 The Commission is, therefore, inclined to take the view that there is credible material against Shri Sajjan Kumar and Shri Balwan Khokhar for recording a finding that he, and Shri Balwan Khokhar were probably involved as alleged by the witnesses. The DSGPC and CJC have also drawn the attention of the Commission to some cases where Shri Sajjan Kumar though named was not charge sheeted or they were closed as untraced. No useful purpose can now be served by directing registration of those cases where the witnesses complaining about the same were examined before the courts and yet the accused were acquitted by the Courts. The Commission therefore recommends to the Government to examine only those cases where the witnesses have accused Shri Sajjan Kumar specifically and yet no charge sheets were filed against him and the cases were terminated as untraced and if there is justification for the same take further action as is permitted by law. Those cases which were closed as untraced and which still deserve to be reexamined are those which would arise from FIR Nos. 250/84, 3
and 3
of police station Sultanpuri, FIR Nos. 325/93, 329/93, 1
of police station Mangolpuri and FIR No.4

of police station Delhi Cantt. 49. Similar observations were made in respect of two other leaders of the Congress. On 24th October 2005, a letter was sent by the Secretary (H) in the Ministry of Home Affairs to the Director, CBI as under: In reply to the discussion held in the Lok Sabha on 10th August 2005 and the Rajya Sabha on 11th August 2005 on the Report of Justice Nanavati Commission of Inquiry into 1984 anti-Sikh riots, the Prime Minister and the Home Minister had given an assurance that wherever the Commission has named any specific individuals as needing further examination or re- opening of case the Government will take all possible steps to do so within the ambit of law.

2. The matter has accordingly been examined and it is observed that the Report of Justice Nanavati Commission, inter Crl.A. 1099/2013 & Connected Matters Page 26 of 203 regarding recommendations alia, contains investigation/ reinvestigation of the cases against (a) Shri Dharam Das Shastri, (b) Shri Jagdish Tytler, and (c) Shri Sajjan Kumar. I am enclosing a copy of the Report of Justice Nanavati Commission along with the relevant extracts of the Report against these persons.

3. It has been decided by the Government that the work of conducting further investigation/reinvestigation against (a) Shri Dharam Das Shastri, (b) Shri Jagdish Tytler, and (c) Shri Sajjan Kumar as per the recommendations of the Justice Nanavati Commission should be entrusted to the CBI.

4. I am accordingly enclosing the relevant records (as per list) connected with the cases against these persons as were available in this Ministry. Additional records/information required in connection with investigations might be obtained from Delhi Police. 50. Inspector Rakesh (DW-17), who was a part of the Special Riots Cell, Delhi Police, deposed that he attempted to join PW-1 in the investigation and even issued a notice to her under Section 160 Cr PC (Ex.PW-1/DY). Thereunder, an endorsement was supposedly made on behalf of PW-1 by her son Gurdeep Singh to whom she dictated her refusal to join the investigation. Eventually, an untraced report was filed by Inspector Sunil Kumar Vashisht (DW-15) and thereafter, a closure report (Ex.DW-15/A) was also filed on 7th September 2005.

51. The letter dated 24th October 2005 extracted hereinabove was issued in pursuance of the discussions held in both Houses of Parliament on 10th and 11th August 2005 wherein demands were made for further action to be taken on the recommendations of the Justice Nanavati Commission. Crl.A. 1099/2013 & Connected Matters Page 27 of 203 Consequently, the investigation of the matter was entrusted to the CBI and, on 22nd November 2005, RC No.SI-1/2005/S0024 was registered at PS Delhi Cantonment. The charge sheet 52. On 13th January 2010, the CBI filed the charge sheet in which it set out the details of the earlier cases which had ended in acquittals as under: S.No.Complainant Deceased 1.

2. Smt. Daljit Kaur Smt. Swaran Kaur Avtar Singh Harbhajan Singh Sp. Case No.3. Smt. Jagir Kaur Joga Singh

4. Smt. Sampuran Kaur Nirmal Singh

5. Smt. Baljit Kaur Avtar Singh Accused Verdict Dt. of judgment Acquittal 29.4.1986 - Balwan Khokhar Acquittal 15.7.1986 - Dhanpat Acquittal 28.5.1986 - Ved Prakash - Shiv Charan - Ramji Lal Sharma - Vidyanand - Balwan Khokhar - Mahender Singh Yadav - Dhanraj - Mahender Singh - Balwan Khokhar - Mahender Singh Yadav - Mahender Yadav - Ram Kumar Acquittal 17.5.1986 Acquittal 4.10.1986

53. The charge sheet summarised the recommendations of the Justice Nanavati Commission as under: 16.6 During the proceedings, the Commission took note of the depositions/affidavits of Smt. Jagdish Kaur, Sh. Sudarshan Singh & Sh. Jasbir Singh and observed that many witnesses have stated about the involvement of Sajjan Kumar. Smt. Jagdish Kaur, Sudarshan Singh and many persons from Raj Nagar, Palam Colony have spoken about the participation of Shri Sajjan Kumar and Balwan Khokhar in the riots in that area. Jagdish Kaur of Raj Nagar has stated that she had heard Sajjan Kumar telling the persons "Sardar sala koi nahin bachna chahiye".' Jasbir Singh of Raj Nagar had also spoken about the Crl.A. 1099/2013 & Connected Matters Page 28 of 203 the witnesses. Thus, involvement of Sajjan Kumar and Balwan Khokhar and further stated that even though he had gone with a written complaint naming the assailants, the police did not take down his complaint and Sajjan Kumar was not put up for trial. 16.7 The Commission

concluded that there is credible material against Sajjan Kumar and Balwan Khokhar for recording a finding that he and Balwan Khokhar were probably involved as alleged by the Commission recommended to the Government to examine only those cases and take further action in them as permitted by the Law, in which the witnesses had accused Sajjan Kumar specifically and yet no chargesheets were filed against him and the cases were terminated as untraced. 16.8 After considering the Nanavati Commission, the Govt of India, Ministry of Home Affairs vide order dated 24.10.2005 directed the CBI to investigate/re-investigate the cases against Sajjan Kumar including FIR No.4dated 4.11.1984 of PS Delhi Cantt., Delhi. Accordingly, case FIR No.4of PS Delhi Cantt. Was re-registered by CBI as case RC-24(S)/2005-SCU.I/SCR.I on 22.11.2005 and investigation was taken up. the findings of

54. The details of the investigation undertaken by the CBI pursuant to the registration of the case were then set out in the charge sheet. Reference was made to the statement of PW-7 who spoke of an unlawful assembly of around 2000 persons in Raj Nagar, Palam Colony at around 7 am on 1st November 1984 with the intention to loot, damage, and burn the properties of the Sikh community and to kill Sikhs and burn their bodies. It was stated that, pursuant to this common object, A-2, A-3, A-4, A-6, and one Raja Ram (since deceased) were part of a mob armed with guns, jellies, iron rods, lathis, etc. which attacked the Raj Nagar Gurudwara and set it on fire. Crl.A. 1099/2013 & Connected Matters Page 29 of 203

55. The charge sheet then narrated how the mob went on to burn the houses and vehicles belonging to the Sikh community. Referring to the killing of Nirmal Singh, the charge sheet stated that he was caught hold of by A-2, A- 3, and A-6 and taken near the shop of Dhanraj where he was assaulted by a mob which included A-4 and then burnt alive after being doused in kerosene oil.

56. The charge sheet then described the killing of Kehar Singh and his son Gurdeep Singh on 1st November 1984 by an unlawful assembly led by A-2, Maha Singh, Santosh Rani @ Janta Hawaldarni, Ishwar Chand @ Chand Sarabi (since deceased), and Dharamveer Singh (since deceased). The charge sheet then

stated, as spoken to by PW-6, that A-1 arrived at Raj Nagar, in pursuance of the aforementioned common object, at around 10- 11 pm on 1st November 1984 and instigated the mob by exhorting them to not allow any Sikh to go alive and to not spare even Hindus who were providing shelter to Sikhs.

57. The charge sheet also stated that after A-1 left, the mob looted household articles from the house of PW-6 and set it on fire. It also mentioned the subsequent attack on the house of DW-2 where the three deceased, Raghuvinder Singh, Narender Pal Singh, and Kuldeep Singh, had taken shelter.

58. The charge sheet then referred to their murders on 2nd November 1984 by a mob comprising A-4, A-5, Dharamveer (since deceased), and Balidan Singh (since deceased). It is mentioned that this was witnessed by PW-1. Crl.A. 1099/2013 & Connected Matters Page 30 of 203 She also was a witness to A-1 addressing a meeting of his followers at around 10 am on 2nd November 1984 near police post (PP) Manglapuri Mandir, exhorting them to not leave any Sikh alive and to kill even those who had given shelter to them. It is further stated that this fact was corroborated by PW-10. Thereafter, the following conclusions were recorded in the chargesheet: the the harmony between 16.14 The investigation further established that provocative speeches, with common object as aforesaid, made by Sajjan Kumar (A-1) to the mob gathered in Raj Nagar area, promoted immediate and violent enmity amongst the public against Sikhs and disturbed two religious groups/communities of the locality resulting into killing of Sikhs and burning/looting of their houses/properties. Thus, Sajjan Kumar (A-1) instigated the mob and other accused persons including Balwan Khokhar (A-2), Mahender Yadav (A-3), Maha Singh (A-4), Baghmal (A-5), Santosh Rani Janta Hawaldarni (A-6), Girdhari Lal (A-7), Krishan Khokhar (A-8), lshwar Chand Gaur @ Chand Sharabi (since expired), Balidan Singh (since expired), Dharamveer Singh (since expired), Raja Ram (since expired) and other unknown persons formed an unlawful assembly armed with deadly weapons like iron rods, lathis, kerosene oil, etc. for the purpose of committing various criminal acts of murder, dacoity and destruction of the property of Sikh Community. The said unlawful assembly also defiled the Gurudwara in Raj Nagar area with intention to insult the religion of Sikh community. The trial Courts judgment 59. Subsequently, charges were framed by the trial Court on 24th May

2010 in the manner referred to hereinabove. The examination of prosecution witnesses commenced with the examination-in-chief of PW-1 on 1st July 2010. Among the 17 witnesses examined by the prosecution were Additional Superintendent of Police (Addl. SP) Manoj Pangarkar (PW- Crl.A. 1099/2013 & Connected Matters Page 31 of 203

15) of the CBI and Deputy Superintendent of Police (Dy. SP) Anil Kumar Yadav (PW-17) of the CBI who prepared the charge sheet. The two Metropolitan Magistrates (MMs) who recorded the statements of PWs 1, 6, 7, and 10 under Section 164 Cr PC were examined as PWs 13 and 14.

60. The statements of the accused under Section 313 Cr PC were recorded and reference to these shall be made subsequently when this Court considers each of the appeals of the accused independently. In all, 17 defence witnesses were examined. Their depositions will be discussed along with the individual cases of the accused on behalf of whom they were examined.

61. In the impugned judgment dated 30th April 2013, the trial Court came to the following conclusions: (i) Judicial notice could be taken from the Justice Nanavati Commission report of the fact that there were as many as 341 killings in the Delhi Cantonment area and five of those killings form the subject matter of the present case. (ii) From the Daily Diary Register (DDR) (Ex. PW-16/A) maintained at Police Post (PP) Palam Colony, it appeared that not a single incident of any killing or any property destroyed was recorded by the police. The police appeared to be privy to the incident of rioting and remained a silent spectator. (iii) The police arrived at the Raj Nagar Gurudwara and disarmed the Sikhs of their kirpans and soon thereafter the mob again arrived there. There was no reason to disbelieve the testimony of PW-7 on Crl.A. 1099/2013 & Connected Matters Page 32 of 203 this point, which reflects a serious lapse on the part of the police entrusted with the law enforcement duty. (iv) Although the mandate of the law was that each incident of crime has to be separately registered by the police and then investigated, it appears that all complaints were clubbed in FIR No.416/1984 registered on 4th November 1984 at PS Delhi Cantonment. (v) The intention of the police was clear from the cyclostyled report (Ex.PW-1/D) which was submitted to the SHO by PW-1

in which the claim on account of the assessed damage to the house was stated as Rs.45,000/- and to the household articles was stated as Rs.1,25,000/-. It appeared as though the police had convinced victims that the killing of their family members was merely an opportunity to bargain for monetary relief. This was another reflection of the polices total inaction. (vi) Balwinder Singh (PW-4) had submitted two reports dated 12th November 1984 (Ex.PW-4/A & B) to the SHO of PS Delhi Cantonment about the killing of his two brothers Raghuvinder Singh and Narender Pal Singh as well as the killing of Kuldeep Singh. Specific mention was made in these reports of A-4, A-5, Balidan Singh, Dharamveer Singh, Ashok, and Chand. However, no FIR was registered in this regard. (vii) The evidence of PWs 1, 6, and 10 had to be appreciated in the peculiar background of no action being taken by the police in FIR No.416/1984 or in respect of the numerous complaints that had been clubbed with it. (viii) The evidence of PW-1 was most natural and without exaggeration or Crl.A. 1099/2013 & Connected Matters Page 33 of 203 falsehood. There was no inconsistency in the narration of facts by PW-1 in her affidavit before the Justice Ranganath Misra Commission as well as what she had deposed in the Court. There was a ring of truth to the testimony of PW-1 when she spoke about witnessing the assault on her husband and son which resulted in their deaths on 1st November 1984. Her testimony was corroborated by that of PWs 3 and 6. PW-1 identified A-2 along with others as being members of the mob which killed her husband and son. There was no reason why she would substitute the assailants names which also appear in Ex.PW-4/A&B which were given to the police on 3rd November 1984. (ix) There was also no reason to disbelieve the testimony of PW-1 that she herself performed the cremation of her husband and son on 3rd November 1984 by preparing the funeral pyre using furniture and household articles available in the house. Her evidence proved that A-2 was part of the rioting mob and had committed the murder of her husband Kehar Singh and son Gurpreet Singh. PW-1 was also believable with regard to her eye witness account of murder of her cousins Narender Pal Singh, Raghuvinder Singh, and Kuldeep Singh. She named A-4 and A-5 along with others as being members of the mob which killed them. Her evidence that Narender Pal Singh was assaulted and killed by the mob was corroborated by PW-3. (x) The charges of rioting against the accused stood proved when examined in light of the testimonies of PWs 7 and 10

as well as Manjit Singh (PW-12). It was concluded: Crl.A. 1099/2013 & Connected Matters Page 34 of 203 It is a matter of fact that Sardar Nirmal Singh taken away by accused persons from that place was later on found murdered but then that criminal offence of murder of Nirmal Singh stood tried separately as FIR41684 wherein present case witness PW10 Nirpreet Kaur daughter of Nirmal Singh and Smt. Sampuran Kaur wife of Nirmal Singh had been cited as eyewitness and that trial ended by an order of acquittal and admittedly Nirpreet Kaur and Sampuran Kaur shad not been examined in that trial and that acquittal judgement had been passed in 1986 itself. Testimony of PW7 is acceptable to the extent and effect of the rioting mob appeared near Gurudwara on 02.11.1984 and accused of the present case namely Bhagmal, Balwan Khokar, Krishan Khokar and Mahender Yadav were part of that rioting mob and mob was armed with weapons, lathis, and sarias. (xi) However, there were reservations in accepting and believing the testimony of PW-7 with respect to the attack on the Raj Nagar Gurudwara since no evidence was available as to what extent that burning damage to the Gurudwara had occurred. There was also no further evidence as to whether the truck of Harbans Singh was set on fire by the mob on that occasion. The evidence of PW-7 was held to have been corroborated by PW-10.It was concluded that: there was a rioting mob and it was armed with weapons like lathis and rods and they did indulge in violence. Accordingly I find these accused persons namely Balwan Khokar, Krishan Khokar, Mahender Yadav and Captain Bhagmal are liable to be convicted for offences of rioting and the unlawful assembly of those rioters armed with deadly weapons and this offence committed by accused on 01.11.1984 at around 7.30 pm near Gurudwara Rajnagar stands duly proved and these four accused persons are liable to be convicted u/S147and 148 IPC. Crl.A. 1099/2013 & Connected Matters Page 35 of 203 (xii) As regards the specific role of A-1, the contention of the defence that the averment in the second page of the affidavit of PW-1 (Ex.PW-1/B) attributing specific words spoken by A-1 at Mandir Manglapuri on the morning of 2nd November 1984 appeared to be manipulated when seen in the context of her statement (Ex.PW-1/C) made on 8th January 2002 was not to be brushed aside. Her statement suggested that the information concerning A-1 was based on hearsay. (xiii) If indeed PW-1 witnessed A-1 speaking those words, then in the first instance before the Justice Nanavati Commission, she would have

disclosed it. If A-1 was involved in the incident, then in the report submitted by PW-4 to the police on 12th November 1984, his role ought to have been mentioned. (xiv) The deposition of PW-6 in the Court was an improvement on his statement under Section 161 Cr PC in which he had not specifically stated that he came out of the house of PW-3 and happened to see and hear A-1. It was for the first time, after 23 years, that PW-6 named A-1. Therefore, there was a serious doubt as to the veracity of PW-6 as regards A-1s role. (xv) Even PW-10 named A-1 for the first time after a long period in her statement under Section 161 Cr PC which was recorded some time in 2007. When her statement initially was recorded in 1985, she had not named A-1 at all. (xvi) Apart from conspiring and abetting, no other act or role had been attributed to A-1. In her affidavit before the Justice Ranganath Misra Commission, PW-1 did not mention A-1 in any manner, although the Crl.A. 1099/2013 & Connected Matters Page 36 of 203 other accused had been named. In the circumstances, the testimony of PW-1 that she had heard and seen A-1 addressing a gathering with provocative and instigating utterances was not acceptable and believable.

62. After recording the aforementioned findings in its judgment, the trial Court proceeded to acquit A-1 of all charges while convicting the other accused, i.e. A-2 to A-6, in the manner indicated hereinbefore. The convicted accused were sentenced in terms of the order on sentence dated 9th May 2013 in the manner indicated hereinbefore. Appeals against the acquittal of A-1 63. At the outset, this Court notes that the following order was passed by this Court on 27th August 2013 in Crl.A.850/2013 which was preferred by PW-1 against the impugned judgment of the trial Court to the extent it acquitted A-1 of all charges: Learned senior counsel for the appellants submits that he has instructions to withdraw the present appeal in case the appellants are permitted to address arguments in the appeal filed by the State and also permitted to raise the grounds of appeal as mentioned in the present appeal. It may be noticed that by a separate order passed in Criminal Leave to Appeal No.385/2013 filed by the State, this court has granted leave to appeal to the appellant / State. Accordingly, present appeal is dismissed as withdrawn, with the following agreed directions: (i) Appellants would be entitled to be represented before this court at the time of hearing of the appeal filed by the State and would be entitled to raise all grounds which have been raised in the

present appeal. Crl.A. 1099/2013 & Connected Matters Page 37 of 203 (ii) A copy of the grounds of appeal will be tagged with Criminal Appeal filed by the State, which is yet to be registered. (iii) All grounds urged instant appeal bearing Crl.A.850/2013 will be considered by the Court at the time of hearing of the appeal filed by the State. in the (iv) LCR and compilation of this case be tagged with the appeal filed by the State. 64. Consequently, this Court has heard the submissions of Mr. H. S. Phoolka, learned Senior Counsel appearing on behalf of PW-1 in the appeal of CBI against the acquittal of A-1. Prosecutions submissions as regards A-1 65. The Court would first like to deal with the appeal filed by the CBI against the acquittal of A-1 in which arguments have been addressed at length by Mr. R. S. Cheema, learned Senior Counsel appearing on behalf of the CBI. He pointed out that the case had to be appreciated in the overall context of the number of killings that took place in the capital city when riots broke out on 31st October 1984 in the aftermath of Smt. Indira Gandhis assassination and continued till at least 4th November 1984 in which thousands of Sikhs were murdered and their properties, and places of worship, destroyed.

66. The very first FIR No.416/1984 was registered on a complaint by one Daljit Kaur for rioting and burning of the house and beating and burning of her husband Avtar Singh at Raj Nagar, Palam Colony by a mob on 2nd November 1984. Just in Delhi Cantonment area alone, a total of 21 FIRs were registered. In FIR No.416/1984 itself, 22 other complaints were Crl.A. 1099/2013 & Connected Matters Page 38 of 203 tagged and these pertained to 30 murders. Of the 341 people killed in the Delhi Cantonment area which resulted in the registration of 21 FIRs, four of them related to Raj Nagar. Only five dead bodies were recovered and this was primarily due to the intervention of the Army. Therefore, post-mortem examinations were conducted only in those five instances.

67. Although 341 Sikhs were killed in the Delhi Cantonment area, in the 21 FIRs registered at PS Delhi Cantonment, only 15 pertained to deaths and murders. He pointed out that, in the first phase, Delhi Police had hardly investigated these cases. In 1992, a Riots Cell was constituted by the Delhi Police. In the second phase of investigation, a conscious attempt was made to nullify the affidavit of PW-1. He submitted that these efforts have been detailed in the testimonies of

PWs 15 and 17.

68. Referring to the strange situation where separate cases were not registered for each of the murders, Mr. Cheema submitted that the police completely failed in its duty to act in accordance with law. Referring to Section 157 Cr PC, he submitted that even if no person came forward to give a complaint, the SHO in-charge of the PS would have to register a complaint himself. In this regard, he referred to Section 157 (1) Cr PC which begins with the words If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence. There was a further obligation upon said officer to send a report to a jurisdictional Magistrate. He made reference to the observations of the Supreme Court in Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC1 Crl.A. 1099/2013 & Connected Matters Page 39 of 203 69. Mr. Cheema then discussed the statements of PW-1 made at various stages. According to him, she was a woman of extraordinary courage who made repeated attempts to report the matter to the appropriate authorities even while exposing herself to palpable risk. She had no faith in the Delhi Police and, from her point of view, there was no purpose in her pursuing or asking for justice from a police force which had connived with the accused.

70. Mr. Cheema submitted that she was a woman with an extraordinary memory. She was subjected to a long cross-examination running into 78 pages. According to Mr. Cheema, an objective evaluation of her testimony showed that, despite the traumatising events and the long shadow of post- riots existence, she could still recall the events with precision and this made her a wholly reliable witness. Mr. Cheema pointed out that in the events leading to the deaths of her husband Kehar Singh and her son Gurpreet Singh, she only named A-2, out of the six accused facing trial, as being present in the mob. Even in the events of 2nd November 1984, she named A-4 and A-5 as being members of the mob that killed Narender Pal Singh, Raghuvinder Singh, and Kuldeep Singh. She had no motive for false implication and there was no possibility of any mistaken identity.

71. Mr. Cheema also pointed out that there was no effective challenge to her status as an eye witness. She has been cross-examined extensively on account of

the delay and had given truthful and convincing details. She had explained in her examination-in-chief on 2nd July 2010 as to what had happened when she reached the PP on 3rd November 1984. Despite a searching cross-examination, she consistently maintained having made that Crl.A. 1099/2013 & Connected Matters Page 40 of 203 statement. The fact of her giving a complaint dated 3rd November 2004 was spoken to by her before the Justice Nanavati Commission. This was acknowledged by even the counsel for Delhi Police present at the time her statement was being recorded before the Justice Nanavati Commission. The depositions of PWs 15 and 17 also corroborated her testimony with regard to the statement dated 3rd November 1984.

72. Mr. Cheema referred to the deposition of Head Constable (HC) Rajender Singh (PW-16), one of the two officials at the PP Palam Colony who was responsible for maintenance of the DDR. He proved the contents of the DDR for the period between 24th/25th September 1984 and 6th/7th November 1984 exhibited as Ex.PW-16/A. In this entire register pertaining to said period, not a single report of any untoward incident had been recorded. When at least 30 persons were killed in the area and their killings formed the subject matter of FIR No.416/1984, the silence of the DDR on these details was shockingly revealing. Therefore, there was no question of PW-1s statement being incorporated in the said register.

73. The prosecution proved each of the entries in Ex.PW-16/A. Mr. Cheema invited attention to entry Ex.PW-16/F-18 dated 3rd November 1984 which showed that a Sub Inspector (SI), the author of the entry, had returned from Safdarjung Hospital on his official motorcycle having recorded the statements of Sardar Singh and Sarjit Singh in the said hospital. It was recorded that, on 1st November 1984, some persons had injured them in a quarrel. He referred to another Entry No.24 (Ex.PW- 16/G-24) dated 4th November 1984, recorded at 10:30 pm which gave Crl.A. 1099/2013 & Connected Matters Page 41 of 203 details as to what transpired in the house of PW-3, as noted by SI Ram Niwas. According to him, the DDR showed that the police personnel were regularly going to the affected area, but intentionally did not report any untoward incident. A meaningful look at the entries, according to him, would show that in view of the disturbed condition, apart

from the local police, other forces, including the RAC, had been requisitioned.

74. Mr. Cheema further pointed out that PW-1 had denied having made the statement dated 20th January 1985 (Ex.DW-4/B) which was purportedly recorded by SI Arjun Singh and proved through ACP Ashok Kumar Saxena (Retd.) (DW-4). Mr. Cheema pointed out that PW-1 was not even in Delhi at that time and she had, in fact, given details as to her place of residence from 12th December 1984 to November 1988. Even before the Justice Nanavati Commission, she had stated that she had moved to Amritsar on 12th December 1984. Mr. Cheema pointed out that even PW-15 took a forthright stand that the said statement was not proved and the veracity thereof was doubtful. According to him, a reading of the Hindi version showed that it had been tailor-made to screen the offenders. It indicated that the assailants had entered by breaking the rear wall of the house and it was silent about the murder of the three cousins of PW-1.

75. Turning to the purported statement of PW-1 dated 31st December 1992 (Ex. DW-16/A) which was recorded by the late Inspector B. D. Tyagi of the Riot Cell, he pointed out that this again was denied by PW-1. The evidence of PW-17 showed that the notice to PW-1 for recording her statement was received by the SSP, Amritsar on 31st December 1992, but could not be Crl.A. 1099/2013 & Connected Matters Page 42 of 203 served upon her for want of an address. Therefore, there was no question of her suddenly appearing voluntarily before the Riot Cell officer. Even SI Man Chand (DW-16) knew nothing as to when the said statement came into existence. DW-16 also admitted that the statements of female witnesses are not recorded at the PS but, as a matter of practice, at their places of residence. From the DDR also, DW-16 was unable to deny that there was no entry therein regarding the arrival and departure of PW-1 in the Riots Cell on 31st December 1992. Mr. Cheema also referred to numerous infirmities in the said document, which will be discussed hereinafter in this judgment.

76. Mr. Cheema further pointed out that, as regards the writings on the two summonses (Ex.PW-1/DX & DY) under Section 160 Cr PC, PW-1 denied the genuineness of the writings above her signatures on each document. She denied having given any dictation and also asserted that the Hindi writing was not that of

her daughter (in Ex.PW-1/DX) or her son (in Ex.PW-1/DY). She clarified that her signatures were obtained only on the summonses without any endorsements being made thereon. Mr. Cheema also referred to the cross-examination of Inspector Sushil Kumar (DW-15) to buttress the above submissions that the entire document was manipulated.

77. Mr. Cheema pointed out that, as regards the statement before the Justice Ranganath Misra Commission, PW-1 had explained that she made her statement in Punjabi and the contents thereof were also recorded in Punjabi but that the person again came with the purported English translation of the same which she signed, believing that the contents were the same. In other Crl.A. 1099/2013 & Connected Matters Page 43 of 203 words, the English translation was not read over and explained to her and she signed it in good faith. She claimed that she had named A-1 in the said affidavit.

78. Mr. Cheema submitted that that this affidavit (Ex.PW-1/A) could not be equated with a statement made to an investigator. It had been drawn up keeping in view the broad and general terms of reference of the Justice Ranganath Misra Commission. Even the translation of the affidavit was very casual and there were sequential mis-arrangements. He referred to the decision in Manohar Lal v. NCT of Delhi (2000) 2 SCC92and submitted that the principles of interpretation enunciated therein are to be adopted in such situations.

79. Referring to the affidavit of PW-1 before the Justice Nanavati Commission (Ex.PW-1/B), Mr. Cheema submitted that, when read as a whole, there is no contradiction in its contents pointing to A-1 leading the mob and providing leadership. He pointed out that, as per the explanation proffered by PW-1, the structure of the affidavit was laid by Government officials who contacted the witnesses and told them to be brief and not to repeat or reiterate what they had earlier stated before the Justice Ranganath Misra Commission.

80. Mr. Cheema stated that the trial Court Judge had by and large accepted the truthfulness and reliability of the deposition of PW-1 when it came to the roles of A-2 to A-6. However, in relation to her testimony on the role of A-1, the learned trial Court Judge had given a rather stray finding and had arbitrarily rejected her

testimony. The learned trial Court gave no reasoning Crl.A. 1099/2013 & Connected Matters Page 44 of 203 to come to the conclusion that page 2, para 9 of her affidavit (Ex.PW-1/B) was manipulated especially since the contents of the said affidavit are reproduced in the report of the Justice Nanavati Commission. There was also no confrontation of PW-1 on this aspect.

81. The observation of the trial Court that PW-1 was taken in a military vehicle was based on the testimony of PW-3, who was in fact a hostile witness and had intentionally twisted his statement so as to ensure that PW- 1 could not be made an eye witness. He submits that it was overlooked by the trial Court that DW-1 was a tutored witness who was made to speak of wholly contradictory timings, i.e. claiming that PW-1 was removed to safety before 8 am.

82. Mr. Cheema concluded his submissions on PW-1 by submitting that the testimony of PW-1 was wholly reliable. He argued that the trial Court had erred in disbelieving her as regards the role of A-1. Mr. Cheema also discussed the trial Courts findings and made his own submissions on the testimonies of PWs 3, 4, 6, 7, 9, 10, and 12. Their testimonies will be discussed hereinafter in this judgment. Complainants submissions as regards A-1 83. Mr. H. S. Phoolka, learned Senior Counsel appearing for PW-1, supplemented the above submissions by pointing out that A-1 always been in a position of influence since 1984 and all attempts to prosecute him have been blatantly thwarted. He pointed out how, in the evidence of Inspector R. K. Jha (DW-10), it was admitted that there were 11-12 affidavits given by the victims in 1984-85 in which the name of A-1 also figured and that, Crl.A. 1099/2013 & Connected Matters Page 45 of 203 even besides these, there were innumerable affidavits. Mr. Phoolka pointed out various instances of the attempts by A-1 to subvert the criminal justice system in order to avoid being brought to book.

84. He then referred to the decision of this Court in Sajjan Kumar v. State 43 (1991) DLT88where, while affirming the anticipatory bail granted to him in an FIR under Section 302 IPC in connection with his role in the riots, the learned Single Judge took note of the fact that when the CBI proceeded to the residence of A-1 to arrest him in 1990, the jeeps of the CBI were burnt and the CBI officers were kept

hostage in his house. According to Mr. Phoolka, the said judgment threw light on the immense influence, political clout, and criminal mindset of A-1 not only in being a mastermind of the brutal killings in 1984 but even for years thereafter in threatening and assaulting law enforcement officers investigating him. According to Mr. Phoolka, in such circumstances, it was unfair to place the entire onus on the witnesses and victims to come forward to speak against A-1 without affording them any protection. He further pointed out that at the time of the aforementioned incident, the party to which A-1 belonged was not in power and yet, he was so influential that no one could dare to take him into custody for questioning.

85. He next pointed out that in the investigation in FIR No.67/1987 registered at PS Nangloi, the statement of one Gurbachan Singh was recorded in which A-1 had been named. He also stated that Gurbachan Singh had also tendered two affidavits dated 4th and 9th September 1985 before the Justice Ranganath Misra Commission and in both affidavits he Crl.A. 1099/2013 & Connected Matters Page 46 of 203 had named A-1. However, the police recommended the filing of the closure report. The prosecution branch disagreed and recommended the filing of the charge sheet. The police registered a separate case on the basis of the affidavit of Gurbachan Singh and registered it as FIR No.491/1991.

86. In view of the opinion of the prosecution branch, the police prepared a charge sheet naming A-1 as an accused but it was never filed. The police then decided to club other charge sheets with FIR No.491/1991. Subsequently, the police dropped the name of A-1 and filed the charge sheet naming the other accused persons. The charge sheet in FIR No.67/1987 was tagged with this and A-1 was never made an accused.

87. The third instance pointed out by Mr. Phoolka is in the year 2010, when this Court appointed a Special Public Prosecutor in a case titled State v. Satpal Gupta. The SPP found the challan in FIR No.67/1987 lying in the police files and moved an application before this Court for clarification since A-1, although named in that challan, was not summoned. According to Mr. Phoolka, a challan simply lying in the file since 1995 without arraying the accused was unheard of in the criminal justice system. He pointed out that a learned Additional Sessions Judge (ASJ) had

passed an order holding that FIR No.67/1987 could not have been clubbed with the case of State v. Satpal Gupta and that A-1 could not be summoned and tried in the said case. The learned ASJ directed the police to deal with the challan in FIR No.67/1987 in accordance with law. Nevertheless, till date, the said challan had not been filed in Court.

88. Mr. Phoolka further pointed out that these aforementioned facts find Crl.A. 1099/2013 & Connected Matters Page 47 of 203 mention in orders dated 23rd October 2010 and 4th June 2011 passed by the learned District & Sessions Judge (D&SJ), Rohini District Courts. The case ultimately was decided by the D&SJ by a judgment dated 20th September 2014, acquitting the accused. An appeal thereagainst, being Crl.A.255/2016 (State v. Satpal Gupta), is presently pending before this Court.

89. The fourth example given by Mr. Phoolka is that in 2005, when the Justice Nanavati Commission recommended the registration of cases against A-1 and another leader of the Congress Party, viz. Jagdish Tytler, the Government of India informed Parliament that it had rejected said recommendation of the Justice Nanavati Commission. The functioning of both Houses of Parliament got stalled for about three days due to protests by members of the Opposition. Only thereafter did the Central Government agree to register the case.

90. Mr. Phoolka stressed that given the influence of A-1 and the impunity with which he has conducted himself since 1984, witnesses or victims could not be reasonably expected to risk their lives and those of their loved ones unless assured of their safety and of action taken on their complaints in accordance with law. Witness protection according to Mr. Phoolka was absolutely essential and the failure to provide this was the main reason for the delay in witnesses coming forward to speak the truth. When they were approached for the first time in 2006, at the earliest possible instance, they confidently named A-1. He referred to the observations of the Supreme Court in this regard in Prithipal Singh v. State of Punjab (2012) 1 SCC10 Crl.A. 1099/2013 & Connected Matters Page 48 of 203 He also referred to the observations in Jaswantbhai Chaturbhai Nai v. State of Gujarat 2017 (3) Bom CR (Cri.) 322 (Bilkis Bano).

91. He further submitted that the onus to prosecute an accused in instances of crimes against humanity, where thousands have been brutally murdered and there has been a complete break-down of civil administration, has to be entirely on the State and not on the victim. Reference in this regard was made to the decision of the Supreme Court in Dinubhai Boghabhai Solanki v. State of Gujarat (2018) 11 SCC129 92. Mr. Phoolka also referred to the decisions of foreign courts and tribunals in such cases where statements made by witnesses have been believed notwithstanding their failure to name the perpetrators of such atrocities in earlier statements. By doing this, he submits, witnesses were given confidence to speak to offences committed and against the perpetrators of such crimes. Specific reference is made to the decision of the Supreme Court of Bangladesh in Government of the Peoples Republic of Bangladesh v. Abdul Quader Molla LEX/BDAD/0004/2013 which pertained to the mass killings of Bangaldeshi citizens committed in 1971 by sympathisers of the Pakistan Army. Reference is also made to the decision of the Court of Appeal of the United Kingdom in the matter of Anthony Sawoniuk [2000]. 2 CR.APP.R.220.

93. Mr. Phoolka further pointed out how, this Courts decision in Sajjan Kumar v. Central Bureau of Investigation 171 (2010) DLT120which was affirmed by the Supreme Court in Sajjan Kumar v. State (2010) 9 SCC368 upheld the order framing charges against A-1 in the present case. Crl.A. 1099/2013 & Connected Matters Page 49 of 203 94. Mr. Phoolka submitted that it is unfortunate that not even a single non- victim had come forward to speak even though the killings had taken place in broad daylight. He attributes this conspicuous anomaly to the fear of people who feel that by speaking the truth, they would put the lives of their family members and themselves in imminent danger. He specifically pointed out at least five persons who sheltered and rescued the victims during the violence, later turned hostile and were non-supportive of the prosecutions case. Four of them, in fact, deposed as witnesses for the defence which, he submitted, illustrated unequivocally the magnitude of the influence and power exercised by the accused. He also pointed out that Baldev Khanna (DW-8) was a saviour but then appeared for the accused as a witness. Even Chajju Ram (DW-9), a former Constable of the Delhi Police, deposed in the manner tutored by the defence.

95. Mr. Phoolka concluded his submissions by stating that no extent of lapse of time can absolve the State and the Courts of their duty towards the victims and to humanity. Submissions on behalf of A-1 96. Mr. Amit Sibal, learned Senior Counsel appearing on behalf of A-1, began his arguments by submitting that it was no ones case that the riots of 1984 did not take place or that the riots were not a monumental national tragedy. He stated that his attempt before the Court was merely to show that A-1 was not involved in the five killings which form the subject matter of these appeals. According to him, the fact that A-1 even had to face trial was the result of an unjust investigation and blatant targeting by the CBI. Crl.A. 1099/2013 & Connected Matters Page 50 of 203 97. Mr. Sibal first addressed the recommendations of the Justice Nanavati Commission as set out in the letter dated 24th October 2005 of the MHA to the CBI asking them to reinvestigate the cases involving A-1. In subsequently filing an application (Ex.PW-15/DA) for grant of permission for further investigation in the matter, the CBI concealed the fact of the outcome of the earlier investigation and most importantly that the closure report sent in FIR No.416/1984 was still pending consideration by the concerned Metropolitan Magistrate (MM) before whom it was filed. He submitted that this was done because permission to conduct further investigation would not have been given by the learned District Judge had it been known that the case was pending before the learned MM at Patiala House Courts who would have been the competent authority to order the investigating agency to further substantiate the charge sheet.

98. Mr. Sibal submitted that A-1s case was not covered within the purview of the recommendations of the Justice Nanavati Commission. He pointed out that the Commission recommended that only those cases where the witnesses had accused A-1 specifically and yet no charge sheet was filed should be examined. The other category mentioned was the cases that were terminated as untraced. He submitted that the present case against A-1 did not fall under either category with A-1 not being named in the FIR registered at PS Delhi Cantonment from which the present case arose nor was the case terminated as untraced.

99. While referring to the Action Taken Report (Ex.DW-14/A), Mr. Sibal classified the accused persons into two categories: those who had been Crl.A. 1099/2013 &

Connected Matters Page 51 of 203 named from the beginning but the cases were sent for closure due to lack of evidence and those who were named only after the constitution of the Justice Nanavati Commission in 2000. He submitted that A-1 belonged to the second category with his name being mentioned for the first time in the affidavit of PW-1 (Ex.PW-1/B) before the Commission.

100. Mr. Sibal referred to the cross-examination of PW-15, who admitted that the record prior to 2000 did not find mention of A-1. Even PW-17 admitted that none of the complainants prior to 2000 had alleged the complicity of A-1. In sum, Mr. Sibal submitted that had the prosecution placed on record the entire record of investigation conducted by earlier agencies, there would have been no proceedings instituted against A-1.

101. Mr. Sibal further argued that even if this was considered a supplementary investigation, it did not have the effect of wiping out, directly or indirectly, the initial investigation. Therefore, the entire record of the Delhi Police and the Riot Cell as well as the closure report filed by the Riot Cell and the documents filed along with the closure report had to be considered. Reliance in this regard was placed on the decision in Vinay Tyagi v. Irshad Ali (2013) 5 SCC762 According to Mr. Sibal, the CBI was in possession of the entire record but had deliberately not placed it along with the charge sheet for judicial scrutiny. The charge sheet was silent on what happened in the period intervening 1984 and 2010 and why the subject matter of the present case was not sent for trial during that time.

102. Mr. Sibal then argued that the CBI had targeted the accused persons from the very beginning and, despite having the entire record, tried to Crl.A. 1099/2013 & Connected Matters Page 52 of 203 present a picture as though no investigation had taken place till the CBI took over the investigation in 2005. He submitted that pursuant to the recommendations of the Jain-Banerjee Committee the case was indeed investigated by the Delhi Police. The constitution of the Jain-Banerjee Committee was successfully challenged in Brahma Nand Gupta v. Delhi Administration (1990) ILR2Del 72.

103. Mr. Sibal then pointed out that an application was filed on 2nd December 2015 (Ex.PW-15/DA) for grant of permission to conduct further investigation. This,

he argued, clearly indicates that investigation had been conducted earlier in that case. Further, it is his submission that although the CBI had argued that the closure report was bogus, mala fide, a sham and fraudulent and that the Riot Cell had no reason to file the closure report, the charge sheet made no such allegation. He submitted that the closure report was filed by the Riot Cell due to the non-cooperation of PW-1, who refused to join the investigation.

104. Mr. Sibal further pointed out that the case was then re-opened on the basis of a letter dated 25th January 2002 from the Delhi Gurudwara Parbandhak Committee (DGPC) to the then Lieutenant Governor of Delhi (LG of Delhi) as PW-1 was available and wanted the case to be investigated. Pursuant thereto, Inspector Sunil Kumar Vashisht (DW-15) was entrusted with further investigation. He summoned PW-1 on several dates but she did not respond. DW-15 then personally went to Amristar on 13th January 2003 for recording of her statement but she refused to join the investigation and gave in writing through her daughter Gurjeet Kaur in Crl.A. 1099/2013 & Connected Matters Page 53 of 203 Hindi that she did not wish to join the investigation and that she could not identify anyone. PW-1 had voluntarily signed the statement that she was not making any statement under pressure.

105. Mr. Sibal submitted that Inspector Rakesh (DW-17) also made efforts to get PW-1 to join the investigation but she again gave in writing through her son Gurdeep Singh that she was ill and could not appear before the Court. He submitted that, as per the endorsement in Hindi, she had stated that she could not identify any person involved after 20-21 years nor could she join investigation. It was in those circumstances that a closure report was filed. Information of the filing of the closure report was sent to her but she did not file any protest petition. The closure report was finally accepted by the learned MM on 31st July 2008.

106. Mr. Sibal submitted that the FIR was re-registered with the CBI on 22nd November 2005 whereas the aforementioned closure report was filed on 14th September 2005. It was his submission that the CBI did not ask the Riot Cell not to proceed with the closure report. He also referred to a letter dated 28th July 2008 from the Riot Cell to the CBI.

107. On the question of registration of FIR in the Delhi Cantonment area, it is submitted that FIRs are normally registered at the Police Station (PS) and not at the Police Post (PP). According to Mr. Sibal, the Roznamcha A of PS Delhi Cantonment was deliberately not placed on record. He pointed out that the register maintained at a PS is Register A whereas the register maintained at a PP is Register B. According to him, the record of PS Delhi Cantonment very clearly demonstrated that FIRs were registered on the first Crl.A. 1099/2013 & Connected Matters Page 54 of 203 day of the occurrence. He submitted that while it might be true that there was no immediate action taken, CBI was not justified in alleging that the FIR was registered only on 4th November 1984. The SPP for the CBI had also submitted the list of FIRs registered on various dates and it showed that there were at least five FIRs registered on 1st November 1984 and one on 2nd November 1984.

108. Mr. Sibal then focused on the charges framed against A-1 and pointed out that two of those charges, i.e. the first and second articles of charge, refer to the date of entering into the alleged conspiracy as 31st October 1984 but no evidence had been adduced in that regard. There was no such allegation in the charge sheet and no evidence was led before the trial Court. Specifically, his submission was as under: No role, either direct or indirect, has been assigned to the respondent no.1 of his involvement with other co-accused. There is no allegation of his having any connections or concern with the other co-accused in respect of that riot. In the charge sheet it is not alleged at all that all the aforesaid acts were done in pursuance of the aforesaid agreement. No role is assigned to any of the accused. 109. Mr. Sibal argued that if no untoward incident occurred on 31st October 1984 according to the witnesses and PWs 7, 9, and 12, who are purported witnesses to the conspiracy, categorically state that A-1 was not there, no such conspiracy can be deduced. Relying on the decision in Badri Rai v. State of Bihar AIR 1958 SC953 Mr. Sibal submitted that in the present case, the charge of conspiracy was not proved in terms of Section Crl.A. 1099/2013 & Connected Matters Page 55 of 203 10 Indian Evidence Act 1872 (IEA).

110. Likewise, the second charge named A-1 as the principal abettor and charged him with having abetted and instigated the co-accused on 31st October 1984. This

charge was framed in continuation of the first charge and again, there was no evidence led in respect thereof.

111. With the fourth article of charge under Section 505 IPC not being pressed for want of sanction, only the third article of charge was left, i.e. on 1st/2nd November 1984, A-1 delivered fiery and provocative speeches to the mob gathered in that area and instigated and promoted violent enmity against the Sikh community and created feelings of enmity and disturbed harmony thereby committing an offence under Section 153A IPC.

112. Mr. Sibal then focused on the evidence of PW-1. He submitted that prior to her appearing before the Justice Nanavati Commission, despite several opportunities to do so, she never named A-1. In fact, prior to her filing the affidavit (Ex.PW-1/B) before the Commission, nobody had named A-1 in relation to the present case. Mr. Sibal discussed the four categories of statements made by PW-1.

113. The first was the complaint given by her on 3rd November 1984 at PP Palam Colony which was not traceable. Mr. Sibal pointed out the references made by her to said complaint in various statements made by her under Sections 161 and 164 Cr PC and submitted that she was constantly changing her statement. This made her testimony wholly unreliable. He also submitted that she was confronted during cross-examination with these Crl.A. 1099/2013 & Connected Matters Page 56 of 203 inconsistencies and thus, it had been demonstrated that the version of the prosecution that the report was entered in the register on 3rd November 1984 and subsequently removed was false. Further, he argued that no clarification was sought from PW-1 as to the contents of said complaint and nothing in that regard emerged from any of her statements under Sections 161 and 164 Cr PC. Further, no notice was given to any authority with regard to said complaint having gone missing.

114. The second category was with regard to statements which were made to the Delhi Police and Riot Cell on 20th January 1985 and 31st December 1992 respectively which subsequently were denied by PW-1. Making reference to various portions of the evidence in this regard, Mr. Sibal maintained that said

statements were genuine and were indeed made by PW-1 in the course of investigations carried out by the Delhi Police and the Riot Cell.

115. The third category of statements were those made before the CoIs constituted in the wake of the riots. Specifically, reference was made to the affidavit filed by PW-1 before the Justice Ranganath Misra Commission (Ex.PW-1/A), the affidavit filed by her before the Justice Nanavati Commission (Ex.PW-1/B), and the statement made by her before the Justice Nanavati Commission (Ex.PW-1/C), all of which, it is pointed out, have been relied upon by the prosecution in the present case and got exhibited through PW-1. On the question of whether such statements can be used to highlight contradictions or impeach the testimony of a witness, reference is made to the decision of this Court in Crl.Rev.P.328/2012 Crl.A. 1099/2013 & Connected Matters Page 57 of 203 (Sajjan Kumar v. Central Bureau of Investigation) in which it was held that A-1 had to be afforded a reasonable opportunity to defend himself by permitting him to confront the witness and other evidence relied upon by the prosecution. This order, it seems, has attained finality with no appeal being filed against it.

116. The fourth category of statements referred to were those recorded by during investigation of the present case. Under this category there were four statements that were recorded, i.e. the statement dated 23rd May 2006 recorded by the CBI under Section 161 Cr PC (Ex.PW-1/DA), the statement dated 10th December 2008 recorded by the MM under Section 164 Cr PC (Ex.PW-1/E), the supplementary statement dated 4th September 2009 (Ex.PW-1/DB), and the supplementary statement dated 11th April 2009 (Ex.PW-17/DB) both recorded by the CBI. It is argued that these statements elicited no response from PW-1 as to the contents of earlier statements made by her with regard to this case to the police or to the affidavits and statements submitted by her before the Justice Ranganath Misra and Justice Nanavati Commissions. It is submitted that the CBI sought to brush the earlier statements under the carpet and instead relied entirely on conjectures at the trial.

117. It is further submitted that even in the complaint/loss form submitted by PW-1 dated 13th November 1984 (Ex.PW-1/D) she did not name any accused. She only

mentioned the loss of life and property. Even as regards A-1, the only allegation was that she saw him addressing the public meeting on 2nd November 1984. Crl.A. 1099/2013 & Connected Matters Page 58 of 203 118. Mr. Sibal then went on to discuss the affidavit sworn by PW-1 before the Justice Ranganath Misra Commission (Ex.PW-1/A). He pointed out that there was no suggestion made therein that any meeting was held in the affected area on 2nd November 1984. Furthermore, he drew attention to the fact that the name of A-1 was not mentioned in any manner whatsoever nor any role, direct or indirect, attributed to him. It is his submission that she gave this statement at a time when the situation in Punjab was under control and she was employed at that time at the stitching/sewing centre run by the Government. She had also stated that she was not scared or under any threat or pressure from any corner whatsoever.

119. Mr. Sibal further submitted that it was only in the affidavit filed before the Justice Nanavati Commission (Ex.PW-1/B) that PW-1 named A-1 for the first time, 15 years after the alleged incident. He submitted that, in this statement, she described the same events with a completely different story. In his submission, if this affidavit was excluded, there would be no case against A-1. No explanation was given for filing this affidavit before the Justice Nanavati Commission when her earlier affidavit before the Justice Ranganath Misra Commission was already under investigation by the Riot Cell.

120. Referring to her statement before the Justice Nanavati Commission (Ex.PW-1/C), Mr. Sibal pointed out that PW-1, on the morning of 2nd November 1984, had gone to the Military Parade Ground and she was taken from there to the PS in a vehicle by DW-1. He pointed out that this is contrary to what she deposed at the trial where she has stated that she went Crl.A. 1099/2013 & Connected Matters Page 59 of 203 to the PS alone. He argued that these were material contradictions and falsified her claim that she was present when the meeting was addressed by A-1.

121. He relied on the deposition of PW-3 who had stated that as he was leaving for the airport with his family members, he had left PW-1 and her children his house but when he saw and Army vehicle approaching, he made them sit in it. He

argued that although this witness was declared hostile by the prosecution, it was unfair to reject his testimony. There was no reason for him to help the defence because he was in fact a prosecution witness. DW-1 himself was a material witness for the prosecution case but could not be produced by the prosecution.

122. Mr. Sibal then pointed to the discrepancy in the times at which PW-1 was rescued as stated by various witnesses, viz. PWs 1, 3, and 6 and DW-1. He argued that even regarding the killing of her three cousins, PW-1 had given different versions of the events. Although she earlier stated in the aforementioned statements before the CoIs that she had witnessed the murders of all three brothers, it emerged from her deposition in the trial that she only witnessed the murder of Narender Pal Singh. This, it is again argued, is a material contradiction which called her testimony into doubt.

123. Mr. Sibal then pointed out that PW-4, who had made the complaint regarding the killing of the three brothers, mentioned the other accused persons but not A-1. As far as PW-6 is concerned, Mr. Sibal submitted that he had never made a statement to the police or any other authority regarding the occurrence. His name had been introduced for the first time Crl.A. 1099/2013 & Connected Matters Page 60 of 203 through the statement of PW-1 dated 23rd May 2006 (Ex.PW-1/DA). The earliest statement of PW-6 on the record is the one made under Section 161 Cr PC dated 7th November 2007 (Ex.PW-6/DA). He also made a statement under Section 164 Cr PC dated 10th December 2008 (Ex.PW-6/A).

124. Mr. Sibal referred to the complaint made by PW-6s father Gurcharan Singh (Ex.DW-4/C) in which no mention is made of the presence of PW-6. According to Gurcharan Singh, the only two persons who witnessed the death of his sons were his daughters-in-law Daljeet Kaur and Harbhajan Kaur. These two were arrayed as prosecution witnesses but were subsequently dropped. It is argued that PW-6 has been introduced belatedly by the CBI to implicate A-1. There was a gap of 1 years between statements of PWs 1 and 6 under Section 161 Cr PC to the CBI.

125. Mr. Sibal submitted that PW-6 contradicted himself while deposing in the trial and was confronted with his previous statement under Section 161 Cr PC where he had stated that when A-1 came he did not emerge from the house of PW-3 nor

did he join the people gathered there whereas in his statement under Section 164 Cr PC, he mentioned that A-1 came in his Ambassador car and after he left, the rioters attacked their house.

126. It is Mr. Sibals contention that there was a material change in the deposition of PW-6 in the Court when compared to his previous statements under Sections 161 and 164 Cr PC. It is submitted that PW-6 was the only witness to speak of seeing A-1 in the locality on the night of 1st November 1984. If indeed this had happened, PW-1 would have spoken about this, since her house was situated nearby. At no point did PW-6 Crl.A. 1099/2013 & Connected Matters Page 61 of 203 mention seeing either PW-1 or her children in the house of PW-3, where he was supposedly taking shelter. If PW-1 had come to the house of PW-3 to drop her children off for safekeeping, it is odd that PW-6 made no mention of this. Reference is also made to the deposition of PW-3 who nowhere admitted to giving shelter to PW-6 in his house.

127. The further submission is that the factum of PW-6 being mona and therefore not identifiable as a Sikh found no mention in the statements of PW-6 under Sections 161 and 164 Cr PC. Reference to this was made for the first time while deposing in the trial. This too made him an unreliable witness. Likewise, his role in bringing DW-1 to rescue PW-1, his bhabhis, and their children was also highly doubtful and improbable.

128. Turning to the deposition of PW-10, Mr. Sibal submitted that she maintained her silence on the matter for 24 years before speaking up when her statement under Section 161 Cr PC dated 5th December 2008 (Ex.PW-10/DA) was recorded by the CBI. Therein, she neither claims that she went to the area with forces provided by Wing Commander L. S. Pannu, nor was there a whisper of any meeting held by A-1. It is argued that, thereafter, in her statement under Section 164 Cr PC dated 21st January 2009 (Ex.PW-1/A), her version was changed to support that of PW-1 so that it may suit the prosecution case. Further, reference is made to an organisation run by PW-10 under the name and style of Justice for Victims and the various responses elicited from her as to her involvement in activism surrounding issues affecting the Sikh community.

129. Mr. Sibal pointed out that although PW-10 stated that her mother Crl.A. 1099/2013 & Connected Matters Page 62 of 203 Sampuran Kaur had not given any statement to the police or any other authority prior to the Justice Nanavati Commission, the record revealed that she and her mother had in fact previously made statements to the police. It was also incredible, according to Mr. Sibal, that despite maintaining good relations with her mother Sampuran Kaur, PW-10 would not have told her about the role of A-1. He also posited that it was difficult to believe that someone as educated as PW-10 would name A-1 for the first time 24 years after the incident. Reliance was placed on the decision in Abdul Rashid v. State (GNCTD) (decision of this Court dated 29th January 2010 in Crl.A. 219/1996), Rathinam v. State of Tamil Nadu (2011) 11 SCC140 and Shakti Singh v. Delhi Administration 57 (1995) DLT731where witnesses who remained silent for many years were disbelieved.

130. Turning to the charge against A-1 for criminal conspiracy, Mr. Sibal submitted that although PWs 7, 9, and 12 were purportedly witnesses to the conspiracy, none of them named A-1. In fact, in their statements, they even denied his involvement. He further pointed out that there was no independent evidence which was the condition precedent for invoking Section 10 Indian Evidence Act against A-1. Reliance was placed on the decisions in Balmokand v. Emperor AIR1915 Lah. 16, Balkar Singh v. State of Haryana (2015) 2 SCC746 Union of India v. Prafful Kumar Samal (1979) 3 SCC4 and Tribhuvannath v. State of Maharashtra AIR 1973 SC450 131. The non-examination of as many as 18 witnesses named by the prosecution out of the 35 witnesses in its list was, according to Mr. Sibal, Crl.A. 1099/2013 & Connected Matters Page 63 of 203 because the prosecution was not confident that said witnesses would support its case and therefore conveniently dropped them. It is pointed out that some of them were subsequently examined by the defence. No reason was given by the prosecution for dropping these material witnesses. Reliance was placed on the decisions in State of Himachal Pradesh v. Gyan Chand (2001) 6 SCC71in which it was held that if material witnesses have been deliberately or unfairly kept back, it cast a serious reflection was cast on the propriety of the trial itself.

132. Mr. Sibal then discussed the testimonies of the 17 defence witnesses. He placed reliance on the decisions in Munshi Prasad v. State of Bihar AIR 2001 SC3031and State of Haryana v. Ram Singh 2002 CriLJ987SC) in support of his submission that there was no reason to disbelieve the defence witnesses and that their creditworthiness must be tested by the same yardstick as the prosecution witnesses.

133. In concluding his submissions, Mr. Sibal alleged that there have been brazen attempts to target A-1 who has been proceeded against in non- compliance with the recommendations of the Justice Nanavati Commission. He further submitted that the prosecution has suppressed the Action Taken Report and records of previous investigation so as to re-open the investigation in the present case. This suppression resulted in A-1 not being able to rely on the exculpatory evidence in possession of the CBI at the stage of charge. This ensured that the case would proceed to trial.

134. Calling into question the genuineness of the case presented against A- 1, Mr. Sibal submitted that since the script was new, the evidence had to be Crl.A. 1099/2013 & Connected Matters Page 64 of 203 tailored to match it. He alleged that in pursuance of this endeavour, the prosecution had sought to brush under the carpet the statement and affidavit made by PW-1 before the Justice Nanavati Commission, having re-opened the investigation on the basis of those statements. By doing so, the prosecution had ensured that they could set up PW-1 as its most vital witness during the trial. He further referred to the prosecutions attempts to resist confrontation of PW-1 with the affidavits sworn by her before the Justice Ranganath Misra Commission and the Justice Nanavati Commission by invoking the Commission of Inquiry Act even though it was the settled position of law that once exhibited, those affidavits became a part of the examination-in-chief and could not escape the rigour of cross-examination.

135. He described the record of evidence of PWs 1, 6, and 10 as being rife with contradictions and effectively a dead record. He further submitted that the standard for reversing an acquittal on the basis of such dead record was absolute assurance. He referred to the decision in Mahabir Singh v. State of Haryana

(2001) 7 SCC148 According to him, since there was no credible evidence qua A-1 and the evidence of PW-1 was without corroboration, the judgment of the trial Court was neither erroneous nor perverse and there was no ground for reversal of the acquittal. The Courts findings as regards the role of Sajjan Kumar (A-1) Failure to register FIRs and unsatisfactory investigations 136. The Court would first like to dwell on the extraordinary circumstances under which the trial in the present case ultimately came about. That there was an abject failure by the police to investigate the violence which broke Crl.A. 1099/2013 & Connected Matters Page 65 of 203 out in the aftermath of the assassination of Smt. Indira Gandhi is apparent from the several circumstances that have already been highlighted hereinabove.

137. In the first place, it is extraordinary that despite there being as many as 341 deaths in the Delhi Cantonment area alone over the span of four days beginning 1st November 1984, only 21 FIRs were registered and, of these, only 15 pertained to deaths/murders. Ultimately, only five bodies were recovered and that too was because of the intervention of Army.

138. It is trite that for each incident involving the offence of murder, a separate FIR had to be registered. There was no question of clubbing several complaints pertaining to several deaths in one FIR. There were extensive arguments advanced as regards the roznamcha of PP Palam Colony. In this regard, it would be pertinent to discuss the Daily Diary Register (DDR) (Ex.PW-16/A), the authenticity of which has been accepted by the accused.

139. The Punjab Police Rules 1934 (Police Rules) establish the statutory nature of the DDR. Rule 22.45 of the Police Rules sets out the registers that are required to be maintained. There is an FIR register and there is a Station Diary. The DDR is referred to as Register No.II. Rule 22.48 of the Police Rules sets out how it shall be maintained. Rule 22.49 talks about the matters to be entered in Register No.II and this includes, in clause (n), a reference to every information relating to the commission of a cognizable offence, and action is taken under section 157, Code of Criminal Procedure, the number and date of the first information report submitted. Under Rule Crl.A. 1099/2013 & Connected Matters Page 66 of 203 22.50 of the Police Rules, a false entry is made punishable.

140. In a case where a victim lodges a report regarding the commission of a cognizable offence, Rule 22.49(n) requires an entry in respect thereof to be recorded in the DDR. The copy of the DDR entry is thereafter forwarded to the PS with an endorsement for the purposes of recording a formal FIR in the FIR register.

141. The Court has perused the copies of the entries in the DDR maintained at PP Palam Colony for the period between 31st October 1984 and 6th November 1984. Entry No.18 dated 3rd November 1984 (Ex.PW-16/F-

18) shows that the SI made the entry after he returned from Safdarjung Hospital on his motorcycle and recorded the statements of Sardar Singh and Sarjit Singh. Those two persons had stated that on 1st November 1984, some persons had injured them in a quarrel.

142. Entry No.24 dated 4th November 1984 (Ex.PW-16/G-24) was recorded at 10:30 pm which states that the SI accompanied by two Constables returned after patrolling PP area and had brought with them six persons, including PW-3, having arrested them under Sections 101 and 151 Cr PC. It states that at that time, a curfew was in operation and a voice had come from inside H. No.R-2/110, Raj Nagar stating if any sardars had survived, they should also not be left alive today. It was recorded that they were saying this loudly by creating a nuisance. Despite the SI going close to the said house and addressing them in a loud voice, the voice from inside the house continued to be raised and they continued to use provocative expressions. The door of the house was opened and the SI went inside but Crl.A. 1099/2013 & Connected Matters Page 67 of 203 even on being advised, the six persons present there, continued raising those slogans and finding no alternative, the SI arrested those persons and detained them in the lockup of PS Delhi Cantonment.

143. The contention of the defence that no details were required to be entered in the DDR is clearly erroneous. What is, however, strange is that despite the widespread killing and bedlam in the area, no mention of this is found in the DDR. It is clear, therefore, that in those chaotic conditions, the local police force was inadequate for the task at hand.

144. There are two other entries at Entry No.22 entered by Constable Nafe Singh (Ex.PW-16/E-22) at 3:30 am on 3rd November 1984 that he along with fellow outer-post RAC returned to the PP after patrolling the area. Entry Nos. 9, 10, 22, and 32 from 8 am onwards on 3rd November 1984 shows the presence of the RAC in the area.

145. HC Rajender Singh (PW-16) proved the above DDR and deposed that it was maintained in the normal course of official functioning of the police station. He was posted at PP Palam Colony at the relevant time. He proved each of the aforementioned entries. He admitted during his cross- examination that it is correct that during this period, force from outside was also requisitioned. The fact remained that this DDR is completely silent about the commission of any cognizable offence although as many as 30 murders occurred in the Raj Nagar area itself.

146. There is a lot of emphasis placed by Mr. Sibal on the factum of registration of the FIRs. It is possible, in terms of the statement of Mr. D. P. Crl.A. 1099/2013 & Connected Matters Page 68 of 203 Singh, learned SPP for the CBI, that some of the FIRs like 409, 410, 411, 412 and 413 were registered on 1st November 1984. The fact of the matter remained that, as far as the murders in Raj Nagar area were concerned, FIR No.416/1984 was able to be registered only on 4th November 1984. The searching cross-examination of PW-17, who was not present in the PS Delhi Cantonment area at that time, did not elicit any answer that could help the defence. He could answer only with regard to FIR No.416/1984 and that was not unnatural. Even the answers given by PW-15 in this regard do not help the accused. When asked as to how many complaints were clubbed in FIR No.416/1984, he stated that there were about
such complaints clubbed in this FIR. He stated that the death of every victim was separately investigated but admitted that all were not sent for trial. When asked whether, on the complaint of PW-1, separate action was taken regarding the killing of her husband, son and three cousins, he answered: No.Practically no substantial action or investigation was done by Delhi Police with regard to the aforesaid death. Thus, it is clear that there was an utter failure to register separate FIRs with respect to each of the five deaths that form the subject matter of the present

appeals. It is also abundantly clear that PW-1 did approach the PP with a complaint on 3rd November 1984. In her examination-in-chief dated 2nd July 2010 about what she did on 3rd November 1984, she stated as under: When I reached the Police Post, the Incharge was present there. At that time, Air Force Personnel were also present nearby with vehicle. The Incharge of the Police Post recorded my report on a plain paper after writing a few lines and made me sign the same. He also obtained my signatures on two blank papers and stated that he was short of time and would prepare the report later. I was not given any copy of the said report nor Crl.A. 1099/2013 & Connected Matters Page 69 of 203 was my report incorporated in a register though I had asked for the copy of the same. When I was making my report, the Incharge of the Police Post had threatened me saying hosh me to ho, jin admiyon ke naam likha rahi ho jitney shakti shali hain, aap apna baki pariwar kahan le jain gi. 147. In her affidavit filed before the Justice Ranganath Misra Commission (Ex.PW-1/A), PW-1 made a reference to the above statement. She again made such reference in her affidavit and statement before the Justice Nanavati Commission (Ex.PW-1/B and Ex.PW-1/C). When her statement was recorded before the Justice Nanavati Commission on 8th January 2002, she had stated that she had made a complaint on 3rd November 1984. Thereupon, learned counsel for the Delhi Police added that this had been made part of FIR No.416/1984. The relevant extract of the portion of her statement before the Justice Nanavati Commission reads as under: I had spent the night there and then next day in the morning i.e. on 3rd November, 1984, I again went to my house. I saw that the mob was looting our house and had taken out the dead bodies of my husband and son. I then collected partly burnt chairs etc. And with such material cremated my husband and son at that place. I had again gone to Shri Om Parkashs house and from there I had gone to Palam Nagar Police Station where I gave my complaint. [Learned counsel from Delhi Police Shri S.S Gandhi stated that as a general complaint was already recorded by Palam Nagar Police Station as FIR No.416, her complaint was made a part of it].. I had disclosed to the police all that had happened. (emphasis in original) 148. The following suggestion given by the defence to her was acknowledgment of her having made such a statement: ... It is incorrect to suggest that on 03.11.1984 police officials were concerned about my safety and they took precautions that I should reach the

police post safely. Though police officials Crl.A. 1099/2013 & Connected Matters Page 70 of 203 had taken me to police post only on the asking of those good persons, I cannot say if on 3.11.1984 police officials were not against me. Behaviour of the police who took me in the vehicle to the police post was not bad. 149. It is a fact that the said statement made by her on 3rd November 1984 was not available before the trial Court. If she had gone to the PP and given that statement, it should have found mention in the FIR. Although the DDR exhibited in the present case is for the period from 24th/25th September 1984 to 6th/7th November 1984, there is not a single entry which mentions her visit to the PP. The killings of at least 30 persons were the subject matter of FIR No.416/1984. As rightly pointed out by Mr. Cheema, the police failed to record any incident whatsoever in the DDR. This explains why PW-1s statement also, therefore, does not find any mention in the DDR. These circumstances establish the apathy of the Delhi Police and their active connivance in the brutal murders being perpetrated. 150.1. In Prithipal Singh (supra), the Supreme Court was dealing with the disappearance of human rights activist Jaswant Singh Khalra who had been abducted by the police from his house and was thereafter not seen alive. The Court observed as under: Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. In B.P Achala Anand v. S. Appi Reddy (2005) 3 SCC313this court observed: (SCC p.318, para1) 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 Crl.A. 1099/2013 & Connected Matters Page 71 of 203 bear in mind the peculiar facts, if so exist, in a given case. 150.2. There again, the truth could be unearthed only after several years. The Court observed that it had to take into consideration the ground realities referred to hereinabove, particularly that it is very difficult to get evidence against policemen responsible for custodial death. The Court was prepared to sustain a conviction based on the solitary witness notwithstanding that his statements were found to be varying. It observed as under: In view of the persistent threats hurled by the accused and other police officials to the complainant and the witnesses throughout

the investigation and trial, variation in Kuldip Singhs 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. In view of the law referred to hereinabove, the same remains the position in case a solitary witness deposed regarding the illegal detention and elimination of Shri Jaswant Singh Khalra. 151.1. In Extra Judicial Execution Victims Families Association v. Union of India (2017) 8 SCC417 the Supreme Court was dealing with a petition brought before it stating that 1528 persons had been killed in fake encounters by police and armed forces personnel in Manipur. This was a follow up of the judgment rendered by the Supreme Court on 8th July 2016 (AIR 2016 SC3400 in which it had issued directions for complete Crl.A. 1099/2013 & Connected Matters Page 72 of 203 information to be collected as regards each individual case and also for information as to whether a judicial inquiry, an inquiry by the National Human Rights Commission (NHRC), or an inquiry under the CoI Act had been held and the results thereof. The Court noted the extraordinary circumstances in which, for many years, no action had been taken by the State. It rebutted the submissions of the learned Attorney General that some of the incidents are of considerable vintage and at this point of time, it may not be appropriate to re-open the issues for investigation. The Court observed that merely because the State has not taken any action and has allowed time to go by, it cannot take advantage of the delay to scuttle an inquiry. 151.2. It also rebutted the submissions of the learned Attorney General that there were local pressures and the ground level situation was such that it would not be surprising if the inquiries were biased in favour of citizens and against the State. The answer of the Supreme Court was as under: if there had been a breakdown of the rule of law in the State of Manipur, surely the Government of India was under an obligation to take appropriate steps. To suggest that all the inquiries were unfair and motivated is casting very serious aspersions on the independence of the authorities in Manipur at that point of time, which we do not think is at all warranted. 151.3. It was then submitted that in many instances, the next of kin had not approached the

Court and therefore a petition by a third party should not be entertained. This too was rejected. The answer provided by the Supreme Court was that for many in the deprived sections of the society access to justice is only a dream. It further stated: Crl.A. 1099/2013 & Connected Matters Page 73 of 203 Our constitutional jurisprudence does not permit us to shut the door on such persons and our constitutional obligation requires us to give justice and succour to the next of kin of the deceased. 151.4. Lastly, it was submitted therein that since the compensation had been paid to the next of kin, it would be advisable not to proceed further in the matter. This too was rejected by the Supreme Court observing that compensation has been awarded to the next of kin for the agony they have suffered and enable them to immediately tide over their loss and for their rehabilitation. This cannot override the law of the land, otherwise all heinous crimes would get settled through payment of monetary compensation. Our constitutional jurisprudence does not permit this and we certainly cannot encourage or countenance such a view.

152. What happened in the aftermath of the assassination of Smt. Indira Gandhi was indeed carnage of unbelievable proportions in which over 2700 Sikhs were murdered in Delhi alone. In the present case, we are only concerned with five of such killings in one particular area, viz., Raj Nagar within the jurisdiction of PS Delhi Cantonment. The law and order machinery had clearly broken down and it was literally a free for all situation which persisted. The aftershocks of those atrocities are still being felt. That many cases remained to be properly investigated was acknowledged recently by the Supreme Court in its order dated 11th January 2018 in W.P.(Crl.) 9/2016 (S. Gurlad Singh Kahlon v. Union of India) by which it was considered appropriate to constitute a three- member Special Investigating Team (SIT) to proceed to investigate as many as 186 cases in which further investigation had not taken place. By a Crl.A. 1099/2013 & Connected Matters Page 74 of 203 recent order dated 4th December 2018, the Supreme Court has permitted a two-member SIT to probe the matter. Past involvement of A-1 153. As rightly pointed out by Mr. Phoolka, the case in which A-1 had been named, i.e. FIR No.67/1987 registered at PS Nangloi, did not proceed. Although a charge sheet had been prepared, it was simply kept in the file and not presented to the Court. This is noted by the D&SJ of Rohini Courts in his orders dated 23rd October 2010 and 4th June 2011 in SC No.54/2010. 154.1. With regard to A-1 himself, the

extraordinary power that he wielded as a politician and as an MP was noted by this Court in its order in Sajjan Kumar v. State 43 (1991) DLT88where it confirmed the anticipatory bail granted to him in FIR No.250/1984 registered at PS Punjabi Bagh which pertained to an incident that took place in Sultanpuri, Delhi. The FIR was registered on the affidavit and statement of one Anwar Kaur, who along with her husband Navin Singh and children were living in H.No.A4, Sultanpuri, Delhi. On 1st November 1984, while she was present in her house she saw thousands of the people of the area armed with lathis, dandas, iron rods and knives, looting the houses of Sardars and setting them on fire. This mob was being led by A-1 who was instigating them, saying that all Sikh males be burnt to death and their property be looted. Under that instigation, her husband was dragged out and attacked with a sharp-edged weapon and burnt to death after being doused in kerosene oil. Thereafter, her house was also burnt. She took refuge in the house of her daughter Film Kaur, who was residing in D-Block, Sultanpuri. Late at Crl.A. 1099/2013 & Connected Matters Page 75 of 203 night, some people came there and removed the burnt dead body of her husband, which was never traced. 154.2. What the police did with her complaint is also noted by the Court in paragraph 7 as under: The assassination of late Prime Minister India Gandhi on 31.10.84, was an unfortunate incident, but still more unfortunate were the events, which took place thereafter, as a result of which a large number of anti-social elements came out of their house in anger and indulged in incidents of rioting, looting, arson, assault and killing of innocent persons and burning their property throughout India. On first of November, 1984 such like 'incidents also took place in the locality of Sultanpuri, Delhi. Information of this incident was received at the Police station at about 2.10 p.m. It was recorded in the DD. Register at serial No.11-A.-and the same was handed over to SI Sukhbir Singh for immediate action. Sukhbir Singh went to the, spot and made preliminary enquiries. Later on, he sent a ruqqa to the police station for the registration of a case u/s 147; 148, 149, 395, 196 IPC. The same was registered as FIR No.250/84. Then, he recorded the statements of various witnesses who were the target of looting, arson and assault. The SI collected the MLCs from the hospital and in view of the medical reports, further recommended inclusion of Sections 307, 324 and 302 IPC. the 154.3. The judgment also noted the dissatisfaction with the progress of the investigation and the public clamour

surrounding it which resulted in the constitution of the Justice Ranganath Misra Commission under the CoI Act on 26th April 1985, inter alia, to find out whether there was any organized mob violence at the behest of Congress workers and if there was, then suggest ways and means to punish the guilty. Crl.A. 1099/2013 & Connected Matters Page 76 of 203 154.4. This Court went on to note that despite acknowledging that rioting in a proper sense had started in a very big way in several parts of Delhi on 31st October 1984 with the murders of Sikhs commencing on 1st November 1984, the Justice Ranganath Misra Commission gave the Congress Party a clean chit by observing: The massive scale on which the operation had started so soon after the fact of death was circulated is clearly indicative of the fact that it was the spontaneous reaction of the people at large. The short span of time that intervened would not have permitted scope for any organising to be done. The gloom that had spread and affected the Congressmen in particular would not have permitted any such organisation to be handled. The reaction appears to have come as flutter and sparked everywhere in a similar pattern. 154.5. It is further noted by this Court that the Justice Ranganath Misra Commission had observed that no responsible person and authority of Congress (I) hatched any conspiracy or organized large-scale rioting, looting, killing, etc. in various parts of Delhi. In fact, the anti-social elements had taken the lead. It was observed that the Commission had come to the conclusion that despite wide spread publicity to the cause, many persons had not come forward to depose as to the actual happenings between 1st and 7th November 1984 and, therefore, it recommended that a new committee be appointed to go through the individual cases of omission or non-registration of cases by the local police. 154.6. The Jain-Banerjee Committee comprising Justice M. L. Jain, a former Judge of this Court, and Mr. A. K. Banerjee, a retired officer of the Indian Police Service (IPS) came to be constituted. This Committee went Crl.A. 1099/2013 & Connected Matters Page 77 of 203 through the affidavit of Anwar Kaur and wrote to the Delhi Administration for an FIR to be registered. At that point, one B. N. Gupta filed a writ petition before this Court which, by the aforementioned judgment in Brahma Nand Gupta (supra), restrained the registration of cases pursuant to directions of the Jain-Banerjee Committee. 154.7. This Court, in its judgment deciding the anticipatory bail application of A-1, noted that on 22nd March 1990, another Committee

comprising of Justice P. S. Poti, a former Chief Justice of the Gujarat High Court, and Mr. P. A. Rosha, a retired officer of the Delhi Police, was constituted. This committee recommended that a case be registered and investigated by the CBI in relation to the omission to register a case and investigate the offences alleged in the affidavit of Anwar Kaur. The CBI then registered FIR No.RC-SI-1/2005/S0024 at PS Delhi Cantonment against six accused persons, including A-1, in the present case on 7th September 1990. On 11th September 1990, it organized a raiding party to search A-1s house and arrest him. 154.8. That very night, the learned Single Judge of this Court granted A-1 anticipatory bail in light of certain extraordinary circumstances which were noted as under: When the officer of the CBI went to the house of the petitioner at A-713, Janta Flats, Paschimpuri, at 6:45 A.M. in order to conduct search of the house and to arrest him, according of Shri G.S. Kapila, Dy.Superintendent of Police, CBI, the search of the house concluded at 8.45 AM, but in the meantime, the petitioner managed to organize a huge crowd, which made it impossible for the officers to leave the premises of the petitioner. During affidavit to the Crl.A. 1099/2013 & Connected Matters Page 78 of 203 the course of search, the respondent officers have seized few documents and six swords but they could not be removed on account of the law and order problem created by the petitioner outside his house. By the time the search was concluded, the mob outside the house inflamed and was raising slogans against the CBI and in favour of the petitioner. The mob in fact had barred the exit gate which made difficult for them to leave the premises. With the lapse of time, the mob continued to swell and provocative slogans were chanted through a loudspeaker system installed by the mob.

5. According to Shri Kapila, the crowed threatened the search party with dire consequences in the event of the petitioner being arrested or harmed in any way. The mob then became violent and smashed and damaged the Maruti Jipsi and Ambassador car of the CBI. The search party tried their best to call for reinforcement from the local police but it could not be arranged. In fact, the information conveyed to the search party by the high police officials was that it was impossible for the police to come to their rescue without inflicting heavy casualties, which in turn, may also endanger the safety of the search party. Ultimately, the search party could only be allowed to leave the premises after the anticipatory bail

order from the High Court was received and conveyed to the persons waiting outside, on make-shift public address system by the petitioner. 155. It is another matter that this Court, while confirming the bail order, held that the apprehensions of the CBI that A-1 could cause hindrance to the investigation were totally misplaced. According to the learned Single Judge, on the date of the alleged incident, he was an MP and had a following; he had a standing in the society and commands respect, love, and affection of the people of his constituency, and further that his social background is such that there is neither any possibility nor has he betrayed the trust placed in him by the Court in avoiding to join the investigation or Crl.A. 1099/2013 & Connected Matters Page 79 of 203 interfered in the due administration of justice. All these expectations were obviously belied because the investigation never went anywhere and nothing of consequence happened in that case. It was only much later, when the Justice Nanavati Commission was constituted, that a recommendation was made for registration of cases against A-1.

156. Here again, it is necessary to briefly refer to the precise recommendation of the Justice Nanavati Commission which has already been extracted hereinbefore. The Commission was clearly of the view that there is credible material against Shri Sajjan Kumar and Shri Balwan Khokhar for recording a finding that he and Shri Balwan Khokhar were probably involved, as alleged by the witnesses. No doubt, the Commission observed that no useful purpose would be served by directing registration of these cases where the witnesses complaining about the same were examined in the Court, and yet the accused were acquitted by the Courts. The recommendation of the Commission was to take further action as is permitted by law after examining only: (i) Cases where the witnesses have accused A-1 specifically and yet no charge sheets were filed against him; and (ii) Cases which were terminated as untraced.

157. Mr. Sibal, in making his submissions, stressed that A-1 belonged to neither of these categories having been named for the first time by PW-1 before the Justice Nanavati Commission only in 2000. He further pointed to the Action Taken Report (Ex.DW-14/A) which was drafted in compliance with the recommendations of the Commission. In the conclusion as to the Crl.A. 1099/2013 & Connected Matters

Page 80 of 203 whether there was any basis for re-opening the case against A-1, it was noted that none of the 18 persons who filed affidavits before Justice Nanavati Commission has named accused Shri Sajjan Kumar for the incidents of riots in the area of PS Delhi Cantt. Therefore, there is no justification to re-open this case.

158. This, however, is clearly not the case as PW-1 definitely went before the Justice Nanavati Commission and accused A-1 of being involved in the crimes that took place at Raj Nagar. This cannot be denied even by A-1 himself. The entire argument that the present cases were wholly unjustified and were beyond the scope of what was recommended by the Justice Nanavati Commission is misconceived and proceeds on a misunderstanding of what was actually recommended. In the view of this Court, the Governments conception of which category A-1s case would fall under is not finally determinative of the question of whether the re-opening of the investigation against him was justified.

159. While it is true that a closure report was filed, and it was for the learned MM to decide as to how the matter should proceed, these records never surfaced. If the fate of the charge sheet prepared in FIR No.67/1987 registered at PS Nangloi is anything to go by, even where a charge sheet named A-1, it was simply kept in the file and never submitted in the Court. This was an extraordinary case where it was going to be impossible to proceed against A-1 in the normal scheme of things because there appeared to be ongoing large-scale efforts to suppress the cases against him by not even recording or registering them. Even if they were registered, they were Crl.A. 1099/2013 & Connected Matters Page 81 of 203 not investigated properly and even if the investigation proceeded, they were not carried to the logical end of actually filing a charge sheet. Even the defence does not dispute that as far as FIR No.416/1984 is concerned, a closure report had been prepared and filed but was yet to be considered by the learned MM.

160. The fact of the matter, therefore, is that A-1 was never really sent up for trial until the CBI intervened. The Court is not impressed with the argument that the CBI deliberately suppressed the fact of the pendency of the closure report in FIR No.416/1984. This argument appears to be born out of sheer desperation. The

Justice Nanavati Commission itself treated FIR No.416/1984 to be a case which was closed as untraced. Even if this is taken to be factually incorrect, the fact remains that there was no progress whatsoever in FIR No.416/1984.

161. In any event, it is too late in the day for A-1 to advance this argument. He cannot take advantage of an obvious failure by the Delhi Police to carry the investigation in FIR No.416/1984 to its logical end. It is only after the CBI stepped in that witnesses found the courage to speak the truth and come forward with their versions which have formed the basis for the charge sheet and the charges framed.

162. Consequently, the Court rejects the plea on behalf of A-1 that the case against him was not covered by the recommendations of the Justice Nanavati Commission or that the CBI withheld any information in its application for re-investigation of the case. That the Delhi Police has a lot to answer for is what comes across explicitly in the answers given by the Crl.A. 1099/2013 & Connected Matters Page 82 of 203 IOs of the CBI in the present case, viz. PWs 15 and 17. In particular, the contention that the testimony of PW-17 entailed an admission of suppression of facts is without basis. His testimony, in fact, indicates the contrary position as is discernible from the portion reproduced hereunder: I have gone through the entire charge sheet. It is correct that killing of five deceased were investigated earlier also in the FIR no.4
PS Delhi Cantt. I have gone through all the documents annexed with this charge sheet. I do not find any document placed in the charge sheet regarding the report/result of the earlier investigation conducted in case FIR no.4
PS Delhi Cantt. I collected the result of the earlier investigations conducted. During the investigation carried out by me, it was revealed that Delhi Police had carried out investigation in the killings of five victims in 1984/1985 and later on as per the direction of Jain Aggarwal Committee, Riot Cell of Delhi Police had carried out investigation after 1992. Q. What was the result of the earlier two investigations?. Ans. I found that the first investigation carried out by Delhi Police was superficial and merely an eyewash. Similarly, investigation carried out by the riot cell of Delhi -Police was also an eyewash wherein they had ultimately filed an untraced report. Q. I suggest to you that first investigation which was conducted by the Delhi Police

also ended in the conclusion of closure of the case and second was not sent for closure as untraced. Do you agree?. Ans. With regard to the first investigation in 1984-85, I do not agree that it was closed whereas second one was submitted before relevant court as closure report/untraced report. The second one was sent in the court of ld. MM, Patiala House Courts. As I remember first it was in the court Smt. Rawat and then Sh. Kuldeep Narayan. Crl.A. 1099/2013 & Connected Matters Page 83 of 203 Q. Where have you come to know about the result of the two investigations?. Ans. From the Delhi Police records forwarded to CBI by Ministry of Home Affairs, I came to know about the aforesaid investigations. 163. There was a further questioning of PW-17 on the third investigation which was ordered in the year 2002 and which was conducted by the Riot Cell. According to him there was nothing like third investigation by the riot cell and they had simply continued their investigation as per the reference made by the Jain Aggarwal Committee. The same was ultimately filed as untraced report in 2005.

164. PW-17 also admitted having gone through the judicial records of FIR No.416/1984 in the learned MMs Court and stated as under: It is correct, that I had taken the certified copy of the judicial record of the FIR no.4
PS Delhi Cantt. pertaining to killing of five persons subject matter of this case from the court of Ms. Illa Rawat, the then id. MM, Patiala House Courts, till June 2007. It is correct that there is no mention of this closure report in the charge sheet filed by the CBI though I had collected before filing the charge sheet. I had gone through this entire closure report. I had seen the letter dated 10.01.2002 on judicial file of FIR no.4
PS Delhi Cantt. it is a letter from Sh. Kulmohan Singh, General Secretary, Delhi Sikh Gurudwara Management Committee requesting for reopening of the case in view of the availability of Smt. Jagdish Kaur. I do not agree that here from that is year 2002 the third time the investigation again started afresh. 165. PW-17 was clear that the incident involving the deaths of the husband and son of PW-1 was not taken to the logical conclusion. Crl.A. 1099/2013 & Connected Matters Page 84 of 203 166. The argument that the charge sheet filed in the present case should have made reference to the allegations of mishandling of the investigations undertaken by the Delhi Police and the Riot Cell is without basis. This became abundantly clear in the trial and through the documents brought on record as well

as the statement of the witnesses. Consequently, the Court is not impressed with the argument that the CBI targeted A-1 and the other accused and deliberately misrepresented the records to secure their convictions. This contention is firmly rejected by this Court. Order framing charges against A-1 upheld 167.1. The submission that the CBI could not have proceeded with the trial deserves to be rejected also on account of the fact that the order framing charges against A-1 was made the subject matter of a challenge before this Court in its decision in Sajjan Kumar v. Central Bureau of Investigation 171 (2010) DLT120which was later upheld by the Supreme Court in Sajjan Kumar v. Central Bureau of Investigation (2010) 9 SCC368 The fact of the filing of the closure report earlier and then the registration of the FIR by the CBI was noted by the Supreme Court in its judgment as under: The present case arises out of 1984 anti-Sikh riot cases in which thousands of Sikhs were killed. Delhi Police has made this case a part of FIR No.416 of 1984 registered at Police Station Delhi Cantt. In this FIR, 24 complaints were investigated pertaining to more than 60 deaths in the area. As many as 5 charge- sheets were filed by Delhi Police relating to 5 deaths which resulted in acquittals. One supplementary charge-sheet about robbery, rioting, etc. was also filed which also ended in acquittal. The investigation pertaining to the death of the family members of Smt. Jagadish Kaur, PW1was reopened by the Anti-Riot Cell of Delhi Police in the year 2002 Crl.A. 1099/2013 & Connected Matters Page 85 of 203 India entrusted the the Government of and after investigation, a closure report was filed in the court on 15-12-2005/22-12-2005. After filing of the closure report in the present case, on 31-7- 2008, a status report was filed by Delhi Police before the Metropolitan Magistrate, Patiala House Court, New Delhi. Pursuant to recommendation of Justice Nanavati Commission, the investigation to the Central Bureau of Investigation (hereinafter referred to as CBI), on 24-10-2005. On receipt of the said communication, the respondent CBI registered a formal FIR on 22-11-2005. The closure report was filed by Delhi Police on 15-12-2005/22-12-2005, when a case had already been registered by CBI on 22-11-2005 and the documents had already been transferred to the respondent CBI. After fresh investigation, CBI filed a charge-sheet bearing No.1/2010 in the present case on 13-1-2010. After committal, charges were framed on 15-5-2010. At the same time, the appellant has also filed a petition for discharge raising various grounds in

support of his claim. Since he was not successful before the Special Court, he filed a revision before the High Court and by the impugned order dated 19-7-2010, after finding no merit in the case of the appellant, the High Court dismissed his criminal revision and directed the trial court for early completion of the trial since the same is pending from 1984. 167.2. The Supreme Court upheld the charges framed against A-1. The Supreme Court was conscious of the fact that the witnesses named by the prosecution did not whisper a word about the involvement of the appellant at the earliest point of time, but the Judge concerned had to appreciate their evidentiary value, credibility, or otherwise and was free to take a decision one way or the other at the trial. The Supreme Court also dealt with the submissions made on behalf of A-1 that, in view of the closure Crl.A. 1099/2013 & Connected Matters Page 86 of 203 report filed by the Delhi Police, the CBI was not justified in reopening the case merely on the basis of the observations made by Justice Nanavati Commission. The Supreme Court made a note of the conclusion reached by the Delhi Police in its status report dated 31st July 2008 as under: From the investigation and verification made so far it was revealed that: (a) There is no eye witness to support the version of the complaint of Smt. Jagdish Kaur (b) The complaints and affidavits made by Smt Jagdish Kaur are having huge contradictions: (i) In her first statement recorded by local police during the investigation, she did not name any person specifically and also stated that she could not identify anyone among the mob. (ii) She even did not name Shri Sajjan Kaur in her statement recorded by the IO of the Special Riot Cell after a gap of seven years (iii) She suspected the involvement of one congress leader Balwan Khokar in these riots but she had not seen him personally. She was told by one Om Prakash who was the colleague of her husband, about the killing of her husband and son. In the statement recorded on 22-1-2993 under Section 161 Cr PC during the course of further investigation, the witness Om Prakash stated that he had seen nothing about the riots. Jagdish Kaur stayed at his house from 1-11-1984 to 3-11-1984 but she did not mention the name of any person who was indulged in the killing of her husband and son. 167.3. Thereafter, the Supreme Court observed as under: It is seen from the report that taking note of lot of contradictions in the statement of Jagdish Kaur, PW1before the Commissions and before different investigating officers and after getting legal opinion from the Public

Prosecutor, closure report was prepared and filed before the Metropolitan Crl.A. 1099/2013 & Connected Matters Page 87 of 203 Magistrate, Patiala House Courts, New Delhi on 31-7-2008. It is further seen that before accepting the closure report, the Magistrate issued summons to the complainant i.e. Smt Jagdish Kaur number of times and same were duly served upon her by the officers of the Special Riot Cell but she did not appear before the court. In view of the same, the Magistrate, on going through the report and after hearing the submissions and after noting that the matter under consideration is being further investigated by CBI and the investigation is still pending and after finding that no definite opinion can be given in respect of the closure report, without passing any order closed the matter giving liberty to the prosecution to move appropriate motion as and when required. 167.4. The Supreme Court, therefore, considered it necessary to observe that since the learned MM had declined to give any definite opinion about the closure report, as the same was under investigation by the CBI, no further probe/enquiry on this aspect is required. Lastly, relying on the decision in Vakil Prasad Singh v. State of Bihar (2009) 3 SCC355 the learned counsel for A-1 had argued before the Supreme Court that re- opening the case merely on the basis of certain statements made after a gap of 23 years cannot be accepted and according to him, it would go against the protection provided under Article 21 of the Constitution. This too was rejected by observing as under: Considering the factual position therein, namely, alleged demand of a sum of Rs. 1,000/- as illegal gratification for release of payment for the civil work executed by a contractor, a charge was laid against Assistant Engineer in the Bihar State Electricity Board and taking note of considerable length of delay and insufficient materials, based on the above principles, ultimately the Court after finding that further continuance of criminal proceedings pending against the appellant therein is unwarranted and quashed the same. Though the principles Crl.A. 1099/2013 & Connected Matters Page 88 of 203 enunciated in the said decision have to be adhered to, considering the factual position being an extraordinary one, the ultimate decision quashing the criminal proceedings cannot be applied straightway. 167.5. The Supreme Court then observed that the principles enunciated in Abdul Rehman Antulay v. R. S. Naik (1992) 1 SCC225were only illustrative and merely because of long delay, the case of the prosecution cannot be closed. The Supreme Court further observed

that though delay may be a relevant ground, in light of the material available to the Court through the CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. It held that those materials had to be tested in the context of prejudice to the accused only at the trial. The Supreme Court finally concluded that the framing of charges against A-1 by the trial Court was not bad in law or an abuse of process of law or without any material.

168. Consequently, the central submission made on behalf of A-1, alleging that the CBI was deliberately targeting him, loses all steam. Admissibility of statements made before the Commissions of Inquiry 169.1. Before proceeding to discuss the evidence of the principal witness PW-1, this Court would like to deal with an issue concerning the admissibility of the statements made before a CoI. In this context, the Court would like to refer to the order passed by the learned Single Judge on 3rd August 2012 in Crl. Rev. P. 328/2012 (Sajjan Kumar v. Central Bureau of Investigation), the Court set aside the following order passed by the trial Court on 2nd June 2012 which concluded as under: Crl.A. 1099/2013 & Connected Matters Page 89 of 203 Interpretation given to Section 6 of the Act as referred to above in Kehar Singhs judgement leaves no doubt that in the present case bar under section 6 of the Commissions of Inquiry Act will be attracted and Section 6 is very much attracted and applicable in this case. Question framed in this order is accordingly answered to the effect that bar under section 6 of the Commissions of Inquiry Act will be attracted so far as witness Smt. Jagdish Kaur has been confronted or sought to be contradicted with her affidavit Ex.PW1/A and Ex.PW1/B and her statement Ex.PW1/C, which was given before Inquiry Commissions. 169.2. The question had earlier been left open by the trial Court until A-1 filed an application on 15th May 2012, requesting the trial Court to decide the question of the admissibility of the statements made by PW-1 before the CoIs before arguments could proceed. The trial Court sustained the objections of the CBI in view of Section 6 of the CoI Act and the decision of the Supreme Court in Kehar Singh v. State (Delhi Administration) (1988) 3 SCC609and held that A-1 could not be permitted to confront PW-1 in respect of her statements before the two CoIs (Ex.PW-1/A to C). 169.3. The learned Single Judge of this Court was of the view that the CBI itself had, along with its charge sheet, placed PW-1s affidavits before

the CoIs as part of the documents relied upon by it. Despite the provisions contained in Section 6 of the CoI Act, PW-1 had herself exclusively referred to her affidavits before the CoIs. The said affidavits have been proved in her examination-in-chief and no objection has been raised by any of the parties regarding the admissibility of Ex.PW-1/A to C, either during examination-in-chief or in cross-examination. The learned Single Judge then proceeded to hold as under: Crl.A. 1099/2013 & Connected Matters Page 90 of 203 Now therefore prosecution is estopped from raising objection regarding cross examination of PW-1 Smt. Jagdish Kaur with respect to Ex.PW1/A to C since this will amount to evidence, which has not been subjected to cross examination being read against the accused. It is settled position of law that no evidence can be read against the accused if not subjected to cross examination. The implication would be that the affidavits Ex.PW1/A & B and statement PW1/C and the deposition to this effect will not be read in favour of prosecution and against the accused. 169.4. This Court accordingly set aside the order dated 2nd June 2012 of the trial Court and directed that whole of the examination-in-chief and cross- examination of PW-1 with respect to Ex.PW-1/A to C will be read in evidence. This order having attained finality, this Court will proceed on that basis while analyzing the evidence of PW-1. Extraordinary circumstances leading to A-1 not being named 170. At the outset, it requires to be noticed that as far as the trial Court is concerned, it held the evidence of PW-1 to be reliable insofar as the culpability of the other accused, i.e. A-2 to A-6, were concerned. It disbelieved PW-1 only on the role attributed to A-1. This was primarily on account of the fact that, according to the trial Court, at the earliest availability opportunity, PW-1 did not name A-1 as one of those involved.

171. The Court would like to begin in this context with the ground realities where, on account of the power and influence wielded by A-1, there was reluctance on the part of the police to proceed against him. These circumstances have been adverted to earlier. It must also be recalled, as Crl.A. 1099/2013 & Connected Matters Page 91 of 203 observed in Prithipal Singh (supra), extraordinary situations demand extraordinary remedies.

172. In the Bilkis Bano case (supra), a Division Bench of the Bombay High Court upheld the conviction of the accused for rape and murder during the 2002 Gujarat

riots. The evidence of the prosecutrix was sought to be attacked in view of omissions and contradictions in relation to the number of people in the mob, the weapons they were carrying, and even the slogans shouted by them. The Court rejected the contention and observed that on account of tainted investigation, there were bound to be discrepancies in the evidence. It was observed in paragraph 214 by the Bombay High Court as under: As far as statement (Exh.

277) recorded by PW23is concerned, the prosecutrix mentions about killing of her relatives, hence, her daughter Saleha is covered in that category. No doubt, there is non-disclosure of killing of daughter in her two statements, i.e., FIR dated 4th March, 2002 and the statements recorded on 7th and 13th March, 2002 by PW42and accused No.16 respectively. As far as FIR is concerned, we have already observed that the police have on purpose not recorded it correctly. As far as fax Exh. 57 is concerned, we have already held that it was not sent by the prosecutrix. As far as statement dated 7th and 13th March 2002 of the prosecutrix are concerned, these cannot be scrutinized properly unless we advert to the most important aspect of the case, i.e., the investigation. The investigation has started at Limkheda Police Station on 4th March, 2002 with recording of FIR Exh.56. The investigation remained with Limkheda Police and thereafter with Gujarat CID. However, there was negative progress in the investigation as A Summary was filed before the Court of Magistrate by Limkheda, Gujarat Police. The members of National Human Rights Commission had interacted with the prosecutrix and thereafter Writ Petition No.118 of 2003 which Crl.A. 1099/2013 & Connected Matters Page 92 of 203 is marked as Exhibit 61 was filed in the Supreme Court by her. The relevant FIR and her statements recorded by Limkheda, Gujarat Police were annexed to the said Writ Petition Exh 61. She prayed before the Supreme Court that the investigation of her case be transferred from Gujarat Police to CBI and investigated by CBI. On account of the tainted and biased investigation, there are bound to be discrepancies in the evidence of the Prosecutrix. However, once the CBI took over the the Prosecutrix, it is noticed that there are no significant omissions or contradictions. the statements of investigation and recorded 173. Even in the Bilkis Bano case (supra), it was argued for the accused that despite several chances, no complaint was lodged by the witnesses about the riot. It was observed that when these witnesses found the police non-cooperative or hostile,

then naturally they were discouraged to lodge any complaint at any place where they were staying. By lodging complaints against Hindus who were in majority or the assailants who were also Hindus, might have led to a situation more dangerous and traumatic and the complainant could have invited further trouble.

174. The Supreme Court dismissed the SLPs filed against above judgment of the Bombay High Court in Bilkis Bano (supra) [See order dated 10th July 2017 in SLP (Crl.) 4290/2017 (R.S. Ramabhai v. CBI) and order dated 20th November 2017 in SLP (Crl.) 7831/2017 (Intmis Abdul Saeed v. CBI).

175. As rightly pointed out by Mr. Phoolka, the Court would also have to bear in mind that till 2006, the victims of the 1984 riots had every reason to believe that they had been abandoned. All the trials had ended in acquittals Crl.A. 1099/2013 & Connected Matters Page 93 of 203 and the prospects indeed looked bleak that they could proceed against the powerful persons involved. While in the 2002 Gujarat riots cases, the Supreme Court did set up an SIT as was done in National Human Rights Commission v. State of Gujarat (2009) 6 SCC342 until 2017, no SIT was constituted to investigate the 1984 riots.

176. The absence of a proper witness protection programme and its adverse effect on the criminal justice system has been acknowledged by the Supreme Court both in Zahira Habibullah Sheikh v State of Gujarat (2006) 3 SCC374and in the National Human Rights Commission (supra). In Zahira Habibullah Sheikh (supra), the Supreme Court observed as under: 41. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like, caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no

reiteration. We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to like Crl.A. 1099/2013 & Connected Matters Page 94 of 203 be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.

42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interest of the Individual accused. In this Courts have a vital role to play. 177. Again, in National Human Rights Commission (supra), the Supreme Court observed as under: Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. Analysis of the evidence of PW-1 178. It is in this backdrop that the Court proceeds to examine the Crl.A. 1099/2013 & Connected Matters Page 95 of 203 depositions of PW-1. In her very first affidavit before the Justice Ranganath Misra Commission dated 7th September 1985 (Ex.PW-1/A), she referred to the attack on

1st November 1984 and stated that it was perfectly organized. She noted that the mob had the names, addresses and particulars, about every Sikh living in our locality. She stated that many Congress leaders were leading the mob and she named A-2, Maha Singh, and Santosh Rani (also known as Janta Hawaldarni). Her pleas for their help were rebuffed by them. She then referred to the attack on her husband and son. She also mentioned the attack at around 6 am on 2nd November 1984 on her three brothers, viz. Narender Pal Singh, Raghuvinder Singh, and Kuldeep Singh who she states were hiding on top of their house in front of our building. Among the persons named by her as those who killed her brothers were A-4 and A-5.

179. PW-1 then mentioned going to PP Palam Colony and the refusal to register a report by saying, Hum kis kis kee baat sune, Sikh to bahut mar rahen hen, jo kuchh hoga sab ke saath ikathha hoga 180. PW-1 mentioned Balram, a local youth Congress leader supplying kerosene oil to the mob and that he had a depot in Palam Colony. She mentioned about being taken on 3rd November 1984 to PS Palam Nagar at 2 pm in the police van where they registered her report. She then states that she was taken to the Sadar Gurudwara camp in Delhi Cantonment in an Air Force van.

181. It is true that before the Justice Ranganath Misra Commission, she did not mention the role of A-1. However, in her original affidavit before the Crl.A. 1099/2013 & Connected Matters Page 96 of 203 Justice Nanavati Commission (Ex.PW-1/B), her statement in para 4 was that MP Sajjan Kumar was leading the mob. She further stated clearly about the killings of her son and husband on 1st November 1984 and the killings of her three brothers on 2nd November 1984. She further narrates how she went to the PS on that date to file a report but no one listened to her and that on 3rd November 1984, when she went to the PS, they entered the report but after that no action was taken by the police. In para 7, she again mentioned: That I can identify the leader of the mob Mr. Sajjan Kumar M.P. because few days back he visited our mohalla regarding sewerage water problem. Local congress worker Sh. Mann Singh Chand & Capt. Bhag Mal were also accompanying this mob. 182. The third mention of A-1 in the affidavit is in para 9 which is as under: That on 2.11.1984 in the morning when I approached the police

station in the way near mandir Manglapuri abovesaid M.P. Sajjan Kumar was organising a meeting and addressing that Sardar Sala Koi Nahi Bachna Chahida & any Hindu if found giving shelter to them should also be burned. 183. There is also the statement made by her before the Justice Nanavati Commission (Ex.PW-1/C) where she referred to the meeting held in the morning of 2nd November 1984 addressed by A-1 and his declaring that whoever kept Sikhs in his house, his house will also been burnt. This statement was made on 8th January 2002.

184. The documents placed on record about her loss claim made on 13th November 1984, no doubt only indicates the loss of property but this, given the circumstances spoken to above, can hardly be said to discredit her Crl.A. 1099/2013 & Connected Matters Page 97 of 203 testimony.

185. Her statement as recorded by SI Arjun Singh on 20th January 1985 (Ex. DW-4/B) does not inspire much confidence. The documents show that she perhaps was not in Delhi at that time. In her testimony, she had given details of where she lived in the period intervening 12th December 1984 and November 1988. The two IOs from the CBI, viz. PWs 15 and 17, have verified these details to be correct. In her statement before the Justice Nanavati Commission made on 8th January 2002, she stated that she had shifted to Amritsar on 12th December 1984.

186. Although ACP Ashok Kumar Saxena (DW-4) sought to prove the said statement, he himself admitted that he was not conversant in the Urdu language. On the other hand, PW-15 was clear that the veracity of that statement was doubtful. Likewise, PW-17 deposed that despite his best efforts, SI Arjun Singh who purportedly recorded that statement could not be traced. The Hindi version of the statement shows that it appears to have been tailor-made to screen the offenders. It states how the assailants came from the rear side of the house by breaking the rear wall. This was obviously inserted so that she could not have possibly seen who had murdered her husband and son. Also, this statement is completely silent about the murder of her three brothers. The Court, therefore, is in agreement with the learned SPP for the CBI that this purported statement ought to be discarded.

187. As far as the statement dated 31st December 1992 (Ex.DW-16/A) is concerned, this was purportedly recorded by Inspector B. D. Tyagi of the Crl.A. 1099/2013 & Connected Matters Page 98 of 203 Riot Cell. PW-1, of course, has denied making any statement or even appearing before the Riot Cell at any point in time. In November 1988, PW-1 moved to the Dangapeedit Colony in Amritsar. On the document (Ex.DW-16/A), however, her address is given as 1713, Nanakpura, Amritsar, which appears to be lifted from the affidavit filed by her before the Justice Ranganath Misra Commission. PW-17 explained that on 28th December 1992, a notice was sent to her for her presence at Delhi. This notice was sought to be served through the SSP, Amritsar. It could not be served for want of address. In the circumstances, it is highly doubtful that she, of her own accord, simply appeared before the Riot Cell.

188. Constable Mohan Singh (DW-13) could not help in proving the handwriting of Inspector B. D. Tyagi. Inspector Man Chand (DW-16), who purportedly identified the handwriting of Inspector B. D. Tyagi, admitted that he knew nothing about the document. He also admitted that a statement of a female witness was ordinarily recorded at her residence and not in the PS. There is no entry in Ex.DW-16/DA, i.e. the DDR of the Riots Cell, about the arrival and departure of PW-1. There is merit in the contention of Mr. Cheema about the said document actually being a forged one. He has pointed out the following factors which bear it out: (i) It shifts the occurrence on 1st November 1984 to 6 am in the morning; (ii) The maker of the statement maintains that she did not identify any member of the mob; (iii) The statement describes Om Parkash as a neighbor; he is proved to have lived at some distance; Crl.A. 1099/2013 & Connected Matters Page 99 of 203 (iv) It is further recorded that she stayed at her house with her children on the night of 2nd November 1984; (v) The date of her statement dated 3rd November 1984 at PP Palam Colony is changed to 2nd November 1984. This statement further records that her cousin brothers were killed on 2nd November 1984 but she knew nothing about that occurrence. It was specifically recorded that she did not know English, obviously to destroy the affidavit marked as Ex.PW-1/A.

189. The above factors, in the considered view of the Court, are sufficient to reject the so-called statement of PW-1 recorded by the Riots Cell on 31st December

1992.

190. The endorsements on the summonses under Section 160 Cr PC purportedly made by the daughter and son of PW-1 on the basis of her dictation have also been heavily relied upon by the defence. Therein she is supposed to have stated that she does not want to make any further statement and that she would accept any decision taken by the Government. Inspector Sushil Kumar (DW-15) who was examined for proving Ex.PW- 1/DX claimed that he had made a DDR entry at the PP Sultan Cantonment (District Amritsar), but admitted that he never obtained a copy of the said DDR. He admitted that neither he nor Constable Bhoop Singh, who had accompanied him from Delhi, nor Constable Mangal Dass of the local PP had been made a witness on the reports recorded on the summonses. Further, PW-1 was conversant in Punjabi and, therefore, there was no question of her depending on someone else for making endorsements of the Crl.A. 1099/2013 & Connected Matters Page 100 of 203 kind. It does appear that these writings are not in the handwriting of PW-1 at all.

191. As far as her affidavit before the Justice Ranganath Misra Commission is concerned, PW-1 stated that she had made the statement originally in Punjabi and that the contents were also recorded in Punjabi, but a person again came with an English translation and she signed it believing it was true. Obviously, the statement was not read out and explained to her. This explains how she claimed that she had named A-1 in this affidavit but when confronted, it is found absent. As pointed out by Mr. Cheema, the translation of the said affidavit does appear to be defective and casual and has apparent errors, gaps, and sequential mis-arrangements. He has pointed out, in particular, the following aspects of that affidavit: (i) (ii) In sub para (ii), there is a reference to the military burning the Sikhs, which was got clarified by the Commission and the witness clearly stated that the military did not indulge in any rioting. Similarly, reference to the role of army in para (viii) is extraneous to what the witness may have stated. In sub para (iii), after the name of mobsters, the following words appear:-

"When the attack on Sikhs was going on, I requested the persons listed above to help us. But they replied very rudely our meeting is going to take place, we have

no time, we will see it after the meeting (iii) The said words make no sense at all. In sub para (vi), the location of the place where the cousin brothers of the witness were hiding, has been misstated because of the erroneous translation. Crl.A. 1099/2013 & Connected Matters Page 101 of 203 (iv) Further in sub para (vi) after the names of the culprits, again there is a missing link around the words Police Station. They refused to register my report saying Hum kis kis kee baant sune, sikh to bahut mar rahen hen, jo kuchh hoga sab ke saath ikathha hoga. 192. There is, therefore, merit in the contention of Mr. Cheema that the original statement of PW-1 in Punjabi has been lost in crude, erroneous and perhaps motivated translation when it was presented before the Justice Ranganath Misra Commission (Ex.PW-1/A). Indeed, this affidavit presented by her has to be read in that context. She did claim in her deposition before the Court that while making this statement, she had named A-1 in her affidavit but it did not find mention in the English translation. This statement of hers indeed cannot be brushed aside. The following observations in Manohar Lal (supra) are relevant in this context: 5. Learned counsel for the appellants made an unsuccessful endeavour to create a dent on the concurrent findings regarding culpability of the appellants. He mainly relied on an affidavit signed by PW-1. It was marked in the trial court as Ext. PW-1/A. The endeavour was to show that PW-1 had gone to the extent of saying that the marauders killed even Shantibai, her daughter-in-law (wife of Darshan Singh) by burning her. True such a version is found in the affidavit prepared in English. It is also stated in the affidavit that she recognised Mannu and Jagga among the killers who dragged her sons out and set them ablaze. In fact Shantibai was not attacked by the killers. She is alive even now. Evidently that part of the affidavit is wrong.

6. Incorporation of such a wrong information in the affidavit is hardly sufficient to throw the testimony of PW-1 overboard. It might be that she had unwittingly formed such a wrong impression earlier at the first instance or that she herself is Crl.A. 1099/2013 & Connected Matters Page 102 of 203 innocent of that part of the affidavit. Even in the court she was not able to vouchsafe to the truth of what all things inscribed in the affidavit because apart from the fact that she affixed her signature in the affidavit she did not know what all were written therein. Neither the person who drafted the affidavit nor the typist who typed it has been examined as

witness. We are therefore not persuaded to reject the testimony of PW-1 mother merely on the strength of the aforesaid wrong information crept in the affidavit. 193. Next, we turn to the affidavit filed by PW-1 before the Justice Nanavati Commission. What stands out as far as this affidavit is concerned is the naming of A-1. Mr. Sibal has made extensive submissions on the contradictions in her deposition in the Court where she stated that she saw A-1 addressing a meeting on the morning of 2nd November 1984 where he was urging the mob to kill all the Sikhs and not spare even Hindus who were sheltering the Sikhs and that he was in fact leading the mob.

194. To appreciate his submissions, it is necessary to revert to PW-1s statement before the Justice Nanavati Commission where, in para 4, she says that A-1 was leading the mob and, in para 7, she states that she could identify the leader of the mob Mr. Sajjan Kumar, MP. Then, we have her deposition in Court on 1st July 2010 where she stated how, at around 9 am on 2nd November 1984, A-1 was coming out of a meeting and was declaring Sikh sala ek nahi bachna chahiyen, jo hindu bhai unko saran de uska ghar bhi jala do aur unko bhi maro. Her examination-in-chief continued on a day to day basis from 1st July 2010 onwards. On 3rd July 2010, when asked by the Public Prosecutor to identify A-1 in Court, she identified him correctly. She also correctly pointed out A-2, A-4, and A-5. Crl.A. 1099/2013 & Connected Matters Page 103 of 203 195. The Court has also carefully perused the cross-examination of PW-1 where she was confronted with her affidavits before the Justice Ranganath Misra Commission, the Justice Nanavati Commission, her statement under Section 161 Cr PC, and her statement under Section 164 Cr PC. She was separately cross-examined by counsel for each of the accused. As pointed out by Mr. Cheema, her cross-examination runs into 78 typed pages. It commenced on 3rd July 2010 and continued on 8th July 2010, 9th July 2010, 12th July 2010, 15th July 2010, 16th July 2010, 23rd July 2010, 26th July 2010, 27th July 2010, 28th July 2010, and 29th July 2010.

196. Her cross-examination by learned counsel for A-1 commenced on 2nd August 2010 and continued on 10th August 2010, 12th August 2010, 29th September 2010. Thus, for nearly three months between 1st July 2010 and 1st October 2010, PW-1 was literally in the box and was grilled over and over again

about all her previous statements including those made before the Justice Ranganath Misra Commission and the Justice Nanavati Commission.

197. On behalf of each of the accused, detailed analysis was made of her evidence intended to point out the contradictions in her previous statements when compared to her depositions before trial Court. The attempt was to show that she is both an untruthful and an unreliable witness. It was submitted that, being an interested witness, her evidence should be viewed with great caution and where she is not corroborated by any of the other witnesses, her evidence should be held to be unreliable and untruthful. In this regard, the well-settled legal position in relation to interested witnesses Crl.A. 1099/2013 & Connected Matters Page 104 of 203 requires recapitulation.

198. In Dalip Singh v. State of Punjab 1954 SCR145 the Supreme Court explained: A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts. 199. In Darya Singh v. State of Punjab (1964) 3 SCR397 it was observed by the Supreme Court as under: There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his

friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Crl.A. 1099/2013 & Connected Matters Page 105 of 203 courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it [I].t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. 200. In Jayabalan v. UT of Pondicherry (2010) 1 SCC199 the Supreme Court held as under: We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. 201. The legal position was succinctly encapsulated in Raju v. State of Tamil Nadu AIR 2013 SC983 .....we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such Crl.A. 1099/2013 & Connected Matters Page 106 of 203 as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the

accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required. 202. Thus, the legal position which emerges from the decisions of the Supreme Court cited above is that in evaluating the evidence of an interested witness, the Court must scrutinise their evidence carefully so as to ascertain whether it has the ring of truth. While their testimony is not to be viewed with suspicion merely because of their relationship with the victim, the Court must be satisfied that it is consistent and cogent.

203. This Court has already referred to the statements of PW-1 before the two CoIs as well as her statements by way of examination-in-chief. The contents of her affidavit are her previous statements in writing and can be used, as stated in Sections 145 and 155(3) IEA, to impeach the credibility of the witness. These affidavits have to be specifically put to the witness to confront her. Reading an earlier affidavit in its entirety as an admission is not what is contemplated under Sections 145 or Section 155(3) IEA.

204. Mr. Cheema has read the Punjabi version of the affidavit before the Justice Nanavati Commission where the words used are Eh Ki Iss Hajoom Crl.A. 1099/2013 & Connected Matters Page 107 of 203 Dee Agvai Saade Halqa Da M.P.Sajjan Kumar Kar Riha Hai. He explains, by referring to the Punjabi English dictionary printed by the Punjab University First Edition, that the word Agvai has varied meanings. One of its connotations is guidance or assertion. When understood in this context, there is no seeming contradiction in her statement in the affidavit before the Justice Nanavati Commission and what she was deposing in the trial.

205. The submission on behalf of counsel for the accused that the second page of the affidavit of PW-1 before the Justice Nanavati Commission was a forgery does not appear to be correct. The Justice Nanavati Commission itself in its report noted the contents of para 9 of the affidavit which is on the second page of that

affidavit. The suggestion of the defence that this page was replaced later deserves to be discarded.

206. Her statements in the cross-examination have been carefully examined by this Court. What she appears to be clear about is that she indeed gave a complaint to the police on 3rd November 1984 and that she did not give any statement either on 20th January 1985 when she was in Amritsar or on 31st December 1992 before the Riot Cell in Delhi. She denied these suggestions categorically. She is very categorical that when she received summons in 2003 from the police, she did not go before them or even to the Shiromani Gurudwara Parbandhak Committee (SGPC) seeking protection. She stated that since the summons was received from the police and I was scared of police and did not trust them, therefore, I did not go to SGPC. Crl.A. 1099/2013 & Connected Matters Page 108 of 203 207. According to PW-1, she did not receive any summons in 2004 stating that she had to make a statement before a Magistrate. As far as the endorsement made on the summons (Ex.PW-1/DC) is concerned, she is clear that only the signature was hers and that the writing was not.

208. When grilled about her naming A-4 and A-5, PW-1 denied the suggestion that she had named them at the instance of the CBI and volunteered that many persons were residing in the mohalla but I gave the names of only those persons who were the mobsters and not of the entire mohalla. She denied the suggestion that A-4 and A-5 are nowhere connected with the riots or that they have been made scapegoats. In other words, the concerted attempts to break PW-1 and to demonstrate that she was not speaking the truth, failed.

209. Attention was drawn to PW-1s failure to name PW-6 in her affidavit before the Justice Ranganath Misra Commission (Ex.PW-1/A) and in her affidavit and statement before the Justice Nanavati Commission (Ex.PW-1/B and C). She was confronted with all three exhibits when she stated in cross-examination that she could not remember whether she had mentioned his name in those proceedings. However, she maintained that she did mention the name of A-1 even before the Justice Ranganath Misra Commission although it is not recorded there.

210. PW-1 denied the suggestion put to her that CBI officials showed her and her affidavit before the Justice Ranganath Misra Commission (Ex.PW- 1/A) on 11th April 2009 when they recorded her supplementary statement Crl.A. 1099/2013 & Connected Matters Page 109 of 203 (Ex.PW-17/DB). In her repeated cross-examination by counsel for A-1, she volunteered, I do not like to speak about Delhi Police because they were the culprits/murderers and killers. She denied firmly the suggestion that she had been tutored to blame the Delhi Police. The following answers also bring out the clarity of PW-1s deposition: It is correct that I have referred the police officials as killers and murderer for the first time in this court because I was not asked earlier. It is correct that in the year 2003 I had received summons from Delhi Police. Same is Ex.PW1/DX and my signature on this summons are at point A and, B Name of my daughter is Gurjeet Kaur. Endorsement on the summons from portion X to X has been read over to the witness and she states that this portion was not dictated by her nor was written at her instance and this endorsement is not in the handwriting of my daughter Gurjeet Kaur. Endorsement from point Y to Y on Ex. PW1/DX is also read over the witness and she states that it was neither written by her daughter nor at her instance. I cannot identify signatures of my daughter. I cannot say if at point C is the signature of my daughter Gurjeet Kaur. This summons was brought at my house at Amritsar. My daughter is Gurjeet Kaur is educated. It is incorrect to suggest that my daughter mentioned on the summons that the endorsement at point X to X and Y to Y have been written by her at my instance. It is incorrect to suggest that I have been tutored to disown these endorsements or that by doing so I am trying to suppress the truth. I do not remember if the person who had brought the summons was accompanied by any local police or not. It is incorrect to suggest that HC Mangal Dass, of local police had accompanied the process server and he made me understand in Punjabi that in case I do not want to go to Delhi then I can give the statement before a Magistrate at Amritsar. I had simply signed the summons as I was told by them to sign the summons irrespective of the fact whether I wanted to appear before the court at Delhi or not as his senior officer do not believe that the summons have been handed over to me. No such endorsement was made on the summons when I signed the same. It is Crl.A. 1099/2013 & Connected Matters Page 110 of 203 incorrect to suggest that when I

signed the summons, endorsements were already there. 211. PW-1 was also able to denounce the endorsement on the summons (Ex.PW-1/DY) as under: I have seen summons Ex.PW1/DY, it bears my signature at point A. It is correct that name of my son is Gurdeep Singh. He has come with me today in the court. I cannot identify signature of my son Gurdeep Singh. It is incorrect to suggest that endorsement from portion X to X is in the hand of my son Gurdeep Singh or is at my stance. Vol. (volunteered) The witness has referred to the manner in which this endorsement is made by stating that last three lines have been written in a very close manner and if at all this endorsement was written prior to her signature, then her signature would not have been at point A but would have been somewhere near point X. 212. What comes across, therefore, is that this is a strong witness who was firm in her cross-examination which went on for almost two months. Specific to A-1, the confrontations of PW-1 during the cross-examination have been recorded as under: I have been stating in my earlier statements and affidavits that someone told me that MP has visited that place a meeting is going on. Confronted with statements Ex PW1/A, Ex. PW1IB, Ex. PWI/C, Ex. PW1/E, Mark A, B, C and Ex. PW1/DA, where it is not so recorded. However it is pointed out by ld. counsel for the CBI that in Ex. PW1/DA it is recorded that 'before going to the police post I learnt that Sajjan Kumar, Member of Parliament was conducting a meeting in that area'. He also referred to statement u/sec. 164 Cr PC Ex. PW1/E where it is mentioned that phir 10 baje mein phir chowki gai menu pata laga ki sansad Sajjan Kumar meeting kar rahe hain. Q. In your statement Ex.PW1/DA you have stated that" before going to the police post, I learnt that Sajjan Kumar a Member Crl.A. 1099/2013 & Connected Matters Page 111 of 203 of Parliament was conducting a meeting in that area and whereas in your statement Ex.PW1/E you have stated that" phir 10 baje mein phir chowki gai menu pata laga ki sansad Sajjan Kumar meeting kar rahe ham". Which of the two version is correct?. Ans. I had been stating that before reaching Police Post I came to know that MP of the area had come and he was holding a meeting and the discrepancy is due to mode of recording of statement. I do not remember if I gave the name of the person who gave this information to me but I was informed by a person who used to be called by his nick name Dardi regarding the meeting held by the MP. I do not remember but I have been stating everywhere that I

nurtured a hope that I would ask for help from the MP and would be able to cremate my husband, son and my brothers. Confronted with statements Ex. PW1/A, Ex. PW1/B, Ex. PW1/C, Ex. PWI/E, Mark A, B, C and Ex. FW1/DA, where it is not so recorded. It is pointed by Id. counsel for the CBI that in statement u/s 164 Cr PC Ex. PW1/E it is mentioned that "I came to know that Sajjan Kumar, Member of Parliament was addressing a meeting I hope that he would help me". He also, referred to statement Ex. PW1/DA, where it is recorded "I felt that MP Sajan Kumar would help me in saving the lives of my children and for cremating the dead bodies of my husband and son". I have been stating in all my statements and affidavits that MP Sajjan Kumar came out of the meeting after about 5 minutes and while standing on a jeep he declared. Confronted with statements Ex. PWI/A, Ex. PW1/B, Ex.PW1/C, Ex. PW1/E, Mark A, B, C and Ex. PW1/DA, where it is not recorded as such. I do not remember if I made any reference to the meeting addressed by Sajjan Kumar in any of my 'affidavits or statements before giving my affidavit in Nanavati Commission. It is incorrect to suggest that the introduction of Sajjan Kumar and his presence in the meeting was introduced for the first time by the political opponents of Sajjan Kumar and Gurudwara Persons (Akali Dai). Crl.A. 1099/2013 & Connected Matters Page 112 of 203 213. Therefore, even when grilled under the pressure of cross-examination, this witness has stood firm and has clearly spoken to what, according to her, was the truth surrounding the tragic events in the aftermath of the assassination of the then Prime Minister Smt. Indira Gandhi.

214. In light of that, the trial Courts analysis of the evidence of PW-1 in the following words appears to be fully justified: I have taken scrutiny of criticism pointed out by defence counsels on the testimony of this witness. I find evidence is in a most natural way without suggesting any kind of exaggeration or falsehood. She is a witness whose presence on the scene of the crime appears very natural, it being her own residential house. As seen above evidence is required to be appreciated that police had failed to take any action concerning those deaths which had taken place in the area and the rioting mob had been indulging in killings and destruction of properties. As it appears from report Ex.PWl/D that victims of these crimes were to console themselves to bargain a monetary compensation and State machinery was a complete failure and at halt to check

those crimes and to listen the victims. 215. In fact, the trial Court on reading Ex.PW-1/A, i.e. the affidavit of PW- 1 before the Justice Ranganath Mishra Commission, observed that there appears no inconsistency in the version of the incident narrated in this affidavit and then deposed by witness in the present trial before going on to conclude: There appears a ring of truth in the testimony of PW Jagdish Kaur that she did see assault on her husband, she did reach the place where she found her son injured and burnt and on the brink of his life and she provided a few drops of water before he breathed his last. Deposition given by the witness is a natural form of evidence which appears suffering no infirmity. Crl.A. 1099/2013 & Connected Matters Page 113 of 203 216. As correctly pointed out, there is absolutely no reason why PW-1 would substitute the real assailants with the names of others who are totally innocent. Here was a woman who, after much struggle, had to perform the cremation of her husband and son by lighting a funeral pyre with the help of furniture and household clothes.

217. The trial Court rightly noted that the testimony of PW-1 proved that A-2 was part of the mob that committed the murder of her husband and son and that, on 2nd November 1984, A-4 and A-5 were part of the mob that assaulted and killed Narender Pal Singh. It is indeed strange that having accepted the testimony as regards the involvement of these three accused, the trial Court performed a complete U-turn when it came to believing her testimony as far as the involvement of A-1 was concerned. This time, the trial Court observed that before the Justice Ranganath Misra Commission, PW-1 did not name A-1. Her statement before the Justice Nanavati Commission (Ex.PW-1/B) has also been erroneously construed by the trial Court as evasive. The further observation that her accusations as regards A-1 were vague is also not borne out by the affidavit filed by her before the Justice Nanavati Commission (Ex.PW-1/B) which she had by and large reiterated in her deposition in the trial without any serious contradiction by the counsel for the accused. She disputed the correctness of the translation of what she had stated before the Justice Ranganath Misra Commission particularly on the aspect of her not having named A-1 therein.

218. What is even more remarkable about the evidence of PW-1 is that she named A-2, A-4, and A-5 in her affidavit submitted before the Justice Crl.A.

1099/2013 & Connected Matters Page 114 of 203 Ranganath Misra Commission (Ex.PW-1/A) and then named A-1 in her affidavit submitted before the Justice Nanavati Commission (Ex.PW-1/B). In her statement before the Justice Nanavati Commission (Ex.PW-1/C) she refers to the earlier affidavit submitted by her before the Justice Ranganath Misra Commission. She has remained consistent on naming those four accused, viz. A-1, A-2, A-4, and A-5, when deposing in the trial in 2010, many years later. She was clearly not exaggerating or improving upon her previous statements as is sought to be suggested by counsel for A-1 and the other three accused. If the statement of PW-1 before the Justice Nanavati Commission is carefully perused, PW-1 naming A-1 and this being left out from her affidavit before the Justice Ranganath Misra Commission appears plausible. The following aspects pointed out by the prosecution are significant in this regard: (b) (a) DW10R.K. Jha Inspector was examined by the defence. He has stated categorically that CBI was having the record of commission of inquiry including affidavits submitted by the witnesses and that there were
affidavits of 1984-85 in which the name of Sajjan Kumar figured. The defence did not re examine him. It may be recalled that even in the last Status Report filed by the riot cell (Ex. DW15C) dated 31.07.2008 there is a reference to an affidavit of Jasbir Singh showing the involvement of Sajjan Kumar apparently this affidavit was filed before the Ranganath Mishra Commission in 1985. Strangely enough in the next line the report closes the issue by stating that when Jasbir Singh made a statement before the Committee on 27.12.1991 he did not reiterate these allegations. There is another reference at page 368 to a similar affidavit by Rajkumar regarding the holding of a meeting by Sajjan Kumar in Mangolpuri area this again is wound up by stating that Raj Kumar denied all allegations made in the Crl.A. 1099/2013 & Connected Matters Page 115 of 203 affidavit on 30.12.1991 and did not name him in his statement subsequently recorded by the Riot Cell. (c) The various reports of the Riot Cell are an exercise in justifying the conduct of the local police and nowhere has the role of Sajjan Kumar been actually subjected to scrutiny and investigation. Hence it is not a case where the name of Sajjan Kumar is brought on the surface after a long time it is rather a case where his name appears and later the things are managed to erase the same. 219. To this Court, PW-1 comes across as a fearless and truthful witness. Till she was absolutely

certain that her making statements will serve a purpose, she did not come forward to do so. This is understandable given the fact that all previous attempts at securing justice for the victims had failed. The large number of acquittals in the cases demonstrated how the investigation was completely botched-up. It also demonstrated the power and influence of the accused and how witnesses could easily be won over. The atmosphere of distrust created as a result of these developments would have dissuaded the victims from coming forward to speak about what they knew.

220. In the context of these cases, the factum of delay cannot be used to the advantage of the accused but would, in fact, explain the minor contradictions and inconsistencies in the statements of the key eye- witnesses in the present case. Nothing in the deposition of PW-1 points to either untruthfulness or unreliability. Her evidence deserves acceptance. Analysis of the evidence of PW-3 221. The Court next turns to the evidence of PW-3 who turned hostile during the trial. No doubt PW-3 went back on what he told the police Crl.A. 1099/2013 & Connected Matters Page 116 of 203 during the investigation and, in fact, went to the extent of discrediting the testimony of PW-1. He was clearly a witness who had been won over and this was most unfortunate because it is not even disputed by the defence that PW-3 was a person who helped some of the victims by giving them shelter and having given them safe passage. Even so, he was able to be won over by the accused who are clearly persons of great influence being prominent political figures.

222. As rightly pointed out by Mr. Cheema, it is not as if the evidence of a hostile witness requires to be discarded in toto. The law in this regard is well settled. In Prithi v. State of Haryana (2010) 8 SCC536 the Supreme Court dealt with the admissibility of the evidence of a witness who was cross-examined by the prosecution and held that it cannot be rejected in toto merely because the prosecution treated him as hostile and cross- examined him. It was observed that if a witness is declared hostile and is cross-examined with the permission of the court, his testimony is admissible and a conviction can be sought on the basis of his testimony if corroborated by other evidence.

223. Similarly, in Khujji v. State of MP (1991) 3 SCC627 the Supreme Court held that the evidence of a hostile witness who has been cross- examined by the prosecution cannot be treated as effaced or washed off the record altogether. The same can be accepted to the extent it is found to be dependable upon careful scrutiny and finds corroboration from other evidence. Crl.A. 1099/2013 & Connected Matters Page 117 of 203 224. In its decision in Rameshbhai Mohanbhai Koli v. State of Gujarat (2011) 11 SCC111 the Supreme Court held that the eye witnesses turning hostile en bloc during trial would not dent the prosecutions case where, even though they might have lied on account of the influence of the accused, the circumstances did not. Reiterating the above stated position, the Supreme Court opined that after exercising due care to separate truth from exaggeration, the Court can use the residual evidence, if sufficient, to convict the accused.

225. There are elements of the evidence of PW-3 which continue to remain uncontroverted and help the case of the prosecution. He described the locations of the houses of PW-1, PW-6, DW-3, as well as his own. He states how, when he came back home at 9-11 pm on 1st November 1984, he learnt of the murders of Kehar Singh and his son Gurpreet Singh. He states how the three deceased brothers were in fact hiding in the house of DW-3. There was some confusion created by PW-3 as regards the time when the brothers came out from hiding. Importantly, he acknowledges that PW-6 was a resident of the neighbourhood and that he knew him by his nickname Golu.

226. As rightly pointed out by Mr. Cheema, it is quite remarkable that PW- 3 admitted to being arrested by the police on the evening of 4th November 1994. This corroborates the contents of the entries in the DDR (Ex.PW-16/B) and in particular the entry at Ex.PW-16/G-24. He initially admitted that on the following day his brother took along with him PW-6 to secure his release although later he substituted this with the father Crl.A. 1099/2013 & Connected Matters Page 118 of 203 of PW-6.

227. The falsehood of his testimony are on issues of not knowing A-4 and A-5 who lived in the same area and in stating that PW-1 and her children had come to his

house and stayed throughout the night of 1st November 1984 and left the next morning, i.e. on 2nd November 1984, in a military van.

228. The trial Court was correct in the following analysis of his testimony: Testimony of PW3 provides a support and corroboration when witness deposed that Kehar Singh and his son were killed by mob on 01.11.1984 and this fact witness came to know when he returned home on that day. Though witness was got declared hostile but even otherwise according to prosecution case he was not an eyewitness of killings of Kehar Singh and his son. 229. However, the trial Court erred in also relying on that portion of his testimony where he turned hostile. This was not a trustworthy witness in the sense that he helped the accused by trying to discredit the testimony of PW-1. He, in fact, was not confronted by any of the counsel for the accused because of his turning hostile. However, as pointed out hereinbefore, some of the parts of his testimony do not contradict the case of the prosecution at all and can be relied upon by it in support of its case. Analysis of the evidence of PW-4 230. The Court then turns to the evidence of PW-4 who is the brother of PW-6 and two of the deceased, i.e. Raghuvinder Singh and Narender Pal Singh. He came into the scene on 8th November 1984 after he was helped Crl.A. 1099/2013 & Connected Matters Page 119 of 203 by the Air Force to reach his house. He was already serving in the army as a Corporal in Chakeri, Kanpur. He filed two complaints (Ex.PW-4/A and B) concerning the killing of Raghuvinder Singh, Narender Pal Singh, and Kuldeep Singh. PW-4 also proved that PW-6 was in fact a clean shaven Sikh, i.e. a mona Sikh. The following are the material aspects of his deposition: (i) That PW-6 was a clean shaven person since his school days. (ii) That PW-6 had been residing with his two other brothers and Kuldeep Singh at H.No.RZ-15, Shiv Mandir Marg and the three brothers were working as MES contractors. (iii) That PW-6 was in Delhi at the relevant time and had met PW-4 in the Gurudwara upon his visit after the occurrence.

231. The trial Court in this regard observed as under: Documents Ex.PW4/A and B show that a report dated 12.11.1984 was submitted to SHO Delhi Cantt. by PW4 Balvinder Singh and this informant Balvinder is the real brother of two deceased of this case namely Raghuvinder Singh and Narender Pal Singh. These two reports specifically mentioned killings of Raghuvinder Singh and Narender pal Singh and

Kuldeep Singh in the incidents of 02.11.1984 at around 06.30 hours and names of culprits were mentioned in these two reports and those were No.1) Bhagmal Singh,

2) Ex Subedar Baldan Singh,

3) Ashok C/o Ex Subedar Baldan Singh,

4) Dharamvir Singh,

5) Girdhari Lal,

6) Chand. Admittedly no registered concerning these deaths. Though local police claimed that such kind of complaints being received were being kept with FIR41684 no action appeared to have been taken on these reports except the claim of Delhi police to have recorded statement of Jagdish Kaur on 20.01.1985 and her statement again recorded by Riot cell in 1992 and both these statements have been report was first information Crl.A. 1099/2013 & Connected Matters Page 120 of 203 strongly refuted by PW1 to have been given by her to the police. No investigation appeared to have been taken up for those killings of persons despite some of the culprits had been named. I do agree with the arguments and contentions of ld. public prosecutor that evidence of the star witness PW1 Smt. Jagdish Kaur and other two material witnesses PW6 Jagsher and PW10 Nirpreet Kaur and other relevant witnesses is to be appreciated in this peculiar background of the case. 232. The above analysis appears to be correct. What is significant is the naming of A-4 and A-5 in the aforementioned report filed way back on 12th November 1984. Therefore, PW-4 is also definitely a witness in support of the case of the prosecution. Analysis of the evidence of PW-6 233. Next, taking up the evidence of PW-6, the principal criticism of his deposition by the counsel for the accused is that he suddenly emerged during the trial not having spoken at any time earlier since 1984. He is, however, a crucial witness as regards the visits by A-1 in the area on the night of 1st November 1984. The presence of PW-6 in the area is spoken to by PW-3 himself and since PW-3 has not been contradicted by the defence in the trial, they cannot possibly deny the presence of PW-6 at the spot.

234. PW-6 too was subjected to extensive cross-examination by the defence and no answer could be elicited to discredit his testimony. The following suggestion in fact brings this out clearly: It is incorrect to suggest that I was not in Raj Nagar Area from 31.10.1984 till 03.11.1984 and that I came to Delhi along with my father after the alleged incident. It is also incorrect to suggest that I came to know the facts of this case when I reached Delhi sometime either on 3rd or 4th of November, Crl.A. 1099/2013 & Connected Matters Page 121 of 203 1984. 235. If one peruses the statement given by PW-6 under Section 161 Cr PC (Ex.PW-6/DA), it does appear that he spoke clearly. He too gave a statement under Section 164 Cr PC where he named A-1.

236. The submission of Mr. Cheema that the defence has split the entire cross-examination of PW-6 into small disjointed sentences for the purpose of confrontation is indeed correct. The confrontation portion does not bring out any major contradictions as can be seen below: I had probably stated before the Magistrate that as soon as I entered that gali I saw one Sikh wrapped in a woollen shawl was running forward by number of persons. I stopped there. The mob called that Sikh gentlemen near the house of one Manjeet Singh Kavi where one electric pole was installed. The mob started beating him with rods and set him on fire when the crowd disturbed a little I went over there and I saw that he was my brother. I identified him as my brother Narender Pal Singh. I identified him by his watch. Confronted with Ex. PW6/a where it was no recorded. However, it is mentioned there that then I saw that rioters were following one man and I also saw half burned body of Sardar lying there, who was my brother Narender. I do not remember if I stated in my statement before the magistrate that Major Yadav agreed to accompany me in order to save my two other brothers and children. He took one vehicle along with 7-8 jawans from Sikh regiment. Confronted with statement Ex. PW6/A where it is not so recorded. However, it is recorded in the statement that Major Yadav had gone along with this witness. . Thereafter, I went to the house of Jagdish Kaur, Jagdish Kaur, her younger son and three daughters were inside the house. I also made them sit in that big vehicle. Confronted with Crl.A. 1099/2013 & Connected Matters Page 122 of 203 statement Ex. PW6A where it is not so recorded. However it is mentioned that I went to Rajnis house where I was told that my bhabis and their children are hiding in the bathroom. 237.

He firmly denied the suggestion that he had been advised by the CBI to falsely implicate persons. He stated, I was only speaking the truth that whosoever helped us even that person was arrested. The following question-answer exchange makes his deposition even more trustworthy: Is it correct that you have deposed before the court on 25.10.2010 that I was working in MES whereas in you statement u/s 161 Cr PC you have stated that my brothers Narender Pal and Raghuvinder Pal were MES contractor and I used to assist them in their work whereas in your examination in chief you have said that I was in MES contractor along with my brothers. Which of your statement is correct?. Ans. All the three versions are correct. 238. That PW-6 was a mona Sikh throughout came across in the following manner: I had stated in my statement before CBI that I was called by the nick names Bhola and Golu. My family were Sikhs by religion. My brothers namely Narender pal Singh, Raghuvinder Singh and Kuldeep Singh were keshdhari and they were also having beard. I got my haircut from the school time itself. In the year 1984, I was not having any beard as I was
years old. Confronted with statement Ex. PW6DA where it is not so recorded. However, factum of him being mona and
years old is mentioned. 239. On the crucial part of him being an eye-witness, he stated as under: I had stated in my statement to CBI that there was a window above the bed, I stood on the bed and watched from the glass on the upper part of the window, I saw that mob armed with Crl.A. 1099/2013 & Connected Matters Page 123 of 203 lathies and sariyas had entered into the house of my sister Jagdish Kaur and the side window was completely demolished. The iron gate was also dismantled. Confronted with Ex. PW6/DA, where it is not so recorded. However, it is recorded I stood on the charpai and from the upper part of the window saw number of people (whom I cannot identify) attacking the house of my sister Smt. Jagdish Kaur w/o Kehar Singh. Probably I had stated in my statement before the CBI that Kehar Singh fell inside the house itself. Confronted Ex. PW6DA, where it is not so recorded. However, it is record from that window pane, I could see that Kehar Singh and his son Gurpreet Singh were dragged out of their house by the mob and attacked them with iron rods. Both of them were crying like hell and mob was then shouting. Kehar Singh fell down there only. 240. It is, therefore seen that a concerted attempt at breaking down PW-6 also failed. The

actions of the mob were also spoken to by him at the very first instance as under: I had stated in my statement that after locking the house when I was going to the house of Rajni and reached Shiv Mandir Marg, I saw mob coming from Palam village side leading to Shiv Mandir Marg and raising slogans. Again said the mob was coming from the road connecting Palam colony with Palam village at the point where a road bifurcates into Shiv Mandir Marg jo Palam colony se Palam gaon ko road ja rahi hai, uske upar se Shiv Mandir Marg ko ander ko road nikalti hai I saw the door of the house of Rajni closed, the mob was raising slogans in sikho ko maro; in gadharo ko maro; Hindustan me ek sikh bhi zinda nahi bachna chahiye. Confronted with statement Ex. PW6DA where it is not so recorded. However, it is recorded that then in order to park our motorcycle inside the house, I came back to our house, park the motorcycle inside the house and was going back to the house of Smt. Rajni when I heard lot of commotion and saw Crl.A. 1099/2013 & Connected Matters Page 124 of 203 people coming running from the main road side immediately I could make out that rioters have started troubles in our area also, by that time due to that commotion Rajni had locked her house from inside. 241. The most harrowing moment was him taking the younger son of PW-1 to get his hair cut which is spoken about as under: I had stated in my statement to CBI that I came out of the house and I was about to enter the house of Ram Avtar Sharma, then I noticed Gurdeep, younger son of Jagdish Kaur, I took him inside the house. I thought he would also be killed, however, I cut his hair with a scissor lying in the house of Ram Avtar Sharma. Confronted with Ex. PW6DA, where it was not so recorded. However, it is recorded then sensing further trouble I took young Gurdeep s/o Kehar Singh to the residence of Ram Avtar Sharma and cut his hair. 242. The Court fails to understand why PW-6 would falsely implicate A-1. These are persons who had suffered tragedies and had no reason to falsely implicate anyone. It is also not as if they were naming all of the accused in a blanket manner. These witnesses have named only the accused to whom they can attribute a discernible role. Their testimony comes across as natural and believable and has been rightly relied upon by the trial Court in convicting A-2 to A-6. However, inexplicably, the trial Court leaves out material portions of such evidence and has, therefore, wrongly acquitted A-1. Analysis of the evidence of PW-7 243. The Court would next like to discuss the evidence of PW-7 who was a

witness to the initial attack on the Raj Nagar Gurudwara on 1st November 1984 at around 7:30 am. He was living in the vicinity of the Crl.A. 1099/2013 & Connected Matters Page 125 of 203 Gurudwara in Raj Nagar, Part-II. At 7:30 am, when alarm calls were heard, he and 20-25 other Sikhs armed with kirpans managed to repel a mob seeking to cause damage to the Gurudwara. However, the police came there and took away the kirpans of the Sikhs. When the mob again came, they managed to cause extensive damage to the Gurudwara besides setting fire to a truck, looting the house of one Jasbir Singh, and committing the murder of Nirmal Singh while taking him away on the pretext of involving him in negotiations for peace.

244. PW-7 also took active part in the funeral of the dead bodies of the Sikhs with the initiative of Wing Commander L. S. Pannu. Among the dead bodies, he could identify those of Kirpal Singh, Ajit Singh and his son, and one Avtar Singh.

245. He also spoke of the complicity of the police. On 2nd November 1984, hiding in the house of his father-in-law, he could see from the window how a police van would come and stop and upon seeing them, Sikhs would come out hoping to be protected. The police would then leave without offering any help or protection and soon thereafter, a mob would come there and burn those very houses.

246. PW-7 is an important witness as regards the culpability of A-2, A-3, A-4, and A-6 who have been identified by him as members of the rioting mob. He could speak of how cremations were taking place at the very place where the bodies were lying there and this was done with furniture, clothes etc. He was asked in the context of the killing of Avtar Singh as under: Q. Why did you leave a helpless lady who had lost her Crl.A. 1099/2013 & Connected Matters Page 126 of 203 husband and son in the riots and house was burnt whereas you claim that you had particularly gone along with Wg. Cdr.Pannu to help the remaining riot victims?. A. Our attention was only to cremate the killed persons and therefore, we did not pay any attention to bring the wife of Avtar Singh and therefore we did not pay attention to living persons in the colony to shift to gurudwara as there were too many persons. We thought it first to cremate the killed persons. Last rites were performed at the places where the dead bodies were lying in the colony. Whatever material was found lying in the houses with the help of those furniture/ clothes,

cremation was done. 247. PW-7 too, in his cross-examination, when asked why he did not prefer to lodge a report to ensure that the culprits were booked as per law, stated we were very much scared of the police and therefore, I did not go to the police station to lodge report. Analysis of the evidence of PW-12 248. PW-12 was a resident of Raj Nagar, Part-II. His father was plying a taxi. It is significant to note that at the time of riots he was a keshdhari and, by the time of his deposition on 14th February 2011, he was not. He spoke of the attack on the Gurudwara and about the Sikhs initially resisting it and later the mob returning and demolishing it. He spoke also of the slogan shouting in the morning of 2nd November 1984 by a mob which announced that if any Hindu had given shelter to any Sikh, then he should also be finished off. His statement was never recorded by the police but only by the CBI. He did not see A-1 and, therefore, did not speak of him while he admitted that he did not know PW-10. PW-12 stated that he knew her Crl.A. 1099/2013 & Connected Matters Page 127 of 203 mother Sampuran Kaur. He comes across as a natural witness who again had no reason to speak falsely. On the aspect of the attack on the Raj Nagar Gurudwara, he corroborates PW-7.

249. The presence of PW-7 is affirmed by A-2 himself in his statement under Section 313 Cr PC where he stated as under: 157.Q. It is further in evidence against you that at about 9 am, Joginder Singh went to Mota Singh School Camp, at Janakpuri, in a Military truck and on the way back he took his father, brother and two more Sikhs who were hiding in Mahavir Enclave with him in that camp and stayed there on 03.11.1984. What have you to say?. Ans. It is correct. 158.Q. It is further evidence against you that in the morning of 04.11.1984, Joginder Singh went to the Air Force Gurdwara Camp, where he met his wife, mother-in-law, sister-in-law besides many other Sikhs of Palam Colony, he also met Wing Commander Mr. L.S. Pannu and stayed there for about 10 days. What have you to say?. Ans. It is correct. 159.Q. It is further in evidence against you that on 05.11.1984, you Balwan Khokhar came to Air Force Gurdwara with milk and biscuits and inquired about Nirpreet Kaur and her family members. What have you to say?. Ans. Six families of Sikhs had taken shelter in my house. Thereafter, I arrange for shifting them to Gurdwara, in order to provide milk and biscuits, I had gone to Gurdwara where I met them as well as Wing Cdr. Pannu. 250. The criticism of PW-7 that he kept quiet for a long time and did not Crl.A. 1099/2013 &

Connected Matters Page 128 of 203 come forward requires to be rejected for the reasons already discussed hereinbefore. The Delhi Police did not inspire the confidence of the victims to come forward and it is understandable that they waited till the CBI took over to speak. PW-7 explained these circumstances when he stated that during the riots we had lost everything and had even no food to eat. After this incident we had gone to Amritsar, therefore, my main priority was to earn my livelihood and not to pay attention to other things. 251. Even when he subsequently gave an affidavit (Ex.PW-7/A), students of Khalsa College, Amritsar had helped. He also pointed out how there was a language problem between him and PW-15 as he was not conversant in the Hindi language. But he had no occasion to go through that affidavit and there was a huge rush and he was made to sign it quickly.

252. PW-7 will again be discussed when dealing with the individual appeals of A-2 to A-6. Nevertheless, he is indeed an important witness for the prosecution and has corroborated the other witnesses on the material aspect of there being rioting mobs targeting Sikh households and the Gurudwara in the locality. The Court concurs with the analysis of the evidence of PW-7 by the trial Court holding it to be acceptable as far as the attack on the Gurudwara is concerned and the role of A-2, A-3, A-4, and A- 6 being members of that mob. Indeed, PW-7 is a truthful and reliable witness. Analysis of the evidence of PW-10 253. PW-10 is another important witness for the prosecution. She was a witness to the happenings at the Raj Nagar Gurudwara which have been Crl.A. 1099/2013 & Connected Matters Page 129 of 203 spoken to by PWs 7 and 12. She was also a witness to the speech of A-1 on the morning of 1st November 1984 and, to that extent, corroborates PW-1. What has emerged in her cross-examination is that she, at one stage, had joined the Sikh Students Federation. However, she denied having been involved in any terrorist activities. She truthfully gave details of the three cases in which she was implicated. In two of them, she was discharged and in the third, she was acquitted.

254. The defence had put forth DW-4 who claimed to have recorded her previous statement (Ex.DW-4/A). He is supposed to have recorded that statement at Gurudwara, Moti Bagh. He admitted in his cross-examination that there was

nothing in the statement which showed the place where it was recorded. He has also not denied that there was no entry in the case diary about the recording of such statement. According to him, many ladies were present but none of them specifically identified PW-10. In the said statement (Ex.DW-4/A), the address given was that of Raj Nagar. PW-10 states that she was not examined by the Delhi Police earlier and to this Court, that appears to be more credible than the unreliable testimony of DW-4.

255. PW-10 was first examined on 6th January 2011 by way of examination-in-chief. She was an eye witness to the murder of her father Nirmal Singh and the attack on the Gurudwara. The attack was by a mob which was led by A-2 and A-3. She also named A-6 as being part of that mob. She spoke about Nirmal Singh being taken away by A-2 and A-3 on a scooter on the pretext of involving him in the talks for compromise. She Crl.A. 1099/2013 & Connected Matters Page 130 of 203 saw one Inspector Kaushik giving a match box to A-6 who set her father on fire while the mob had caught hold of him and after Chand Sharabi doused him with kerosene oil. She also spoke about A-4 tying up her father with ropes to a telephone pole after he escaped and jumped into a nala. She stated that the wife of one Dua was contributing kerosene oil and her father was again set on fire. When her father again jumped into the nala, the pujari of the nearby temple called the mob again. This time, A-2 hit her father with a rod and A-3 sprinkled some white powder as a result of which he was burnt. Someone from the mob shouted that his entire family should be killed. PW-10 then rushed towards their house and found her mother lying unconscious and her house burning.

256. The next morning, she got introduced to the Wing Commander L. S. Pannu who had told her that he could provide her with a vehicle and jawans. When she went alone in the vehicle with jawans to Palam Colony, on reaching Manglapuri, she noticed A-1 standing and addressing the mob saying Ek bhi sardar jinda bachna nahi chahiye and further Jo bhi sardaro ko bacha raha hai usse bhi jala do. In Sardaro ko maro inhone hi hamari ma ko mara hai. Ye saap ke bacchhe hai.

257. She is categorical that neither her statement nor the statement of her mother (Sampuran Kaur) was ever recorded by the police. According to her, neither she

nor her mother received summons from the Court either in 1985 or thereafter.

258. In fact, the judgment of acquittal in SC No.32/1986 indicates how the trial Court itself noticed how summonses to eye-witnesses were not being Crl.A. 1099/2013 & Connected Matters Page 131 of 203 served and the Court criticised the conduct of the process serving agency. Summons were first issued on 14th April 1986 and when eye-witnesses, which included PW-10, her mother Sampuran Kaur, and one Constable Paramjeet Singh, did not appear, the case was adjourned to 20th April 1986 when again they were not served. The Court gave a last opportunity to the prosecution on 16th May 1986. Again, they were not served and the report said that they were untraceable. It was in these circumstances that the trial Court concluded the proceedings even though it was apparent that the eye- witnesses were being kept away.

259. This was another family where the mother (Sampuran Kaur), out of fear, took away PW-10 and her brothers to her village in Gurdaspur District in Punjab at the end of November 1984. When they returned in January 1985 to Delhi, they started living in rented accommodation and kept changing houses because some suspicious elements used to roam near houses and therefore being scared we used to change accommodation. In 1986, they were allotted accommodation with other riot victims at Tilak Vihar.

260. In 1984, PW-10 was 16 years old. After she joined the Sikh Students Federation, she states that they were implicated in three false TADA cases and she remained in jail for many years. She was discharged in two and acquitted in the other.

261. Her statement was first recorded before the learned MM in January 2009 (Ex.PW-10/A). She could correctly identify A-1, A-2, A-3, A-4, and A-6 in the trial. Her cross-examination commenced on Crl.A. 1099/2013 & Connected Matters Page 132 of 203 10th January 2011 and continued on 11th, 12th, 13th, 18th, 19th, 20th, 25th, 27th, 31st January 2011 and 1st and 2nd February 2011. Therefore, even PW-10 was grilled day after day by each of the counsel for the accused. If one carefully peruses the confrontations made, it cannot be said to be so serious as to discredit her testimony in its entirety. Relevant excerpts are reproduced as

below: I had stated in my statement before CBI that on 31.10.1984 I came to know that Prime Minister Indira Gandhi has been assassinated by her security guard except some stray incidents everything was normal. Confronted with statement Ex. PW10/DA where it is not so recorded but it is recorded on 31.10.1984 Smt. Indira Gandhi, the then Prime Minister was assassinated. On that day no untoward incident took place in our area. . I had stated before the CBI that on that day my father had come early to the house. Confronted with statement Ex.PW10/DA where it is not recorded. I had stated in my statement to the CBI that in the evening at about 6.30pm, Balwan Khokar who used to introduce himself as nephew of Sajjan Kumar alongwith his brother Krishan Khokar came to our house and asked my father to keep his brother Krishan Khokar as driver. My father told him that at present there is no vacancy and in case there will be any vacancy, he will inform him within 3-4 days. Confronted with Ex.PW10/DA where it is not so recorded. However it is recorded "in the evening at about 6.30 pm Balwan Khokar (nephew of Sajjan Kumar) came to our house for discussing employment for his nephew as driver". . I had stated in my statement before the CBI that my father asked Balwan Khokar that Sikhs are being attacked thereupon Balwan Khokar told him that Sajjan Kumar is his maternal uncle and he has assured him that there shall be no attacks in our colony. Confronted with statement Ex. PW10/DA where it is not so recorded. I had stated in my statement that on the Crl.A. 1099/2013 & Connected Matters Page 133 of 203 intervening night of 31.10.1984 and 01.11.1984 at about 2.30- 3am, Granthi of our gurudwara came to our house and informed my father that police personnels have come in the gurudwara because my father was President of gurudwara. My father and my mother accompanied him to gurudwara. Confronted with statement Ex. PW10/DA where it is not so recorded. However, it is recorded "on the intervening night of 31.10-1.11.1984 at about 4 am, on 01.11.1984 the granthi of gurudwara came to our home asking for tea and also told my father that there was a police man in the gurudwara. After that my parents went to the gurudwara for the morning prayer. Morning prayer start at 2:30am as gurudwara sahib opens at that time. . I had stated in my statement before CBI that we heard noise and of slogans at about 7.3
am, we rushed and saw that a huge mob was coming which was being led by Balwan Khokar, Mahender Yadav and owner of Mamta Bakery, they were with

sariyas, rods, subals, jellies and etc. Time I have given by approximation. Confronted with statement Ex. PW10/DA, where it is not so recorded but it is recorded "at about 8.30am, a mob led by Balwan Khokar, Mahender Yadav and owner of Mamta Bakery (whose name I do not remember attacked gurudwara". . I had stated before CBI that Balwan Khokar, Mahender Yadav and Kishan Khokar came where all the Sikhs had gathered and they offered to pay compensation for the loss/damages. Confronted with statement Ex. PW10/DA where it is not so recorded. However it is recorded "seeing that mob could not defeat Sikhs, Balwan Khokar, Kishan Lal, Mahender Yadav, owner of Mamta bakery came near our house saying why we brothers should fight amongst each other and lets compromise and settle the issue. . I had stated before the CBI that my father went with Balwan Khokar and Mahender Yadav on scooter. Confronted with statement Ex. PW10/DA where it is not so recorded. However Crl.A. 1099/2013 & Connected Matters Page 134 of 203 it is recorded that my father then sat on the motorcycle behind Balwan Khokar. Probably I had stated in my statement before the CBI that Mohan Singh one of the Sikh, who had gathered over there uttered that now my father would not come back. On hearing this, I. rushed in the same direction where my father had gone I saw that the scooter stopped near the shop of Dhanraj. Confronted with statement Ex. PW10/DA where it is not so recorded. However it is recorded that "meantime sensing trouble for my father I ran towards the shop of Dhanraj". I had stated in my statement that mob caught hold of my father, Ishwar Sharabi sprinkled kerosene oil over my father. Confronted with statement Ex. PW10/DA where it is not so recorded. However it is recorded that "Ishwar Sharabi gave kerosene oil to the mob". I had stated in my statement before CBI that from his name plate I could gather that his name was Inspector Kaushik. Inspector Kaushik gave match box which was taken by Kishan Khokar and Kishan Khokar set on fire my father. Confronted with statement Ex. PW10/DA where it is not so recorded. However it is recorded that then it was Kaushik who gave them match box and the mob poured kerosene on my father and set him on fire. I had stated in my statement that mob had gone a little ahead my father jumped in a nearby nala when the mob saw that my father is alive they returned back. Confronted with statement Ex. PW10/DA where is not so recorded. However it is recorded that "after that the mob left. My father who had sustained burn on chest managed to

jump in a nearby nala however the mob returned and saw him alive". . I had stated in my statement before CBI that Captain Bhagmal tied my father with rope on the telephone pole. Confronted with statement Ex. PW10/DA where it is not so recorded. However factum of tying her father with telephone pole is mentioned but name of Captain Bhagmal is not there. I had stated in my statement that wife of Dua gave kerosene oil and my father was again set on fire. Confronted with statement Ex. PW10/DA where it is not so recorded. I had stated in my statement that Balwan Khokar hit my father with rod, Crl.A. 1099/2013 & Connected Matters Page 135 of 203 Mahender Yadav sprinkled some white powder on my father as a result of which he was burnt. Confronted with statement Ex PW10/DA where it is not so recorded. However it is recorded that "this time the mob hit my father with iron rod and poured kerosene and some white powder and set him on fire. 262. It is not possible for this Court, therefore, to agree with the criticism of the counsel for the accused that PW-10 is an untruthful and unreliable witness. The trial Court too considered PW-10 to be a truthful witness who provided support and corroboration to PW-7 as far as the attack on the Gurudwara and the killing of her father Nirmal Singh is concerned. However, strangely, the trial Court has disbelieved her when it came to acquitting A-1. How the same witness who is truthful as far as the involvement of A-2, A-3 and A-6 are concerned can suddenly turn untruthful when it comes to the involvement of A-1, is not understood. It is here that the trial Court has faltered in its analysis of her testimony. Analysis of the evidence of PW-9 263. At this stage, reference may also be made to the deposition of Jasbir Kaur (PW-9) who lost her husband, father-in-law, and mother-in-law in a ghastly attack at their residence on the morning of 2nd November 1984. Her house was damaged entirely. Since she was hiding in the neighbouring house with the children, she could not see the attackers herself. She too had made a complaint (Ex.PW-9/A) but was never examined by the police. She broadly corroborates the testimony of the other PWs discussed hereinbefore.

264. These prosecution witnesses were themselves were sufficient to prove Crl.A. 1099/2013 & Connected Matters Page 136 of 203 the guilt of the accused. Analysis of the defence witnesses 265. At this stage, the Court would also like to discuss the evidence of the defence witnesses.

266. DW-1 was posted as Garrison Engineer (East) in Delhi Cantonment. Om Prakash (not examined) came to his residence at around 7 am on 2nd November 1984 and asked for help for the family of Kehar Singh, the friend of Om Prakash whom DW-1 knew from before. DW-1 then accompanied Om Prakash to Raj Nagar with a unit truck. Om Prakash fetched PW-1 and her four children - three daughters and a son. PW-1 requested DW-1 that they should be evacuated to a safer place. She also asked that her bhabhi and their children also be rescued. Om Prakash then went and brought two ladies and two children with them. DW-1 then brought all of them to the Parade Camp at the Parade Ground, Delhi Cantonment.

267. According to DW-1, he brought them there at 8 am and they all stayed there till 11:30 am. This is where he departed from the case of the prosecution and helped the accused. In his cross-examination, he stated that he did not inform anyone that he had rescued PW-1 and others. He claimed not to know PW-3. He states that he did not notice that the house adjoining Ram Avtar was in a burnt condition. He denied the suggestion that he had gone to rescue the brothers of PW-6, on the asking of PW-6.

268. DW-1 denied the suggestion that Malhi & Co., in which PW-6 was a Crl.A. 1099/2013 & Connected Matters Page 137 of 203 partner, were working for him. At the same time, he admitted having written a letter dated 11th April 1995 (Ex.DW-1/P-1), which falsified this claim. This was a letter by him to Daljeet Kaur, the widow of Raghuvinder Singh. He then tamely suggested that Raghuvinder Singh might have obtained the contract and this letter may have been written pursuant thereto. However, with Raghuvinder Singh having been killed on 2nd November 1984, the question of his obtaining a contract at a date thereafter simply did not arise. The sudden appearance of DW-1 after 27 years, not mentioning these facts to anyone makes his testimony certainly suspicious. Mr. Cheema would argue that if the evidence of DW-1 is read carefully, it supports PW-1 on the broad particulars of her rescue along with her children. Of course, the timing of such rescue has been wrongly spoken to by DW-1 in order to falsify her testimony of her presence at Raj Nagar on the morning of 2nd November 1984. To that extent, his testimony becomes doubtful and does not inspire much

confidence.

269. DW-2 point blank denied having given shelter to any Sikh family in her house. She too was obviously won over, despite her having helped the Sikhs in the moment of crisis. She goes to the extent of stating that she did not even know the house where Narender Pal Singh, Raghuvinder Singh, and PW-6 were residing with their families. This denial of knowledge about her neighbours makes her again a wholly unreliable witness. PW-15, the IO, mentioned how DWs 1 and 2 had given evasive replies and failed to cooperate with the investigation.

270. DW-9 was posted at PP Palam Colony during the relevant time. His Crl.A. 1099/2013 & Connected Matters Page 138 of 203 statement that no crowd collected outside the PP in the morning of 2nd November 1984 seems palpably false given the mayhem and commotion in the area. He later sought to dilute his stand by suggesting that A-1 had not come to the PP on that day in his presence. In his cross- examination, his pathetic assertion that, in his presence, no untoward incident took place and that he did not notice any burnt houses, dead bodies, or ransacked houses exposes his brazen attempts in supporting the defence. He then states that since riots were going on, therefore, there was a mob. I apprised the chowki in-charge about the same but no report was lodged separately by me regarding this fact. This actually points to the extent of police connivance with the rioters. He brazenly asserted that during the period of his duties from 31st October 1984 till 6th November 1984, it never came to my notice that any Sikh person in the locality has been killed or their house looted and ransacked. This single sentence is enough to expose the utter falsehood of his testimony which deserves to be jettisoned in toto.

271. S. A. Prasad (DW-11) was examined by the defence to prove that on the relevant dates, there was no electricity in the area. One Mukesh Sharma, MLA had, through an RTI, obtained information (Ex.DW-11/A). However, this witness was unable to confirm this fact. He in fact was shown the electricity bill mentioning a Raj Nagar address (Mark-X). He, however, was unable to produce the record.

272. Subhash Chand (DW-12) was a registration clerk. He had no knowledge of the house stated to be occupied by PW-1. Crl.A. 1099/2013 & Connected Matters

Page 139 of 203 273. Through the evidence of PWs 15 and 17, it becomes clear that the Delhi Police did not carry out any serious and effective investigation into the murders of 30 persons, forming the subject matter of FIR No.416/1984. PW-17 confirmed that as many as 23 complaints were clubbed in the said FIR and only five murders were investigated. Five separate lists of witnesses were filed by way of five charge sheets. Later, a supplementary charge-sheet was also filed. Resultantly, as many as 25 murders were not prosecuted at all.

274. Mr. Cheema pointed out how PW-9 who had lost her husband and in- laws and had filed a complaint (Ex.PW-9/A) was responded to with silence and no action was taken on her complaint. Likewise, one Kuldeep Singh had named HC Satbir Singh as an accused. Again, no action was taken and the murder was not investigated. As many as 20 murders remained un- investigated in FIR No.416/1984. It may be recalled that even as per the Justice Nanavati Commission, as many as 341 Sikhs were killed within the jurisdiction of Delhi Cantonment.

275. As regards the clubbing of all these complaints into one FIR, none of the records would show that any specific order was passed directing such clubbing. Therefore, none of the charge sheets included the offence of conspiracy punishable under Section 120B IPC. All six cases in which separate charge sheets were filed ended in acquittals.

276. Mr. Cheema then touched upon the Riot Cell investigation and pointed out that there was, in fact, no investigation at all. It was only after an Crl.A. 1099/2013 & Connected Matters Page 140 of 203 untraced report was prepared by the Delhi Police on 14th September 2005 that the case was entrusted to the CBI on 24th October 2005. On 22nd November 2005, the Riot Cell filed a cancellation report before the MM. Therefore, before the CBI could even embark on a meaningful investigation, the Riot Cell tried to bury the case.

277. Turning to Ex.DW-15/C, which is a report recapitulating the earlier reports, it recorded the complicity of A-1. However, when DW-15 appeared before the Committee on 27th December 1991, he denied all other allegations except naming A-2, Mangat Ram, Raju, and Hukum Chand. One Raj Kumar, who had mentioned

the name of A-1 in an affidavit regarding the meeting in Manglapuri, resiled from his statement while appearing before the Committee on 30th December 1991. This also showed the power and influence of A-1.

278. Then we have the police officers of the Riot Cell who were also examined. To begin with, DW-4 was produced to prove the statement supposedly made earlier by PW-10 (Ex.PW-4/A). From the side of the prosecution, they challenged the said statement. DW-4 did not even know where PW-10 was residing on 1st March 1985, or even earlier. DW-4 was extensively examined and cross-examined. The CBI summarises the following aspects of DW-4's testimony which point to the failure of the investigation: (i) He did not remember whether he investigated FIR No.4
for a single day. He however admitted that the file remained with him till the final compliance. Crl.A. 1099/2013 & Connected Matters Page 141 of 203 (ii) He did not know whose killings were the subject matter of the instant case. He did not remember if he ever investigated the killings of the five deceased of this case. He refused to see the case diary. (iii) He did not remember whether PW15recorded his statement in the course of the investigation by the CBI. He did not remember if he was ever called for enquiry at any stage. He did not remember the number of murders which were the subject matter of FIR41684, Later he recalled that there were 3-4 killings. On further cross examination he stated that he did not remember if there were 23 complaints involving the killings of 30 persons. (iv) He did not remember if a composite report u/s 173 Cr.P.C. was prepared by the SHO, to which he annexed five lists of witnesses. He refused to see the case diary on the point. He stated that it was possible that in 4 out of 5 challans, he might have been cited as a witness. He did not recall in how many cases he appeared as a witness. (v) He refused to say anything on the question that in three out of the five murders, sent for prosecution, the eyewitnesses were not even served and the cases ended in acquittal. (vi) He did not remember about the damage of the Gurdwara. He did not even remember if any looted property was recovered. He also could not remember if in the said 5 challans any post mortem was conducted or not. 279. DW-15 never visited the Raj Nagar area nor did he record the statement of any witness and therefore did not undertake any investigation. Despite an affidavit being a part of the case diary, he could not state whether Narender Pal Singh and

others ever contacted him. Thus, it was Crl.A. 1099/2013 & Connected Matters Page 142 of 203 concluded that DW-15 did not carry out any proper investigation. His expectation was to pursue PW-1 with some ulterior motive of a damage control exercise to nullify the contents of her affidavit.

280. There are many important witnesses that the Delhi Police failed to examine and this included PWs 3, 4, 6, 7, 9, and 12. How these witnesses could have been left out is indeed a mystery. The Delhi Police also did not examine Daljit Kaur and Harbhajan Kaur. They were both cited by the CBI but not examined as they were deemed to be unnecessary witnesses.

281. The Court is, therefore, satisfied that the Riot Cell did not carry out any genuine investigation. PW-1 was justified in not joining such an investigation. Finding on A-1s involvement in criminal conspiracy 282. The Court then turns to the aspect of criminal conspiracy. Here, one of the main submissions was that two of the articles of charge framed against A-1 alleged that the conspiracy was entered into on 31st October 1984 whereas the first incident took place only on 1st November 1984.

283. The evening of 31st October 1984 saw the beginnings of unrest, commotion, and attack on Sikhs, which has been spoken to by many of the PWs. Clearly, these actions could not have been taken without some degree of pre-planning. People had come armed with matchsticks, kerosene oil, and even with white powder (presumably phosphorus which was instantly combustible). There was no question that there was detailed planning and the witnesses have spoken about seeing some of the political leaders Crl.A. 1099/2013 & Connected Matters Page 143 of 203 walking around with lists in order to identify the houses of Sikhs. Without such careful planning, the scale of violence, destruction, and the loss of lives could not have been brought about.

284. In this context, the two relevant witnesses were unable to be shaken in their cross-examination. One was PW-12 who spoke about the raging mob moving freely and targeting male Sikhs. The systematic attempt was to ensure that no Sikh male member of a family is alive. Many Sikhs had to cut their long hair in order to conceal their identification. The other witness who spoke in graphic detail

about the scale of violence at the time is PW-9, whose husband and in-laws both were killed on 2nd November 1984. Her statement was never recorded by the police or the Riot Cell. Even PW-9 was not able to be subjected to any effective cross-examination by the counsel for the defence.

285. The targeting of Sikh male members was spoken to by many witnesses. The attacks were brutal and targeted. There could be no doubt at all that these were cold-blooded murders of members belonging to one community. The role of the police in all this is also very unfortunate. The DDR and its silence on these atrocities has already been discussed hereinbefore. It has been pointed out by Mr. Cheema that when one peruses the entries in the register, the following features emerge: (i) No whisper of the terrible riots could even be remotely deciphered from the register. There are consistent entries in the said register showing total normalcy in the area. This feature has been duly noticed by the learned trial court. (ii) The reports show that police parties were regularly Crl.A. 1099/2013 & Connected Matters Page 144 of 203 patrolling the area but no one returned to make a report of any untoward incident disclosing the break out of communal riots. (iii) There was reference of some incidents and the police visiting local Gurdwara. The police personnel have simply avoided mentioning as to what had happened there and who were involved. Ironically there was a report alleging that Sikhs had unleashed violence against each other, who have collected in the house bearing number. 4000 (Ex. PW16/E-5). (iv) (v) One report on 04.11.1984 mentioned that one Ram Avtar (PW3 along with some others was arrested in the apprehension of breach of peace, which is exhibited as Ex. 16/G-24. As per the allegations he was openly abetting the riot but was arrested under security proceedings only. His arrest itself shall be a pointer to the ugly face of the scheme of things. (vi) Every day the roznamcha was closed with a specific report that no untoward incident had been reported or occurred. 286. Thus, the police indeed turned a blind eye and blatantly abetted the crimes committed by the rioting mob. The investigation by the local police was a farce. Three out of the five trials involving allegations of murder were never investigated. The witnesses who might have seen the murders were not questioned. As pointed out by the trial Court, the State machinery came to a complete standstill in those two or three days when the rioting mobs took to the streets and indulged in acts of violence and killings, and setting properties on fire.

The mayhem, destruction, and murders that rocked Raj Nagar ensured the exodus of the Sikh population from there. Many of the males were either killed or were put in such fear that they were scared to be seen in long hair and beards. Crl.A. 1099/2013 & Connected Matters Page 145 of 203 287. The Court is satisfied that, in the present case, the conspiracy would have preceded the attack on the Raj Nagar Gurudwara on the morning of 1st November 1984. Conspiracies are invariably hard to prove. The Justice Nanavati Commission itself had this to say: to go of or inside forced The attacks were made in a systematic manner and without much fear of the police; almost suggesting that they were assured that they would not be harmed while committing those acts and thereafter. .. There was a common pattern which followed by the big mobs which had played havoc in certain areas. The shops were identified, looted and then burnt. Thus what had initially started, as an angry outburst became an organized carnage. . There is also evidence to show that in systematic manner the Sikhs who were found to have collected either at Gurdwara or at some place in their localities for collectively defending themselves were either persuaded their houses.. The systematic manner in which the Sikhs were thus killed indicate that the attacks on them were organized. It appears that from 1-11-1984 another cause of exploitation of the situation had joined the initial course of anger. The exploitation of the situation was by anti social elements. The poorer sections of the society who were deprived of enjoyment of better things in life saw an opportunity of looting such things without the fear of being punished for the same. The criminals got an opportunity to show their might and increase their hold. The exploitation of the situation was also by the local political leaders for their political or personal gains like increasing the clout by showing their importance, popularity and hold over the masses. Lack of fear of the Police forces was also one of the causes for the happening of so many incidents within 3 or 4 days. If the police would have taken prompt and effective steps, very probably so many lives would not have been lost and so many properties would not have been looted, destroyed or burnt. Crl.A. 1099/2013 & Connected Matters Page 146 of 203 288. There was a two-pronged strategy adopted by the attackers. The first was to liquidate all Sikh males and the other was to destroy their residential houses leaving the women and children utterly destitute. The attack on the Raj Nagar Gurudwara was clearly a part of the

communal agenda of the perpetrators.

289. The violence against Sikhs in Raj Nagar began on 31st October 1984 with stray incidents occurring here and there. In fact, the Delhi Police itself had a huge role to play, as is evident from the following factors pointed out in the submissions of the CBI: (i) (ii) No reports were entered nor any cases registered. the crimes were committed in the patronizing and encouraging presence of police personnel on duty. as per the pre arranged conspiracy the police force remained paralyzed by design and resultantly: I. II. No police personnel visited the scene of crime which was in the open to provide assistance either by way of protection or shifting the injured to the hospital or guarding the dead bodies for later sending them for autopsy. III. By design, the police ensured total breakdown of accountability because if the injured is shifted to the hospital and is saved there is every likelihood that he would implicate the evil doers. Similarly if the fire brigade is called, the requisitioning of the same would create record which would cause problems. If the dead body is guarded and taken into possession it shall have to be accounted for and the autopsy would lead to trouble for the killers. Therefore, the role carved out for the police in the conspiracy was such as would provide cast iron protection to the perpetrators of the crime. Crl.A. 1099/2013 & Connected Matters Page 147 of 203 IV. Police role in non-registration and investigation - No cases were registered as per the elements of the conspiracy because each case registered would have to be taken to a logical conclusion. The looted and the burnt house would have to be photographed; the statements of the survivors would have to be recorded and some karwai would have to follow for search of the accused and recovery of the property. 290. The Court would like at this juncture to briefly discuss the case law in relation to the offence of conspiracy punishable under Section 120B IPC. In Ajay Agarwal v. Union of India (1993) 3 SCC609 the Supreme Court characterised the offence as an agreement between two or more persons to do an illegal act or a legal act through illegal means. The commission of the offence is complete as soon as there is consensus ad idem. It is immaterial whether this is found in the ultimate object. It is necessary that conspirators agree on the design or object of the conspiracy. In State v. Nalini (1999) 5 SCC253 the Supreme Court summarised the key aspects of the offence of conspiracy as under: 583. Some of the broad principles governing the law of conspiracy may be

summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question Crl.A. 1099/2013 & Connected Matters Page 148 of 203 for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons

may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no Crl.A. 1099/2013 & Connected Matters Page 149 of 203 step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. time before 6.

7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the

main Crl.A. 1099/2013 & Connected Matters Page 150 of 203 offenders". inherent in and 9. inferred from 8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. Crl.A. 1099/2013 & Connected Matters Page 151 of 203 However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime. 291. In Esher Singh v. State of Andhra Pradesh (2004) 11 SCC585 the Supreme Court

observed: An agreement between two or more persons to do an illegal/legal act through illegal means is criminal conspiracy. The offence is complete as soon as there is consensus ad idem. It is immaterial whether this is found in the ultimate object. They should agree for design or object of conspiracy. Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which to punishment, independent of the conspiracy. individual offenders are liable 292. The following observations of the Supreme Court in Firozuddin Basheeruddin v. State of Kerala (2001) 7 SCC596are also relevant: 23. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organised crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct Crl.A. 1099/2013 & Connected Matters Page 152 of 203 that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offense, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.

24. Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy - who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organisation, there is but one objective: to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

25. Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into Crl.A. 1099/2013 & Connected Matters Page 153 of 203 a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts. 293. In considering a situation where there was no evidence of any express agreement between the accused to do or cause to be done an illegal act, the Supreme Court, in Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra (1981) 2 SCC443 opined that for an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. In Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra (1970) 1 SCC696 the Supreme Court observed: A conspiracy from its very nature is

generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact, because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit Crl.A. 1099/2013 & Connected Matters Page 154 of 203 an offence then anything done by any one of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto. 294. In light of the legal position that emerges from these decisions, the trial Court failed to properly address the charge of conspiracy and this was despite the fact that detailed arguments were submitted by the CBI in that regard. There is also a failure to return findings on the offences punishable under Sections 436 IPC (mischief by fire qua a place of worship), 153A IPC (promoting enmity), and 295 IPC (defiling a place of worship). Indeed, the above heads of charges stand proved against the accused comprehensively from the evidence that has come on record. In other words, the larger dimensions of the crimes appear to have been overlooked. At this juncture this Court would like to observe that the evidence brought on record does not support the case of the CBI against any of the present accused for the other offences they have been charged with viz., under Sections 395, 427 and 449 IPC. Also, with no sanction having been obtained for prosecution under Section 505 IPC none of the accused can be convicted for that offence either.

295. The charge of conspiracy was not only framed against A-1, but against each of the accused. Mr Cheema argued that the nature, intensity and scale of the crime and the planned inaction on the part of the law enforcement agencies coupled with total non-intervention of the Executive, are essential pointers to the presence of the Big Brother. It is, therefore, in this context that the Court proceeds to examine the evidence against A-1. Crl.A. 1099/2013 & Connected Matters Page 155 of 203 296. We have already noticed how, in the presence of PW-6, A-1

visited the Raj Nagar area on the night of 1st November 1984 after 10 pm, took stock of the situation, and even reprimanded the rioters for not accomplishing their work properly. He asked them not to spare those Hindus who had given shelter to Sikhs that night. He was obviously following-up on instructions which were given to the mob earlier.

297. Similar slogans were heard by PW-12 at 7 am on the morning of 2nd November 1984. It is plain that the mob kept a night long vigil around the house of DW-2 in which the three deceased brothers were taking refuge. The specific role of A-1 was spoken to eloquently by PWs 1, 6, and 10. These witnesses have already been discussed in detail hereinbefore.

298. In giving A-1 the benefit of doubt, the trial Court has relied on the fact that before the Justice Ranganath Misra Commission, PW-1 did not name A-1. As was rightly pointed out by Mr. Cheema, the statement of PW-1 dated 3rd November 1984 was a vital document and its removal from the record is a pointer to the extent of active connivance between the Delhi Police on the one hand and the accused on the other. In any event, what is deposed before the Court cannot be equated with a statement made before the CoI. Ultimately, the trial has to proceed on the basis of what is stated before the Court and the evaluation of such evidence.

299. For all of the aforementioned reasons, the Court finds that the trial Court was not justified in acquitting A-1 for the offences with which he was charged. With the offence of criminal conspiracy against him more than Crl.A. 1099/2013 & Connected Matters Page 156 of 203 adequately proved, this Court has no hesitation in holding him guilty for the offence punishable under Section 120B read with Sections 302, 436, 153A (1) (a) and (b), and 295 IPC. In addition, the evidence led by the prosecution proves beyond reasonable doubt that he was the leader of the mob and actively abetted the commission of crimes by his repeated exhortations to the mob to indulge in the mayhem and kill innocent Sikhs and that he delivered fiery/provocative speeches to the mob gathered at Raj Nagar on 1st/2nd November 1984, instigating and promoting enmity against the Sikh community which was prejudicial to the maintenance of harmony and disturbed

public tranquillity. A-1s guilt for the offence punishable under Section 109 read with the aforementioned provisions of the IPC also stands proved. Further, his guilt for the offence punishable under Section 153A (1) (a) and (b) IPC stands proved beyond reasonable doubt. With sanction not having been obtained for prosecuting A-1 under Section 505 IPC, he cannot be convicted for that offence. Reversal of acquittal 300. Having satisfied itself that there exists enough evidence on the basis of which A-1s guilt stands proved, it becomes necessary for this Court to consider the legal position as regards reversal of acquittals in appeal. In Bishan Singh v. State of Punjab (1974) 3 SCC288 the Supreme Court explained the legal position thus: 22. It is well settled that the High Court in appeal under Section 417 of the Cr PC. has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it is found to be expressly stated in the Crl.A. 1099/2013 & Connected Matters Page 157 of 203 Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. 301. In B. N. Mutto v. Dr. T. K. Nandi (1979) 1 SCC361 the Supreme Court observed thus: It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the

benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J.

in his charge to the jury in R. v. Fantle reported in 1959 Criminal Law Review 584.]. 302. In Muralidhar @ Gidda v. State of Karnataka (2014) 5 SCC730 Crl.A. 1099/2013 & Connected Matters Page 158 of 203 after discussing the earlier decisions, the legal position was summarised as under: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court; (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal; (iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court. 303. The powers of the appellate Court have been clearly explained by the Supreme Court in Bhagwan Singh v. State of Uttar Pradesh (2003) 3 SCC21as under: 7. We do not agree with the submissions of the learned Crl.A. 1099/2013 & Connected Matters Page 159 of 203 counsel for the appellants that under Section 378 of the Code of Criminal Procedure the High Court could not disturb the finding of facts of the trial court even if it found that the view taken by the trial court was not proper.

On the basis of the pronouncements of this Court, the settled position of law regarding the powers of the High Court in an appeal against an order of acquittal is that the Court has full powers to review the evidence upon which an order of acquittal is based and generally it will not interfere with the order of acquittal because by passing an order of acquittal the presumption of innocence in favour of the accused is reinforced. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. In a case where the trial court has taken a view ignoring the admissible evidence, a duty is cast upon the High Court to re- appreciate the evidence in acquittal appeal for the purposes of ascertaining as to whether all or any of the accused has committed any offence or not. Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. 304. In Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC1 the Supreme Court observed as under: ... The appellate court has all the necessary powers to re- evaluate the evidence let in before the trial court as well as the conclusions reached. It has a duty to specify the compelling and substantial reasons in case it reverses the order of acquittal passed by the trial court. In the case on hand, the High Court by adhering to all the ingredients and by giving cogent and Crl.A. 1099/2013 & Connected Matters Page 160 of 203 adequate reasons reversed the order of acquittal. 305. Further, in Khurshid Ahmed v. State of J&K (2018) 7 SCC429 the Supreme Court held: 33. The power of the appellate Court in an appeal against acquittal is the same as that of an appeal against conviction. But, in an appeal against acquittal, the Court has to bear in mind that the presumption of innocence is in favour of the accused and it is strengthened by the order of acquittal. At the same time, appellate Court will not interfere with the order of acquittal merely because two views are possible, but only when the High Court feels that the appreciation of evidence is based on

erroneous considerations and when there is manifest illegality in the conclusion arrived at by the trial Court. In the present case, there was manifest irregularity in the appreciation of evidence by the trial Court. The High Court based on sound principles of criminal jurisprudence, has interfered with the judgment of acquittal passed by the trial Court and convicted the accused as the prosecution was successful in proving the guilt of the accused beyond reasonable doubt. 306. Thus, the position in law which emerges from the decisions of the Supreme Court cited hereinabove is that where there has been a manifest irregularity in the appreciation of evidence by the trial Court, the appellate Court might interfere with the judgment of acquittal by the trial Court and instead convict the accused if it is satisfied that the prosecution has been successful in establishing their guilt. In the present case, the trial Court was clearly in error in selectively finding witnesses such as PWs 1, 6, 7, and 10 reliable qua the other accused but unreliable only on the aspect of the involvement of A-1 in the violence that afflicted the area. Disbelieving key witnesses who have remained consistent and spoken clearly about his role is not acceptable. Thus, this Court is satisfied that the trial Court has Crl.A. 1099/2013 & Connected Matters Page 161 of 203 appreciated the evidence in this regard on erroneous considerations and thus, its finding of innocence qua A-1 suffers from manifest illegality. Conviction of A-1 307. The Court accordingly reverses the impugned judgment of the trial Court acquitting A-1 and convicts him in the following manner: (i) For the offence of criminal conspiracy punishable under Section 120B read with Sections 302, 436, 153A (1) (a) and (b), and 295 IPC; and (ii) For the offence of abetting the commission of criminal offences punishable under Section 109 read with Sections 302, 436, 153A (1) (a) and (b), and 295 IPC. (iii) For the offence of delivering provocative speeches instigating violence punishable under Section 153A (1) (a) and (b) IPC.

308. It may well be that A-1 had organized peace rallies and blood donation camps and helped in rehabilitation of the victims of the violence. However, this cannot take away from his involvement in the riots in the first place which resulted in the murders of the five deceased in the present case. His claim that he enjoys the political support of the Sikh community also does not find much sympathy from this Court. The Court also cannot agree with his description of the violence as being the result of a self-evoked provocation which resulted in an outburst of crime

in Delhi and other parts of the country when thousands of Sikh men, women, and children have been butchered while the law and order situation deteriorated all around them.

309. The Court, therefore, sees no reason why he should be dealt a lenient Crl.A. 1099/2013 & Connected Matters Page 162 of 203 sentence. Accordingly, he is sentenced as indicated hereafter. Appeals by Mahender Yadav (A-3) and Krishan Khokar (A-6) 310. Mr. Vikram Panwar, learned counsel, has appeared on behalf of A-3 and A-6. He pointed out at the outset that in the five different charge sheets that were filed in FIR No.416/1984 pertaining to five different incidents, A-6 was not named as an accused for any of the offences in any of those incidents.

311. A-3, meanwhile, was charge sheeted in two cases. In SC No.31/1986, which was on the complaint of one Jagir Kaur for the death of Joga Singh and in which he was acquitted by a judgment dated 29th April 1986 as well as in SC No.32/1986, which was on the complaint of Sampuran Kaur on account of death of Nirmal Singh and in which he was acquitted by an order dated 17th May 1986. Incidentally, the issue concerning his acquittal in SC No.32/1986 was taken up suo moto in a revision petition by this Court by an order dated 29th March 2017 which had been carried by A-3 in appeal to the Supreme Court in SLP (Crl.) No.3928/2017.

312. He pointed out that neither the Justice Nanavati Commission nor the Government of India recommended further investigation to be carried out against A-3 and A-6 with respect to the incident of Nirmal Singhs murder. According to him, even the application moved by the CBI on 2nd December 2005 for further investigation before the Sessions Judge, Tis Hazari Courts, Delhi was qua the incidents relating to the complaints of Jasbir Singh and Jagdish Kaur wherein the charge sheets against A-1 and A-2 were not filed. The participation of A-3 and A-6 in those incidents has Crl.A. 1099/2013 & Connected Matters Page 163 of 203 not been alleged.

313. However, subsequently, on 20th December 2005, the learned District Judge permitted the CBI to re-investigate the complaint of Jagdish Kaur in relation to the death of five persons, i.e. her husband, her son, and her three brothers. According

to Mr. Panwar, this was done in contravention of the provisions of law and the dictum of the Supreme Court and betrayed an absence of application of mind on the part of the learned District Judge.

314. The CBI now implicated, apart from others, A-3 and A-6 as well. According to Mr. Panwar, the CBI mischievously recorded the statements of PWs 7 and 10 against them although neither had anything to do with the investigation of the complaint of PW-1. The subject matter of the statement of allegations had already been tried by the Court of competent jurisdiction, with A-3 having already been acquitted. On 15th May 2010, an order on charge was passed qua A-3 and A-6 and they were charged as under: (i) Section 120B read with Sections 147, 148, 153A, 295, 302, 395, 427, 436, 449, 505 IPC; (ii) Section 147 IPC; (iii) Section 148 IPC; (iv) Section 302 read with Section 149 IPC; (v) Section 427 read with Section 149 IPC; (vi) Section 436 read with Section 149 IPC; (vii) Section 449 read with Section 149 IPC; (viii) Section 495 read with Section 149 IPC; and (ix) Section 295 read with Section 149 IPC. It is pointed out that there was no substantive charge under Sections 153A and 505 IPC framed against A-3 and A-6.

315. By the impugned judgment, A-3 and A-6 have been convicted under Sections 147 and 148 IPC and sentenced to RI for two years under Crl.A. 1099/2013 & Connected Matters Page 164 of 203 Section 147 IPC and RI for three years under Section 148 IPC and in default of payment of the fines imposed, to undergo further RI for six months. They have been acquitted of the remaining charges.

316. Mr. Panwar, learned counsel appearing for A-3 and A-6, submitted as under: (i) The present case is in relation to the alleged killing of five persons on the complaint of PW-1 with no role of A-3 and A-6 discernible in those incidents. The convictions of the two under Sections 147 and 148 IPC pertained to a different incident of attack on the Raj Nagar Gurudwara which already stood tried by the Court of competent jurisdiction. Thus, the conviction is wholly illegal. (ii) PW-1 has not named A-3 and A-6 due to them not having been present at any time in Raj Nagar, Part-I during the incident. The testimonies of PWs 7 and 10 were only in relation to the incident at Raj Nagar, Part-II where the death of Nirmal Singh had taken place and that the two places are some distance apart. Even the site plan

depicted only Raj Nagar, Part-I and not Raj Nagar, Part-II and did not show the presence of the two accused in Raj Nagar, Part-II. Once the role of the two accused was not found in relation to those five deaths, A-3 and A-6 ought to have been acquitted. (iii) A-3 and A-6 have been convicted in the incident of 1st November 1984 of rioting and burning of the Raj Nagar Gurudwara and the murder of Nirmal Singh. A-3 was acquitted precisely for those very charges in SC No.32/1986 on the ground that the case of the prosecution appeared improbable and unreliable. Crl.A. 1099/2013 & Connected Matters Page 165 of 203 PW-10 and Sampuran Kaur were named as witnesses in that case but were not served with notices and, therefore, not examined. Even here, although Sampuran Kaur was initially cited as a witness, she was subsequently dropped. No appeal was filed against the said order. (iv) Thereafter, suo moto, this Court issued notice to A-3 and other accused by its judgment dated 29th March 2017 to show cause as to why the judgment in SC No.32/1986 be not set aside a retrial or fresh trial be directed by this Court in exercise of its revisional powers. The challenge against this order is pending before the Supreme Court. (v) The rule of issue estoppel precludes evidence being led to prove the fact in issue as regards which evidence had already been led and a specific finding recorded by the Court of competent jurisdiction. Therefore, the evidence of PWs 7 and 10 could not have been admissible as the same was in relation to the same fact decided by the Court earlier. Reliance is placed on the decision in Manipur Administration v. Thokchom, Bira Singh AIR 1965 SC87 Pritam Singh v. The State of Punjab AIR 1956 SC415 and Lalta v. State of Uttar Pradesh AIR 1970 SC1381 (vi) It is further submitted that the trial of A-3 was hit by the rule of autrefois acquit under Section 300 Cr PC. At the time of re- registration of the FIR by the CBI, the judgment of the learned ASJ in SC No.32/1986 was in force and, therefore, the initiation of the case itself was illegal. The further proceedings are rendered null and void. In other words, A-3 could not have been tried for the same Crl.A. 1099/2013 & Connected Matters Page 166 of 203 offence nor on the same facts or for any other offence for which a charge different from the one made against him might have been made and for which he might have been acquitted or convicted. It is pointed out that Ex.PW-11/A is not a consent under Section 300 (2) Cr PC but one under Section 196 Cr PC which is a mandatory consent for initiation of prosecution under Section 153A

Cr PC. (vii) The CBI could not have re-investigated the death of Nirmal Singh without the requisite sanction of law. Reliance is placed on the decision in Vinay Tyagi v. Irshad Ali (2013) 5 SCC762to urge that an order directing re-investigation could have only been passed by the High Court or the Supreme Court. Reliance is also placed on the decision in State of Punjab v. Davinder Pal Sing Bhullar (2011) 14 SCC770to urge that where the initial action is not in consonance with law, all subsequent proceedings stand vitiated. (viii) On merits, it is submitted that the testimonies of PWs 7 and 10 were unreliable, uncorroborated, and unbelievable. Sampuran Kaur, who was one of the main witnesses for the prosecution, was dropped and the reason for this has not been properly explained. There was no evidence of conspiracy either. Reference is made to the decisions in Nalini (supra) and Santoshanand Avdoot v. State 2014 (4) JCC2649 (ix) On sentence, it is submitted that the Sessions Court did not order the two sentences to run concurrently qua the two Appellants for the same offences under Sections 147 and 148 IPC whereas for the remaining convicts, their sentences were directed to run concurrently. Crl.A. 1099/2013 & Connected Matters Page 167 of 203 317. On the aspect of Section 300 Cr PC, it is submitted in reply by Mr. Cheema that criminal conspiracy is a distinct offence and a specific charge was framed by the trial Court. In fact, the trial Court failed to discuss this charge in a comprehensive manner, particularly with regard to the accused other than A-1. It also omitted to deal or dealt only perfunctorily with the charges under Sections 153A, 505, 295, 395, 427, 436, and 449 IPC. Consequently, the acquittal vis--vis the murder of Nirmal Singh did not bar the present trial against A-3 and A-6. There was no earlier prosecution with regard to the main charge of conspiracy and that constituted a separate and distinct offence which did not bar the subsequent prosecution. Reliance is placed on the decision in Leo Roy Frey v. Superintendent AIR 1958 SC119 Jitendra Panchal v. Narcotics Control Bureau (2009) 3 SCC57 Sardar Sardul Singh Caveeshar v. State of Maharashtra AIR 1965 SC682 Monica Bedi v. State of A.P. (2011) 1 SCC284 and Sangeetaben Mahendrabhai Patel v. State of Gujarat (2012) 7 SCC621 318. It is further submitted that the onus to prove such a defence lay on the accused. Reliance is placed on the decision in Monica Bedi (supra). It is pointed out that the judgment of acquittal passed by the trial Court on 17th May 1986 in SC No.32/1986, the case pertaining to the murder

of Nirmal Singh, has not even been formally proved by the defence. Even if the judgment could be treated as a part of the record, the charge sheet under Section 173 Cr PC, the FIR lodged by Sampuran Kaur, the statements of witnesses, and documents collected as part of evidence of the case were not brought on record. Only the statement made by PW-10 to the police was Crl.A. 1099/2013 & Connected Matters Page 168 of 203 sought to be brought on record by examining DW-4, a retired ACP, who proved Ex.DW-4/A.

319. Notwithstanding that the authenticity of such statement having been recorded is itself doubtful, a perusal of the said statement showed that PW-10 was not a witness to the damage to the Raj Nagar Gurudwara and did not incorporate the allegations constituting an offence under Section 153A IPC. Therefore, there is nothing to show that in the previous trial, the Sessions Judge could have framed charges under Sections 153A, 295, or 120B IPC.

320. Mr. Cheema referred to Section 300 (2) Cr PC which creates an exception for a second trial in a case where any distinct offence exists for which a separate charge might have been made against the accused and provides that the accused can be prosecuted for the said offence subsequently with the consent of the State Government. In the present case, there was an order (Ex.PW-11/A) whereby the State Government had given sanction for prosecution of the accused under Section 153A IPC.

321. Section 300 Cr PC reads as under: 300. Person once convicted or acquitted not to be tried for same offence.- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof. Crl.A. 1099/2013 & Connected Matters Page 169 of 203 (2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section

(1) of section 220. (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted. (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged. (5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate. (6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897) or of section 188 of this Code. Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section. 322. As explained by the Supreme Court in Leo Roy Frey (supra), criminal conspiracy is a separate offence for which the previous trial would not come in the way since that was not the subject matter of trial. The facts in that case were that the previous trial proceeded against the accused under Crl.A. 1099/2013 & Connected Matters Page 170 of 203 the Sea Customs Act, whereas they were sought to be tried for the offence under Section 120B IPC. The Supreme Court pointed out that criminal conspiracy is an offence created and punishable by the Indian Penal Code. It is not an offence under the Sea Customs Act. It further explained as under: The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences. This is also the view expressed by the United States Supreme Court in United States v. Rabinowich. The offence of criminal conspiracy was not the proceedings before the Collector of Customs and therefore it cannot be said that the petitioners have already been prosecuted and punished for the same offence. It is true that the Collector of Customs has used the words punishment and conspiracy, but those words were used in order to bring

out that each of the two petitioners was guilty of the offence under Section 167(8) of the Sea Customs Act. The petitioners were not and could never be charged with criminal conspiracy before the Collector of Customs and therefore Article 20(2) cannot be invoked. the subject-matter of 323. In Jitendra Panchal (supra), the above legal position was reiterated. Likewise, in Sardar Sardul Singh Caveeshar (supra), reference was made to the earlier decisions in State of Bombay v. S. L. Apte [1961]. 3 SCR107where it was observed as under: To operate as a bar the second prosecution and the consequential punishment thereunder, must be for 'the same offence'. The crucial requirement, therefore, for attracting the Article is that the offences are the same i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of fact in the two Crl.A. 1099/2013 & Connected Matters Page 171 of 203 complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out. 324. In Monica Bedi (supra), the law was exhaustively discussed and it was observed as under: It is thus clear that the same facts may give rise to different prosecutions and punishments and in such an event the protection afforded by Article 20(2) is not available. It is settled that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence. 325. As regards the onus of proof, it was observed as under: Be that as it may, there is no factual foundation laid as such by the appellant taking this plea before the trial court. Nothing is suggested to the Investigating Officer or to any of the witnesses that she is sought to be prosecuted and punished for the same offence for which she has been charged and convicted by a competent court of jurisdiction at Lisbon. She did not even make any such statement in her examination under Section 313 Cr.P.C. It is true that the fundamental right guaranteed under Article 20(2) of the Constitution is in the nature of an injunction against the State prohibiting it to prosecute and punish any person for the same offence more than once but the initial burden is upon the accused to take the necessary plea and establish the same. 326. In Sangeetaben Mahindrabhai Patel (supra), the legal position was summarized thus: In view of the above, the law is well settled that in

order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Cr PC or Section 71 Crl.A. 1099/2013 & Connected Matters Page 172 of 203 IPC or Section 26 of the General Clauses Act, the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge. 327. The Court agrees with Mr. Cheema that the Government of India had permitted the prosecution under Section 153A by its order marked herein as Ex.PW-11/A with there being a distinct offence made out in respect of which no charge was framed earlier. Following the recommendations of the Justice Nanavati Commission, there was an express letter of the Government dated 24th October 2005 authorizing the CBI to investigate the offences and, therefore, there is no illegality attached to that either.

328. The evidence of DW-4 has already been discussed. His testimony is indeed unconvincing. Although he tried to prove Ex.DW-4/A, it is highly doubtful that he ever recorded the statement of PW-10. That statement nevertheless makes no mention of the damage to the Raj Nagar Gurudwara and therefore, on that statement, no charge for the offence under Section 153A IPC could have been framed, much less under Sections 295 and 120B IPC.

329. It is another matter that the trial Court in the present case did not examine those charges although the evidence was amply led and proved in that regard. Therefore, sending up A-3 and A-6 for trial for the offences Crl.A. 1099/2013 & Connected Matters Page 173 of 203 under Sections 153A and 120B IPC and other offences was not in contravention of Section 300 (2) Cr PC. The Court, therefore, is not persuaded that there is an operation of issue estoppel as pleaded by A-3 or that the bar under Section 300 Cr PC stands attracted.

330. On the question of conspiracy, this Court has already discussed the evidence threadbare and finds that, in the present case, both PWs 7 and 10 have spoken

clearly and consistently about the role of A-3 and A-6 in the attack on the Raj Nagar Gurudwara. That each of them acted in concert, and pursuant to planning in great detail, specifically targetting the Sikhs has been established convincingly by the prosecution. The evidence in this regard has been discussed extensively hereinbefore. The Court, therefore, does not accept the plea of A-3 and A-6 that there is no evidence to prove the charge of criminal conspiracy against either A-3 or A-6.

331. The evidence is thus sufficient to uphold the convictions of these accused as recorded by the trial Court and to further convict them for the offence of criminal conspiracy punishable under Section 120B read with Sections 436, 153A (1) (a) and (b), and 295 IPC. A-3 and A-6 are accordingly sentenced as indicated hereafter. Appeal by Captain Bhagmal (Retd) (A-4) 332. The Court now turns to the appeal of A-4. Elaborate written submissions have been filed by learned counsel on his behalf to supplement the oral submissions made by Mr. R. N. Sharma, learned counsel appearing on his behalf. Crl.A. 1099/2013 & Connected Matters Page 174 of 203 333. Much of the focus was on the inconsistent statements made by PW-1 at various stages and how the introduction of A-4 as an accused in this case was a deliberate ploy by the CBI to somehow secure his conviction when, for 26 years between 1984 and 2010, not a single witness had named him as an accused. There were detailed submissions made in respect of the testimonies of PWs 6 and 7 as well. According to Mr. Sharma, A-4 was not part of the mob on 1st November 1984 and he could not be made a member of that mob at all.

334. At the outset, it requires to be noticed that this is a case where there was an abject failure by the Delhi Police to conduct a proper investigation in the case and this has already been adverted to extensively hereinbefore. The testimonies of PWs 1, 7, and 10 have also been discussed threadbare hereinbefore. Here, it must be added that in a matter such as this involving mass crimes, where witnesses have been living under fear for years on end, while appreciating the testimonies of such witnesses, one cannot get into hyper-technicalities and start dissecting their statements to the point of incredulity. What has to be seen is that there is a consistency in their testimonies on the broad aspects of the prosecution

case. Embellishments here and there and some marginal inconsistencies and contradictions would not result in throwing out the entire evidence as a whole and rendering it unbelievable.

335. The settled legal position in relation to the appreciation of ocular evidence may be recapitulated. In State v. Saravanan AIR 2009 SC152 the Supreme Court held that the trial Court could overlook minor Crl.A. 1099/2013 & Connected Matters Page 175 of 203 discrepancies on trivial matters which do not affect the core of the prosecution case. In State of U.P. v. Krishna Master AIR 2010 SC3071the Supreme Court reminded that it is the duty of the Court to separate falsehood from the truth, in sifting the evidence.

336. In State of U.P. v. M.K. Anthony AIR 1985 SC48 it was explained by the Supreme Court as under: While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. importance to some Crl.A. 1099/2013 & Connected Matters Page 176 of 203 337. Again, in State of Rajasthan v. Kishore AIR 1996 SC3035 the

Supreme Court observed: Be it noted that the High Court is within its jurisdiction being the first appellate court to re-appraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate otherwise acceptable evidence. 338. In Ugar Ahir v. State of Bihar AIR 1965 SC277 the Supreme Court explained the legal position as under: The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. 339. In Rammi alias Rameshwar v. State of Madhya Pradesh AIR 1999 SC256 it was observed: When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps Crl.A. 1099/2013 & Connected Matters Page 177 of 203 an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny. 340. Keeping this in view, if one would examine the evidence of PW-1, it is seen that she has named A-4 in her affidavit filed before the Justice Ranganath Misra Commission and has also referred to his being part

of the rioting mob in her affidavit filed before the Justice Nanavati Commission. In her deposition in Court, in connection with the killing of Narender Pal Singh, she deposed thus: the street adjoining my house. Soon At about 7.30am. Again said I was not having a watch, it may be 6:30-7am, when one of my brother Narender Pal, jumped into thereafter, Raghuvinder Singh and Kuldeep Singh followed him. When Narender Pal jumped down, Dharamvir noticed him and shouted that the Thekedars running away and called upon others to come. The house of Girdhari Lal was close by. He came running armed with lathi (dang); Baldan Singh Retd. Subedar also rushed; Retd. Captain Bhagmal also came alongwith mob that gathered there. My brother Narender Pal was caused some lathi injuries and burnt close to my house. I also saw my two other brothers Raghuvinder Singh and Kuldeep Singh, being attacked and taken away by the mob to some distance. I closed the door and did not see thereafter as I was concerned about our own safety. 341. A common counsel appeared for A-3, A-4, and A-5 in the trial Court and the cross-examination of PW-1 by him did not bring about any serious Crl.A. 1099/2013 & Connected Matters Page 178 of 203 contradictions as regards her naming A-4 and the acts attributed by her to him. It is plain that the counsel strategically avoided confronting her about any inconsistency in this regard but instead went into other minor details. She was asked about her statement before the Justice Nanavati Commission and stated as under: It is correct that I had stated in statement Ex. PWI/C that I was only given a small writing stating that it will be useful for the purpose of pension. Vol. I was speaking in Punjabi and I do not know whether the Commission understood it or not. How can I say that my statement was not recorded correctly by the Justice Nanavati Commission of Inquiry. I had signed my statement which was recorded before Justice Nanavati Commission of Inquiry. Whatever questions were asked by the Commission, I used to reply the same. I did not said anything. Before this court I have given the statement of my own. It is incorrect to suggest that even before the Nanavati Commission I had given the statement of my own. 342. In her entire cross-examination, there is no suggestion to her that she wrongly named A-4 and incorrectly attributed culpability to him. Much has also been made of the fact that she earlier claimed to be a witness to the murders of all three brothers, whereas before the Court, she was speaking only of the killing of Narender Pal Singh. She

clarified as under: It is incorrect to suggest that I had stated in all my earlier statements / affidavits that I had witnessed the killing of my all three brothers. Vol. I had been telling everybody that I had witnessed the killing of only one of my brother Narender Pal and other two brothers were taken away and I do not know where they were taken away and where they were killed but they may be writing statements / affidavits in their own ways. It is incorrect to suggest that I had not witnessed any of the killing of my brothers or that because of this reason I am making different stands at different times. Crl.A. 1099/2013 & Connected Matters Page 179 of 203 343. Throughout before the two Commissions and then before the CBI and the MM, and finally in the trial, PW-1 has been consistent about the accused she named in the first instance. There is a difference between being silent about an accused and being inconsistent about the named accused. There is absolutely no inconsistency qua A-4 who has been named by PW-1 before the Justice Ranganath Misra Commission, the Justice Nanavati Commission, in her statements under Sections 161 and 164 Cr PC, and later in the Court.

344. The manner in which the counsel for A-4 has gone about analyzing the evidence of PW-1 overlooks the essential feature of her testimony that she throughout remained consistent on the broad aspects about the involvement of A-4 in the killing of Narender Pal Singh. On this essential aspect of the matter, therefore, she has stood firm and is truthful, consistent, and reliable.

345. This Court, therefore, is not impressed with the pointing out of the inconsistencies in her statement before Justice Nanavati Commission and in the Court.

346. There is much criticism on the position from which PW-1 allegedly saw the incident. There is also heavy criticism of the site plan (Ex.PW-15/A) prepared in this regard. This is a case based on direct evidence and not circumstantial evidence. Had it been prepared contemporaneously at the earliest point in time, the site plan might have been an important document. In the present case, however, the site plan (Ex.PW-15/A) was prepared by PW-15 in 2006, i.e. 22 years later. In any Crl.A. 1099/2013 & Connected Matters Page 180 of 203 event, when the witness herself is truthful and convincing, merely because the site plan

may not have been prepared to indicate the point from where she viewed the incident would not go to destroying her credibility. She is speaking to the CBI in 2006, 22 years after the incident. Therefore, to even attempt to point out from a rough site plan, not drawn to scale, the precise place where she had been standing at the time of the incident would have been unrealistic.

347. What PW-1 has relied on is her memory of the actual murders of the deceased and, on that aspect, she cannot be faulted. She is not inconsistent and nothing has been elicited in her cross-examination to even remotely suggest that she is speaking falsehood. In any event, it has not been shown why she would falsely implicate the accused whom she has named repeatedly and consistently. More so, why the IO of the CBI would have any motive to falsely implicate A-4 is not explained.

348. Learned counsel for A-4 then created doubt regarding the testimony of PW-6 and suggested that he was a planted witness and introduced only to somehow procure the conviction of the accused. The fact of the matter is that many of these witnesses were living in fear and had completely lost confidence in the Delhi Police and were therefore, unsure about coming forward to speak the truth. They could gather confidence only after the CBI took over the investigation.

349. In the first place, PW-6 has not named this accused, i.e. A-4, in particular. He provides broad corroboration to the material aspect of the testimony of PW-1 about Narender Pal Singh being murdered by a mob. Crl.A. 1099/2013 & Connected Matters Page 181 of 203 Therefore, it cannot be said that PW-6 is a planted witness who was introduced only to somehow secure the conviction of A-4.

350. Turning now to the testimony of PW-7, he definitely names A-2, A-3, A-4, and A-6 as being part of the mob which came to attack the Raj Nagar Gurudwara. He stated as under: On 01.11.1984 at about 7.30 am I along with my wife came out of gurudwara and saw that a huge mob was coming from Mehrauli road side. I could identify Balwan Khokhar, Kishan Khokhar, Mahender Yadav, Capt. Bhagmal, Raja Ram and Gulati from amongst the mob. The mob was armed with lathis, rods, pipes, jellies etc. The mob comprised of people from nearby villages and colonies.

Some persons of my colony were also there. Thereafter we went to our house. After sometime some sikhs shouted that gurudwara has been attacked and it should be saved. About 20-25 of sikhs including me, with their kirpans assembled together in front of the gurudwara. We saw that mob had burnt the gurudwara, looted the house of Jasbir Singh and burnt the truck of Harbans Singh. The mob again came which was led by Balwan Khokar, Kishan Khokar, Mahender Yadav. Mahender Yadav and Balwan Khokar were on scooter while Kishan Khokar was on foot. Balwan Khokhar and Mahender Yadav caught hold of hand of Sardar Nirmal Singh who was standing near gurudwara. They told him that they want to talk to him and want to make some settlement and he should accompany them. They took him with them thereafter we went to our house. Prior to that when we had gone along with our sword to gurudwara in order resist police officials came and took the swords with them the police had come after about two hours. Again said the police had come after two hours of our reaching to gurudwara and the mob came after one hour. Then, I remained at my house. Thereafter, I remained at my house on 01.11.1984. I along with my wife had gone to the house of my father in law and it was very near to gurudwara and stayed there on 01.11.1984. There was huge noise outside the house "mar do mar do" and there was smoke Crl.A. 1099/2013 & Connected Matters Page 182 of 203 outside. 351. He was able to correctly identify A-4 in the Court. He was extensively cross-examined by the counsel for A-3, A-4, and A-5, but on the crucial aspect of his actually having seen A-4 as part of the mob, he was not confronted with any inconsistent statement made by him earlier to the CBI. In his cross-examination, the confrontations read as under: I had stated in my statement before the Magistrate that on 01.11.1984 at about 7.30am alongwith my wife came out of gurudwara and saw that a huge mob was coming from Mehrauli road side. I could identify Balwan Khokhar, Krishan Khokhar, Mahender Yadav, Captain Bhagmal, Raja Ram and Gulati from amongst the mob. Confronted with statement Ex.PW7/B where it is not recorded. However, it is recorded that I alongwith my wife Harjeet Kaur were coming towards our house on 01.11.1984 at about 7.30am from Gurudwara and saw that a mob was coming from opposite side armed with sariya, lathies and jellies. I had stated in my statement before the Magistrate that mob comprised of the people from the nearby villages and, colonies, some persons of my colony were also there and thereafter

we went to our house after some time some Sikhs shouted that Gurudwara has been attacked and it should be saved. Confronted with statement Ex. PW7/B where it is not recorded. However, it is been recorded that he and his wife had gone to their house after some time. I had not stated in my statement before the Magistrate that we saw that mob had burnt the Gurudwara. I might have forgotten to state this fact before the Magistrate. I had stated before the Magistrate that the mob again came which was led by Balwan Khokhar, Krishan Khokhar and Mahender Yadav. Mahender Yadav and Balwan Khokhar were on scooter while Krishan Khokhar was on foot. Confronted with statement Ex. PW7/B where it is not recorded. I had stated in my statement to the Magistrate that the police had come after two hours of our reaching to Gurudwara and the mob came after one hour then I remained at my house. Thereafter, I remained at my house on 01.11.1984. Crl.A. 1099/2013 & Connected Matters Page 183 of 203 Confronted with statement Ex. PW7/B where it is not recorded. However, it is pointed by ld Counsel for the CBI that it is recorded that after some time police officials came and mob came thereafter. 352. These confrontations have to be read in the overall context of his entire testimony and not piecemeal as is invariably sought to be done when witnesses are cross-examined. The further confrontations read as under: I had stated in my statement before the CBI that on 01.11.1984 at about 7.30am I along with "my wife" came out of Gurudwara and saw that a huge mob was coming from Mehrauli road side. Confronted with statement Ex. PW7/DA where wife and Mehrauli is road side is not mentioned. I had also stated in my statement to the CBI that after some time some Sikhs had shouted that Gurudwara had been attacked and it should be saved. Confronted with statement Ex. PW7/DA where it is not recorded. I had also stated in my statement to the CBI that the mob again came which was led by Balwan Khokhar, Krishan Khokhar, Mahender Yadav. Mahender Yadav and Balwan Khokhar were on scooter and while Krishan Khokhar was on foot. Confronted with statement Ex.PW7/DA where it is not recorded. I had stated in my statement before the CBI that Balwan Khokhar and Mahender Yadav caught hold of hand of Sardar Nirmal Singh who was standing near the Gurudwara they told him that they want to talk to him and want to make certain settlement and he should accompany him. They took him with them thereafter we went to our house. Confronted with statement Ex.

PW7/DA where it is not recorded. It is pointed by ld. Counsel for the CBI that factum of Balwan Khokhar and Krishan Khokhar and Mahender Yadav catching hold of Sardar Nirmal Singh find mention in the statement. I had stated in my statement CBI that thereafter, I remained at my house on 01.11.1984. Confronted with statement Ex. PW7/DA where it is not recorded. 353. If one carefully reads the evidence of PW-7, he clearly states that A-4 Crl.A. 1099/2013 & Connected Matters Page 184 of 203 was part of the armed mob which attacked the Raj Nagar Gurudwara. When he speaks about the mob returning and taking Nirmal Singh away, he does not mention specifically that A-4 was part of that mob. In his earlier statement before the learned MM, he spoke generally of an armed mob and does not name anyone in particular. The Court does not consider this to be, therefore, a contradiction or an inconsistency. In Court, he does name A-4 and is correctly able to identify him. He, therefore, is an important witness in fixing A-4s presence in the mob that attacked the Raj Nagar Gurudwara.

354. Turning now to the evidence of PW-10, she names A-4 as being involved in the incident of her fathers murder. She, however, does not specifically name him with regard to the incident of the burning of the Gurudwara. Since the death of Nirmal Singh is not the subject matter of these appeals, her evidence need not be discussed any further.

355. The Court is satisfied that the evidence of PW-7, who has been unable to be shaken in cross-examination, is by itself sufficient to find A-4 guilty of the offences under Section 120B read with Sections 436, 295, and 153A (1) (a) and (b) IPC. As far as the murder of Narender Pal Singh is concerned, the evidence of PW-1 is sufficient to convict him for the offence under Section 302 read with Section 149 IPC.

356. Therefore, no interference is called for with the convictions recorded by the trial Court qua A-4 or the sentence awarded to him therefor. This Court also sees it fit to further convict him for the offence of criminal conspiracy punishable under Section 120B read with Sections 436, 153A (1) (a) and (b), and 295 IPC. He is sentenced as indicated hereafter. Crl.A. 1099/2013 & Connected Matters Page 185 of 203 Appeal by Balwan Khokar (A-2) 357. The Court now turns to the appeal

filed by A-2. Here again, PW-1 was a star witness and the criticisms of her testimony is more or less the same as those made by the other accused. The submission is that the trial Court, having disbelieved PW-1 qua the guilt of A-1, should disbelieve her even qua the guilt of the other appellants, including A-2. This Court has not found favour with this submission qua A-1 himself so there is no question of this witness being disbelieved as regards the culpability of A-2.

358. It is then submitted that the CBI did not give any reasons for dropping 17 witnesses during the trial, some of whom have later been examined as defence witnesses. The fact that these witnesses were examined as defence witnesses and had tried to help the accused provides the reason why the CBI considered it prudent not to examine them as PWs. This is entirely the prerogative of the CBI and it actually stands against the accused that they had made attempts - having success in some instances - to win over witnesses.

359. The role of A-2 has been spoken of by the key witnesses, i.e. PWs 1, 6, 7, and 10. Their testimonies have been discussed extensively hereinbefore. PW-6 cannot be said to be a planted witness. He comes across as natural and believable witness. It is then submitted that A-2 is not a Congress leader but a mere local worker. This does not make much difference to the role attributed to him by the eye witnesses who come across as truthful and believable. Crl.A. 1099/2013 & Connected Matters Page 186 of 203 360. Therefore, no interference is called for with the convictions recorded by the trial Court qua A-2 or the sentence awarded to him therefor. This Court also sees it fit to further convict him for the offence of criminal conspiracy punishable under Section 120B read with Sections 436, 153A (1) (a) and (b), and 295 IPC. He is sentenced in the manner indicated hereafter. Appeal by Girdhari Lal (A-5) 361. Lastly, the Court deals with the appeal filed by A-5 who is represented by Mr. Aditya Vikram, learned counsel. It is first submitted that PW-1 had, in her statement under Section 161 Cr PC, stated the time of killing of her cousins Raghuvinder Singh, Narender Pal Singh, and Kuldeep Singh as 8.30 am (Ex.PW-1/DA) whereas in her statement under Section 164 Cr PC, no such time of killing was mentioned. Then, in her deposition in the Court, she gave the time of killing as between 6:30 to 7 am. In the considered view of the Court, this is not a major contradiction that goes to discredit

PW-1.

362. It is then submitted that PW-1 did not mention the names of the assailants in the affidavit and statement given by her before Justice Nanavati Commission. This is not true in light of what has been discussed hereinbefore. In any event, it is her testimony in the Court that was most critical. In her statement before the Justice Ranganath Misra Commission, she clearly mentioned A-5 as part of the mob which killed her brothers. In her deposition before the Court, as regards the killing of Narender Pal Singh, she clearly stated, The house of Giridhari Lal was close by. He came running armed with lathi (dang). She also mentioned how her Crl.A. 1099/2013 & Connected Matters Page 187 of 203 brother Narender Pal was caused some lathi injuries. Therefore, the presence of A-5 in the mob that killed Narender Pal Singh is clearly spoken by PW-1.

363. The submission that she named six persons in her affidavit before the Justice Ranganath Misra Commission whereas she named only four in her deposition in the Court also does not help the case of A-5, as he figures in both these statements. It is then submitted that before the Justice Ranganath Misra Commission, she stated how her three cousins were killed within her sight at the same time whereas in the Court she spoke about witnessing only the murder of Narender Pal Singh. This has already been discussed in the context of appeal of A-5 and need not be repeated here.

364. Much of the criticism of her testimony about her not appearing before the Riot Cell and about her statement recorded by the police on 3rd November 1984 being taken off the record have also been dealt with earlier. It is also again submitted that her statement recorded on 20th January 1985 is to be taken as a reliable statement. This Court has already rejected this contention earlier.

365. The Court is of the view that even one reliable witness is sufficient to bring home the guilt of an accused. The following observations in State of Maharashtra v. Ramlal Devappa Rathod (2015) 15 SCC77lucidly summarise the position: 15. The case of the prosecution depends upon the testimony of PW12 Sarojini. The substantive evidence on record is only through this witness. The law on the point is well settled that a conviction can well be founded upon the testimony of a sole

Crl.A. 1099/2013 & Connected Matters Page 188 of 203 witness. However, as laid down in State of Haryana v. Inder Singh (2002) 9 SCC537the testimony of a sole witness must be confidence inspiring and beyond suspicion, leaving no doubt in the mind of the Court. In Joseph v. State of Kerala 2003 (2) SCC465it was stated that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. It was further stated in Patel Engineering Limited v. Union of India (2012) 11 SCC257that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution. ..

18. It needs to be stated here that the High Court has also not rejected her testimony doubting her presence but has proceeded to put the matter in the light of the decision of this Court in Masalti (supra). .

21. That brings us to the question whether in an attack such as the present one, how far the principle laid down by this Court in Masalti (supra) is applicable?. .

24. in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are not attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly. It is for this reason that in Masalti (supra) this Court was cautious and cognizant that no particular part in respect of an overt act was assigned to any of the assailants except Laxmi Prasad. It is in this backdrop and in order to consider "whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly", this Court at pages 148-149 in Masalti (supra) observed that his participation as a member of the Crl.A. 1099/2013 & Connected Matters Page 189 of 203 unlawful assembly ought to be spoken by more than one witness in order to lend corroboration. The test so adopted in Masalti (supra) was only to determine liability of those accused against whom there was no clear allegation of having committed any overt act but

what was alleged against them was about their presence as members of the unlawful assembly. The test so adopted was not to apply to cases where specific allegations and overt acts constituting the offence are alleged or ascribed to certain named assailants. If such test is to be adopted even where there are specific allegations and overt acts attributed to certain named assailants, it would directly run counter to the well known maxim that "evidence has to be weighed and not counted" as statutorily recognized in Section 134 of the Evidence Act. .

26. We do not find anything in Masalti (supra) which in any way qualifies the well settled principle that the conviction can be founded upon the testimony of even a single witness if it establishes the overt acts constituting the offence as committed by certain named assailants and if such testimony is otherwise reliable. ... The test adopted in Masalti (supra) as a rule of prudence cannot mean that in every case of mob violence there must be more than one eyewitness. in clear and precise terms, 366. In light of this position, the uncontroverted deposition of PW-1 is more than sufficient to bring home the guilt of A-5. On the broader aspects of the deposition of PW-1, the Court finds sufficient corroboration by the other witnesses. Therefore, no interference is called for with the convictions recorded by the trial Court qua A-5 or the sentence awarded to him therefor. This Court also sees it fit to further convict him for the offence of criminal conspiracy punishable under Section 120B read with Sections 436, 153A (1) (a) and (b), and 295 IPC. He is sentenced in the manner indicated hereafter. Crl.A. 1099/2013 & Connected Matters Page 190 of 203 Crimes against humanity 367.1. The Court would like to note that cases of the present kind are indeed extraordinary and require a different approach to be adopted by the Courts. The mass killings of Sikhs between 1st and 4th November 1984 in Delhi and the rest of the country, engineered by political actors with the assistance of the law enforcement agencies, answer the description of crimes against humanity that was acknowledged for the first time in a joint declaration by the governments of Britain, Russia and France on 28th May 1915 against the government of Turkey following the large scale killing of Armenians by the Kurds and Turks with the assistance and connivance of the Ottoman administration. The declaration termed the killings as crimes against humanity and civilization for which all the members of the Turkish Government will be held responsible together with its agents implicated in the massacres 367.2. The Charter that

established, after the conclusion of the Second World War, the International Military Tribunal (IMT) at Nuremberg to try Nazi criminals accused of mass extermination of Jews defined crimes against humanity as: murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or prosecutions on political, racial or religious grounds in execution or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the country where perpetrated. the domestic law of 367.3. The IMT proceeded to hold many of the defendants before it guilty Crl.A. 1099/2013 & Connected Matters Page 191 of 203 of that crime. The International Criminal Tribunal for the former Yugoslavia (ICTY), as well as the International Criminal Tribunal for Rwanda (ICTR), held trials for a series of offences including genocide, war crimes and crimes against humanity. The definition adopted of crimes against humanity in Article 3 of the ICTR Statute was that they were 'inhumane acts' that were part of a systematic or widespread attack against any civilian population on national, political, ethnic, racial or religious grounds. 367.4. Article 7 of the Rome Statute for the International Criminal Court defines crimes against humanity as meaning any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.. and this includes (a) Murder; (b) Extermination; (c) Enslavement and so on and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. It incorporates the criminal element of murder rape etc. but also a contextual element viz., the perpetrator must be aware that he is contributing to a widespread or systematic attack against civilians. 367.5. It is widely acknowledged that Prof. Hersch Lauterpacht, a renowned international law jurist, who held the Whewell Chair of International Law at the University of Cambridge was responsible for making the offence of crime against humanity part of the offences for which the Nazi defendants would be tried at the IMT in Nuremberg. Another renowned scholar, a contemporary of Prof. Lauterpacht, was Prof. Crl.A. 1099/2013 & Connected Matters Page 192 of 203 Raphael Lemkin whose academic efforts were instrumental in bringing about the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) which has been ratified by India. In a book titled East West Street (Weidenfeld &

Nicolson, 2016) p. xxix, Prof. Philippe Sands explains the distinction between the two concepts as under: What is the difference between crimes against humanity and genocide?. Imagine the killing of 1000,000 people who happened to come from the same group..Jews or Poles in the city of Lviv. For Lauterpacht, the killing of individuals, if part of a systematic plan, would be a crime against humanity. For Lemkin, the focus was genocide, the killing of the many with the intention of destroying the group of which they were a part. For a prosecutor today, the difference between the two was largely the question of establishing intent: to prove genocide, you needed to show that the act of killing was motivated by an intent to destroy the group, whereas for crimes against humanity no such intent had to be shown. proving intent to destroy a group in whole or in part was notoriously difficult, since those involved in such killings tended not to leave a trail of helpful paperwork. 367.6. In India, the riots in early November 1984 in which in Delhi alone 2,733 Sikhs and nearly 3,350 all over the country were brutally murdered (these are official figures) was neither the first instance of a mass crime nor, tragically, the last. The mass killings in Punjab, Delhi and elsewhere during the countrys partition remains a collective painful memory as is the killings of innocent Sikhs in November 1984. There has been a familiar pattern of mass killings in Mumbai in 1993, in Gujarat in 2002, in Kandhamal, Odisha in 2008, in Muzaffarnagar in U.P. in 2013 to name a few. Common to these mass crimes were the targeting of minorities and the Crl.A. 1099/2013 & Connected Matters Page 193 of 203 attacks spearheaded by the dominant political actors being facilitated by the law enforcement agencies. The criminals responsible for the mass crimes have enjoyed political patronage and managed to evade prosecution and punishment. Bringing such criminals to justice poses a serious challenge to our legal system. As these appeals themselves demonstrate, decades pass by before they can be made answerable. This calls for strengthening the legal system. Neither crimes against humanity nor genocide is part of our domestic law of crime. This loophole needs to be addressed urgently. 367.7. Elsewhere too, the legal systems of the world are grappling with crimes against humanity. The Supreme Court of Bangladesh, in Abdul Quader Molla (supra), considered the appeal of the government against the acquittal of the accused of mass killing of Bangladeshi citizens committed in 1971 by sympathisers of the Pakistani Army.

The trial commenced in 2009, 38 years after the incident, and concluded in 2013. The following observations of the Supreme Court of Bangladesh resonate with the fact situation in the present appeals: 88. The investigation, prosecution, and adjudication of core crimes against humanity often take place years or decades after their actual commission. Such delay usually results as societies recovering from mass atrocity are faced with a variety of more pressing reconstructive needs; a fragile political environment; or a lack of criminal justice capacity. Much time may be required before post-atrocity societies are able to implement fair and effective criminal trials. The undertaking of such delayed prosecutions is nevertheless supported by arguments made by various international legal actors that domestic statutes of limitations do not apply to such crimes. There may in fact be an increase in such prosecutions in the future as the pursuit of individual accountability for such crimes becomes a Crl.A. 1099/2013 & Connected Matters Page 194 of 203 norm, rather than an exception, with societies increasingly willing and able to investigate atrocities perpetrated in their past. Even when such prosecutions are undertaken by international criminal courts, such as the International Criminal Court (ICC), experience shows that all too often it is many years before investigations are effectively initiated or an accused person actually brought to trial. .

256. As noticed above, the incidents took place in 1971 and the witnesses deposed before the tribunal in 2012 after about 41 years. The witnesses who saw the incidents dared to depose for fear of reprisal and due to such delay most of the material evidence have been destroyed by reason of death of some vital witnesses and the change of political atmosphere in the intervening period. Under such circumstances, the prosecution has collected best evidence available to prove the charges. The defence has not at all denied any of the incidents. It has merely denied the appellants complicity. Under such circumstances, it is to be looked into whether the story introduced by the prosecution is reliable or the story introduced by the defence is probable. The facts and circumstances, the materials placed before it and believed the version given by the prosecution as reliable. It should not be ignored that although huge number of persons were brutally killed and some girls were raped, the prosecution witnesses pointed fingers at one person, the appellant who, with his Behari cohorts perpetrated the incidents. If the

prosecution was launched for political victimization, as suggested, it could have implicated other leaders of Jamat-e-Islami in the said incidents. .

267. On behalf of the defence it was submitted that in her book Shahid Kabi Meherunnessa ext-B, she did not state that Abdul Quader Molla killed them, rather she stated that the Non-Bangalees suddenly attacked Mehers house and killed her brothers, mother and Meher. She was confronted with this statement in course of cross-examination. In reply she stated that since no steps were taken for the trial of the perpetrators of war crimes, she did not mention any ones name in her book tribunal had to weigh the Crl.A. 1099/2013 & Connected Matters Page 195 of 203 for fear of reprisal in the hands of perpetrators and that she deposed against Quader Molla at this stage as his trial was proceeding. This explanation appears to me cogent, reasonable, believable in the context of the situation then prevailing in the country. The perpetrators of Crimes Against Humanity were rewarded by the authorities in power since August 15, 1975 instead of putting them to justice. It is only this present Government which pledged to the people to put them on trial and after coming to power in 2009 started the process of trial. This is an admitted fact and the court can take judicial notice of this fact. The defence suggested to this witness that in 1971 in the Mirpur locality one Quader Molla namely Behari Kasai was involved in all those atrocities. She denied the suggestion. The defence failed to substantiate its claim to prove the existence of one Kasai Quader Molla other than the appellant. This suggestion sufficiently supported the prosecution version that the appellant was the main perpetrator of all killing and inhuman acts committed at Mirpur. 367.8. The Court of Appeal in United Kingdom in Anthony Sawoniuk (supra) was dealing with the issue of framing criminal proceedings 56 years after the alleged crime. The Jury had convicted the Appellant on two counts of murder and on account of killing of Polish Jews during the Nazi era. The Appellate Court rejected the contention of the accused and refused leave to appeal before the European Court of Human Rights (ECHR). Thereafter, the ECHR, by its judgment dated 29th May 2001, upheld his conviction. This obligation to prosecute crimes against humanity, no matter the lapse of time, has also been echoed by International Criminal Law- Critical Concepts in Law, 2015 (1st Ed) wherein it was opined that no amount of time can be 'too long' to satisfy the needs for truth and some measure of accountability, nor can come arbitrary

legal time limit be set. The argument that some wounds are too old to be exposed has little moral integrity the Crl.A. 1099/2013 & Connected Matters Page 196 of 203 wounds are still there for all to see. 367.9. The International Law Commission (ILC) is at present working towards a Convention on Crimes against Humanity. It has submitted the draft articles of the Convention to the UN General Assembly. It is expected that after comments are received from governments, international organizations and others, followed by a second reading of the draft articles by the ILC in 2018, the proposed convention will be adopted by the UN General Assembly in 2019 or 2020. India, in view of her experience with the issue, should be able to contribute usefully to the process. 367.10. The Court has digressed into the above brief discussion on crimes against humanity since cases like the present are to be viewed in the larger context of mass crimes that require a different approach and much can be learnt from similar experiences elsewhere. The following observations of our Supreme Court in Asha Ranjan v. State of Bihar (2017) 4 SCC397are relevant in this context: There can be no denial of the fact that the rights of the victims for a fair trial is an inseparable aspect of Article 21 of the Constitution and when they assert that right by themselves as well as the part of the collective, the conception of public interest gets galvanised. The accentuated public interest in such circumstances has to be given primacy, for it furthers and promotes Rule of Law. It may be clarified at once that the test of primacy which is based on legitimacy and the public interest has to be adjudged on the facts of each case and cannot be stated in abstract terms. It will require studied scanning of facts, the competing interests and the ultimate perception of the balancing that would subserve the larger public interest and serve the majesty of rule of law. Crl.A. 1099/2013 & Connected Matters Page 197 of 203 Summary of conclusions 368. The summary of conclusions arrived at by the Court is as under: (i) There was an abject failure by the police to investigate the violence which broke out in the aftermath of the assassination of the then Prime Minister Smt. Indira Gandhi is apparent from the several circumstances highlighted hereinabove. (Para

136) (ii) There was an utter failure to register separate FIRs with respect to the five deaths that form the subject matter of the present appeals. The failure to record any incident whatsoever in the DDR and the lack of mention of PW-1s statement

therein, amongst other circumstances, established the apathy of the Delhi Police and their active connivance in the brutal murders being perpetrated. (Paras 146 and

149) (iii) What happened in the aftermath of the assassination of the then Prime Minister was carnage of unbelievable proportions in which over 2,700 Sikhs were murdered in Delhi alone. The law and order machinery clearly broke down and it was literally a free for all situation which persisted. The aftershocks of those atrocities are still being felt. (Para

152) (iv) This was an extraordinary case where it was going to be impossible to proceed against A-1 in the normal scheme of things because there appeared to be ongoing large-scale efforts to suppress the cases against him by not even recording or registering them. Even if they were registered they were not investigated properly and even the investigations which saw any progress were not carried to the logical end of a charge sheet actually being filed. Even the defence does not Crl.A. 1099/2013 & Connected Matters Page 198 of 203 dispute that as far as FIR No.416/1984 is concerned, a closure report had been prepared and filed but was yet to be considered by the learned MM. (Para

159) (v) The argument that the CBI deliberately suppressed the fact of the pendency of the closure report in FIR No.416/1984 is born out of sheer desperation. Even if FIR No.416/1984 was not closed as untraced, the fact remains that there was no progress whatsoever in the said FIR. (Para

160) (vi) PW-1 comes across as a fearless and truthful witness. Till she was absolutely certain that her making statements will serve a purpose, she did not come forward to do so. Nothing in the deposition of PW- 1 points to either untruthfulness or unreliability. Her evidence deserves acceptance. (Paras 219 and

220) (vii) PW-4 is also definitely a witness in support of the case of the prosecution. (Para

232) (viii) PW-6 was one of the persons who had suffered tragedies and had no reason to falsely implicate anyone. (Para

242) (ix) The failure to examine important witnesses including PWs 3, 4, 6, 7, 9 and 12 by the Riot Cell of the Delhi Police and also the non- examination of Daljit Kaur and Harbhajan Kaur establishes that the Riot Cell did not carry out any genuine investigation. PW-1 was justified in not joining such an investigation. (Paras 280 and

281) (x) The trial Court completely omitted to address the charge of conspiracy despite detailed arguments submitted by the CBI in that regard. There was a two-pronged strategy adopted by the attackers. First was to liquidate all Sikh males and the other was to destroy their Crl.A. 1099/2013 & Connected Matters Page 199 of 203 residential houses leaving the women and children utterly destitute. The attack on the Raj Nagar Gurudwara was clearly a part of the communal agenda of the perpetrators. (Paras 288 and

294) (xi) The mass killings of Sikhs between 1st and 4th November 1984 in Delhi and the rest of the country, engineered by political actors with the assistance of the law enforcement agencies, answer the description of crimes against humanity. Cases like the present are to be viewed in the larger context of mass crimes that require a different approach and much can be learnt from similar experiences elsewhere. (Paras 367.1 and 367.10) (xii) Common to the instances of mass crimes are the targeting of minorities and the attacks spearheaded by the dominant political actors facilitated by the law enforcement agencies. The criminals responsible for the mass crimes have enjoyed political patronage and managed to evade prosecution and punishment. Bringing such criminals to justice poses a serious challenge to our legal system. Decades pass by before they can be made answerable. This calls for strengthening the legal system. Neither crimes against humanity nor genocide is part of our domestic law of crime. This loophole needs to be addressed urgently. (Para 367.6) (xiii) The acquittal of A-1 by the trial Court is set aside. He is convicted of the offence of criminal conspiracy punishable under Section 120B read with Sections 302, 436, 295, and 153A (1) (a) and (b) IPC; for the offence punishable under Section 109 IPC of abetting the commission of the aforementioned offences; and for the offence of delivering provocative speeches instigating violence against Sikhs Crl.A. 1099/2013 & Connected Matters Page 200 of 203 punishable under Section 153A (1) (a) and (b) IPC. (Para

307) (xiv) The convictions and sentences of A-2 to A-6 as ordered by the trial Court are affirmed. Additionally, each of them is convicted for the offence of criminal conspiracy punishable under Section 120B read with Sections 436, 295, and 153A (1) (a) and (b) IPC. (Paras 331, 356, 360, and

366) Sentences 369. As far as A-1 is considered, he is sentenced as under: (i) For the offence of criminal conspiracy punishable under Section 120B read with (a) Section 302 IPC, to imprisonment for life, i.e. the remainder of his natural life; (b) Section 436 IPC, to RI for 10 years and fine of Rs. 1 lakh and in default of payment of fine to undergo simple imprisonment (SI) for 1 year; (c) Section 153A (1) (a) and (b) IPC, to RI for three years; and (d) Section 295 IPC, to RI for two years. (ii) For the offence punishable under Section 109 read with Sections 302, 436, 153A, and 295 IPC to identical sentences as in (i) (a) to (d) above. (iii) For the offence punishable under Section 153A (1) (a) and (b) IPC, to RI for three years. All sentences shall run concurrently.

370. The bail and surety bonds furnished by A-1 stand cancelled and he Crl.A. 1099/2013 & Connected Matters Page 201 of 203 shall surrender not later than 31st December 2018, failing which he shall forthwith be taken into custody to serve out the sentences awarded to him. A-1 shall not from this moment till his surrender leave the NCT of Delhi in the meanwhile and shall immediately provide to the CBI the address and mobile number(s) where he can be contacted.

371. As far as A-2 to A-6 are concerned, in addition to the sentences awarded to each of them for the offences for which they were found guilty by the trial Court, this Court sentences each of them as under: (i) For the offence of criminal conspiracy punishable under Section 120B read with (a) Section 436 IPC, to RI for 10 years and fine of Rs. 1 lakh and in default of payment of fine to undergo SI for 1 year; (b) Section 153A (1) (a) and (b) IPC, to RI for three years; and (c) Section 295 IPC, to RI for two years. All sentences, including those awarded by the trial Court, to run concurrently.

372. A-2, A-4, and A-5 are already in custody. A-3 and A-6 shall surrender not later than 31st December 2018, failing which they shall forthwith be taken into custody to serve out the sentences awarded to each of them. The bail bonds and

surety bonds furnished by A-3 and A-6 stand cancelled forthwith.

373. A-3 and A-6 shall not, from this moment till their surrender, leave the NCT of Delhi in the meanwhile and each of them shall immediately Crl.A. 1099/2013 & Connected Matters Page 202 of 203 provide to the CBI the addresses and mobile number(s) where each of them can be contacted. Conclusion 374. Crl.A.861/2013 by A-2, Crl.A.715/2013 by A-3, Crl.A.851/2013 by A-4, Crl.A.710/2014 by A-5, and Crl.A.753/2013 by A-6 are accordingly dismissed. Crl.A.1099/2013 filed by the CBI is partly allowed in the above terms.

375. All pending applications are disposed of. Separate consequential orders have been passed in the individual appeals. S. MURALIDHAR, J.

VINOD GOEL, J.

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