



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of order: 11th AUGUST, 2025

IN THE MATTER OF:

+ **CRL.REV.P. 245/2017**

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr. Siddharth Aggarwal, Senior Advocate (*Amicus Curiae*) with Mr. Vishwajeet Singh, Mr. Karan Dhalla and Mr. Japman Singh, Advocates.

versus

DHANRAJ & ORS.

.....Respondents

Through: Mr. Rakesh Vatsa, Mr. Jeetin Jhala, Mr. Shakunt Jhala, Ms. Reenila Jhala, Advocates for Respondent/Balwan Khokhar.
Mr. Laksh Khanna, Advocate for the State.
Mr. H. S. Phoolka, Sr. Advocate with Mr. Gurbaksh Singh, Ms. Surpreet Kaur and Ms. Kamna Vohra, Advocates for Complainant.
Ms. Tarannum Cheema, Mr. Akash Singh and Mr. Akshay N., Advs. for CBI.

+ **CRL.REV.P. 246/2017**

COURT ON ITS OWN MOTION

.....Petitioner

Through: Ms. Inderjeet Sidhu, Advocate (*Amicus Curiae*) and Ms. Nazreena Sheikh, Advocate



versus

VIDYANAND & ORS.

.....Respondents

Through: Mr. Rakesh Vatsa, Mr. Jeetin Jhala,
Mr. Shakunt Jhala, Ms. Reenila Jhala,
Advocates for Respondent/Balwan
Khokhar.
Mr. Laksh Khanna, Advocate for the
State.
Mr. H. S. Phoolka, Sr. Advocate with
Mr. Gurbaksh Singh, Ms. Surpreet
Kaur and Ms. Kamna Vohra,
Advocates for Complainant.
Ms. Tarannum Cheema, Mr. Akash
Singh and Mr. Akshay N., Advs. for
CBI.

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CRL.REV.P. 249/2017

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr. Siddharth Aggarwal, Senior
Advocate (*Amicus Curiae*) with
Mr. Vishwajeet Singh, Mr. Karan
Dhalla and Mr. Japman Singh,
Advocates.

versus

BALWAN SINGH KHOKHAR & ORS.

.....Respondents

Through: Mr. Rakesh Vatsa, Mr. Jeetin Jhala,
Mr. Shakunt Jhala, Ms. Reenila Jhala,
Advocates for Respondent/Balwan
Khokhar.
Mr. Aashneet Singh, APP for the
State.
Mr. H. S. Phoolka, Sr. Advocate with
Mr. Gurbaksh Singh, Ms. Surpreet
Kaur and Ms. Kamna Vohra,



Advocates for Complainant.
Ms. Tarannum Cheema, Mr. Akash
Singh and Mr. Akshay N., Advs. for
CBI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The assassination of Ms. Indira Gandhi, former Prime Minister of India, led to eruption of riots in the entire city of Delhi in 1984, resulting in death of several innocent *Sikhs* and destruction of properties of various *Sikh* families as also *Gurudwaras*.
2. The present batch of matters arises out of FIR No. 416/1984 dated 04.11.1984 registered at Police Station Delhi Cantt. The said FIR was registered at the instance of one Mrs. Baljit Kaur D/o late Shri Avtar Singh.
3. Pursuant to the registration of the said FIR, several other complaints were received regarding murders of innocent *Sikhs* and destruction of properties in the Raj Nagar area, which includes the Complaint of one Sampuran Kaur on 18.11.1984 stating that her husband S. Nirmal Singh had been murdered. She stated that on 01.11.1984, after the assassination of Ms. Indira Gandhi, when she was present at her house along with her husband and children, a mob was roaming around to kill *Sikhs* and at about 9:30AM, they set fire to the *Gurudwara* at Raj Nagar. She stated that about 500 people came to her house and started pelting stones and set her house on fire. She stated that the rioters were being led by Mahinder Singh Yadav, Bagdola-wale and Balwan Khokhar. She stated that when her husband



Nirmal Singh came out and asked the rioters as to why they were killing them, Balwan Khokhar came and took her husband away to get the matter compromised. He took her husband Nirmal Singh on a motorcycle and took him to the shop of one Dhan Raj where Balwan Khokhar gave away her husband to the rioters and Dhan Raj tied her husband Nirmal Singh with a rope and then, Mahinder Singh Sharabi and other rioters poured kerosene oil on Nirmal Singh and set him on fire. They also robbed her house and thereafter, set it on fire. This complaint dated 18.11.1984 led to Sessions Case 32/86, which gave rise to Criminal Revision Petition 245/2017.

4. Similarly, another Complaint dated 15.11.1984 by one Jagir Kaur was received, who complained that on 01.11.1984, at about 5:30 PM, a mob of about 1000-1500 people led by Balwan Khokhar, Vidyanand Gupta and Mahender Singh, residents of Village Bagdola, attacked her house, gave beatings to her husband Joga Singh by bricks and pipes, and after beating him, they poured kerosene oil over her husband and burnt him alive. The said complaint has led to Session Case 31/86, which gave rise to Criminal Revision Petition 246/2017.

5. One more complaint was received from Daljit Kaur on 12.11.1984 stating that on 01.11.1984, at about 9:30 AM, a mob led by Balwan Khokhar set a *Gurudwara* on fire and thereafter they came to her house at RZ-241/D, Raj Nagar, Palam Colony, New Delhi shouting that all *sardars* must be brought and killed. They set the front door of her house on fire. She stated that when her husband, Avtar Singh came out, he was immobilised by the mob and was set on fire. She stated that while her husband was still alive, his son Sukhvinder Singh tried to save him but he was also set on fire and killed. This complaint has resulted in Sessions Case No.10/86, pertaining to



Criminal Revision Petition 247/2017.

6. A composite *challan* had been filed *inter alia* in all the aforesaid three Complaints, ultimately giving rise to three Sessions Cases, *viz.*, Sessions Case 31/86, Sessions Case 32/86 and Sessions Case 10/86. It is pertinent to mention that all the three Sessions Cases were tried separately, and all accused persons in these cases were acquitted by Ld. Additional Sessions Judges, New Delhi *vide* Judgment dated 29.04.1986 in Sessions Case 31/86, Judgment dated 17.05.1986 in Sessions Case 32/86 and Judgment dated 15.07.1986 in Sessions Case 10/86.

7. Material on record also indicates that concerned with the lack of proper investigation and the causes of large scale violence, several Commissions were appointed including (i) the Marwah Commission, 1984; (ii) Justice Ranganath Misra Commission of Enquiry, 1985; (iii) Dhillon Committee, 1985; (iv) Ahuja Committee, 1985; (v) Kapur Mittal Committee, 1987; (vi) Jain Banerjee Committee, 1987; (vii) Potti Rosha Committee, 1990; (viii) Jain Aggarwal Committee, 1990 and (ix) Narula Committee, 1993 to examine the various aspects of the matter.

8. Reports were furnished by these Committees/Commissions. On 08.05.2000, the Government of India appointed a Commission of Inquiry under the Chairmanship of Justice G. T. Nanavati, former Judge of the Supreme Court of India, *i.e.*, the "**Nanavati Commission**", to inquire into the causes and the course of criminal violence targeting members of the *Sikh* community which took place in the NCT of Delhi and other parts on 31.10.1984 and thereafter; the sequence of events leading to and all such facts relating to such violence and riots. The Commission also covered questions as to whether the crimes which were committed against the *Sikh*



community could have been averted and whether there were any lapses or dereliction of duty on the part of the Police Officials and other authorities. The Commission was also to inquire and report on the adequacy of administrative measures taken to prevent and deal with the said violence and riots and certain other matters as may be found relevant in the course of the inquiry.

9. The Nanavati Commission of Inquiry gave its Report on 09.02.2005, which was placed before the Houses of Parliament. Before the Parliament, an assurance was given by the then Prime Minister and the then Home Minister that wherever the Commission has named any specific individuals which would require further examination or re-opening of the case, steps will be taken to do so within the ambit of law.

10. After examination of the matter, a Communication dated 24.10.2005 was issued by the Ministry of Home Affairs for further investigation/re-investigation of cases against Dharam Das Shastri, Jagdish Tytler, Sajjan Kumar for their role in the various cases/actions and the cases were entrusted to the Central Bureau of Investigation (CBI). The CBI registered an FIR *vide* RC24/2005-SIU-I/SIC-1/CBI/ND.

11. Upon conclusion of the investigation, Chargesheet No.1/10 dated 13.01.2010 was filed against eight accused persons, namely, Sajjan Kumar, Balwan Khokhar, Mahender Yadav, Capt. Bhagmal (Retd.), Girdhari Lal, Krishan Khokhar, Maha Singh and Santosh Rani @ Janta Hawaldarni. The case was registered as Sessions Case 26/2010. Since some of the accused namely, Ishwar Chand Gaur @ Chand Sharabi, Dharamveer Singh Solanki, Balidan Singh and Raja Ram, had passed away before the trial, proceedings against them stood abated, and charges were framed against the surviving



accused persons.

12. *Vide* Judgment dated 30.04.2013, the learned Additional District & Sessions Judge, Karkardooma acquitted Sajjan Kumar while the other five accused persons were convicted for commission of different offences, which resulted in filing of the following appeals before this Court:

- a. Criminal Appeal No. 715/2013 titled '*Mahender Yadav v. CBI*'
- b. Criminal Appeal No. 753/2013 titled '*Krishan Khokhar v. CBI*'
- c. Criminal Appeal No. 831/2013 titled '*Jagdish Kaur & Anr. v. Balwan Khokhar & Ors.*'
- d. Criminal Appeal No. 851/2013 titled '*Capt. Bhagmal Retd. v. CBI*'
- e. Criminal Appeal No. 861/2013 titled '*Balwan Khokhar v. CBI*'
- f. Criminal Appeal No. 1099/2013 titled '*State through CBI v. Sajjan Kumar & Ors.*'
- g. Criminal Appeal No. 710/2014 titled '*Girdhari Lal v. CBI*'

13. It is pertinent to note that the CBI investigation and the resultant trial pertained *inter alia* to:

- a. the larger conspiracy resulting in the incidents which took place on 01/02.11.1984 in the Raj Nagar area;
- b. the murders of five *Sikh* persons (Kehar Singh, Gurpreet Singh, Raghuvinder Singh, Narender Pal Singh & Kuldeep Singh);
- c. damage caused to the Raj Nagar *Gurudwara*.

14. The CBI case did not pertain to the alleged offences which were the subject matter of Sessions Cases 10/86, 11/86 and 32/86, presumably on account of acquittal of the accused persons, which were not followed up with any appeals on behalf of the State or the victims.



15. During the course of hearing of the aforesaid Criminal Appeals, Ld. Counsel for some of the accused persons (Capt Bhagmal and Sajjan Kumar) had sought to place reliance *inter alia* on the following Judgments passed by Ld. Additional Sessions Judges, Delhi in:

Sr.No	Case No.	Parties name	Result of the trial	Details of complaint
(i)	SC No.31/86	State v. Vidyanand, Balwan Khokhar, Mahender Singh Yadav	Acquittal judgment by dated 29.04.1986	Dated 15.11.1984 by Jagir Kaur (widow)
(ii)	SC No.32/86	State v. Dhanraj, Mahender Singh, Balwan Khokhar, Mahender Singh Yadav	Acquittal judgment by dated 17.05.1986	Dated 18.11.1984 by Sampuran Kaur (widow)
(iii)	SC No.11/86	State v. Dhanpat, Ved Parkash, Shiv Charan, Ramji Lal Sharma	Acquittal judgment by dated 28.05.1986	Dated 15.11.1984 by Swaran Kaur (widow)
(iv)	SC No.10/86	State v. Balwan Khokhar	Acquittal judgment by dated 15.07.1986	Dated 19.11.1984 by Daljit Kaur
(v)	SC No. 33/86	State v. Mahender Singh, Ram Kumar	Acquittal judgment by dated 04.10.1986	Dated 04.11.1984 by Baljit Kaur (daughter) (registered as FIR 416/84)

16. The Ld. Counsel for the aforesaid accused persons sought to draw strength from the abovementioned Judgments of acquittal on the basis that the incidents which formed the subject matter of these judgments as also the incidents under consideration in the Criminal Appeals being heard, although arising from different investigations, had taken place around the same time, *i.e.*, 01/02.11.1984, in the aftermath of the assassination of Ms. Indira Gandhi.

17. In order to appreciate the contentions of the Ld. Counsel for the aforesaid accused persons, this Court deemed it fit to issue directions for



tracing out the records of the cases in which the Judgments of acquittal tabulated above had been rendered.

18. Extracts of relevant Orders which outline the steps taken for tracing the records of Sessions Cases 10/86, 11/86 and 32/86, viz. the subject matter of the present Revision Petitions, are as under:

- a. Order dated 08.02.2017 passed in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014, reads as under:-

“...2. It would appear to be in the interest of justice that the record of these cases is traced out. Further directions with regard to the same would be made once the parties had a chance to inspect the same.

3. A direction is issued to the District Judge (Headquarters) to trace out the record of the cases and cause the same to be produced before us within two weeks from today. Even if the digitized record is available, the same may be produced before us”

- b. Order dated 21.02.2017 passed in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014, read as under:-

“1. By our order dated 8th February 2017, we had directed the District Judge (Headquarters) to cause the following record to be produced before us within two weeks from that day:

Sr.No	Case No.	Parties name	Judgment date	Judgment passed by
1.	SC No.31/86	State v. Vidyanand, Balwan Khokhar, MahenderSinghYadav	29.04.1986	Sh. S.P. Singh Chaudhari, ASJ, New Delhi



2.	SC No.32/86	State v. Dhanraj, Mahender Singh, Balwan Khokhar, Mahender Singh Yadav	17.05.1986	Sh. S.P. Singh Chaudhari, ASJ, New Delhi
3.	SC No.11/86	State v. Dhanpat, Ved Parkash, Shiv Charan , Ramji Lal Sharma	28.05.1986	Sh. V.B. Bansal, ASJ, Delhi.
4.	SC No.10/86	State v. Balwan Khokhar	15.07.1986	Sh. V.B. Bansal, ASJ, Delhi.
5.	SC No.33/86	State v. Mahender Singh, Ram Kumar	04.10.1986	Sh. S.P. Singh Chaudhari, ASJ, New Delhi
6.	SC No.28/93	State v. Sunil Tiwari @ Raju, Hukam Chand, Mangat Ram, Balwan Khokhar	30.04.1994	Sh. S.S. Bal, ASJ, New Delhi.

7. On 31st January, 2012, the Mauza Clerk from the Record Room (Sessions), Tis Hazari Courts had placed the following report before the Trial Court (at TCR – Part-VI page 735-737):

“1. S.C. No.10/86 decided on 15.07.86 vide goshwara No.80/S has been destroyed weeding out cell on 09.06.05.

2. S.C. No. 11/86 vide goshwara No. 96/S decided on 27.05.86 is not traceable due to shifting the judicial record from Room No. 220 to Room No. 45. So it is humble request that, kindly give some more time for trace the judicial file.

3. S.C. No. 31/86 decided on 29.04.86 vide goshwara No. 27/S has been destroyed weeding out cell on 10.06.05.

4. S.C. No. 32/86 decided on 17.05.86 vide goshwara No.29/S has been destroyed weeding out cell on



10.06.05.

5. S.C. No. 33/86 decided on 04.10.86 vide goshwara No. 16/S has been destroyed weeding out cell on 09.06.05.”

11. It appears therefore, that so far as the record of the SC No.11/86 and SC No.28/93 were available as on 13th February, 2012. So far as the record of other four cases are concerned, the same had been reported to be weeded out.

(Emphasis supplied)

- c. Order dated 16.03.2017 passed in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014, read as under:-

“...3. Pursuant to our orders dated 21st February, 2017 and 9th March, 2017 calling for the records of these cases, only the record of SC No. 11/86 has been sent to this court by the office of the District & Sessions Judge (Headquarters).So far as the other five cases are concerned, it is submitted vide report dated 23rd February 2017 (No. 51 RR(s)/THC/DELHI/2017) that as per the practice and procedure followed for maintenance of records in the district judiciary, the records of these cases stand weeded out/destroyed, as per Delhi High Court Rules & Orders, upon attaining maturity.

4.We are informed by Mr. D.P. Singh, learned Special Public Prosecutor appearing for the CBI that the Delhi Police would be in possession of the challans and the other records which were filed before the court as well as the original case diaries relating to these cases.



5. The judgments in these cases are being heavily relied upon by the appellants in support of their appeals. We deem it essential to peruse the record of these cases in order to facilitate adjudication.

6. Accordingly, a direction is issued to the Commissioner, Delhi Police to produce forthwith the complete record relating to the challans which were filed and registered as cases from serial nos. (i) to (vi) in para 1 arising out of FIR No. 416/84 Police Station Delhi Cantt.

7. We also direct that the above record shall not be weeded out or destroyed by the Delhi Police until further orders from this court.”

(Emphasis supplied)

- d. Order dated 22.03.2017 passed in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014, read as under:-

“1. The Delhi Police has filed a status report dated 21st March 2017 under the signatures of Radhey Shyam Meena, Asst. Commissioner of Police, Anti-Riot Cell, New Delhi enclosing a list of files which are stated to have been sent to the CBI by the Ministry of Home Affairs of the Government of India. Time is sought by Mr. D.P. Singh, learned Special Prosecutor to examine the same and to ascertain the location of the files mentioned in our order dated 16th March 2017. The CBI shall ensure that the information with regard to the record received from the Nanawati Commission or any other authority is disclosed to the counsel to enable them in assisting this court in the matter.

2. Some more time is sought by Rahul Mehra, learned Senior Standing Counsel to undertake a further verification with regard to the availability of records keeping in view the judgments, copies whereof has now



been made available to him.”

(Emphasis supplied)

19. A perusal of the above extracts indicates that records pertaining to three cases which are being dealt with by this Court by way of the present Order, viz., Sessions Case 10/86, Sessions Case 31/86 and Sessions Case 32/86, have been destroyed / weeded out. While some steps for tracing out the aforesaid records were undertaken by this Court, as on date, only the composite Chargesheet along with the final Judgments passed in the aforesaid cases are available before this Court.

20. Thereafter, this Court initiated proceedings under Section 401 CrPC in Criminal Revision Petition 245/2017, Criminal Revision Petition 246/2017 and Criminal Revision Petition 249/2017, which are now being dealt with by way of the instant Order.

21. *Vide* Order dated 29.03.2017, several directions were passed by this Court in the three revision petitions, viz., Criminal Revision Petition 245/2017, Criminal Revision Petition 246/2017 and Criminal Revision Petition 249/2017.

22. The directions passed by this Court in Criminal Revision Petition 245/2017, reads as under:

“114. We accordingly direct as follows:

(i) Let this order be registered as a petition under Section 401 of the Cr.P.C.

(ii) Issue notice without process fee to private respondent nos. 1 to 4 as well as the State - respondent No.5 to show cause as to why the judgment dated 17th May, 1986 in SC No.32/86 premised on the composite chargesheet dated 25th March, 1985 based inter alia



on the complaint dated 18th November, 1984 of Smt. Sampuran Kaur (clubbed with FIR No.416/84, P.S. Delhi Cantt.), be not set aside and a retrial/fresh trial be directed by this court in exercise of its revisional powers under Section 401 of the Cr.P.C.

(iii) Issue notice without process fee to private respondent nos. 1 to 4 as well as the State - respondent no.5 to show cause as to why this court not direct fresh/further investigation into the complaint of Smt. Sampuran Kaur by an independent agency as the Central Bureau of Investigation.

(iv) The address of the complainant - respondent no. 6 shall be ascertained by the State and the same shall be filed in the Registry within two weeks from today.

(v) Subject to the compliance with the above directions, court notice without process fee shall be issued for the service of complainant - respondent no. 6.

(vi) Compliance with the above directions shall be got ensured by the Commissioner, Delhi Police.

(vii) A copy of the composite final report dated 25th March, 1985 filed by the Delhi Police in SC Nos.10/86, 11/86, 31/86, 32/86 and 33/86 (placed by CBI on the record of Crl.A.No. 1099/2013) and a copy of the judgment dated 17th May, 1986 in SC No.32/86 shall be placed in the file along with the present order.

(viii) For the reasons set out above, we appoint Mr. P.K. Dey, Advocate as Amicus Curiae in this matter.

(ix) The Registry shall ensure that a complete paper book is made available to the Amicus Curiae.

(x) It shall be the responsibility of the Delhi High Court Legal Services Committee to pay the fees of the



Amicus Curiae which are quantified at Rs.50,000/-.

(xi) All notices shall be returnable on 20th April, 2017.”

(Emphasis supplied)

23. The directions passed by this Court in Criminal Revision Petition 246/2017, reads as under:

“105. We accordingly direct as follows :

(i) Let this order be registered as a petition under Section 401 of the Cr.P.C.

(ii) Issue notice without process fee to private respondent nos. 1 to 3 as well as the State - respondent No.4 to show cause as to why the judgment dated 29th April, 1986 in SC No.31/86 premised on the composite chargesheet dated 25th March, 1985 based inter alia on the complaint dated 15th November, 1984 of Smt. Jagir Kaur (clubbed with FIR No.416/84, P.S. Delhi Cantt.), be not set aside and a retrial/fresh trial be directed by this court in exercise of its revisional powers under Section 401 of the Cr.P.C.

(iii) Issue notice without process fee to private respondent nos. 1 to 3 as well as the State - respondent no.4 to show cause as to why this court not direct fresh/further investigation into the complaint of Smt. Jagir Kaur by an independent agency as the Central Bureau of Investigation.

(iv) The address of the complainant - respondent no. 5 shall be ascertained by the State and the same shall be filed in the Registry within two weeks from today.

(v) Subject to the compliance with the above directions, court notice without process fee shall be issued for the service of complainant - respondent no. 5.



(vi) Compliance with the above directions shall be got ensured by the Commissioner, Delhi Police.

(vii) A copy of the composite final report dated 25th March, 1985 filed by the Delhi Police in SC Nos.10/86, 11/86, 31/86, 32/86 and 33/86 (placed by CBI on the record of Crl.A.No. 1099/2013) and a copy of the judgment dated 29th April, 1986 in SC No.31/86 shall be placed in the file along with the present order.

(viii) For the reasons set out above, we appoint Ms. Inderjeet Sidhu, Advocate as Amicus Curiae in this matter.

(ix) The Registry shall ensure that a complete paper book is made available to the Amicus Curiae.

(x) It shall be the responsibility of the Delhi High Court Legal Services Committee to pay the fees of the Amicus Curiae which are quantified at Rs.50,000/-.

(xi) All notices shall be returnable on 20th April, 2017.”

(Emphasis supplied)

24. The directions passed by this Court in Criminal Revision Petition 249/2017, reads as under:

“98. We accordingly direct as follows :

(i) Let this order be registered as a petition under Section 401 of the Cr.P.C.

(ii) Issue notice without process fee to private respondent no. 1 and 2 to show cause as to why the judgment dated 15th July, 1986 in SC No.10/86 premised on the composite chargesheet dated 25 March, 1985 based inter alia on the complaint dated



18th November, 1984 of Smt. Daljit Kaur (clubbed with FIR No.416/84, P.S. Delhi Cantt.), be not set aside and a retrial/fresh trial be directed by this court in exercise of its revisional powers under Section 401 of the Cr.P.C.

(iii) Issue notice without process fee to private respondent nos. 1 as well as respondent no.2 to show cause as to why this court not direct fresh/further investigation into the complaint of Smt. Daljit Kaur by an independent agency as the Central Bureau of Investigation.

(iv) The address of the complainant - respondent no. 3 shall be ascertained by the State and the same shall be filed in the Registry within two weeks from today.

(v) Subject to the compliance with the above directions, court notice without process fee shall be issued for the service of complainant - respondent no. 3.

(vi) Compliance with the above directions shall be got ensured by the Commissioner, Delhi Police.

(vii) A copy of the composite final report dated 25th March, 1985 filed by the Delhi Police in SC Nos.10/86, 11/86, 31/86, 32/86 and 33/86 (placed by CBI on the record of Crl.A.No. 1099/2013) and a copy of the judgment dated 15th July, 1986 in SC No.10/86 shall be placed in the file along with the present order.

(viii) For the reasons set out above, we appoint Mr.Siddharth Aggarwal, Advocate as Amicus Curiae in this matter.

(ix) The Registry shall ensure that a complete paper book is made available to the Amicus Curiae.

(x) It shall be the responsibility of the Delhi High



Court Legal Services Committee to pay the fees of the Amicus Curiae which are quantified at Rs.50,000/-.

(xi) All notices shall be returnable on 20th April, 2017.”

(Emphasis supplied)

25. Material on record indicates that the Order dated 29.03.2017 passed in Criminal Revision Petition 246/2017 was challenged before the Apex Court by Mahender Singh Yadav, one of the accused in Sessions Case 31/86 (giving rise to Criminal Revision Petition 246/2017), by filing Special Leave Petition (Crl.) 3928/2017. The aforesaid matter remains pending before the Apex Court since 2017. Even though no Order(s) staying the present proceedings were passed, the present matters remained pending, awaiting the outcome of proceedings in the Apex Court.

26. The Petitioner in Special Leave Petition (Crl.) 3928/2017, namely, Mahender Singh Yadav, *i.e.* one of the accused in SC 31/1986, had passed away during the pendency of the SLP, as recorded by this Court in Order dated 21.11.2023.

27. As such, since Mahender Singh Yadav, *i.e.* the Petitioner in Special Leave Petition (Crl.) 3928/2017, has passed away, and there was no Order of the Apex Court directing this Court not to proceed further with the hearing of the batch of Criminal Revision Petitions, including the present case, this Court has heard the parties as well as the *Amicus Curiae*.

28. In Criminal Revision Petition 245/2017, only one accused, Balwan Khokhar is alive, and the other three accused persons, namely, Dhanraj, Mahender Singh and Mahender Singh Yadav have passed away.

29. In Criminal Revision Petition 246/2017, out of the three accused



persons, namely, Vidyanand, Balwan Khokhar and Mahender Singh Yadav, only Balwan Singh Khokhar is alive.

30. Similarly, in Criminal Revision Petition 249/2017, the sole accused Balwan Singh Khokhar is alive.

31. A perusal of the material on record indicates that a composite *Challan*, i.e. Police Report under Section 173 CrPC dated 25.03.1985, was filed in Sessions Cases 10/86, 11/1986, 31/86, 32/86 and 33/86.

32. Material on record also *prima facie* indicates that apart from shoddy investigation of the cases, even during the course of trial, the Ld. Additional Sessions Judges hardly took any steps to ensure the presence of crucial witnesses, including persons who had witnessed the incident, more specifically in Criminal Revision Petition 245/2017 (arising from Sessions Case 32/86) and Criminal Revision Petition 246/2017 (arising from Sessions Case 31/86).

33. Insofar as Criminal Revision Petition 249/2017 is concerned, this Court noted in its Order dated 29.03.2017, that the Complainant/Daljit Kaur was examined as PW1, however, her testimony was disbelieved on account of a purported discrepancy between her earlier statement and her deposition in Court.

34. The conduct of perfunctory investigations and trials constrained this Court to make observations in its Orders dated 29.03.2017 regarding the lapses on part of the Investigating Agency as also the Ld. Additional Sessions Judges. Relevant extracts containing the aforesaid observations in Crl.Rev.P.245/2017 are reproduced herein below:-

“20. So far as the trial is concerned, in paras 8 and 9 of the judgment dated 17th May, 1986 in SC No.32/86 referring to the examination of the witnesses, the trial



court has noted as follows:

“8. In this case, seven witnesses have been cited. Out of them, four have been examined. Smt Sampuran Kaur, Nirprit Kaur and Constable Paramjit Singh have not been examined. As regards Paramjit Singh is concerned, she is a formal witness. He was a photographer. The photos Ex.PX, PY & PZ were admitted by the accused persons. Photos do not show anything to connect the accused persons with the alleged offences. Evidence of PW Paramjit Singh was formal and he had taken only photographs.

9. In this case, Sampuran Kaur and Nirprit Kaur, according to the prosecution, were the eye witnesses of the incident. They were the only eye-witnesses of the incident. They were the only eye witnesses of the incident who had been cited as prosecution witnesses. But, unfortunately, both these alleged eye-witnesses have not been produced by the prosecution. Summons of these witnesses were issued for 14-4-86 and they were not properly served and they did not appear. In this connection, in the order-sheet dated 14-4-86, I have mentioned regarding the slackness of the process-serving agency and in view of the request of the I.O., I had ordered for given dasti summons to the I.O. The case was fixed for prosecution evidence on 28-4-86. On that date also, Sampuran Kaur and Nirprit Kaur did not appear and the service upon them was not properly effected. Regarding the slackness of the process-serving agency, I have mentioned in the order-sheet which is self-explanatory. Even the report of the process server were not forwarded by the SHO which was necessary according to the practice. On 28-4-86, in view of the request of the APR and the I.O. the case was adjourned and it



was mentioned that the last opportunity was given and 16-5-86 was fixed for Sampuran Kaur and Nirprit Kaur again for 16-5-86 and they were received back unserved again and according to the report they were untraceable. No other address of these witnesses was supplied by the prosecution. In these circumstances, the most important witnesses Sampuran Kaur and Nirprit Kaur have not been produced by the prosecution and according to the process server's reports, they were untraceable."

(Emphasis supplied)

As per the judgment, the prosecution thus produced only four police witnesses during the trial.

21. Finally, in paras 16 to 18 of the judgment dated 17 May, 1986, the trial court has held as follows:-

"16. Sampuran Kaur, who had given these applications and who was the complainant, has not been produced. She had given these applications with great delay and there was possibility of manipulations. As regards Nirprit Kaur is concerned, her statement was recorded with great delay on 1-3-85. In this way, her statement u/s. 161 Cr.P.C. was recorded for the first time after about four months from the date of incident. Hence, why she had not approached the police four months after the incident, has not been satisfactorily explained by the prosecution. The arguments of the defence counsel that Nirprit Kaur was introduced as an eye witness in this case after consultation and manipulation and with undue delay, has got force in the circumstances of this case.

17. Nothing incriminating was recovered from



*the possession of the accused persons. **Accused persons were arrested after a long gap** from the date of the incident. They had **no motive** to commit the alleged offences. The accused persons had **not given** any **disclosure** statements and they had **not given** any **confessional** statements.*

*18. I have considered the entire evidence on record and the circumstances of this case. **Prosecution has miserably failed to prove its case. Prosecution story appears to be improbable and unreliable.** No offence is proved against the accused persons, in this case."*

(Emphasis by us)

22. Para 9 of the judgment extracted above narrates the steps taken by the trial court in SC No.32/86 regarding summoning and ensuring appearance of the two cited eye-witnesses. The case was therefore, fixed for 14th April, 1986, 28th April, 1986 and 16th May, 1986 when it was reported by the "process server" that they were "untraceable" and were treated as untraceable without any further effort at all to trace the eye witnesses in serious offences including rioting and murder.

25. We have noted above that the Code of Criminal Procedure as well as Indian Evidence Act, 1872 amply empowers the trial court to take action for ensuring the appearance of the witnesses. Therefore, the judgment of the trial court dated 17th May, 1986 in SC No.32/86 suggests that it was passed without any effort by the court to ensure that vital witnesses were served and their evidence recorded.

26. It is noteworthy that the case stands registered as



SC No.32/86 and the trial was completed in the middle of May, 1986 on 17th May, 1986 i.e. within a period of hardly five months.

Whether any evidence of the offence could have been available to the trial court conductine the trial in SC No.32/86?

29. Another material question thrown up from the above extract of the trial court judgment is as to whether it was ensured that the best and all evidence were secured and made available to the trial court? It has been pointed out by Mr. R.N. Sharma, Id. counsel for the appellant (in Crl.A.No.851/2013) and Mr. Anil Kumar Sharma, Id. counsel for the respondent no.1 (in CrLA.No.1099/2013) referring to the trial in SC No.26/10, that to establish the commission of the offences, the attack on the Gurudwara, Raj Nagar and the murder of Nirmal Singh on the of November 1984, the prosecution has examined Joginder Singh as PW-7 and also produced Nirpreet Kaur (daughter of Nirmal Singh) as PW-10 and Manjeet Singh as PW-12 in this trial.

30. Mr. R.N. Sharma, Id. counsel for the appellant (in Crl.A.No.851/2013) and Mr. Anil Kumar, Id. counsel for the respondent no.1 (in Crl.A.No.1099/2013) have submitted that amongst others, the prosecution examined Nirpreet Kaur (daughter of Late Nirmal Singh and Sampuran Kaur) who was examined as PW-10 in SC No.26/10. Mr. Sharma and Mr. Anil Kumar, Id. counsels have elaborately read before us her testimony. To illustrate, we extract hereunder some portions of her testimony recorded on 6th January, 2011 placed before us which read thus:-

"PW-10 Ms. Nirpreet Kaur w/o Late Sk



Dilbar Singh, aged. 42 years r/o H. No. WZ-127A Street No. IDA, Old Shahpura, Tilak Nagar, N.Delhi-18, occupation: ready-made garment business.

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I am residing at the above mentioned address for last about 10-12 years. In the year 1984 I was residing at RZ/WZ-241, Raj Nagar, Palam Colony, N. Delhi alongwith my father Late Sh. Nirmal Singh, mother Sampuran Kaur, my two brothers namely Nirpal Singh and Nirmolak Singh. My father was a transporter by profession and he was also running a taxi stand in Anand Niketan. I and my family members are followers of Sikh religion. My father was keshdhari and an amritdhari Sikh.

On 31.10.1984 I came to know that Prime Minister Smt. Indira Gandhi has been assassinated by her security guard. Except for some stray incident, everything was normal. On that day my father had come early to the house. In the evening at about 6.30pm, Balwan Khokar who used to introduce himself as nephew of Sajjan Kumar alongwith his brother Krishan Khokhar came to our house and asked my father to keep his brother Krishan Khokhar 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. Balwan Khokar and Krishan Khokar are present in the court today. My father asked Balwan Khokar that Sikhs are being attacked thereupon Balwan Khokar told him that Sajjan Kumar is his maternal uncle and he had assured him that there shall be no attack in our colony.

On the 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 the Gurudwara**. My father and my mother accompanied him to Gurudwara. **Our house was very near to Gurudwara**. When my father and mother went to Gurudwara they had a talk with the police personnel and they inform him that situation outside is not congenial and they have been deployed to safeguard the Gurudwara. **I also went to Gurudwara at about 5/5.30 am** for bhajan & kirtan. When I had reached Gurudwara at that time police personnel were present in the gurudwara but during the midst of prayers **police official disappeared, without intimating anyone**. In the meantime, **we heard noise and of slogans at about 7.30/8am**. We rushed outside and saw that **a huge mob** is coming which was being **led by Balwan Khokar, Mahender Yadav and owner of Mamta Bakery**. They were **armed with sariyas, rods, subbal, jellies etc**. The people in the mob were **raising slogans "Indira Gandhi amar rahe", "en Sardaron ko maro, enhonne hamari maa ko mara hai"**. I became **scared and became apprehensive** that mob may not dishonour (beadbi) "Guru Granth Saheb I **rushed back to Gurudwara** in order to pick up Guru Granth Saheb. **My younger brother Nirmolak Singh who was aged about 9 year** at the time followed me. **The mob attacked us**. I could save myself, he was caught by the mob, but due to his tender age, he could also managed to come out from the clutches of the mob. **Mahender Yadav and owner of Mamta Bakery told the mob** by pointing out towards us **"ese maron, ye saap ka bachcha hai"**. I picked up Guru Granth Saheb and returned back to my house. I saw that the **mob had come to my house and they had damaged the wall of my**



house and the gate. **My father came out of the house** and told the mob that they are not responsible for killing of Indira Gandhi and they are also citizens of India. On hearing this some members of the mob went away and **some persons from the mob set on fire a truck** belonging to Harbans Singh. In our street mainly Sikhs persons were residing. On hearing the voice of my father Harbans Singh and other Sikhs came out of their houses and they all put off the fire. All decided that they will save themselves. **For 2^{1/2} to 3 three hours we were defending ourselves.** In the meantime **police personnels/police officials came. Balwan Khokar, Mahender Yadav and Kishan Khokar came,** where all the Sikhs had gathered. **Mahender Yadav bowed down towards the feet of my father and told him that he is just like his younger brother and will try to solve the matter and offered to compromise** and that they will pay the compensation for the loss/damages. My father and other Sikhs who had gathered over there refused to compromise. **Police personnels asked my father and other Sikhs persons to compromise the matter. Police personnels took the kripan from the Sikhs and went away. My father went with Balwan Khohar and Mahender Yadav on a scooter.** 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 where mob was present and Balwan Khokar told the mob that the Sikh who was left has been brought by him. Mob caught hold of my father, Ishwar Sharabi Sprinkled kerosene oil over my father. The mob was not having any match box at that time. One police personnel told the mob "doob maro tum se ek Sardar bhi nahi jalta ". From his name plate, I**



*could gather that his nanie was Inspector Kaushik. Inspector Kaushik gave match box which was taken by Kishan Khokar and Kishan Khokar set on fire my father. Mob had gone a little ahead my father jumped on a nearby nala. When the mob saw that my father is alive they returned back. Dhanraj gave ropes from his shop. Captain Bhagmal tied my father with ropes on the telephone pole. Wife of Dua gave kerosene oil and my father was again set on fire. The mob then left. My father again jumped into the nala. Pujari of a hearby Temple called the mob again by telling them that he (Sardar) was still alive. The mob again came. Balwan Khokar hit my father with rod. Mahender Yadav sprinkled some white powder on my father as a result of which he was burnt. Somebody from the mob shouted that after 15 minutes his whole family should be killed. On hearing this **I rushed towards my house**. I found my mother lying unconscious, **my house was burning**. Police personnels were standing near the gate of our house, but **nobody helped us**. Wife of Sh. Santok Singh Sandhu who used to live in our neighbourhood and her husband was serving in Air Force somehow managed to get Air Force vehicle and in that vehicle her family and our family went to Air Force Station, Palam. On the way I saw half burnt bodies of Sardars."*

(Emphasis by us)

31. It is pertinent to note that as per para 5 of the judgment dated 17th May, 1986 in SC No. 32/86, the killing of S. Nirmal Singh was the subject matter of the complaint dated 18th November, 1984 made by his widow Smt. Sampuran Kaur. It was the subject matter of SC No.32/86, the trial whereof culminated in the judgment of acquittal dated 15th May, 1986 primarily



for the reason that eye-witnesses were not examined.

32. So far as her daughter Nirpreet Kaur being joined in the investigation into the commission of the offences in 1984, recording of her statement and appearance in court is concerned when examined as a witness in SC No.26/10, Nirpreet Kaur has given the following testimony on oath:

"I do not know if my mother is a witness in this case or not. Name of my mother is Sampuran Kaur. Statement of my mother was not recorded by the Cm. I know this fact and therefore I am deposing to this effect. It is incorrect to suggest that my mother gave a statement to CBI on 17.09.2008 or that she has been cited as PW-19 in the present case. My statement was recorded by CBI in January 2009. Again said CBI recorded my statement in December 2008 and my statement was recorded by Magistrate in January 2009.

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Probably the report of Nanavati Commission came in the year 2005 but I am not confirmed about the same. During the period 2000 to 2005 I continued visiting PS Delhi Cantt and Riot Cell for the killing of my father. It is incorrect to suggest that I did not visit PS Delhi Cantt or riot cell or that if I had visited these places I would have been informed by the duty officer of PS Delhi cantt that the case has since been decided on 17:05.1986 or that even the riot cell would have also informed me about the fate of the case after seeing the record which was with them. It is incorrect to suggest that from the very beginning I was aware of the fact that case pertaining to killing of my father has been decided. It is incorrect to suggest that if I was not aware about the fate of case of killing of my



father I would have made representation when NDA Government came into power. Vol. For me change of Government was of no consequence. I had no faith in any of the Government."

(Emphasis by us)

33. In SC 26/10, Nirpreet Kaur (PW-10) has also testified about her whereabouts and the circumstances which prevented her from taking any legal action about the murder of her father. Some portion of her testimony reads as follows:

"After leaving the house at Raj Nagar, Palam Colony, I stayed at Air Force Gurudwara and Moti Bagh Gurudwara. When we were in Moti Bagh Gurudwara, my mother started receiving threats that I speak too much and I will be killed. My mother became very scared and took me and my brothers to village Ghorewal, Tehsil^ Khanowan, Distt Gurdaspur, Punjab, in end November,1984. In the beginning of December, 1984, red card was issued to us. I have brought the same in the court In first week of January, 1985 we came back to Delhi and started living in a rented accommodation initially at Anand Niketan; thereafter at Virender Nagar and then ChokhandL We kept on changing the houses because some suspicious element used to roam near houses and therefore being scared we used to change accommodation. In 1986 we were allotted accommodation like other riot victims at Tilak Vihar and my mother is now residing in the allotted accommodation as riot victim. In May 1985, I again went to my village Ghorewal as I again started receiving threats. After staying there for some time, I went to Jhalandhar at the house of my maternal uncle and took admission in Lyallpur, Khalsa College, Jhalandhar. I was



having the feeling of anguish that injustice is being done to Sikhs and nobody is coming to their help therefore I joined Sikh Student Federation. In 1984 I was 16 years of age. At that time I was student. After I joined Sikhs Student Federation, I was involved in two false cases of TADA. I remained in Jail for many years. In one case I was acquitted while in another case I was discharged. In Punjab also I was implicated in a case pertaining to TADA. In that case also I was discharged.

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It is correct that I did not make any written representation before any authority regarding killing of my father upto December 2008. Vol. When CBI official contacted me I gave statement. I do not know when my statement was recorded by the CBI but I joined investigation in the end of August 2008 and thereafter had several meetings with them. I had faith in the courts from where I was acquitted and discharged. xxx xxx

xxx. I had taken the plea in the TADA cases that I have been falsely implicated because I was an eye witness to the killing of my father in 1984 riots. I have been verbally telling the court that since I have been speaking against MPs and MLAs therefore I have been falsely implicated in false cases. There was no question of 'taking any such plea in writing before the concerned judges as my statement was not recorded therein (it is stated by counsel for the CBI that no statement u/s 313 CrPC was recorded by the concerned judges due to no incriminating facts appearing against the accused and she was accordingly acquitted/discharged in all cases.). I do not know if I was produced in person before the TADA Committee for review within three months of my



arrest. Vol. After the arrest I was tortured and I was only produced before the court where the proceedings were going on and was bailed out after three years. ...”

(Emphasis by us)

34. So far as knowledge about the judgment dated 7th May, 1986 is concerned, in SC 26/10 Nirpreet Kaur (PW-10) has given the following testimony:-

" ... It is correct that I was informed by Mr. Pangarkar that case pertaining to killing of my father was tried and that has resulted into acquittal but I did not believe his version because we were never called to appear as witness in that case nor heshowed the copy of judgement to me.

Q. After you came to know from 'Mr. Pangarkar that the case pertaining to killing of your father had been tried and same has resulted into acquittal then what steps you have taken?

Ans. I gave statement before Mr. Pangarkar and thereafter before Magistrate U/sec. 164 CrPC expecting that now the case pertaining to killing of my father will be tried.

During the course of argument on charge when it was submitted by counsel for accused that this case does not pertain to killing of my father and thereafter I went through the judgement then I came to know that this case does not pertains to killing of my father. After I came to know about this fact I contacted the LO Mr. Anil Yadav and told him that if this case does not pertain to killing of my father then why I was made a witness in this case. Thereupon he told me that in the case pertaining to killing of my father our summons



have been sent to wrong address and therefore that case has resulted in acquittal however since I knew the incident which had taken place in the locality therefore I have been cited as witness. Till date I am not satisfied and want that I should get justice for the killing of my father.

Q. After coming to know that this case does not ' pertains to killing of your father and after going through the judgement it was confirmed to you. Have you made any representation either to the CBI or to any other authority while explaining that my statement was recorded for killing of my father which they have not pursued and I am cited as witness in a different case?

Ans. I am still finding ways and means to get the case pertaining to killing of my father tried.

Q. I put a question to you specifically submit before the court what steps you have taken after knowing to this fact in writing?

Ans. I do not want to disclose the step which I am taking now.

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Q. You have stated before the court that you have read the judgement in case titled as State vs. Dhanraj and ors. FIR no.416/84 u/s 148/302/201/436/149/427/395/396 IPC in Session Case no.32/86 decided by the hon'ble Court of Sh. S.P. Singh Choudhary, Id. ASJ vide his order dated 17.05.1986. Is it correct that the concerned hon 'ble court has observed in the judgement and has made observation. While considering your statement dated 01.03.1985 recorded by S.I. A.K. Saxena, South Distt. Line, u/s 161 CrPC before



Delhi Police in that case?

Ans. Neither me and my mother made any such statement u/sec. 161 CrPC except an application dated 11.11.104 was given by my mother for compensation."

(Emphasis by us)

35. In the trial in SC No.26/10, the investigating officer Shri Ashok Kumar Saxena stands examined by the defence as DW- 4th on 3rd August, 2011 and 4th August, 2011. On the nature of the investigation conducted by him into FIR No.416/84 and the complaints (including the complaint dated 18th November, 1984 given by Sampuran Kaur) clubbed with it, Shri Ashok Kumar Saxena inter alia stated thus:-

"... S.I. Arjun Singh had also partly investigated FIR No. 416/84. He was a member of the investigating team. He had also investigated this case with me. I do not remember how many charge sheets were submitted in case FIR No. 416/84. I have seen S.I. Arjun Singh signing and writing as he worked with me. I did know Urdu. S.I. Arjun Singh knew Urdu. I identify the handwriting and signatures of Arjun Singh appearing on the statement of Jagdish Kaur dated 20.01.85. The same is EX DW 4/B (objected to as mode of proof). Arjun Singh signed on the statement at point A. SI Arjun Singh used to write Urdu and the statement shown to me is in Urdu and formed part of case diary therefore, it bears the signature of S.L Arjun Singh therefore, I say that the statement was recorded by SI Aijun Singh In the gist of relevant case diary' statement of Guru Charm Singh is mentioned' the same is EX DW 4/C, and signature of SI Arjun Singh is at



point A. (objected to as to mode of proof)."

(Emphasis disclosed)

36. *Shri Ashok Kumar Saxena was also extensively crossexamined by Mr. R.S. Cheema, Id. Senior Counsel for CBI when he stated as follows:-*

"It is correct that myself and S.L Arjun Singh never remained posted together and I never worked with him prior to the formation of special investigation team of case FIR No. 416/84. There was no personal/official exchange of letters between me and S.I. Arjun Singh. Vol. During the course of investigation of this FIR No. 416/84 when the file used to come to me I used to go through the investigation carried out by S.I. Arjun Singh and during that period I used to see his writing. I used to get the Urdu portion read over to me by someone when he was not there. I do not remember if Jagdish Kaur joined the investigation of the case in my presence or not I do not remember under what circumstances and what place and in what manner the statement EXDW4/B was recorded. I do not recollect if I met personally Jagdish Kaur or having seen her. I can write my name in Urdu but otherwise I cannot read and write Urdu. I have not read Urdu as subject in my school. It is correct that if on two separate papers in Urdu without mention of case diary etc. is shown to me I will not be able to say with certainty if the same are written by S.I. Arjun Singh or not."

(Emphasis supplied)

37. *So far as the status of the residence of the complainant and recording of the statement of Nirpreet Kaur is concerned, we extract hereunder some portions*



of Shri Ashok Kumar Saxena's (DW-10) cross-examination on this aspect which read thus:-

*"I had visited the house mentioned in statement EXDW 4/B. This statement was recorded in Moti Bagh Gurudwara. It is not mentioned in the statement that it was recorded in **Moti Bagh Gurudwara** and I am stating so on the basis of my memory. I can tell after seeing the case diary. Some goods were lying burnt in the house but house was not reduced to ashes. When I had gone for site inspection at that time **nobody was living in this house**. Witness is shown case diary dated 01.03.1985 of case FIR No. 416/84, P.S Delhi Cantt. It is correct that prior to 01.03.1985 I did not meet Nirpreet Kaur nor I knew her. During investigation I went to Gurudwara Moti Bagh where on inquiry about the resident of WZ 241, Raj Nagar Palam Colony Nirpreet Kaur d/o Nirmal Singh came forward and I recorded her statement. Many other ladies were present at that time. I am stating this fact from my memory. The ladies were from other victims families of Delhi Cantt. I am not recollecting the name of any other lady. It is incorrect to suggest that I never went to Moti Bag Gurudwara or that I never recorded the statement of Nirpreet Kaur EX DW 4/A or that it is a forged statement. I cannot say if Nirpreet Kaur was not residing at Moti Bagh Gurudwara however, she was there when she met me and I recorded her statement. I am not aware if any camps were organized for the victims or not but riot victim's families were there in the Gurudwara. I cannot say if there was a camp in Moti Bagh Gurudwara for the riot victims families or the same was closed in March 1985. I can not say if after 01.3.85, I went to Moti Bagh Gurudwara or not. I do not remember when I lastly visited Moti Bagh Gurudwara.*



*I did not record any statement of Sampooran Kaur w/o Nirmal Singh. I do not remember if I ever met her. After seeing the case diary dated 09.05.85 the witness admits that he recorded the supplementary statement of Sampooran Kaur on 09.05.85. (at the request of counsel for the accused the statement is exhibited as DW 4/D). It is correct that **same address is mentioned in the statement of Sampooran Kaur as that of Nirpreet Kaur.** It is incorrect to suggest that the statement dated 09.05.85 of Sampooran Kaur is forged one or that she was not available at Mod Bagh Gurudwara on 09.05.85 or that **there was no camp at that time.** It is incorrect to suggest that statement EX DW 4/B and EXDW 4/C are not recorded by S.L Arjun Singh or that in order to favour the accused persons I am going out of the way to identify signatures of S.I Arjun Singh...."*

(Emphasis by us)

38. With regard to the address of Sampuran Kaur and Nirpreet Kaur (wife and daughter of Late Shri Nirmal Singh respectively), Shri Ashok Kumar Saxena (DW-10) has made the following statement:-

*"... It is correct that **Sampooran Kaur** w/o Nirmal Singh and **Nirpreet Kaur** d/o Nirmal Singh **did not appear in the court however I cannot say if they were served or not.** It is incorrect to suggest that I know it fully well that both these witnesses were not served with the summons or that I am intentionally pleading ignorance. **Whatever addresses were given by them at the time of their statements, were given in the charge sheet.***

*Question: I put it to you that you **have mentioned the address of Nirpreet Kaur and Sampooran***



Kaur as resident of WZ 241 Raj Nagar, Palam Colony in the challan?

Answer. So far as I recollect beside WZ 241 Raj Nagar Palam colony they had also given some new number of the same house which was also mentioned in the statement U/s 161 Cr.P.C. I do not remember if on 15.05.85, they were not residing at this address. I remember in March 1985 when I recorded their statements they were in Gurudwara Moti Bagh. Thereafter I do not where they lived."

(Emphasis by us)

39. So far as the manner in which the investigation has been conducted, the witness Ashok Kumar Saxena (DW-10) has stated as follows:-

"I do not know Guru Charon Singh whose statement has been exhibited as DW 4/C. I cannot say if SI Ram Niwas investigated case FIR No.416/84 from 4.11.84 to 17.11.84 but he and other I.Os had investigated this FIR. After formation of Special investigation Team S.I. Avtar Singh, S.I. Arjun Singh and myself investigated this FIR. I do not remember if I investigated this FIR on 04.12.1984 for a single date. However, it is correct that I had investigated this FIR in a single date. Vol. thereafter also. It is correct that the file remained with me till final compliance from 26.02.85. It is correct that I had taken help of someone for getting the Urdu version read over to me but I do not remember if the name of that person was SI. Bhim Singh. I do not want to see the case diary in this regard."

40. So far as the judgments passed in 1986 of acquittals, the filing of the final report/challans and cases registered by P.S. Delhi Cantt. are concerned,



the witness Shri Ashok Kumar Saxena (DW-4) has stated as follows:-

"I do not exactly remember how many killings were the subject matter of FIR No. 416/84. However I remember that there were 3/4 killings and the same was the number of the complainant. I do not remember if there were 22 complaints involving killing of 30 persons. It is correct that objections raised by prosecution branch was tried to be removed in that case. It is correct that 4/5 challans of FIR No. 416/84 were dealt with by me. I do not remember if a composite report U/s 173 Cr.P.C was prepared by S.H.O. Sita Ram Mangai or that he annexed five list of witnesses. I do not want to see the case diary in this (O regard. It may possible that out of five challans I was cited as witness in four challans. Charge sheet was submitted by the SHO. I appeared as a witness but I cannot tell in how many cases I appeared as a witness. It may be possible that I might have appeared as witness in the case pertaining to the killing of Nirmal Singh.

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Question. In three of the five challans pertaining to the murder of Avtar Singh, Nirmal Singh, and Joga Singh, the eye witnesses were not served and the court found that they were not residing at the siven addresses and the cases resulted in acquittal.

Ans. I cannot say anything.

It is correct that in all these cases the deceased were Sikh males. It is correct that Gurudwara Raj Nagar also came to notice during



investigation and we visited there. We had gone to Gurudwara for making inquiry. I do not remember about the damage of Gurudwara. In the statement of the witnesses it had come that houses were looted. I do not remember if any looted property was recovered. Details of looted property did of come to my notice therefore house of any accused could not be searched in that perspective. During investigation it was revealed that some of the victims were burnt, some of them were half burnt and their postmortem was conducted. I do not remember if in these five challans any postmortem was conducted or not It is incorrect to suggest that a large number of murders were clubbed together illegally in FIR No.- 416/84 to suppress the scale of crime. It is further incorrect to suggest that investigation conducted by us was a farce and the addresses of eye witnesses were not correctly given to give undue benefits to the accused persons. It is further incorrect to suggest that I have deposed falsely under the influence and pressure of the accused. It is further incorrect to suggest that CBI had joined me in investigation on more than one occasion and my detailed statement was recorded on 19.06.2006."

(Emphasis supplied)

41. We have merely noted the above portions of the testimony of two of the witnesses in SC No.26/10. This should not be construed as our having opined on the truth and veracity of this evidence. The above statements raise the question as to whether the prosecution made any effort to ensure that the best and available evidence was produced during trial in SC No.32/86 and whether the trial judge took any steps in this regard? We consider these questions hereafter.

Whether this court has any jurisdiction to intervene



in the judgements bearings SC No.31/86 dated 29th April. 1986; SC No.32/86 dated if 17th May. 1986: SC No. 11/86 dated 28th May. 1986: SC No.10/86 dated 15th July. 1986 and SC No.33/86 dated 4th October. 1986

42. The judgments in SC Nos.10/86, 11/86, 31/86, 32/86 and 33/86 have come to our knowledge while hearing appeals being Crl.Appeal Nos.715, 753, 831, 851, 861, 1099/2013 & 710/2014, in exercise of our jurisdiction under Section 386 of the Cr.P.C. Prima facie the judgments reflect a very perfunctory and hasty disposal of the cases which has deeply troubled our judicial conscience. Would it be permissible for this court to shut its eyes in the matter or does the available statutory regime and law make available any possible option for intervention at this stage? We are conscious that no order adverse to the interest, of an accused person (who stands acquitted) or a victim can be passed without hearing him/her or behind his/her back. However, to exercise judicial power, a prima facie view has to be recorded to ensure whether such intervention could be justified and appropriate. For this reason, prior to issuance of notice, we have undertaken a prima facie examination of the statutory provisions as well as judicial precedents which, we set out hereunder.”

93. A prima facie consideration of the composite challan dated 25th March, 1985 indicates lip service to the duty to investigate while the judgments in SC Nos. 10/86, 11/86, 31/86, 32/86 and 33/86 reflect no steps or compliance with Sections 62, 64, 65, 87 and 311 of the Cr.P.C. as well as Section 165 of the Indian Evidence Act, 1872 and haste to scuttle prosecutions and close trials.



94. The complaints which were the basis of the trials in SC Nos. 10/86, 11/86, 31/86, 32/86 and 33/86, refer to the incidents on 1st and 2nd November, 1984, all in the Raj Nagar referable to the police post Palam Colony under Police Station Delhi Cantt. They were investigated by the same police officials. A consolidated final report dated 25th March, 1985 under Section 173 of the Code of Criminal Procedure was filed in court. It is undisputed that after committals and framing of charges, the trials in these cases culminated within a short period of three to four months and the final outcome was acquittal of the accused persons from the charges.

95. Even if each complaint could be examined as a standalone crime, it is undisputed that each of them relates to the very serious offence of commission of murder. Some of the accused persons are implicated for commission of more than one such offence. Would these crimes fall in the category where truth has become a casualty at the hands of investigator, prosecutor and in the trial?

Prima facie observation

101. Even at the cost of repetition, we hasten to add that we are not commenting on the correctness of the evidence of Nirpreet Kaur as PW-10 or that of Shri Ashok Kumar Saxena (DW-10) in SC No.26/10 or the legal acceptability of her explanation. We may note here that a strong objection is taken by Mr. R.N. Sharma and Mr. Anil Kumar Sharma, Id counsels for the appellants in Crl.A.Nos.851/2013 and Crl.A.No. 1099/2013 to the testimony of Nirpreet Kaur (DW- 10) on the fact that she has surfaced and made the allegations for the first time in the case only in the year 2011 when her evidence had been recorded during



trial in SC No.26/10 by the trial court and that she deserved to be disbelieved for this reason. We shall rule on this after hearing counsels in Crl.A.Nos.715/2013, 753/2013, 831/2013, 851/2013,861/2013, 1099/2013 and 710/2014. These are amongst the several aspects on merits which we shall consider in the appropriate proceedings.

102. We have extracted the testimony of Nirpreet Kaur (PW-10) and of Shri Ashok Kumar Saxena (DW-4) only to point out that the prosecution in SC No.32/86 was bound to bring out the truth. However, the responsibility to do so did not rest only on or end with the prosecution. It was the statutory duty of the court as well conducting the trial and actively engaged with the proceedings to ensure that the truth is brought out and the justice is done.

103. The instant case manifests that after giving three dates, which were separated by barely a few weeks, there was a total period hardly of one and a half months, for service of the two eye-witnesses including the complainant to the occurrence. It was brought out on record that the complainant's own house stood burnt; that she was not available at that address; that the summons sent by the court had not been served on her as per para 9 of the judgment dated 17th May, 1986, no effort was made by the trial court for causing an inquiry to be made with regard to her address and serving her even with summons let alone taking the coercive action by way of bailable or nonbailable warrants to enforce the presence of a witness.

*104. Persons have come forward as eye-witnesses and have given their testimony in SC No.26/10. Upon consideration of the principles laid down by the Supreme Court in (2004) 4 SCC 158, **Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.** and (2015) 8 SCC 787, **Bablu Kumar & Ors. V.***



State of Bihar & Anr., prima facie it appears that the present case is fit to invoke the revisional power by this court under Section 401 of the Cr.P.C. to thereby set aside the impugned judgment and direct a retrial of the case.

Investigation — whether any undertaken?

105. A perusal of the above composite chargesheet/fmal report under Section 173 of the Cr.P.C. dated 25th March, 1985 would show that the bare essential requirements of an investigation into any of the complaints do not appear to have been carried out before its filing. It is not disclosed as to on whose instance the site plan was prepared and what were the photographs taken of? No effort has been made to trace out either the dead bodies or the stolen materials. No statement of the eye-witnesses, including relatives or any other neighbours or other public persons who may have been present has been recorded. To say the least, the bare notions of investigation do not seem to have been carried out before the challan has been filed.

106. What to say of investigation, the complaints which disclosed commission of the heinous and serious offence like murder, have not even been registered.

108. During the course of hearing Crl.A.Nos.715/2013, 753/2013, 831/2013, 851/201, 861/2013, 1099/2013 and 710/2014, we have repeatedly queried counsels as to who was killed, or even how many died in the violence which erupted ® after the 31®' of October, 1984? We have got no firm answer at all. The complaints in SC No. 10/86 (lodged by Daljit Kaur); 11/86 (lodged by Swaran Kaur -



widow)', 31/86 (lodged by Jagir Kaur - widow)', 32/86 (lodged by Sampuran Kaur - widow) and 33/86 (lodged by Baljit Kaur - daughter) show that only adult male members of families of one community were killed. The complaints disclose horrifying crimes against humanity. The complaints also point out that male members of one community were singled out for elimination. This suggests that these were no ordinary crimes, or 'simple' murders (if ever a murder could be termed as 'simple'). Treated as individual cases, while the culprits got away scot free, everybody else, the police, the prosecutors, even the courts, appear to have failed the victims, and, most importantly society. Perhaps, had these terrible offences in 1984 been punished and the offenders brought to book, the history of crime in this country, may have been different. We are of the view that if we fail to take action even now, we would be miserably failing in our constitutional duty as well as in discharging judicial function.”

35. Relevant extracts containing the aforesaid observations in Crl. Rev. P. No. 246/2017 are reproduced herein below:-

“Prima facie observations

25. In the judgment dated 29th April, 1986, the trial court has thus rejected the complaint dated 13th November, 1984 of Jagir Kaur as fake, incomplete and confusing. The prosecution has been faulted for not registering the case. The trial court also held that failure to register a separate case has not been satisfactorily explained and also as to why the inquiries regarding the application dated 13th November, 1984 (EX.PW4/A) were not conducted. The trial court specifically notes that in Ex.PW4/A, only Balwan Singh Khokhar and Mahender Singh, residents of Village Bagdola were mentioned. However, after arrest of the accused, no identification parade was conducted.



In these circumstances, the court has accepted the defence case that the accused persons were introduced by the complainant and police after consultation and manipulation.

26. The trial court had also disbelieved the complaint for the reason that it was dated 13th November, 1984 while it refers to the incident dated 1st November, 1984.

27. So far as the eye-witness or the complainant Jagir Kaur is concerned, para 10 of the judgment dated 29th April, 1986 deserves to be extracted and reads thus:

"10. ...In this case, the *only eye-witness is Jagir Kaur*, according to the prosecution. But this Jagir Kaur has also *not been produced by the prosecution in spite of opportunity given*. Her summons was issued but received back unserved and according to the report, she is untraceable. The I.O. has also stated that she is untraceable. In this way, this *most important witness has also not been produced by the prosecution and hence, non-production of this material witness goes against the prosecution and an adverse presumption can be drawn u/s. 114 of the Indian Evidence Act. ...*"

(Emphasis by us)

Thus the report on a single summon to the effect that Jagir Kaur is untraceable was accepted by the trial court to acquit the accused persons.

28. It has further been observed thus in paras 10, 11 and 12 of the judgment dated 29th April, 1986:

"10. xxxx It appears that the incident had taken



place in the densely populated area in the day time and it appears that the incident was seen by several persons. Except the interested witness Jagir Kaur, no independent witness was examined u/s 161 CrPC or was produced in this court as a prosecution witness. Even the site plan ExPW3/B was prepared with undue delay on 1-3-85. It was prepared after about four months from the date of incident. This site plan was not prepared on the pointing out of the eye witness. This site plan was prepared as noticed by the I.O. on the spot. This site plan shows that near the place of incident, there are houses of E.C. Sharma, Daya Ram Gautam and R.L. Tiwari. But none of them have been produce as a prosecution witness and they also were not examined u/s 161 Cr.P.C.

11. The body of Joga Singh deceased was not recovered. His post mortem was not conducted according to the prosecution case, he was burnt at the place of incident. Just after the incident or at the earliest. The FIR was not registered and the ID had also not seen the place of incident so that material evidence regarding the burning could be collected on 1-3-85 when site plan was prepared. Neither ashes nor any other evidence was found on the spot to show that Joga\Singh was burnt on that spot. Neither ashes nor any petrol nor any other incriminating article was recovered from the possession of the accused. No looted property was recovered from the possession of the accused. Names of the accused persons were introduced with great delay and they were also arrested with undue delay. The statement of Jagir Kaur was recorded u/s 161 Cr.P.C.with undue delay. In the absence of Jagir Kaur, there is no evidence on record to connect the accused persons with the alleged offence.



12. I have considered the entire evidence on record and the circumstances of this case. Prosecution story appears to be improbable and unreliable. No offence is proved against the accused persons. "

(Emphasis by us)

29. It has been noted in the judgment dated 29th April, 1986 that the site plan (Ex.PW3/B) was prepared on the 1st of March 1985 i.e. four months after the date of the incident by the investigating officer "on his own" and not on pointing out of any witness.

30. It has been noted that in the site plan (Ex.PW3/B), the houses of E.G. Sharma, Daya Ram Gautam and R.L. Tewari are mentioned. However, none of them has been examined.

31. We find that in para 11 of the final judgment dated 29th April, 1986, the trial court observed that the dead body of Joga Ram was not recovered, his post-mortem was not conducted and no FIR was registered. It has been observed that no petrol or other incriminating article was recovered; no ash or any other evidence was found and no looted property was recovered from the possession of the accused which would support that Joga Singh was burnt on the spot.

32. Finally, it was observed that in the absence of Jagir Kaur, there was no evidence on record to connect the accused persons with the alleged offences. Consequently, it was held that the prosecution story appears to be "improbable and unreliable". Balwan Khokhar and Mahender Singh Yadav were consequently, acquitted in the case by the judgment dated 29th April, 1986.



33. *Despite noting that the incident had taken place in a densely populated area in the daytime, no independent witness has been examined by the prosecution.*

34. *The prosecution is bound to produce the best evidence to support the allegations against the accused persons. However, the responsibility does not rest only on or end with the prosecution. It is the statutory duty of the trial court as well conducting the trial to actively engage with the proceedings to ensure that the truth is brought out and that justice is done.*

35. *Despite it being brought out on record that Jagir Kaur's house had been attacked; that she was not available at the given address; that even the summons had not been served on her; no effort had been made by the trial court for causing an inquiry to be made with regard to her address and serving her with summons, let alone taking the coercive action by way of bailable or non-bailable warrants to enforce the presence of a witness.*

36. *The trial judge has noted that as per her application as well as her statement recorded u/s 161 CrPC, she has stated that her house had been attacked and that her husband had first beaten her husband and subsequently burned him alive.*

37. *It was the solemn responsibility of the court, trying such a serious and heinous offence, to ensure that the witness is traced out and produced. Instead of discharging this duty, the court has opted to draw an adverse presumption under Section 114 of the Evidence Act while discarding the value of Jagir Kaur's evidence as that of an "interested witness".*



Investigation - whether any undertaken?

97. A perusal of the above composite chargesheet/final report under Section 173 of the Cr.P.C. dated 25th March, 1985 would show that the bare essential requirements of an investigation into any of the complaints do not appear to have been carried out before its filing. It is not disclosed as to on whose instance the site plan was prepared and what were the photographs taken of? No effort has been made to trace out either the dead bodies or the stolen materials. No statement of the eye-witnesses, including relatives or any other neighbours or other public persons who may have been present has been recorded. To say the least, the bare notions of investigation do not seem to have been carried out before the challan has been filed.

98. What to say of investigation, the complaints which disclosed commission of the heinous and serious offence like murder, have not even been registered.

99. The prosecutors also appear to have completely abdicated their duties and have not assisted the trial courts nor ensured that the truth was brought out, guilty convicted and serious crimes punished. The prosecutions were launched without any effort at ensuring that investigations were honestly complete and that culpability could be fixed.

100. During the course of hearing Crl.A.Nos.715/2013, 753/2013, 831/2013, 851/201, 861/2013, 1099/2013 and 710/2014, we have repeatedly queried counsels as to who was killed, or even how many died in the violence which erupted after the 31st of October, 1984? We have got no firm answer at all. The complaints in SC No. 10/86 (lodged by Daljit Kaur); 11/86 (lodged by Swaran Kaur -widow); 31/86 (lodged by Jagir Kaur



- widow); 32/86 (lodged by Sampuran Kaur - widow) and 33/86 (lodged by Baljit Kaur - daughter) show that only adult male members of families of one community were killed. The complaints disclose horrifying crimes against humanity. The complaints also point out that male members of one community were singled out for elimination. This suggests that these were no ordinary crimes, or 'simple' murders (if ever a murder could be termed as 'simple'). Treated as individual cases, while the culprits got away scot free, everybody else, the police, the prosecutors, even the courts, appear to have failed the victims, and, most importantly society. Perhaps, had these terrible offences in 1984 been punished and the offenders brought to book, the history of crime in this country, may have been different. We are of the view that if we fail to take action even now, we would be miserably failing in our constitutional duty as well as in discharging judicial function.

Whether the victim and complainant should be heard

103. In the present case, the composite final report dated 25th March, 1985 admits that it commenced intervention only on complaints made by relatives of deceased who were also victims of the violence. They had complained of having faced threats and their property being stolen or destroyed; We have extracted hereinabove the composite final report under Section 173 of the Cr.P.C. regarding the five complaints setting out the nature of investigation undertaken on their complaints and the final judgments after the trials which suggest insufficient effort, if any made, to ensure the appearance of the complainants before the court. ”

36. Relevant extracts containing the aforesaid observations in Crl. Rev. P.



No.249/2017 are reproduced herein below:-

“Prima facie observations

26. *The above extract of paras 10 and 11 of the judgment dated 15th July, 1986 show that the trial court has taken the view that Daljit Kaur has stated in the initial part of her statement that Balwan Khokhar was not present in the crowd and that he had not participated in the incident and therefore, liability could not be fastened on Balwan Khokhar merely because he was named by Daljit Kaur in her cross-examination by the APP.*

At the same time, the Id. trial judge has also noted that in Ex.PW/A, Daljit Kaur has named Balwan Khokhar as responsible for the offence.

27. *On the issue of inconsistencies in previous statements, we may usefully refer to the pronouncement of this court in **Crl.A.No.741/2008, Vishal Yadav v. State of U.P.** dated 2nd April, 2014 in which one of us (Gita Mittal, J) had the occasion to discuss the applicable law;*

*"358. In (2001) 10 SCC 6 titled **Majid v. State of Haryana**, the issue was whether the evidence of PW-6 Hasham could be contradicted with the evidence of DW-1 Jamaluddin unless at least the attention of PW-6 has been drawn to the fact that he had stated such inconsistent version to DW 1 ? The court held as follows: —*

14. If the former statement was in writing or was reduced to writing, Section 145 of the Act requires that attention of the witness must be called to those parts of it which are used for the purpose of contradicting him. Here the statement allegedly made by PW 6 to DW 1 was not in writing, nor was it



reduced to writing. Nonetheless, if the object of examining DW 1 as a witness was to discredit PW 6, it is only fair to insist that PW 6 himself should have been given an opportunity to explain it. Without PW 6 being asked about that aspect, it is unreasonable to expect PW 6 to explain about it. Hence it is immaterial that the statement claimed by DW1 as made to him by PW 6 was not reduced to writing.

359. It is contended on behalf of the appellants that testimony of Nilam Katara in court contains material improvements over her statement recorded in the First Information Report as well as her two statements (Ex.PW30/DA and Ex.PW30/DB). The learned Trial Judge has rejected this contention and concluded that the facts which she narrated in court are only explanations and elaboration of what she had informed to police in the FIR and her statements under Section 161 of the Cr.P.C.

*360. Some of the precedents which shed valuable Light on similar objections deserve to be considered and are considered hereinafter. So far as the contents of FIR are concerned, in a judgment of the Supreme Court reported at (2006) 10 SCC 163 **S. Sudershan Reddy and Ors. v. State of Andhra Pradesh**, the court laid down the following:*

18. ...It is well settled that FIR is not an encyclopaedia of the facts concerning the crime merely because of minutest details of occurrence were not mentioned in the FIR the same cannot make the prosecution case doubtful. It is not necessary that minutest details should be stated in the FIR. It is



sufficient if a broad picture is presented and the FIR contains the broad features. For lodging FIR, in a criminal case and more particularly in a murder case, the stress must be on prompt lodging of the FIR....

361. On the same aspect, we find that the Trial Court in its judgment has referred to the judgment of the Allahabad High Court reported at **1998 Cri.L.J.2064 Dharmendra Singh v. State of U.P.**, which also noted the requirement of details in the statement under Section 161 Cr.P.C. in the following terms:-

28...The F.I.R. and the statement recorded under Section 161, Cr.P.C. are not encyclopaedia, to give each and every minute details which had come into light during the deposition in the Court. Sometime witnesses do not think it proper to get it mentioned in the F.I.R. or in their statements recorded under Section 161, Cr. P.C. but it does not mean that the facts do not exist.

362. The Supreme Court had occasion to compare a **deposition in court** as against a **statement under Section 161 of the Cr.P.C.** by a witness in the judgment reported at (2000) 8 SCC 457, **Narayah Chetanram Chaudhary v. State of Maharashtra**, which reads as follows:-

43. On an analysis of the statement of PW 2 (which is part of Vol. 4 of the paper-book), his statement under Section 161 Cr.P.C. and the deposition made by him on 15-10-1984 during investigation (which is part of Vol. 3 of the paper-book) we have come to a conclusion that there is no material



improvement, much less contradiction in the deposition made by him before the trial court after being granted pardon. The so-called improvements are in fact the details of the narrations extracted by the Public Prosecutor and the defence counsel in the course of his examination-in-chief and cross examination."

(Emphasis by us)

28. *It is therefore, well settled that if a witness has to be contradicted with any portion of his previous testimony or any other statement, his attention has to be drawn to the inconsistent version and he would be required to have been given an opportunity to explain the same. Prima facie, such opportunity does not seem to have been afforded to Daljit Kaur (PW-1).*

29. *It is a settled principle of law that so far as a witness turning hostile is concerned, so much of the testimony as supports the prosecution can and has to be relied upon. This important well settled principle of law has been completely ignored in the judgment dated 15th of July 1986.*

30. *Furthermore, the evidentiary value of Ex.PW/A has been ignored.*

Whether this court has am jurisdiction to intervene in the judgments bearing SC No.31/86 dated 29th April, 1986; SC No.32/86 dated 17th May, 1986: SC No.11/86 dated 28nd May, 1986: SC No.10/86 dated 15th July, 1986 and SC No.33/86 dated 4th October, 1986

31. *The judgments in SC Nos.10/86, 11/86, 31/86, 32/86 and 33/86 have come to our knowledge while hearing appeals being Crl.Appeal Nos.715, 753, 831, 851, 861, 1099/2013 & 710/2014, in exercise of our*



jurisdiction under Section 386 of the Cr.P.C. Prima facie the judgments reflect a very perfunctory and hasty disposal of the cases which has deeply troubled our judicial conscience. Would it be permissible for this court to shut its eyes in the matter or does the available statutory regime and law make available any possible option for intervention at this stage? We are conscious that no order adverse to the interest of an accused person (who stands acquitted) or a victim can be passed without hearing him/her or behind his/her back. However, to exercise judicial power, a prima facie view has to be recorded to ensure whether such intervention could be justified and appropriate. For this reason, prior to issuance of notice, we have undertaken a prima facie examination of the statutory provisions as well as judicial precedents which, we set out hereunder.

82. A prima facie consideration of the composite challan dated 25th March, 1985 indicates lip service to the duty to investigate while the judgments in SC Nos. 10/86, 11/86, 31/86, 32/86 and 33/86 reflect no steps or compliance with Sections 62, 64, 65, 87 and 311 of the Cr.P.C. as well as Section 165 of the Indian Evidence Act, 1872 and haste to scuttle prosecutions and close trials.

83. The complaints which were the basis of the trials in SC Nos. 10/86, 11/86, 31/86, 32/86 and 33/86, refer to the incidents on 1st and 2nd November, 1984, all in the Raj Nagar referable to the police post Palam Colony under Police Station Delhi Cantt. They were investigated by the same police officials. A consolidated final report dated 25th March, 1985 under Section 173 of the Code of Criminal Procedure was filed in courts. It is undisputed that after committals and framing of charges, the trials in these cases culminated within a short period of three to four



months and the final outcome was acquittal of the accused persons from the charges.

84. Even if each complaint could be examined as a standalone crime, it is undisputed that each of them relates to the very serious offence of commission of murder. Some of the accused persons are implicated for commission of more than one such offence. Would these crimes fall in the category where truth has become a casualty at the hands of investigator, prosecutor and in the trial?

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prosecutions were launched without any effort at ensuring that investigations were honestly complete and that culpability could be fixed.

93. During the course of hearing Crl.A.Nos.715/2013, 753/2013, 831/2013, 851/201, 861/2013, 1099/2013 and 710/2014, we have repeatedly queried counsels as to who was killed, or even how many died in the violence which erupted after the 31st of October, 1984? We have got no firm answer at all. The complaints in SC No. 10/86 (lodged by Daljit Kaur); 11/86 (lodged by Swaran Kaur -widow); 31/86 (lodged by Jagir Kaur - widow); 32/86 (lodged by Sampuran Kaur - widow) and 33/86 (lodged by Baljit Kaur — daughter) show that only adult male members of families of one community were killed. The complaints disclose horrifying crimes against humanity. The complaints also point out that male members of one community were singled out for elimination. This suggests that these were no ordinary crimes, or 'simple' murders (if ever a murder could be termed as 'simple'). Treated as individual case, while the culprits got away scot free, everybody else, the police, the prosecutors, even the courts, appear to have failed the victims, and, most importantly society. Perhaps, had these terrible offences in, 1984 been punished and the offenders brought to book, the history of crime in this country, may have been different. We are of the view that if we fail to take action even now, we would be miserably failing in our constitutional duty as well as in discharging judicial function.

94. We have crafted this order with care and circumspection merely noting bare facts, proceedings and orders brought to our knowledge, as well as statutory provisions and judicial precedents, conscious of the first principle that no person can be “condemned” unheard. However, this order under Section 401 of the Cr.P.C. must show that we have



applied our mind and prima facie found that material and circumstances as well as the law mandates invocation of our revisional jurisdiction under Section 401 of the Cr.P.C. before issuance of notice. We have abided by this discipline required by law. We, therefore, make it clear that all our observations hereinabove are a prima facie consideration. Nothing herein contained is a final view in the matter which would be taken after hearing the respondents.

95. Given the manner in which the Delhi Police appears to have conducted itself and the failure of the prosecution in performing its basic functions, we are of the view that independent assistance is needed by this court for consideration of the case.”

37. Heard Mr. H S Phoolka, Ld. Senior Counsel appearing for the Complainants, Mr. Siddharth Aggarwal, Ld. Senior Counsel and Ms. Indermeet Sidhu, Ld. Counsel, who have been appointed as *Amicus Curiae* in the matters, and Mr. Rakesh Vatsa, Ld. Counsel appearing for the accused/Balwan Khokhar.

38. Mr. Phoolka, Ld. Senior Counsel for the Complainants, contends that the investigations and trials were conducted in these cases in a completely sketchy manner and that the matters have to be sent back for re-trials.

39. Mr. Siddharth Aggarwal, Ld. *Amicus Curiae*, points out that the instant proceedings have been instituted in exercise of powers conferred on this Court under Section 397/401 of the CrPC. He draws the attention of this Court to Section 397 of the CrPC and states that before proceeding further and giving any tentative finding as to the correctness or otherwise of the Judgments passed by the Ld. Additional Sessions Judges, this Court has to



call for the records, examine them and only then proceed ahead in the matter. He states that without calling for and examining the records, the Judgments of the Ld. Additional Sessions Judges cannot be interfered with and cases cannot be sent back for the purposes of re-trial. He draws the attention of this Court to Section 401(3) of the CrPC to state that the High Court cannot convert a finding of acquittal to one of conviction and at the highest, the powers of the High Court is only to send the matter back for re-trial or pass any other further directions. He draws the attention of this Court to the Orders dated 08.02.2017, 21.02.2017, 16.03.2016 and 22.03.2017 passed by this Court in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014, to indicate that the records in Sessions Cases 10/1986, 31/1986 and 32/1986 (which pertain to the Criminal Revision Petitions being dealt with in the present Order) have been weeded out/destroyed. He submits that without getting the records, it would not be appropriate for this Court to proceed further with the matter.

40. Mr. Aggarwal, learned *Amicus Curiae*, also draws the attention of this Court to the Judgment passed by the Apex Court in State of Uttar Pradesh v. Abhai Raj Singh, (2004) 4 SCC 6. The relevant portion of the said Judgment reads as under:-

“6. The powers of the appellate court when dealing with an appeal from a conviction are delineated in sub-clauses (i), (ii) and (iii) of clause (b) of Section 386 of the Code. The appellate court is empowered by Section 386 to reverse the finding and sentence and acquit. Therefore, the acquittal is possible when there is reversal of the finding and sentence. The appellate court is also empowered to discharge the accused. The third category which seems to be applicable to the present case is a direction for retrial by a court of competent jurisdiction subordinate to the appellate



*court or committed for trial. For exercise of the powers in cases of first two categories, obviously a finding on merits after consideration of the materials on record is imperative. Where that is not possible because of circumstances like the case at hand i.e. destruction of the records, the proper course for the appellate court would be to direct retrial after reconstruction of the records if in spite of positive and constructive efforts to reconstruct the records the same was impossible. If on the other hand, from the copies available with the prosecuting agency or the defence and/or their respective counsel, reconstruction is possible to be made, the said course should be adopted and the appeal can be disposed of as it deserved under the course indicated in sub-clauses (i) and (ii). After perusal of the records and hearing the appellant's pleader and Public Prosecutor under Section 377 or 378, the exercise of power as indicated above can be resorted to. As was observed in *Bani Singh v. State of U.P.* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848] the plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it must call for the records and Section 386 mandates that after record is received, the appellate court may dispose of the appeal after hearing as indicated.*

*7. A question would further arise as to what happens when reconstruction is not possible. Section 386 empowers the appellate court to order that the case be committed for trial and this power is not circumscribed to cases exclusively triable by the Court of Session. (See *State of U.P. v. Shankar* [AIR 1962 SC 1154 : (1962) 2 Cri LJ 261] .)*

*8. It has been the consistent view taken by several High Courts that when records are destroyed by fire or on account of natural or unnatural calamities, reconstruction should be ordered. In *Queen Empress v.**



Khimat Singh [1889 Awn 55] the view taken was that the provisions of Section 423(1) of the Criminal Procedure Code, 1898 (in short “the old Code”) made it obligatory for the court to obtain and examine the record at the time of hearing. When it was not possible to do so, the only available course was a direction for reconstruction. The said view was reiterated more than six decades back in Sevugaperumal, Re [AIR 1943 Mad 391 (2) : 44 Cri LJ 611] . The view has been reiterated by several High Courts as well, even thereafter.

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10. We, therefore, set aside the order of the High Court and remit the matter back for fresh consideration. It is to be noted at this juncture that one of the respondents i.e. Om Pal has died during the pendency of the appeal before this Court. The High Court shall direct reconstruction of the records within a period of six months from the date of receipt of our judgment from all available or possible sources with the assistance of the prosecuting agency as well as the defending parties and their respective counsel. If it is possible to have the records reconstructed to enable the High Court itself to hear and dispose of the appeals in the manner envisaged under Section 386 of the Code, rehear the appeals and dispose of the same, on their own merits and in accordance with law. If it finds that reconstruction is not practicable but by ordering retrial interest of justice could be better served — adopt that course and direct retrial — and from that stage law shall take its normal course. If only reconstruction is not possible to facilitate the High Court to hear and dispose of the appeals and the further course of retrial and fresh adjudication by the Sessions Court is also rendered impossible due to loss of vitally important basic records — in that case and situation only, the direction given in the impugned judgment shall operate and the matter shall stand



closed. The appeals are accordingly disposed of.”

(Emphasis supplied)

41. Thereafter, he draws the attention of this Court to the Judgment of the Apex Court in Jitender Kumar Rode v. Union of India, **2023 INSC 419**, wherein it was opined that where the entire record was lost or destroyed and the re-construction of record was not possible, the Appellate Court shall order a fresh/*de novo* trial provided that the time lag from the date of incident and the date of hearing of the appeal is short. The Apex Court was further of the opinion that if the same is long and/or the FIR, statement of witnesses under Section 161 CrPC and other relevant papers are not available, the Appellate Court shall ordinarily not make an order for re-trial.

42. Learned Counsel for the Accused contends that the incident is of the year 1984 and the matter is being considered after 40 years. He states that when the entire record has been weeded out, the rights of the accused under Article 21 of the Constitution of India would be violated if a re-trial or further investigation is ordered at this stage.

43. Unlike in Sessions Case 11/86 (giving rise to Criminal Revision Petition 247/2017), where the record of the case is available, the material on record in the present cases, *viz.* Sessions Cases 10/86, 31/86 & 32/86, indicates that the records have been weeded out/destroyed, and are presently not available before this Court to enable it to exercise its powers under Section 401 of the CrPC. The only material available at present is in the form of the composite *challan* as also the final Judgments passed by the Ld. Additional Sessions Judges.

44. Material on record further *prima facie* reveals several lacunae in the



investigation as also the conduct of trials. A *prima facie* reading of the Judgment passed by the Trial Court indicates that the Judgments are not well considered, as already noted by this Court in its Orders dated 29.03.2017. However, this Court is not inclined to make any further comments on the tenability of the impugned Judgments at this juncture without having the benefit of perusing the records of the Sessions Cases.

45. Since the entire records are not available and without vital documents, such as the deposition of witnesses, documents exhibited before the Ld. Additional Sessions Judges, statements recorded under Section 161 of the CrPC *etc.*, it would be impossible for this Court to proceed with further consideration of the present cases.

46. Valuable lives have been lost in the incidents which form the subject matter of the present cases. Several crucial witnesses, including eyewitnesses to the incident were not examined in Sessions Cases 31& 32/86 on account of insufficient efforts to secure their presence through service of summons at addresses which had been damaged and/or abandoned by such witnesses in the aftermath of the incident. A composite *challan* has been filed for several cases *prima facie* reflecting a perfunctory investigation. Therefore, this Court is of the opinion that the matter cannot be left to rest at this juncture.

47. The valuable rights of victims and the society at large to a free and fair investigation as also a real trial cannot be allowed to be compromised as a result of *fait accompli*. This Court is, therefore, inclined to follow the course as suggested by the Apex Court in Abhai Raj Singh (supra), and consequently direct the jurisdictional Trial Court for reconstruction of the records of Sessions Case 10/86, Sessions Case 31/86 and Sessions Case



32/86. We fervently hope that the exercise initiated by this Court *vide* Orders dated 08.02.2017, 21.02.2017, 16.03.2017 and 22.03.2017 in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014 would be brought to its logical conclusion at the earliest.

48. We may also advert to the following observations of the Apex Court in Abhai Raj Singh (*supra*) which support the course of action we propose to take:

“9. ...It is not clear as to why the High Court did not require the Sessions Court to furnish the information about reconstruction of records; and / or itself take initiative by issuing positive directions as to the manner, method and nature of attempts, efforts and exercise to be undertaken to effectively achieve the purpose in the best interests of justice resulting from any lapse, inaction or inappropriate or perfunctory action, in this regard; particularly when no action was taken by the High Court to pass necessary orders for about a decade when it received information about destruction of record. The course adopted by the High Court, if approved, would encourage dubious persons and detractors of justice by allowing undeserved premium to violators of law by acting hand in glove with those anti-social elements coming to hold sway, behing the screen in the ordinary and normal course of justice.”

(Emphasis supplied)

49. Several Commissions had been constituted to look into various aspects of the *Sikh* riots in 1984. The CBI had also investigated into the larger conspiracy resulting in the incidents which took place on 01/02.11.1984 in the Raj Nagar area and the murders of five *Sikh* persons (Kehar Singh, Gurpreet Singh, Raghuwinder Singh, Narender Pal Singh &



Kuldeep Singh), leading to the conviction of six accused persons named in that case. This Court hopes that records of Sessions Case 10/86, Sessions Case 31/86 and Sessions Case 32/86 may be available with the CBI, having been taken into consideration by it during the course of investigation into RC24/2005-SIU-I/SIC-1/CBI/ND. We are also informed that certain appeals directed against the Judgment dated 17.12.2018 passed by this Court in Criminal Appeal Nos. 715/2013, 753/2013, 851/2013, 861/2013, 1099/2013 & 710/2014, *i.e.* the CBI case, are pending before the Apex Court. As such, the records of the present Sessions Cases 10/86, 31/86 and 32/86 may also be available as part of the Trial Court Record in the said appeals, which may be available with the Registry of the Apex Court, having been collected during the course of investigation by the CBI.

50. Such records may also be available in the archives of the various Committees/Commissions appointed from time-to-time.

51. Efforts are required to be made on a best endeavour basis to secure such records from any and all sources so as to enable this Court to finally adjudicate the present Criminal Revision Petitions.

52. In the event such records are not available with the CBI or with the various Committees/Commissions, the assistance of lawyers who conducted Sessions Cases 10/86, 31/86 & 32/86 may be taken, including Public Prosecutors, Defence Counsel and other assisting counsel, as they are equal stakeholders in the judicial process, and owe a duty to this Court to ensure a proper adjudication of the present Criminal Revision Petitions.

53. As a first step, this Court directs the jurisdictional Trial Court to make an endeavour to reconstruct the records of Sessions Cases 10/86, 31/86 & 32/86. To this end, the Order dated 28.05.2025 passed by this Court



reserving Judgment in the present Criminal Revision Petitions is recalled. It is expected that the CBI, the Delhi Police, the Public Prosecutor(s), the Ld. Counsel for the accused persons, as also the Ld. Counsel for the Complainants, will extend full cooperation in the matter.

54. The Ld. Trial Court is expected to make best possible efforts to reconstruct the records from all possible avenues as expeditiously as possible, and file a detailed report in that regard before the next date of hearing.

55. List for further hearing on 01.09.2025.

56. This Court expresses its appreciation for the invaluable assistance rendered by Mr. Siddharth Aggarwal, learned Senior Counsel (*Amicus Curiae*), and Mr. Vishwajeet Singh, learned Counsel, who has ably assisted the *Amicus Curiae* and this Court.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

AUGUST 11, 2025

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