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Court No. - 1

Case :- CRIMINAL APPEAL No. - 549 of 2016

Appellant :- Devendra Pandey and others

Respondent :- State Of U.P. Thru. C.B.I.

Counsel for Appellant :- Arun Sinha, Alok Shukla, Anil Kumar, Arti Ganguly, Aseem Goswami, Atul Verma, Edward Sam Julius Paul, Gaurav Shukla, Hari Krishna Verma, Hemant Kumar Mishra, Janardan Singh, Nagendra Mohan, Rajendra Prasad Mishra, Ram Mohan Mishra, Salil Mohan, Sanjay Kumar Srivastava, Saroj Kumar Shukla, Sheikh Wali-Uz Zaman, Umesh Chandra Yadav

Counsel for Respondent :- Rishad Murtaza, Anurag Kumar Singh, B. Nath, Ishan Baghel, S.B. Pandey, Vivek Kumar Rai

Connected with

Case :- CRIMINAL APPEAL No. - 513 of 2016

Appellant :- Vijendra Singh And Ors.

Respondent :- State Thru. C.B.I.

Counsel for Appellant :- Manish Bajpai, Atul Verma, Nagendra Mohan, Rajat Singh Chauhan, Rajendra Prasad Mishra, Rajesh Vishwakarma, Salil Mohan, Sanjay Kumar Srivastava, Sarvesh Kumar Pandey, Sheikh Wali-Uz Zaman

Counsel for Respondent :- Rishad Murtaza, Ishan Baghel, S.B. Pandey, Vivek Kumar Rai

with

Case :- CRIMINAL APPEAL No. - 551 of 2016

Appellant :- Rajendra Singh and Ors.

Respondent :- State Of U.P. Thru. C.B.I.

Counsel for Appellant :- Indu Prakash Singh, Nagendra Mohan, Rajendra Prasad Mishra, Salil Mohan, Sanjay Kumar Srivastava, Sheikh Wali-Uz Zaman

Counsel for Respondent :- Rishad Murtaza, Ishan Baghel, S.B. Pandey, Vivek Kumar Rai

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav, J.

(**Delivered by Hon'ble Ramesh Sinha, J.)**

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A. INTRODUCTION

- (1) Forty-seven accused persons, namely, **Gyan Giri, Subhash Chandra, Lakhan Singh, Nazim Khan, Harpal Singh, Rajendra Singh, Narayan Das, Krishnveer, Karan Singh, Rakesh Singh, Nem Chandra, Shamsher Ahmed, Satyendra Singh, Badan Singh, Devendra Pandey, Mohd. Anis, Ramesh Chandra Bharti, Veer Pal Singh, Nathu Singh, Dhani Ram, Sugam Chandra, Collector Singh, Kunwar Pal Singh, Shyam Babu, Banwari Lal, Dinesh Singh, Sunil Kumar Dixit, Arvind Singh, Ram Nagina, Vijay Kumar Singh, Vijendra Singh, M.P. Mittal, M.C. Durgapal, R.K. Raghav, Surjeet Singh, Udai Pal Singh, Munna Khan, Durvijay Singh son of Tadinal, Mahaveer Singh, Gaya Ram, Register Singh, Rashid Hussain, Durvijay Singh s/o Dilaram, Syed Aale Raza Rizvi, Satya Pal Singh, Harpal Singh and Ram Chandra Singh**, were tried by the Special Judge, C.B.I., Court No.1/Additional District Judge, Lucknow in Criminal Case No.1800439 of 2001: *State of U.P. Through C.B.I. Vs. Gyan Giri & others*, arising out of (i) R.C.1(S)/1993; (ii) R.C.2(S)/1993; and (iii) R.C.3(S)/1993, under Sections 120-B, 302, 364, 365, 218, 117 I.P.C., Police Station C.B.I./S.I.C., New Delhi.
- (2) Vide judgment and order dated 04.04.2016, the Special Judge, C.B.I., Court No.1/Additional District Judge, Lucknow

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convicted and sentenced the accused persons in the manner stated hereinbelow :-

Accused Gyan Giri, Subhash Chandra, Lakan Singh, Nazim Khan, Register Singh, Shyam Babu, Syed Aale Raza Rizvi, Gaya Ram, Narayan Das, Rashid Hussain, Mahavir Singh, Dhani Ram, Sunil Kumar Dixit, Kunwar Pal Singh, Sugam Chandra, Shamsher Ahmad, Krishna Veer, Karan Singh, Dinesh Singh, Nem Chandra, Ram Nagina, Arvind Singh, Badan Singh, Ram Chandra Singh, Harpal Singh son of Munshi Singh, Durvijay Singh son of Tadinal, Banwari Lal, Nathu Singh, Durvijay Singh son of Dilaram, Satyendra Singh, Rakesh Singh, Collector Singh, Vijay Kumar Singh and Munna Khan :-

	Conviction	Sentence	Fine
01.	Under Section 302 read with 120-B I.P.C.;	Life imprisonment	Rs.2,00,000/- (Rupees Two Lac) In default of payment of fine to undergo 1½ years additional simple imprisonment.
02.	Under Section 364 read with 120-B I.P.C.	10 years R.I.	Rs.50,000/- In default of payment of fine to undergo one year additional simple imprisonment.
03.	Under Section 365 read with 120-B I.P.C.	5 years R.I.	Rs.25,000/- In default of payment of fine to undergo six months additional simple imprisonment.
04.	Under Section 218 read with 120-B I.P.C.	2 years R.I.	----

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05.	Under Section 117 read with 120-B I.P.C.	1 year R.I.	----
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Accused Harpal Singh son of Shri Bhim Sen, M.P. Vimal, R.K. Raghav, Veerpal Singh son of Mohindra Singh, Satyapal Singh, Surjeet Singh, Ramesh Chandra Bharti, M.C. Durgopal and Udai Pal Singh

	Conviction	Sentence	Fine
01.	Under Section 302 read with 120-B I.P.C.;	Life imprisonment	Rs.5 Lac. In default of payment of fine to undergo 2 years' additional simple imprisonment.
02.	Under Section 364 read with 120-B I.P.C.	10 years R.I.	Rs.2 Lac. In default of payment of fine to undergo one year's additional simple imprisonment.
03.	Under Section 365 read with 120-B I.P.C.	5 years R.I.	Rs.1 Lac. In default of payment of fine to undergo six months additional simple imprisonment.
04.	Under Section 218 read with 120-B I.P.C.	2 years R.I.	----
05.	Under Section 117 read with 120-B I.P.C.	1 year's R.I.	----

Accused Vijendra Singh, Mohd. Anis, Rajendra Singh and Devendra Pandey,

	Conviction	Sentence	Fine
01.	Under Section 302 read with 120-B I.P.C.;	Life imprisonment	Rs.7 Lac. In default of payment of fine to undergo 03 years additional simple imprisonment.
02.	Under Section 364 read with 120-B I.P.C.	10 years R.I.	Rs.3 Lac. In default of payment of fine to undergo one year additional simple imprisonment.
03.	Under Section 365 read with 120-B I.P.C.	5 years R.I.	Rs.1 Lac. In default of payment of fine to undergo six months additional simple imprisonment.
04.	Under Section 218 read with 120-B I.P.C.	2 years' R.I.	----
05.	Under Section 117 read with 120-B I.P.C.	1 year R.I.	----

All the sentences were directed to run concurrently and the period of incarceration was directed to be set off against the

sentence of imprisonment. It was also directed to pay Rs.14,00,000/- each to the family members of the deceased out of the fine imposed as compensation.

- (3) Feeling aggrieved by their aforesaid conviction and sentence, convicts/appellants, Devendra Pandey, Mohd. Anish, Ramesh Chandra Bharti, Veer Pal Singh, Nathu Singh, Dhani Ram, Sugam Chand, Collector Singh, Kunwar Pal Singh, Shyam Babu, Banwari Lal, Dinesh Singh, Sunil Kumar Dixit, Arvind Singh, Ram Nagina and Vijay Kumar Singh, have preferred Criminal Appeal No.549 of 2016, whereas convicts/appellants Vijendra Singh, M.P. Vimal (M.P. Mittal), M.C. Durgapal, R.K. Raghav, Surjeet Singh, Udai Pal Singh, Munna Khan, Durvijay Singh son of Todilal (Tadinal), Mahavir Singh, Gaya Ram, Register Singh, Rashid Hussain, Durvijay Singh son of Dila Ram, Syed Aale Raza Rizvi, Satya Pal Singh, Harpal Singh and Ram Chandra Singh have preferred Criminal Appeal No.513 of 2016 and convicts/appellants Rajendra Singh, Harpal Singh s/o Shri Bheem Sen, Gyan Giri, Subhash Chander, Lakan Singh, Nazim Khan, Narayan Das, Krishna Veer, Karan Singh, Rakesh Singh, Nem Chandra, Shamsher Ahmad, Satinder Singh and Badan Singh have preferred Criminal Appeal No.551 of 2016.
- (4) During pendency of the above-captioned appeals, appellant no.3-M.C. Durgapal and appellant no.9-Mahavir Singh of Criminal Appeal No. 513 of 2016; appellant no.14-Badan Singh

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of Criminal Appeal No. 551 of 2016; and appellant no.6-Dhani Ram in Criminal Appeal No. 549 of 2016, died and as such, the above-captioned appeals filed on their behalf stood abated. Now, the above-captioned appeals are surviving only against **forty-three** convicts/appellants i.e. Devendra Pandey, Mohd. Anis, Ramesh Chandra Bharti, Veer Pal Singh, Nathu Singh, Sugam Chand, Collector Singh, Kunwar Pal Singh, Shyam Babu, Banwari Lal, Dinesh Singh, Sunil Kumar Dixit, Arvind Singh, Ram Nagina, Vijay Kumar Singh, Vijendra Singh, M.P. Vimal (M.P. Mittal), R.K. Raghav, Surjeet Singh, Udai Pal Singh, Munna Khan, Durvijay Singh son of Todilal (Tadinal), Gaya Ram, Register Singh, Rashid Hussain, Durvijay Singh son of Dila Ram, Syed Aale Raza Rizvi, Satya Pal Singh, Harpal Singh, Ram Chandra Singh, Rajendra Singh, Harpal Singh s/o Shri Bhim Sen, Gyan Giri, Subhash Chandra, Lakhan Singh, Nazim Khan, Narayan Das, Krishna Veer, Karan Singh, Rakesh Singh, Nem Chandra, Shamsher Ahmad and Satyendra Singh.

- (5) Since the above-captioned criminal appeals arise out of a common factual matrix and impugned judgment dated 04.04.2016, this Court proceeds to decide the same by a common judgment.

B. FACTUAL MATRIX

- (6) In the intervening night of 12/13.07.1991, three incidents at three different places i.e. (1) Neoria, (2) Bilsanda, and (3)

Puranpur, in District Pilibhit took place between the alleged Sikh terrorists and the police of District Pilibhit, in which ten alleged militants were killed. In this regard, cumulatively thirteen F.I.R.s. were lodged in police station Neoria, Bilsanda and Puranpur of district Pilibhit.

- (i) **F.I.R. RELATING TO THE INCIDENT THAT TOOK PLACE WITHIN THE JURISDICTION OF POLICE STATION NEORIA**
- (7) In respect of the incident that took place at Neoria, district Pilibhit, wherein four alleged terrorists, namely, *Baljeet Singh alias Pappu, Jaswant Singh alias Jassa, Harminder Singh alias Minta and Surjan Singh alias Bittoo*, were killed in an encounter, Case Crime Nos. 144 to 148 of 1991, under Sections 147, 148, 149, 307 I.P.C. and Section 25 of the Arms Act were registered at Police Station Neoria, District Pilibhit on the oral complaint of Chander Pal Singh, Station Officer, Police Station Neoria, alleging therein that in the intervening night of 12/13.07.1991, he along with Constable Sukhpal Singh of Police Station Neoria, S.I. Brahm Pal Singh of Police Station Sungadi, Constable No. 331 Gyan Giri, Constable No. 76 Subhash Chander, Constable No. 410 Lakhan Singh of Police Station Sungadi, Constable No. 394 Mahender Singh of Police Station Puranpur, Constable No. 481 Nazim Khan of Police Station Barkhera, Constable/Driver Shiv Ram Singh of Police Lines in one party and in another party, S.O. Harpal Singh of Police Station Gajraula, S.O. Rajinder Singh of Police Station

Amaria, Constable No. 85 Ram Swaroop, Constable No. 428
Narain Lal, Constable No. 27 Krishanaveer, Constable No. 30
Karan Singh of Police Station Gajraula, Constable No. 125
Rakesh, Constable No. 465 Nem Chand, Constable 375
Shamsher of Police Station Amaria in Government Jeep along
with Driver Veer Singh of Police Station Amaria, HC 51
Satyender Singh of Police Station Neoria, Constable No. 247
Badan Singh of Police Station Neoria, had laid an ambush near
Dhamela Kuan in the Mahof forest. At about 04:00 p.m., 5-6
Sikhs were seen coming towards them. On suspicion, they
challenged them. On being challenged, they (5-6 Sikhs) opened
fire on the police parties with the intention to kill them, upon
which the police parties had also opened fire in self-defence.
The firing between the Sikh militants and the police parties
continued for about half an hour. In the meanwhile, two
militants were seen to be running away toward the forest, upon
which one party headed by S.O. Amaria chased them but they
ran away in the forest. After the firing stopped from the side of
the militants, the police party went there and found the dead-
bodies of four unknown Sikh militants, who died as a result of
gun shot injuries. From the possession of one militant, one
S.B.B.L. country-made gun 12 bore and four cartridges laid
near to him were recovered; from the possession of second
militant, one S.B.B.L. countrymade gun 12 bore and five
cartridges laid near to him were recovered; from the possession
of third militant, one 315 bore countrymade rifle and four live

cartridges laid in his half- open fists of right hand, were recovered; and from the possession of fourth militant, one 315 bore countrymade rifle and five live cartridges laid in his left side, were recovered. Thereafter, the recovery memos of the aforesaid arms and ammunition were prepared separately and brought to the police station.

(7.1) The investigation of the aforesaid incident took place at Neoria, district Pilibhit was conducted by S.I. Naresh Chand, who, after conducting inquest of the dead-bodies of the four unidentified militants, sent it for post-mortem.

(7.2) The post-mortem of the deadbodies of four unidentified alleged militants (later on identified as *Harmendra Singh alias Minta, Baljeet Singh alias Pappu, Surjan Singh and Jaswant Singh alias Lassa*) were conducted between 06:00 p.m.-07:00 p.m. on 13.07.1991 at District Hospital, Pilibhit by Dr. P.N. Saxena, who found the following ante-mortem injuries on their persons:-

“Ante-mortem injuries of first unidentified deadbody, aged about 22 years (Ext. Ka. 23/1)

(1) A Gun Shot wound of entry on the Rt. upper arm 8 cm below the shoulder medially 0.5 x 0.5 cm c wound of exit on the lateral side. 2 cm lateral to the injury No. (1) measuring 0.8 cm x .6 cm. No blackening tattooing.

(2) A.G.W. of entry 4 cm x 2 cm at front of chest 1 cm above the Rt. nipple c wound of exit on Lt. side of chest measuring 5 cm x 6 cm. No blackening tattooing at ant. axillary fold.

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- (3) A.G.W. of entry on the Rt. side chest .5 cm x .5 cm x cavity deep. 8 cm lateral to Rt. nipple at 9 O'clock. No blackening tattooing present.
- (4) A.G.W. of entry .5 cm x .5 cm on Lt. (sic) c wound of exit point to the w. of entry measuring 1.5 cm x 1.5 cm. No blackening tattooing present.

Ante-mortem injuries of second unidentified deadbody aged about 28 years (Ext. Ka.23/2)

- (1) G.W. of entry 8 cm x 4 cm x muscle deep directing upward out the Rt. side chest. 6 cm below the Rt. nipple at 6 O'clock position. One pellet recovered.
- (2) G.W. of entry 2 cm x 1 cm at the epassguinea x cavity deep c wound of exit in the hypogastrium measuring 6 cm x 4 cm loops of bowels coming out.
- (3) A.G.W. of entry at Rt. side of abdomen 2 cm x 2 cm cavity deep. Communicating c wound of exist at Rt. iliac fossa 4 cm x 3 cm.
- (4) Two wounds of entry measuring each .5 cm x .5 cm at Rt. upper arm just below the shoulder joint c wound of exit in the Rt. axilla 4 cm x 4 cm c fracturing underlying bones.
- (5) A.L.W. 4 cm x 3 cm x muscle deep at Lt. side chest. 4 cm below the Axilla.

Ante-mortem injuries of third unidentified dead-body aged about 28 years (Ext. Ka. 23/3)

- (1) A.G.W. of entry 2 cm x 2 cm x cavity deep. Rt. side chest. 8 cm below the axilla at ant. axially fold. Rt. side chest communicating c wound of exit 4 cm x 4 cm at Rt. inguinal region.

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- (2) A.G.W. of entry at Lt. side neck 2 cm above in Lt. clavicle middle part 0.5 cm x 0.5 cm x cavity deep c wound of exit 10 cm x **4 cm** just below the Lt. nipple underlying bones fractured.
- (3) G.W. of entry just below the Lt. scapula 0.5 cm x 0.5 cm communicating c wound of exit. 4 cm x 4 cm just above the Rt. illiac crest.
- (4) L.W. 10 cm x 4 cm x muscle deep at lateral on side of Rt. thigh in the middle.
- (5) A.L.W. 12 cm x 6 cm at anterior-lateral side of lower 1/3rd of Rt. leg underlying bones fractured.
- (6) An abraded contusion 10 cm x 10 cm at his mid of sacrum.

Ante-mortem injuries of fourth unidentified deadbody aged about 24 years (Ext. Ka. 23/4)

- (1) A.G.W. of entry 0.5 cm x 0.5 cm on the top of Rt. shoulder x cavity deep. Communicating with wound of exit at Lt. side abdomen 6 cm above the A.S.I.S. measuring 3 cm x 3 cm.
- (2) A.G.W. of entry .5 cm x .5 cm at Lt. side neck (sic) part, 7 cm below the angle of mandible c wound of exit 6 cm x 4 cm at left tempo parietal region brain matters coming out of the wound. # of underlying bones.
- (3) A.G.W. of entry .5 cm x .5 cm Lt. side of epigastrium x cavity deep with wound of exist 5 cm x 3 cm at level of 2nd (sic) spine Rt. side back.
- (4) L.W. 2 cm x 1/2 cm x muscle at wrist joint gone left side medially.
- (5) L.W. 5 cm x 2 cm x muscle deep in the middle of Lt. leg laterally."

The cause of death spelt out in the post-mortem reports

of all the dead-bodies of unidentified alleged terrorists

was due to shock and haemorrhage as a result of

aforesaid ante-mortem injuries.

(ii) **F.I.R. RELATING TO THE INCIDENT THAT TOOK PLACE WITHIN THE JURISDICTION OF POLICE STATION BILSANDA**

- (8) In respect of the incident which took place at Bilsanda, district Pilibhit, wherein alleged four militants, namely, Lakhvinder Singh alias Lakkha, Jaswant Singh alias Fauji, Kartar Singh son of Ajaib Singh and Randhir Singh alias Dheera, were said to be killed in alleged encounter by the police, Case Crime Nos. 136 to 140 of 1991, under Sections 147, 148, 149, 307 I.P.C., Section 25 of the Arms Act and Section 3/4 of TADA Act, were registered at Police Station Bilsanda, District Pilibhit on the oral complaint of S.O. Devendra Pandey of police station Bilsanda, district Pilibhit, alleging therein that in the intervening night of 12/13.07.1991, he alongwith SHO Mohd. Anis of Police Station Bisalpur, S.I. Ramesh Bharti of Police Lines, Pilibhit, Constable Ashok Kumar of Police Station Bisalpur, S.I. Veerpal Singh, H.C. No. 9 Nathu Singh, Constable 567 Dhani Ram, Constable 164 Ugar Pal, Constable 540 Sugam Chandra, Constable 551 Collector Singh, Constable 19 Kunwar Pal Singh, Constable 392 Shyam Babu, all of Police Station Bilsanda, H.C. Banwari Lal of PAC, Constable 42114 Dinesh Singh, Constable 42855 Sunil Kumar Dixit, Constable

42943 Arvind Kumar, Constable 42231 Ram Nageena and Constable 42237 Vijay Kumar Singh, all of 32nd Battalion PAC B Coy and Shyam Nath Shukla Platoon Commander 32nd Battalion B Coy of Provincial Armed Constabulary (PAC) with half section, left Police Station Bilsanda at 23:15 hours vide G.D. Entry No. 48 in connection with the investigation and in search of militants of Case Crime No. 13 of 1991 registered on 12.07.1991 at Police Station Bilsanda relating to looting of one .315 bore rifle of Shri Prahlad Singh son of Beche Singh, resident of Pipergehna and one .12 bore gun of Shri Jagdish son of Sardar, resident of Bhikampur. In connection thereof, the aforesaid police party reached Phagunai Ghat at 03:30 a.m. in the intervening night of 12/13.07.1991, wherein they found movement of some persons near the river bed. After that, the Station Officer lit his torch and in the torch light, the Station Officer found that those persons appeared to be Sikh militants. Immediately thereafter, he challenged them on which the militants opened fire on the police party with the intention to kill them and raised slogans '*Khalistan Jindabad*', upon which the police party had also opened fire in self-defence. During the firing, 4-5 militants crossed the river and ran away. At about 04:30 a.m., when the firing from the militants stopped, the police party moved ahead and recovered the unidentified deadbodies of three militants from the river bank and that of one militant from inside the river. From the possession of the

aforesaid four militants, arms and ammunitions were seized under the recovery memos.

(8.1) The investigation of the aforesaid incident was entrusted to S.I. Netrapal Singh, who, after conducting the inquest of the deadbodies of four alleged unidentified terrorists from S.D.M. Bisalpur, sent their deadbodies for post-mortem.

(8.2) The post-mortem of three unidentified deadbodies (later on identified as Jaswant Singh *alias* Fauji, Kartar Singh and Randeer Singh alias Dheer) was conducted on 13.07.1991 at 10:00 p.m. in District Hospital, Pilibhit by Dr. P.N. Saxena, who, found the following ante-mortem injuries on their persons :-

Ante-mortem injuries of first unidentified deadbody of alleged terrorist aged about 30 years (Ext. Ka. 24/1)

1. G.W. shot lacerated wound Rt. side skull 10 cm x 6 cm x cavity deep bones fractured in pieces. Brain matter coming out.
2. G.W. of entry at medial side of thigh (Left) at perineum 5 cm x 5 cm c communicating wound of exit 5 cm x 3 cm at the upper part of thigh front aspect 2 cm below in A.S.I.S.
3. L.W. 2 cm x 1.5 cm at the base of Lt. great toe.

Ante-mortem injuries of second unidentified deadbody of alleged terrorist aged about 20 years (Ext. Ka. 24/2)

1. Firearm wound entry 2 cm x 2 cm on the front of chest on the central part of sternum bone, cavity deep.

2. Firearm wound of exit 5 cm x 5 cm on the left side back 10 cm below lower angle of scapula.
3. Fire wound of entry 2 cm x 2 cm on the top of Rt. shoulder of mole (sic).
4. Fire wound of exit 18 cm x 5 cm on the front aspect of Rt. forearm elbow & forearm.
5. Lacerated wound 3 cm x 3 cm on the left thumb in distal half of left hand with amplitude of distal half of (sic).

Ante-mortem injuries of third unidentified deadbody of alleged terrorist aged about 45 years (Ext. Ka. 24/3)

1. G.W. of entry .5 cm x .5 cm x cavity deep at Rt. side para sternum region c wound of exit at milieu scapula region measuring 6 cm x 5 cm.
2. G.W. entry .5 cm x .5 cm x cavity deep at parasternal region 3 cm below & Rt. to the injury no.(1) c xiphisternum wound of exit Rt. side lower part of back just above the sacral region.
1. L.W. 10 cm x 5 cm x muscle deep just above & front of Rt. knee.
2. Lacerated wound (sic) muscle deep at back (sic).

(8.3) The post-mortem of fourth unidentified dead-body of alleged terrorist (later on identified as Lakhvinder Singh alias Lakkha) was conducted on 13.07.1991 at 10:30 p.m. in District Hospital, Pilibhit by Dr. Vimal Kumar, who found the following ante-mortem injuries on his person :-

Ante-mortem injury of fourth unidentified deadbody of alleged terrorist aged about 38 years (Ext. Ka. 24/4)

1. Lacerated wound of gun shot present on the medial side of left upper top of head 12 cm x 6 cm x cranial cavity deep from where brain matter are coming out under bone of scalp fractured.
2. Abrasion 2 cm x 2 cm on the front of Rt. knee.
3. Abrasion 2 cm x 2 cm on the middle of left forearm on the back aspect.
4. Lacerated wound 4 cm x 2 cm x muscle deep on the Rt. palm.
5. Abrasion 3 cm x 2 cm on the back of Rt. elbow.”

The cause of death spelt out in the aforesaid post-mortem reports of four unidentified deadbodies was due to shock and haemorrhage as a result of ante-mortem injuries.

(iii) F.I.R. RELATING TO THE INCIDENT THAT TOOK PLACE WITHIN THE JURISDICTION OF POLICE STATION PURANPUR

- (9) In respect of the incident which took place at Puranpur, wherein two alleged terrorists, namely, Narendra Singh *alias* Ninder and Mukhvinder Singh *alias* Mukha, were said to be killed in an encounter, Case Crime Nos. 363 to 365 of 1991, under Sections 147, 148, 149, 307 I.P.C. and under Section 25 of the Arms Act were registered against the two unknown deceased militants at Police Station Puranpur, District Pilibhit on 13.07.1991 at 06:15 a.m., on the oral complaint of Vijendra Singh, Station House

Officer, Puranpur, alleging therein that on 12.07.1991, at about 09:05 p.m., he received an information that a gang of 6-7 militants armed with AK47, .315 bore rifles, 12 bore gun and revolver were likely to come from Tarai side around midnight, upon which he requisitioned police force from police station Madho Tanda and a section of PAC, 1½ Section of Special Protection Force (SPF). After requisition, the force had arrived at Police Station Puranpur. Thereafter, he alongwith S.I. M.P. Vimal, S.I. M.C. Durga Pal, S.I. R.K. Raghav, S.I. Surjit Singh, S.I. U.P. Singh, S.I. S.S. Virk, Constable 473 Munna Khan, Constable 584 Durvijay Singh, Constable 23 Munis Khan, Constable 409 Vijay Bahadur, Constable 210 Veer Singh, Constable 128 Mahavir Singh, Constable 30 Gaya Ram, Constable 371 Register Singh, Constable 80 Rashid Hussain, Constable 470 Durvijay Singh, Constable/Driver Syed Aale Raza Rizvi, all of Police Station Puranpur, S.O. Rajesh Chander Sharma of Police Station Madho Tanda, S.I. M.P. Singh, S.I. S.P. Singh, Constable 37 Harpal Singh, Constable 429 Ram Chander, Constable 165 Kishan Bahadur, all of Police Station Madho Tanda along with one section of Central Reserve Police Force (CRPF), one section of PAC 15th Battalion and one and a half section of SPF and Constable No. 257 Suraj Pal of Police Station Kotwali, Pilibhit, left the police station at 22:30 hours and reached Barhamdev Barrier at about 22:50 hours in police vehicles. The police vehicles were left at the barrier. S.I. S.S. Virk, Constable 210 Veer Singh, Constable 409 Vijay Bahadur

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along with one Section of PAC of 15th Battalion were instructed to lay a picket in front of village Pattabhoji and the rest of the force went inside the Pattabhoji forest to lay an ambush. Around 12 midnight, 6-7 persons came from the North side. On being challenged, they opened fire on the police party with intention to kill. The fire was returned by police personnel. The intermittent exchange of fire between the militants and the police party continued until a little before dawn. When there was no firing from the militants' side for about half an hour, the police party came out from the ambush and noticed two militants lying dead on the *kacha* road. The arms and ammunitions recovered from the possession of the aforesaid two militants were seized under the recovery memo.

- (9.1) The investigation of the aforesaid case was conducted by SI S.S. Vrik, who after conducting the inquest of the two unidentified dead-bodies of the alleged terrorists, sent it for post-mortem.
- (9.2) The post-mortem of two unidentified dead-bodies of the alleged terrorists (later on identified as Mukhvinder Singh alias Mukkha and Narendra Singh alias Ninder) was conducted on 13.07.1991, at 05:30 p.m., in District Hospital Pilibhit by Dr. D.B. Kaushik, who found the following ante-mortem injuries on their persons :-

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“Ante-mortem injuries of first unidentified dead body of the alleged terrorist aged about 28 years (Ext. Ka. 25/1)

1. A Gun shot wound of entry of size .5 cm x .5 cm frontier arm of (Lt.) shoulder c wound of exit 3 cm x 2 cm (sic) post aspect (Lt.) shoulder.
2. A Gun shot wound of entry of size .5 x .5 cm present on back of (Lt. side) Abdomen 3 cm (sic.) with exit wound of size 3 cm x 3 cm cavity deep (sic.) linear part of Rt. side of chest 8 cm below the (Rt.) nipple, 9th & 10th ribs #.
3. A Gun shot wound of entry of size .5 cm x .5 cm from below of upper part of abdomen 6 cm below the middle line 10 cm above the iliac spine, with wound of exit 5 cm x 4 cm cavity deep (sic) epigastrium (Lt.) side.
4. Multiple Gun shot wounds of entry of size 2 cm x 2 cm in the area of 6 cm x 6 cm (sic.) Rt. side muscle deep & cavity deep. Bullets recovered (7)mm/in No. from the wounds.
 1. a L.W. of size 6 cm x 4 cm x muscle deep (sic.) of (Rt.) forearm 9 cm above the left joint. In all the injuries, no blackening and tattooing.

“Ante-mortem injuries of second unidentified dead body of the alleged terrorist aged about 28 years (Ext. Ka. 25/2)

1. G.S. wound of entry .5 cm x .5 cm frontier (R) side of chest cavity deep just above the nipple communicating with the wound of exit of size 6 cm x 4 cm at the xiphisternum (Lt.) side.
2. G.S. wound of entry of size .5 cm x .5 cm frontier (Rt.) nipple cavity deep. Communicating c the exit wound of size 6 cm x 4 cm at the xiphisternum (Lt.) side.

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3. G.S. wound of entry present at the base of Rt. side (sic) 2 cm above the clavicle .5 cm x .5 cm cavity deep. Communicating c the wound of exit 3 cm x 3 cm at the Rt. mid scapular line (inter scapular region).
4. G.S. wound of entry of size .5 cm x .5 cm frontier (Lt.) scapula medial (sic.) communicating with the wound of exit 8 cm x 4 cm (sic) present (Lt.) side front of chest just above the nipple.
5. G.S. wound of entry of size .5 cm x .5 cm cavity deep 8 cm below the injury No. (4) communicating with the wound of exit of injury No.4.
6. L.W. of size 12 cm x 6 cm from medial side of (Lt.) forearm middle muscle deep.
7. G.S. wound of entry .5 cm x .5 cm from the base of (Lt.) thumb (sic) communicating c the wound of exit 6 cm x 6 cm at the medial side of (Lt.) (sic.).

In all the above injuries, no bleeding and tattooing present.

The cause of death spelt out in the aforesaid post-mortem reports of the unidentified deceased was due to shock and haemorrhage as a result of ante-mortem injuries.

- (10) It is pertinent to mention that after post-mortem, all ten unidentified dead-bodies were cremated by the police at the cremation ground located by the side of police lines, Pilibhit during the night of 13.07.1991.

- (iv) **BACKGROUNDS OF ENTRUSTMENT OF INVESTIGATION TO THE CENTRAL BUREAU OF INVESTIGATION AND FILING OF CHARGE-SHEET AGAINST THE ACCUSED PERSONS**

- (11) A news item was published in ‘*The Times of India*’ edition dated 18.07.1991 i.e. after five days of the aforesaid incidents. On the basis of the aforesaid news item, R.S. Sodhi, Advocate, had filed Writ Petition (Criminal) No. 1118 of 1991 : *R.S. Sodhi, Advocate Vs. State of U.P. and others*, before the Apex Court on 18.07.1991 itself, wherein the Apex Court directed the Additional Chief Judicial Magistrate, Pilibhit to conduct an inquiry and submit his report. In pursuance thereof, the Additional Chief Judicial Magistrate, Pilibhit, conducted an inquiry into the matter and submitted a report before the Apex Court, pointing out therein that the identity of the persons killed in the encounters was not correctly stated. In the meanwhile, the State Government also appointed one member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter.
- (12) During pendency of the aforesaid writ petition, the Investigating Officer had submitted final report in the aforesaid three F.I.Rs. on the pretext that ten Sikhs, which were killed at Neuria, Bilsanda and Puranpur, were terrorists.
- (13) Thereafter, on 15.05.1992, the Apex Court had considered all the aforesaid facts and circumstances of the aforesaid incidents and after considering it, the Apex Court, vide order dated 15.05.1992, entrusted the investigation of the aforesaid

incidents which took place at Neuria, Bilsanda and Puranpur in district Pilibhit, to the Central Bureau of Investigation.

- (14) After entrustment of the investigation by the aforesaid order dated 15.05.1992, the Central Bureau of Investigation had registered three separate corresponding cases under Sections 120-B, 302/34, 364, 365, 218, 117 I.P.C., at Police Station C.B.I./S.I.C., District Lucknow on 01.01.1993 at 04:00 p.m. viz. Crime No. RC 1 (S) of 1993 (Ext. Ka.39) in respect of Case Crime Nos.144 to 148 of 1991 registered at Police Station Neoria in connection with the incident which took place in the Dhamela Kuan forest within the area of Police Station Neoria; Crime No. RC 2 (S) of 1993 (Ext. Ka.40) in respect of the Case Crime No. 136 to 140 of 1991 registered at Police Station Bilsanda in connection with the incident which took place in Wahad Gram, Sheetlapur Fanaighat within the area of Police Station Bilsanda; and Crime No. RC 3 (S) of 1993 (Ext. Ka. 41) in respect of Case Crime Nos. 363 to 365 of 1991 registered at Police Station Puranpur in connection with the incident which took place in Pattabhoji forest within the area Puranpur, district Pilibhit.
- (15) The investigation of Crime No. RC 1 (S) of 1993 was conducted by the Inspector J.C. Prabhakar, C.B.I. (P.W.29); the investigation of Crime No. RC 2 (S) of 1993 was conducted by the Inspector Shri Hoshiyar Singh and after that it appears that

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investigation was entrusted to Shri R.S. Prasad, D.S.P. and thereafter to Randhir Singh Punia (P.W.63), D.S.P., C.B.I.; the investigation of Crime No. RC 3 (S) of 1993 was conducted by Shri Harbhajan Ram, D.S.P., C.B.I. P.W.64-Diwan Singh Dagar had conducted the investigation of the aforesaid three cases as an Assistant Investigating Officer.

- (16) Thereafter, further investigation of the aforesaid three cases was entrusted/transferred to Shri R.S. Dhankar, D.S.P., C.B.I., who, after due investigation, prepared the common charge-sheet against 57 accused persons for the offences punishable under Sections 120B read with Sections 302, 364, 365, 218 I.P.C. and submitted it before the Court concerned on 09.06.1995.
- (17) At this juncture, it would be apt to mention that during the course of trial, Shri R.S. Dhankar died, therefore, he was not examined by the trial Court.
- (18) After investigation, the case set up by the CBI is that on 20.06.1991, a passenger bus, bearing No. UP-26/0245, of Shri Amit Kumar (P.W.5), was chartered by Talwinder Singh (missing after the incident) for Rs.30,000/- for a pilgrimage trip to Patna Saheb and Hazoor Saheb from 29.06.1991 to 12.07.1991. In this regard, an advance payment of Rs.500/- was made vide receipt No. 720 on 20.06.1991 itself and Talwinder Singh gave a list of passengers in duplicate to the owner of the aforesaid bus Shri Amit Kumar (P.W.5).

On 28.06.1991, Shri Amit Kumar applied for issuance of a temporary permit for the aforesaid bus in respect of a pilgrimage trip to R.T.O., Bareilly by enclosing the list of passengers in duplicate and obtained temporary permit no. 872 for the period 30.06.1991 to 13.07.1991 on the date itself i.e. on 28.06.1991.

On 29.06.1991, Talwinder Singh contacted the owner of the aforesaid bus Shri Amit Kumar, upon which Shri Amit Kumar gave temporary bus permit along with the list of passengers to his driver Mushraff Hussain and directed him to ply the bus as chartered. Around 09:00-10:00 a.m., Driver Mushraff Hussain, helper Pradeep Kumar alias Rashid along with Talwinder Singh left Pilibhit for Sitarganj, Nanak Matha and Amaria for collecting the passengers.

After collecting 24 passengers from the aforesaid places, the bus returned to Pilibhit in the late afternoon of 29.06.1991 itself. Thereafter, at Pilibhit, Talwinder Singh made the balance payment of Rs.29,500/- to Shri Amit Kumar and thereafter the bus left for onward journey. Having left Pilibhit, the aforesaid 24 passengers/pilgrimages along with Talwinder went to Banaras, Patna Sahib, Hazur Sahib and Nanded etc.

On 11.07.1991, after paying darshan at Nanded, the pilgrimages/passengers party left Nanded and reached Gwalior. On 12.07.1991, after paying obeisance at Gwalior Gurdwara, the party left Gwalior and reached Kachla Ghat, Police Station

Kotwali Soron, District Etah at about 10:00-11:00 am, wherein armed police personnel of district Pilibhit intercepted the aforesaid bus. After that ten Sikh pilgrimages (deceased) as well as Talwinder Singh (missing) were deboarded from the bus and boarded in sky blue colour mini-bus belonging to the police. Thereafter, 8-10 armed police personnel boarded in the passengers' bus and kept roaming it here and there for whole day. Thereafter, in late night of 12.07.1991, passenger's bus was brought to a Gurdwara in Pilibhit and its occupants were let off. In the meanwhile, ten Sikh persons, who were deboarded from the aforesaid pilgrimage bus, were divided into three parts and in the intervening night of 12/13.7.1991, the police of district Pilibhit killed them at three different places i.e. Neuria, Bilsanda and Puranpur showing them as Sikh terrorists in a fake encounter.

- (19) The case was committed by the Special Judicial Magistrate (C.B.I.), Lucknow vide order dated 03.02.2001 to the Court of Sessions, wherein 55 accused persons out of 57 charge-sheeted accused persons (two accused died) were charged for the offence punishable under Section 120B read with Sections 302, 364, 365, 117, 218 I.P.C. and Section 302/34 I.P.C on 20.01.2003. They pleaded not guilty to the charges and claimed to be tried. Their defence was of denial.

(20) It is relevant to mention here that out of 57 accused persons, ten accused persons, namely, Munish Khan, Rajesh Chandra Sharma, Madan Pal Singh, Kishan Bahadur, Surajpal, Ashok Kumar, Ramswaroop, Sukhpal Singh, Chandrapal Singh and Brahmpal Singh, died, hence their trial **stood abated**. After the death of ten accused persons, trial of 47 accused persons/convicts/appellants, as stated hereinabove, were commenced by the trial Court.

(v) **PROSECUTION WITNESSES**

(21) During trial, the prosecution, in order to prove its case, had produced 67 witnesses, out of which P.W.1-Brajesh Singh, P.W.2-Ranveer Singh, P.W.3-Santosh Singh, P.W.4-Ajeet Singh, P.W.5-Amit Kumar, P.W.6-Ram Singh, P.W.7-Jasbeer Singh, P.W.11-Swarn Kaur, P.W.13-Balwinderjeet Kaur, P.W.17, Kamaljit Singh, P.W.18-Gurmej Singh, P.W.19-Bhagwat, P.W.21-Brijesh Kumar, P.W.24-Avtar Singh, P.W.30-Ranjit Kaur, P.W.34-Milkha Singh, P.W.35-Shyam Lal, P.W.36-Darshan Singh, P.W.38-Mahendra Singh, P.W.39-Rajjab, P.W.40-Major Singh, P.W.41-Subhash Singh and P.W.52-Balakram, were examined as witnesses of facts, whereas P.W.1-Brajesh Singh, P.W.2-Ranveer Singh, P.W.9-Ram Kumar, P.W.10-Manohar, P.W.12-Ram Kumar, P.W.14-Ishwar Chand, P.W.15-Mewa Lal, P.W.16-Om Prakash Yadav, P.W.22-Ravindra Singh Yadav, P.W.23-Dr. G.G. Gopaldas, P.W.26-Rampal Sharma, P.W.27-Anek Pal, P.W.28-Ram Swaroop, P.W.32-

Siyaram, P.W.33-Amal Sarkar, P.W.37-Surendra Kumar, P.W.39—Rajjab, P.W.44-D.P. Awasthi, P.W.48-Narayan Singh, P.W.50-Trilok Singh, P.W.51-Mahendra Singh Chandel, P.W.54-Constable Kunwar Singh, P.W.57-Dayan Singh Lakshpal, P.W.58-Harkesh Singh, P.W.61-Naresh Pal Singh, P.W.62-Gopal Singh, were examined as witnesses of manipulation of records; P.W.8-Avijit Dey, P.W.23-Dr. G.G. Gopal, P.W.25-Sudesh Lal Makkhi, P.W.31-Dr. Vipul Kumar, P.W.49-Dr. P.K. Singh, P.K.60-Dr. G.D. Gupta, P.W.65-Dr. S.K. Chaddha, P.W.66-Dr. S.C. Mittal and P.W.67-Dr. Satyapal Khanna were examined as expert witnesses; P.W.29-G.C. Prabhakar, P.W.63-Randhir Singh Punia, P.W.64-Devan Singh Dagar, were examined as witnesses of investigation; and P.W.19-Gurucharan Singh, P.W.42-Dhruv Kumar Singh, P.W.45-Diwan Singh Rawal, P.W.43-Jitendra Sonkar, P.W.46-Pratap Singh, P.W.47-Anil Kumar, P.W.53-Sohan Lal, P.W.55-Netrapal Singh, P.W.56-Naresh Chandra and P.W.59-Hind Prabhat Singh, were examined as miscellaneous witnesses.

- (22) P.W.1-Brajesh Singh, who was posted as A.R.T.O. in district Bareilly between September, 1988- July, 1992, had deposed while seeing Paper No. D-3 (i) that Amit Kumar (P.W.5), son of Jagdish Prasad, resident of Pilibhit, moved an application for temporary permit (Ext. 1) w.e.f. 30.06.1991 to 13.07.1991 for plying his vehicle no. UP26/0245 empty from Bareilly to Sitarganj and thereafter from Sitarganj to Patna Saheb and

Huzur Sahab along with the list of passengers (Ext. 2). On the basis of the aforesaid application, temporary permit No. 872 was granted to him on 28.06.1991. After some days from the date of issuance of the aforesaid permit, the then Superintendent of Police (Rural) Dayanidhi Mishra came to his office and enquired about the aforesaid permit and the bus. At that moment, ARTO and office peon Rajan were also sitting there. After that Dayanidhi Mishra requested to give photocopy of the aforesaid permit, upon which he and ARTO (Administration) Pandey asked the concerned Clerk to supply the photocopy of the aforesaid permit to the Superintendent of Police Dayanidhi Mishra. At that time, D.P. Yadav was posted as R.T.O.

On the next day, concerned Clerk Ranbir wrote an application to R.T.O. informing him that in place of original list of passengers, photocopy of the same was annexed with the application. After that the R.T.O. asked him (P.W.1) to give his report. In pursuance thereof, he (P.W.1) submitted his report, stating therein that on the request of the Superintendent of Police (Rural), Bareilly, photocopy of the carbon copy of the list of passengers was made by office peon Rajan on the direction of him (P.W.1) and Pandey, however, on the next date, he came to know that the original carbon copy did not reach to the office and as such, he immediately contacted the Superintendent of Police (Rural), who informed him that he had

only photocopy of the carbon copy of the list and not original carbon copy.

P.W.1 had deposed that original carbon copy of the list of passengers was tagged with the file when Dayanidhi Mishra was shown the file. He further deposed that the purpose of the passenger list is that when enforcement officer checks the vehicle, then, it could ascertain whether genuine passenger is travelling or not. He also deposed that Police Officer could also check the vehicle.

In cross-examination, P.W.1 had stated that he had not handled paper no. D-3 (I) nor he had issued any direction on it. He had no knowledge about the writing or cutting of numbers in the corner of the document nor he had any knowledge as to who had cut after writing in between point no. 6 to 8. He had no role officially in issuance of the aforesaid permit but he could also issue permit officially. He further deposed that permit section was the official custodian of the application.

P.W.1 had also deposed that he had not issued direction to Rajan to get the photocopy of the document but it was issued by ARTO (Administration). When the Superintendent of Police (Rural) came, he was sitting there. This fact was stated to C.B.I. during investigation. He also deposed that while giving official record to Superintendent of Police (Rural), no application was taken from him. When photocopy was handed

over to Superintendent of Police, he was not present and therefore, he could not say whether receipt was taken from him while supplying the photocopy of the document or not.

P.W.1 had further deposed that passenger list was not easily legible, however, it could be read. He denied the suggestion that passenger list in the shape of carbon copy was not annexed with the application and photocopy of the passenger list was only annexed, which has been presently tagged.

(23) P.W.2-Ranvir Singh, who was posted as Senior Clerk in RTO, Bareilly in 1984, deposed that he was assigned the work to issue temporary permit of buses. On 28.06.1991, the bus owner Amit Kumar (P.W.5) had applied for temporary permit of bus No. UP26/0245. He proved the temporary permit issued by him w.e.f. 30.06.1991 to 13.07.1991 of the aforesaid bus handed over to the owner of the bus. At that time, Brajesh Singh was posted as A.R.T.O. Enforcement, Bareilly, who sought information regarding the permit of the aforesaid bus and also directed him to bring the file. In pursuance thereof, he brought the file. At that time, A.R.T.O. (Administration) Pandey and R.T.O. D.P. Yadav were present there. He handed over the file to R.T.O. D.P. Yadav and went from there. He deposed that after two hours, when the file was returned to him, then, he noticed that in place of original carbon copy of passenger's list, photocopy of the same was tagged in the file.

In this regard, a note (Ext. Ka. 5) was forwarded to A.R.T.O. Brajesh Singh.

P.W.2 had also stated that the permit was sought from Bareilly to Sitarganj (empty) and Sitarganj to Patna Sahib-Huzur Sahib and back and it was issued. The permit was prepared in one copy and entry of the same was made in the register and handed over to the owner the vehicle.

On 04.06.2003, the cross-examination of P.W.2 was deferred on account of the fact that the Hon'ble High Court in Criminal Misc. Case No. 614 of 2003 directed not to compel the accused to cross-examine the witness. After that another opportunity was granted to the accused to cross-examine P.W.2 on 14.07.2003 but the learned Counsel for the accused refuted to cross-examine P.W.2 on account of non-supply of documents and petition before the Hon'ble High Court.

However, on 28.01.2009, the cross-examination of P.W.2 was made, wherein he had stated that in the passenger list, name of passengers, their age and number of passengers were mentioned. The name of Sardar Amarpal Singh aged about 60 years was mentioned in the first number of the list of passengers and in column of his name, four passengers were endorsed. The second name of Dyan Singh aged about 65 years was mentioned and the third name of Amrik Singh aged about 62 years was mentioned in the list of passengers. The name of

all the passengers mentioned in the list of passengers was not readable. The lowest age of passenger was written as 31 years in the list of passengers and no passenger younger than 31 years was on that list. According to the list, total number of passengers traveling in the bus was mentioned as 45. The permit Ext. K.6 was valid w.e.f. 30.06.1991 to 13.07.1991. The carbon copy of the list was taken away by Superintendent of Police (Rural), Bareilly and photocopy of the original carbon copy of the list was with him. This list was handed over in R.T.O. Office on 28.06.1991.

(24) P.W.3-Santosh Singh, who is the father of deceased Mukhvinder Singh alias Mukkha (encountered in Pattabojhi forest falling in the jurisdiction of police station Puranpur), had deposed in his examination-in-chief that he is an agriculturist. He had two sons, namely, Mukhvinder Singh alias Mukkha (deceased) and Harjinder Singh. In 1991, Mukhvinder (deceased) was aged about 23 years and he went from the house for Huzur Sahib. At that time, Mukhvinder (deceased) was doing the work of Carpenter and he told that he would return on 16-17 July, 1991. Mukhvinder (deceased) had also informed him that he would also visit Nanakmatta.

P.W.3-Santosh Singh had deposed that when his son Mukhvinder (deceased) did not return on 17.07.1991, then, he made efforts to search him and he also went to the police station, wherein the police had informed that photo was

published in the newspaper and his son might have been killed. Thereafter, he came to know from the newspaper that his son Mukhvinder, who was shown as Vichitra Singh as well as Kartar Singh and Jaswant Singh of his village who also went to Huzur Sahib along with his son from bus, were shown dead. He further deposed that all three were not terrorists. He identified two photos (paper/photo no. D-174/1 and D-174/2) of his son Mukhvinder Singh (deceased) as well as paper/photo No. D-175/1 of Randhir Singh (deceased), Jaswant Singh (deceased) and Kartar Singh (deceased).

P.W.3-Santosh Singh had further deposed that one Inspector of Pilibhit came to his village and showed him Photo D-174/2, upon which he identified his son (deceased Mukhvinder). He also identified the photo No. 4 of Jaswant Singh (Ext.3). He further deposed that earlier his son Mukhvinder (deceased) was doing the work of Carpenter in Jammu, however, later on he was doing it in the village. He also deposed that A.C.J.M. Pilibhit summoned him in the Court, wherein his statement was recorded and he also identified the photo of all four persons. He further deposed that no case has been registered against his son in the police station. He proved the signature of Kartar Singh (deceased) on the register (paper No. D-6) of Gurudwara Langar Sahib, Nanded. He deposed that his son and his other three friends were killed in a fake encounter.

P.W.3-Santosh Singh, in his cross-examination, had deposed that his statement was recorded by the C.B.I. Officer but he did not state anything about his son Harjinder to C.B.I. His son Mukhvinder (deceased) was unmarried and was doing the work of carpenter. He further deposed that he is a heart patient; he is illiterate and he could only write his name in ‘*gurumukhi*’; he has cataracts; he could not read ‘*gurumukhi*’; and he could also not read ‘*gurumukhi*’ prior to it. He further deposed that he could not identify any photo because at that moment, he saw one of three. First of all, the Inspector of Pilibhit had shown photo and at that moment, he identified the photo and after that he identified the photo in Court. He denied the suggestion that as there was cross in the register and some of the photos were not identifiable, therefore, he is not telling the right reason by making a false excuse of cataract.

(25) P.W.4-Ajit Singh, who is the father of deceased Harmendra Singh alias Minta (killed in encounter in Dhamalkuan forest falling in the jurisdiction of police station Neuria) and father-in-law of Swarnkaur (P.W.11), had deposed in his examination-in-chief that he had two sons, namely, Harmendra alias Minta (deceased) and Sukhvinder. His elder son Harmendra alias Minta along with his wife Swarnkaur (P.W.11) with whom he married just six months’ back, went as pilgrim to Nanakmatta (U.P.) in the month of *baisakh* from Delhi. From Nanakmatta, his elder son wrote a letter to him that he is going to Huzur

Sahib from Nanakmatta and he would return on 15-16. After that he came to know that the pilgrims who had gone to Huzur Sahib were killed, then, he along with his son went to the house of Yashpal Singh, wherein newspaper was shown to him, in which the photo of the persons killed in encounter was there and he identified the photo of his son. He identified the photo (Paper No. 175/2) (Ext. Ka. 8 & 9) of his son Harmendra Singh (deceased) and his wife Swarnkaur (P.W.11). He further deposed that against him or his son, not a single F.I.R. was lodged in the police station and the police had shown fake encounter.

P.W.4-Ajit Singh had further deposed that when he came to know about the incident, he met with S.S.P., Gurdaspur and C.O. Gurdaspur and also enquired from them regarding pendency of any case against him or his son. After that he went to Pilibhit, wherein he met with Advocate Bhagwant Singh. Thereafter, he went to the Court of ACJM, wherein his statement was recorded and he identified the photo of his son. After that, the marriage of his daughter-in-law Swarnkaur was solemnized with his younger son Sukhvinder because she had a small daughter. He also deposed that he came to know about the killing of other persons including his son for the first time from newspaper and after that he came to know about the whole incident when he reached Pilibhit.

In cross-examination, P.W.4-Ajit Singh had deposed before the trial Court that he denied the suggestion that F.I.R. No. 70 of 1990, under Sections 452, 147, 148, 149, 302 I.P.C., Sections 25/54/59 of the Arms Act and Section 3/4 of the TADA Act; F.I.R. No. 115 of 1990, under Sections 395, 396, 397, 148, 149 I.P.C., Sections 25/24/29 of the Arms Act and Section 3/4 of the TADA Act; and F.I.R. No. 152 of 1990, under Sections 147, 148, 149, 302 I.P.C., Sections 25/54/59 of the Arms Act and Section 3/4 of the TADA Act, were lodged against his son Harmendra alias Minta at Police Station Dhariwal on 08.05.1990, 21.08.1990 and 26.11.1990, respectively. He further deposed that except his son, he did not know about other killed terrorists nor he could make effort to know about them. He also denied the suggestion that his son Harmendra Singh alias Minta was actively participating in terrorist activities in the year 1990 within the jurisdiction of police station Dhariwal, District Gurdaspur. He also denied the suggestion that his son came to Pilibhit from Punjab on account of avoiding his arrest by the police and involvement in terrorist activities. He also denied the suggestion that Swarnkaur (P.W.11) was also involved along with his son Harmendra Singh (deceased) in terrorist activities.

P.W.4-Ajit Singh had further deposed that his son Harmendra Singh *alias* Minta left home on 15th -16th of the month of ‘Jyesth’ for pilgrimage and this was also stated by him to the

Investigating Officer but the same has not been written by the Investigating Officer in his statement under Section 161 Cr.P.C. He also stated that his son went to Delhi for enquiry about going to abroad as well as pilgrimage. He further deposed that he gave Rs.10,000/- to his son after selling the land, however, he did not know how much amount out of Rs.10,000/- he took out.

P.W.4 had further deposed that Huzur Sahib is nearer from Punjab but as Harmendra (deceased) had some work in Delhi, therefore, he went to Huzur Sahib via Delhi. His son went to see Nanakmatta, which was the part of his visit. He further deposed that news was published that while returning from Huzur Sahib, some people including Harmendra were killed. After 2-3 days of reading this news, he went along with his daughter-in-law to Pilibhit. After that he went to leave his daughter-in-law to home. He had shown the photo (Ext. 8 (D-145/2) to Shri Sodhi Advocate, who had filed his case before the Apex Court, however, he did not tell the Investigating Officer of the same because it was not asked from him by the Investigating Officer.

(26) P.W.5-Amit Kumar, who is the bus owner of the bus no. UP26/0245, had deposed before the trial Court in his examination-in-chief that his travel agency New Hindustan Travels Company, is situated in Chatri chauraha, district Pilibhit, which was looked after by him, his father Jagdish

Prasad and his brother Anil Kumar. He could not ply the bus No. UP26/0245 on any route but it was kept only for booking of reserve party and marriage party. On 20.06.1991, Talwinder Singh came to the office of his Company and asked him of a bus for going to Huzur Sahib, Patna Sahib and Nanded. He was also told by Talwinder Singh that bus would go on 29.06.1991 and would return on 12.07.1991. In this regard, he informed Talwinder Singh about fare of Rs.30,000/- of the bus. After that, Talwinder Singh gave him Rs.500/- in advance along with the list of passengers in two sets. After that he went to R.T.O., Bareilly and applied for temporary permit of bus no. 26/0245 from 30.06.1991 to 13.07.1991 (Ext. Ka. 6) by enclosing two sets of the list of passengers. After that temporary permit was granted to him.

P.W.5 had further deposed that on 29.06.1991, Talwinder Singh came and he gave temporary permit to him and a copy of temporary permit was also given to the driver of the bus Mushraff. Thereafter, the bus driver went to pick up the passengers and Talwinder Singh, after returning, gave Rs.29,500/-, of which he gave receipt thereof. He deposed that the receipt was prepared in three sets. The original receipt was handed over to Talwinder Singh; the carbon copy of the receipt was handed over to his driver; and third copy of the receipt was enclosed in his office record, which was given to the C.B.I. He

[41]

proves the receipt (Ext.Ka.7), wherein signature of him and Talwinder Singh were there.

PW.5 had further deposed that the bus had left in the evening of 29.06.1991 and it was plied from Company office. The list of passengers was necessary to be attested from any M.L.A., M.P. or Block Pramukh and record regarding the bus was in the old R.T.O. Office. He deposited Rs.320/- for temporary permit. The driver of the bus was Mushrraf, who was resident of Moradabad. He also knew the two *sadu* of Mushrraf, who were also driver. When the driver came by picking up the passengers from Sitarganj, then, 25-26 passengers were in the bus. He gave documents and Rs.20,000/- to the driver of the bus. After that the bus left with passengers and Talwinder Singh. This bus was to return either on 12.07.1991 or 13.07.1991.

P.W.5 had further deposed that in the morning about 8:00 or 08:30 a.m. of 13.07.1991, driver Mushrraf came and told him that the bus was standing near the office. The C.B.I. had enquired from him. Now, the driver Mushrraf does not work in his company.

The accused was provided opportunity to cross-examine P.W.5 but the accused did not cross-examine P.W.5.

- (27) P.W.6-Shri Ram Singh, who is the Salesman of Bharat Service Centre situated in Assam Road, Pilibhit, had deposed that on 29.06.1991, between 05:00-05:30 p.m., the bus of Hindustan

Travels came and after taking diesel left from his Service Centre. Some passengers were in the bus.

(28) P.W.7-Jasbir Singh, who is the elder brother of Kuldeep Singh used to serve in Huzur Sahib Gurudwara, Nanded, had deposed in his examination-in-chief that he has three brothers, out of which, he is eldest. His younger ones are Kuldeep Singh and Mahendra Singh. He and his brother Kuldeep Singh have studied till 10th class and they knew Punjabi and Hindi language and also could write, read and speak Punjabi and Hindi language.

P.W.7 had further deposed that around 1990-91, his brother Kuldeep Singh used to participate in service of Huzur Sahib Gurudwara, Nanded. He knew the handwriting of his brother Kuldeep very well. After seeing page no.133 and document no. 6 of the register of Gurudwara Langar Sahib, Nanded, which related to the arrival and departure of pilgrims, booking rooms etc., he deposed that it was his brother's handwriting, which was marked in red circle (Ext. Ka.10) and the same was booked in the name of Kartar Singh.

In cross-examination, P.W.7 had deposed that he has lived in Delhi since the beginning and has studied in Delhi Government Municipal Corporation School, Delhi. His brother Kuldeep Singh is still alive. At the moment, his brother Kuldeep Singh is living with him. He deposed that it is true to say that there is

some overwriting on Ext. Ka. 10 and some cutting and also there is over writing on Ext. Ka. 10 where vehicle number is written. However, he could not say if earlier it had other number and after that it has been changed to another. This handwriting did not occur in front of him nor any entry of the register was made in front of him neither could he even tell when and where the register has been written.

- (29) The evidence of P.W.8-Abhijeet shows that he was posted as Senior Science Officer Grade-II in the year 1993 and 1994 in Central Forensic Science Laboratory, C.B.I., Lucknow. During this period, case property of the instant case including weapons and cartridges was sent to him in ten parts for examination and he had examined the same on 22.09.1993, 04.03.1994, 22.04.1994, 18.05.1994, 07.04.1994, 13.05.1994, 04.03.1994, 05.10.1993, 11.05.1994, 08.04.1994, 13.10.1993 and 29.03.1994. All the reports were typed on his direction and after making corrections, he made signature thereon.

P.W.8 had further deposed that he, after legal examination (Scientific Examination) of the photographs relating to holes of the vehicle in question marked as B-13, B-14, B-6, gave report that all these holes have come due to the bullet. He also deposed that he did not examine the case to the effect that as to which of the weapons sent for the test, holes in the bus in question would have come from as the photographs of three holes nature were taken from other angles.

- (30) The evidence of P.W.9-Ram Kumar shows that around 15-16 years ago, he was coming after planting paddy from the field of Bangali (Haran) and in the cross-road of Richaula Kothi, police called him and boarded him in blue maruti car. On enquiry, he was told by the police that a thief has to be caught. After that he was taken away to police station Neuria, wherein he was told by the police that the police has caught the thief and subsequently, the police got the signature of him on a plain paper. At that moment, a boy, namely, Manohar Lal was also sitting in police station and the police had also affixed his thumb and got signature of him on it. However, he did not know as to whether police brought anyone to police station or not because the matter is quite old. After that on the same date, the policemen after bringing him in the blue car, dropped him on Kachahari crossroad.
- (31) P.W.10-Manohar has stated that after planting paddy in the field and taking food, when he was sitting in his field, then, the police came and brought him to police station Neuria from a vehicle, where the police got his thumb impression on a plain paper.

In cross-examination, P.W.10 had stated that for the first time, he deposed the fact that the police forcefully took his signature on 2-3 papers, in the Court and before that he had not told this

fact to anyone. He denied the suggestion that he deposed falsely on account of pressure of C.B.I.

(32) P.W.11-Swarnjeet Kaur, who is the wife of Harmindra Singh Minta (deceased), had deposed before the trial Court in her examination-in-chief that she went to pilgrimage at Nanakmatta, Patna Sahib (Bihar) and Huzur Sahib Maharashtra. She and her husband Harmindra Singh alias Minta (deceased) sat in the bus from Nanakmatta. She deposed that about 25-26 persons were also in the bus. After 12-13 days of the visit, the bus came back.

P.W.11 had deposed that when the bus was returning on 12.07.1991, then, the policemen stopped her near the barrier of a very big river bridge, wherein many policemen climbed into her bus and deboarded 10-11 young Sikhs from the bus and 2-3 old people, children and women were allowed to sit in the bus. Thereafter, some policemen sat in her bus and some policemen boarded the young Sikhs in their bus. After that, the policemen were roaming her bus here and there and did not even allow stopping to use bathroom. Then, in the evening, her bus was left to Pilibhit Gurudwara and she did not know where their fellow Sikhs have been taken away by the policemen. In the night, she stayed in Gurudwara and in the morning, she asked a *Sewadar* to telegram her father-in-law in Punjab. After receipt of telegram, her father-in-law came from Punjab and took her to

her house, where her father-in-law told her that her husband was killed.

When a photograph was shown to P.W.11, then, objection was made by the learned Counsel for the defense/convicts/appellants to the effect that it is a secondary evidence and is not admissible in Court nor it was given to accused under Section 207 Cr.P.C. On this objection, trial Court observed that this objection has to be decided during the course of analysis of evidence. Thereafter, P.W.11 was shown the photographs of D175/1, D175/2, D175/5, D175/6, D175/7 and D176/3, then, P.W.11 had identified the photo of her husband Harmender Singh Minta in D175/1; her photo and her husband's photo in D175/2; her photo in D175/5; her photo and her husband's photo in D175/6; her photo in D175/7; and her husband's photo in D176/3. She further deposed that these photos were taken during the course of pilgrimage.

In cross-examination, P.W.11 had stated that as on date, she was not a widow as now her husband is Sukhvinder Singh who is the younger brother of her deceased husband. After one year of her husband Harmindra Singh's killing, her second marriage was solemnized. The name of her father and her father-in-law are Ajit Singh (P.W.4). The distance between her father's house and the village of her father-in-law Satkoha is 15-20 Kms. Her marriage was solemnized with Harmendra Singh (deceased) in the month of February, 1991. She further deposed that her

husband Harmendra was studying in 11th Class and was doing the work of agriculture. After marriage, her husband wanted to go abroad after getting a passport. The passport of her husband was made and she showed her husband's passport to the C.B.I.

P.W.11 had further deposed that firstly she went to Amritsar and after that she went from Amritsar to Delhi, however, she did not know when she went from Amritsar to Delhi as it was a matter of 14-15 years ago. She further deposed that she went to Delhi from Amritsar in the month of June. She also deposed that she left from Amritsar to Delhi via train without any reservation in the evening and she reached Delhi in the morning, wherein she stayed 2-3 days and visited Seeshganj, Rakabganj and Bangla Sahib and in all three days, she stayed in Sheeshganj Gurdwara. She further deposed that C.B.I. had recorded her statement. She had stated to C.B.I. that she came from Amritsar to Delhi for darshan of Gurudawaras but she did not know whether she told the C.B.I. that she saw Gurudwaras, or not. She further deposed that she did not know whether Rakabganj Gurudwara is in New Delhi or old Delhi because big incident happened against her. She further deposed that she did not know to whom Harmendra Singh Minta went to meet in Delhi because she stayed in Gurdawara. She also stated that she went from Delhi to Nanakmatta through rail without any reservation.

P.W.11 had further deposed that the bus was big and in the bus, there was 25-26 passengers but she did not remember whether

the bus was full or not. She also did not remember as to whether she stated to C.B.I. that 25-26 passengers were in the bus. She also did not remember that out of 25-26 passengers, how many men; how many women; and how many children were travelling in the bus. She had also stated that after coming from Huzur Sahib, she did not go to Nanakmatta but she went to Pilibhit Gurudwara, wherein the policemen had left her by bus. On the next morning, she sent a telegram to her father-in-law through *sewadar*. In the telegram, she had written that her husband was caught by the police and she was in the Gurudwara. She did not give any money to *Sewadar* for telegram nor *Sewadar* had asked for it. She was crying at that time. The *Sewadar* did not give her the receipt of the telegram nor she demanded it from him.

P.W.11 had also stated that in these 2-3 days, thousands of persons visited the Pilibhit Gurudwara but she did not hear from them in these 2-3 days that 10-11 Sikhs were encountered by the police, may be, because she was almost crying and was already upset. She did not tell in these 2-3 days to any granthi or any Sardar that her husband was caught by the police nor she made request to any one to get her to higher police officers because in the meantime, other women kept on supporting and telling her that the policemen first catch and thereafter leave the person.

P.W.11 had further deposed that she came to know about the killing of Harmindra Singh by the police when she reached her home in Punjab with her father-in-law. She stated that when her father-in-law started crying after getting off the rickshaw, then, she came to know her husband had died. She further deposed that she does not remember that whether she gave statement to C.B.I. that the day when the police had dropped her in Pilibhit Gurudwara in the night, she thought that the police would leave her husband too but only a day after, it came to be known from the newspaper that her husband and other police personnel arrested many Sikhs and encountered them. She also deposed that the name of her husband Harmendra alias Minta was neither entered in any police station nor he had any criminal history nor his name was in the list of declared terrorist nor she was the member of any group of terrorist.

(33) The evidence of P.W.12-Ramkumar shows that in the year 1993, he and his father were doing the work of planting rice in the farm of Balkar Singh. During lunch hour when he was having lunch, the police vehicle came and brought him and his father to Neuria police station, wherein the police took his signature.

In cross-examination, P.W.12-Ram Kumar had deposed that he is an illiterate person, therefore, he could not tell which year is going on. He further stated that he told the C.B.I. that he was not literate, however, he only put signature.

(34) P.W.13-Balwinderjeet Kaur alias Lado, who is the wife of deceased Baljeet Singh alias Pappu, had deposed before the trial Court that she along with her husband Baljeet Singh alias Pappu, brother-in-law Jaswantar Singh and mother-in-law Surjeet Kaur went to pay darshan of Nanakmatta (Nainital) on 29.06.1991 by bus. She further deposed that in the bus, 25-26 passengers were traveling, out of which there were 10-11 young Sikhs, 2-3 old persons, 2-3 children and rest women. They were travelling for about 12-13 days and in these days, they visited Nanakmatta, Patna Sahib, Huzur Sahib, Nanakjeera and other Gurudwaras. When they were returning from pilgrimage on 12.07.1991, then, around 9-10 a.m., some policemen stopped the bus on a bank of a river, wherein a big bridge was lying. After that 8-10 policemen got into her bus through both the doors of the bus and took off 10-11 young Sikhs including Baljeet Singh Pappu and her brother-in-law Jawant Singh and boarded them in the blue colour police bus. After that the police sat on her bus and were roaming the bus whole day here and there and in the evening they were dropped in Pilibhit Gurudwara. The policemen told them that they were deboarding the Sikhs terrorists from the bus, therefore, do not tell anyone about it.

P.W.13-Smt. Balwinderjeet Kaur alias Lado had further deposed that when the policemen deboarded the Sikhs, then, 2-3 Sikhs ran after escaping from the police, however, villagers caught

them and handed them over to the police. The policemen abused and threatened her a lot and on being asked, the policemen told her that after investigation, they would leave her husband. At that time, they had cameras but the policemen snatched them. She identified the photographs of his brother-in-law Jaswant Singh Jassa (D-176/1) and Bajeet Singh Pappu (D-176/2).

In cross-examination, P.W.13-Smt. Balwinderjeet Kaur alias Lado had deposed that her marriage was solemnized with Baljeet Singh (deceased) out of her sweet-will on 12.12.1990. She admitted the facts that in the month of September, 1990, while sitting in her courtyard, she was weaving *chadar* and all of her family members had gone outside the house for work and she was alone. On finding her alone in the house, some unknown persons came with Maruti Van and brought her to unknown farm house, wherein Baljeet Singh *alias* Pappu was present and Baljeet Singh *alias* Pappu older than her told her that he want to marry her. At that time, she was not screaming while sitting in Maruti Van. She deposed that her family members did not want to marry her with Baljeet Singh *alias* Pappu, therefore, she solemnized marriage with Baljeet Singh *alias* Pappu out of her sweet-will. She stated that she did not solemnized the marriage with Baljeet Singh *alias* Pappu because she was forcibly taken by the men of Baljeet Singh *alias* Pappu or because of the pressure of Baljeet Singh *alias*

Pappu but she got marriage with Baljeet Singh alias Pappu as her family members did not want her to marry with Baljeet Singh alias Pappu.

P.W.13 had further stated that she was brought by the men of Baljeet Singh alias Pappu before fifteen days of her marriage. After bringing her, she was taken away at Tataiya Khurd, Nawabaganj, district Bareilly, where the sister of Baljeet was living and they lived for some time there, however, she could not tell how many days she lived there. She further stated that from the house of the sister of Baljeet, she and Baljeet left for Nanakmatta Gurudwara, Nainital, where they stayed for some time with fake names Simarjeet and Sukhdev. She further stated that their marriage was solemnized in Nanakmatta Gurudwara and the family members of Baljeet were ready for their marriage they and sister of Baljeet who lived in Tatatiya Khurd, Bareilly were not coming at the time of marriage. She stated that when she and Baljeet reached the house of the sister of Baljeet at Tatatiya Khurd, the sister of Baljeet was not present as she went to Punjab in relation to the marriage of her son. She stated that because she and Baljeet did love marriage, hence they wrote down their fake name in Nanakmatta in order to conceal their identity. She did not know how many criminal cases were registered before the marriage and after marriage against Baljeet. She also did not know whether case of murder, snatching, TADA and dacoity was lodged before the marriage

upon Baljeet or not. She stated that at the time when she was brought from her house, terrorism has spread a lot in Punjab, Pilibhit, Nanital, Udhampur Singh Nagar and *tarai* of Bareilly. She denied the suggestion that Baljeet Singh was a named terrorist in police station Dhariwal, district Gurudaspur because of which he was not living with his father at village Arjunpur and was involved in terrorist activities in *tarai area* of Bareilly. She also denied the suggestion that she was the active member of the terrorist gang of Baljeet Singh and was living with the active members of Baljeet Singh's gang in *tarai area*. She also denied the suggestion that the Government of Punjab gave a job because she was the member of a group of terrorists and her husband was a named terrorist and after the murder of her husband, job was given to her under the settlement scheme. She further stated that the name of her brother-in-law was Jaswant Singh alias Jassa alias Bijli.

P.W.13 had further deposed that they did not stay in Nanakmatta Gurudwara but they came there only for darshan. They came to know at Nanakmatta Gurudwara that one bus for pilgrimage was to go on 29.06.1991. She further stated that on 29.06.1991, they came at Nanakmatta Gurudwara and on that day, they went for pilgrimage tour. She further stated that they came from Punjab through rail without reservation. After Nanakmatta Gurudwara, they reached Pilibhit and on the date itself, they went from Pilibhit to Banaras, where they stayed for

about one day but she could be tell the timing of reaching Banaras.

P.W.13 had denied the suggestion that her husband, brother-in-law and other Sikhs were killed in police encounter on account of their involvement of terrorist activities.

- (35) P.W.14-Shri Ishwarchand Sharma, who conducted the '*panchayatnama*' of four unidentified dead-bodies of Phagunaighat forest area, police station Bilsanda, had deposed that in the year 1991, he was posted as Sub-Divisional Magistrate, Bhisalpur, district Pilibhit. On 13.07.1991, he received a message in the wireless set installed in his jeep that encounter of terrorists took place in the area of Bilsanda, therefore, S.D.M. be sent for '*panchayatnama*'. On receipt of the aforesaid message, he reached at the place of the incident, wherein Anis Ahmad (convict/appellant), Inspector of Kotwali Bhisalpur, met and told him that he sent the wireless message to him for '*panchayatnama*' but he stated to him that no wireless message was received by him till time, however, he came on listening the message on the wireless set installed in his jeep, therefore, if it is necessary, then, *panchayatnama* would be conducted by him. After that, Inspector told him that it is necessary to conduct '*panchayatnama*' by him. Therefore, he saw the dead-bodies lying on the spot and after seeing the dead-bodies, he prepared the '*panchayatnama*' of it with the help the police and put signature thereon. He stated that deceased were

four in number and all the four were Sikhs. The photograph of the dead-bodies were not snapped in his presence. He sent the letter for post-mortem in district headquarter because the post-mortem would be conducted in Pilibhit. No permission was obtained from him regarding the cremation of the dead-bodies of the deceased. He proved the document nos. D-60/3, D-60/4, D-60/6, D-60/11 and D-61/3, D61/5, D61/10, D61/11 and D-62/3, D62/4, D62/5, D62/10 and D63/3, D63/4, D63/5 and D63/10.

In cross-examination, P.W.14 had deposed that S.D.M. or Magistrate had only concern to fill *panchayatnama* and had no concern with the post-mortem or cremation of the dead-bodies, hence no permission was required to be taken in this regard. He further stated that he took five *panchas* from the gathering whose name were reduced in the *panachayatnama* and their statements were recorded. Out of five panchas, the name of one ‘panch’ was Sardar Jaswinder Singh and another one was Sabran Singh.

- (36) P.W.15-HCP Mewalal Yadav had deposed before the trial Court in his cross-examination that in July, 1991, camp of his Company (15th Battalion PAC, Agra) was on tehsil in front of police station Puranpur. In the intervening night of 12/13.07.1991, a Constable from the police station Puranpur came to his camp and told to his Major that encounter is going on, hence he would have to go on duty. After that Major woke

him up and on the direction of C.C. Shri Badri Prasad Verma, he went to police station Puranpur, wherein he told the Munshi to endorse his ‘entry’, upon which the Munshi told him that Inspector went towards Bhagwantpur forest area, hence he should go there. After that he asked him (Munshi) to provide a guide but the same was not provided to him and he was asked to go there as Inspector would meet him there. Thereafter, he along with 1½ Section of the armed police of the Company went towards Bhagwantpur forest but after some distance from the police station, the big bus of PAC bogged down on the bridge, hence whole section of the Company proceeded to go by foot from there. However, they reached there in the morning at about 5-5:30 a.m.

P.W.15, in cross-examination, had deposed that entry and exit have been recorded in the G.D. of the Company. He stated that the days in which the incident has taken place, terrorism was in full swing in district Pilibhit and policemen wearing police uniform were not moving alone. He heard that terrorist looted a Bank before the incident.

- (37) P.W.16-Om Prakash Yadav, in his examination-in-chief, had deposed before the trial Court that on 16.04.1974, he was appointed on the post of ‘Sipahi’ in Central Reserve Police Force. In July, 1991, his Company 25th Vahini was posted in district Pilibhit. The platoon was posted in police station Madhotanda, wherein he was also posted. At that time, he was

Lans Nayak and his Commander was H.C. Chajjuram. On 13.07.1991, at 02:00 a.m. in the morning, Constable Chajjuram told that they have to go on special operation, therefore, they should prepare for duty. After that he along with Constable Chajjuram, Lans Nayak Amal Kumar, Constable Ashok Kumar, Constable Subodh Nath, Constable Jasbir Rathi and also S.I. M.P. Singh of police station Puranpur went towards Puranpur. When they reached at police station Puranpur, S.I. M.P. Singh left the jeep outside the police station Puranpur and went inside the police station Puranpur. After some time, SI M.P. Singh and Inspector Vijendra Singh came from police station Puranpur and went towards Pattabhojhi forest from the same Jeep. Before one kilometre from the forest, Jeep was stopped and all of them were going by foot towards forest. After that SI M. P. Singh had deployed him in left portion of the forest before 30-40 yards before the start of forest area and directed that if any terrorist or suspicious men are seen coming from the forest area, then anyhow they should not be allowed to go outside and if necessary, fire may also be opened. S.I. M.P. Singh had also told him that around 400-500 yards ahead, Uttar Pradesh Police, S.T.F., P.A.C. had laid ambush. At that time, it was around 03:15 a.m. Thereafter, S.I. M.P. Singh and Vijendra Singh went towards the forest on foot. After 15-20 minutes of their departure, sound of fire was suddenly coming and it seemed as if many weapons were being fired. After that, few fires lasted till 05:30 p.m. After the fire stopped, S.I. M.P. Singh came to their Section and

ordered the Section Commander Chajjuram to search the left side of the forest. After ordering this much, S.I. M.P. Singh went back to the forest. While searching, they reached near the raw path of the forest, then, he saw from a distance of 30-40 yards that two Sikh men were lying dead. The distance between the two would be 60-70 yards. At that time, S.I. M. P. Singh ordered to close the section and wait for them outside the forest. Some policemen were also standing on rough road. After that they came outside of the forest and waited for the police. Thereafter, at 10:00 a.m., a Protection Jeep and an Ambassador Car were seen going towards the forest. The Ambassador Car had a red beacon and it was learnt that the Superintendent of Police, Pilibhit had come. After one hour, the vehicle came outside the forest. Thereafter, he also came through Jeep along with S.I. M.P. Singh to police station Puranpur. After that S.I. M.P. Singh brought them to their camp Madho Tanda at 13 hours.

- (38) P.W.17-Kamaljeet Singh had deposed that on 12.07.1991, 05:00 p.m., when he was returning after taking fertilizer from M/s Lalit Hari Sugar Factory, Gajraula through tractor-trolley, Railway Crossing situated in Mala Railway Station was closed, therefore, he stopped his tractor trolley and saw police vehicles there. He stated that two Jeeps, which was opened from three sides, were standing forefront, in which armed police personnel were sitting and behind it, TATA-407 was standing, in which

some Sikh persons and police personnel were sitting and behind it, vehicle of PAC was standing, wherein also his tractor trolley was standing. After 10 minutes, railway crossing was opened and first of all, police vehicles crossed the railway crossing and after that he crossed the railway crossing. On the next day, he read in the newspaper that some terrorists were killed by the police in encounter.

- (39) P.W.18-Gurmez Singh had deposed on 17.10.2007 before the trial Court that he was posted at Mala Range in Forest Department between 1985-86 to 1997. On 12.07.1991, he was posted at Richaula Gate in Forest Barrier. His duty was between 04:00 p.m. to 12:00 p.m. Around 05:00 p.m.-05:30 p.m., he saw 3-4 police vehicles coming, which were going from railway crossing towards Madhotanda via Richaula, out of which in one vehicle, some policemen and some Sikhs were there. Their face was covered and their hair was open. They were Sardar and they had beard. The policemen were armed with firearm. One vehicle was in blue colour.
- (40) P.W.19-Gurucharan Singh had deposed before the trial Court on 07.11.2007 that he under the partnership of his elder brother Kuldeep Singh was running a Firm, namely, Punjab Gun House situated in Station Road, Pilibhit, for selling gun, cartridges etc. to the license holder. On seeing the document No. D-1-6/1, which is a cash memo No. 2005 dated 19.05.1978, he stated

that 12 Bore of S.B.B.L. Gun No. 57729 was sold out to Sukhdev Singh through cash memo no. 2005 dated 19.05.1978.

In cross-examination, P.W.19 had stated that he did not take photocopy of license from Sukhdev Singh because at that time, photocopy did not happen. He had not kept copy of the license in his record. He sold out new gun, which was purchased by him from Punjab Gun House, Bareilly and the record of the same was available in his home but as the same was not asked to be brought, hence he has not to bring it. The license on which he sold the gun was of all India, therefore, he sold the gun. The license number was 128/SAD/78, which was valid upon 31.12.1978, however, he had no knowledge when the license was issued but it was issued from D.M., Tripura (West). The address which was mentioned in the license was 207, M.T.N. Regiment C/O 99 A.P.O., P.S. Raidhara Village Sultan Pahal Amritsar. He had not verified the license before selling the gun. He did not send any information of sale of the gun to the D.M. Tripura (west) and D.M. Amritsar on this license but he only sent information regarding sale of this gun to S.P., Pilibhit and except him, no one was informed by him about sell of it. He proved Ka-22/3, which was the Sales Certificate for selling cartridges to Sukhdev Singh.

- (41) P.W.20-Bhagwat had deposed before the trial Court on 11.01.2008 that he was posted in Mala Railway Gate, district Pilibhit from 1987 to around 1994. On the direction of Station

Master, he closed the railway gate on arrival of rail and opened the gate on departure of rail. He proved the facts that on 12.07.1991, for the first time, he closed the railway gate around 04:40 p.m. and opened it around 04:55 p.m. and after that he closed the railway gate at 05:40 p.m. and opened it at 06:00 p.m.

In cross-examination, P.W.20 had deposed that he can neither speak English nor write English. He never gave any statement in English to anyone in his life. The police had not recorded his statement, however, C.B.I. took his statement.

- (42) P.W.21-Brajesh Kumar had deposed before the trial Court on 01.08.2009 that in the year 1991-92, he was posted as Head Wireless Operator in district Pilibhit. At that time, Shri Joshi and S.O. Shri B.D. Sanola were posted along with him. His duty was only to the effect that received wireless message was required to be sent to the concerned officers or persons. On seeing the document No. D-88/2, he stated that this radiogram was the photocopy of the essentiality certified in which there was his signature and a copy of this wireless was sent through S.P., Pilibhit on 08:36 hour. This wireless was transmitted by him to Zone Control, district Bareilly and district Nainital at 09:40 a.m. and 10:30 a.m., respectively. This wireless was also transmitted to district Kheri by P.D. Joshi. The radiogram was sent on priority basis.

In cross-examination, P.W.21 had deposed that he was posted in Pilibhit in the year 1994. The whole record with respect of receiving and passing wireless message of a day between 12 O'clock to 12 O'clock were sent to R.S.O. Office and after six months, all the records were weeded out in the R.S.O. Office. He did not bring the photocopy of the receiving or passing of the wireless message. He further stated that when any question was put to him in English, he could not answer the same in Hindi without understanding the whole thing. He further stated that he never gave any statement to C.B.I. in English. The C.B.I. interrogated him in Hindi, however, he did not know that C.B.I. had recorded his statement in Hindi or English as his statement was not shown to him. His statement recorded in English under Section 161 Cr.P.C. was read out to him, then, he stated that he did not give his statement in English. He also stated that in those days, terrorism of Sikh was prevalent in district Pilibhit.

- (43) P.W.22-Ravindra Singh Yadav had deposed before the trial Court on 23.09.2009 that in the year 1984-2000, he was posted as Block Pramukh in Faridpur, district Bareilly. The related matter was of district Pilibhit and he had no concern with district Pilibhit. Paper No. D-3(II) was shown to him and asked from him whether his signature was in Q-1 and Q-2, then, he stated that this photocopy was neither in his handwriting nor his signature nor the seal on it was of him. After that paper no.

D-109/1 to D109/3 was shown, then, he admitted that it was in his handwriting and signature. He also stated that he very well knew Jagdish Prasad of Pilibhit, who is doing the work of transport and his bus is also running. Shri Jagdish Prasad had never come to him at Pilibhit for attestation.

In cross-examination, P.W.22 had stated that he never gave his statement to any officer of C.B.I. or Investigating Officer in English. He did not know whether C.B.I. recorded his statement in English or in Hindi.

- (44) P.W.23-Dr. G.G. Gopal had deposed before the trial Court on 25.09.2012 that in the year 1989-1994, he was posted as EMO in District Hospital, Pilibhit. In the night of 12.07.1991, he was on Emergency duty and along with him, Pharmacist Shri L.K. Jaiswal was also posted. On seeing the Emergency Admission Register, O.P.D. Register, Medicine issue Register and Bed Head Ticket of 12.07.1991, he stated that on 12.07.1991, at 11:15 p.m., Shri C.P. Singh, the then Station Officer, district Neuria, came to Pilibhit Hospital and complained about abdomen pain, entry of which was made in page no. 57 of the O.P.D. register, which is D-81 (Ext. Ka. 75). On seeing serial no. 6 of page no. 129 (D-79) dated 12.07.1991, he stated that the name of Shri G.P. Singh, S.O., Neuria, Pilibhit and his details were endorsed and it was written in the handwriting of Pharmacist Shri N.K. Jaiswal and there was his small signature. On seeing paper no. D-80, he stated that the complete details of

patient were endorsed, which was in the handwriting of Shri N.K. Jaiswal. On seeing the medicine issue register, he stated that the bottle of Injection Diazepam and Dextrose were given from hospital. The name of Shri C.P. Singh and medicine were endorsed on D-82.

In cross-examination, P.W.23 had deposed that as soon as patient arrives, his entry would be made in O.P.D. register. In the end of 10.07.1991 and above 11.07.1991, three lines were left, in which number of patients of the previous date have been mentioned. He had not prepared O.P.D. register but it was written by concerned Pharmacist. The entry of the name of Shri C.P. Singh in O.P.D. register was at last number 10 and after that no line was left. Serial No. 11 was started from date 13.07.1991, wherein after cutting the time, 11:20 was written but there was no signature of him on it. Above 14.07.1991, five lines were left, in which some calculations were written. He further stated that during treatment, he could not ascertain the reason for abdomen pain to C.P. Singh. He also stated that in the bed head ticket and O.P.D. register, the mark of identification of Shri C.P. Singh was not written nor his thumb impression or his signature was on it. He stated that there was no provision to write the mark of identification of the patient in bed head ticket and O.P.D. register nor signature on it. The number of 1548 mentioned in Bed Head Ticket was related to admission. He further stated that as per admission register, C.P.

Singh was admitted last among the admitted patients. He further stated that discharge of patient was not written in admission register, however, he put the date of discharge on the bed head ticket but he left to endorse the time on it. The medicine mentioned in the bed head ticket was in his handwriting and the details of patient was written by Pharmacist. He also stated that in the medicine issue register, the name of Shri C.P. Singh was written at serial no.1.

- (45) P.W.24-Avtar Singh had deposed before the trial Court on 01.04.2013 that he was doing the work of farming and studied upto High School. On seeing Pilgrimage Register B-6 of Gurudwara Langer Sahib, Nanded, he identified the signature of Kartar Singh on page no. 72. In the army, the name of Kartar Singh was Avtar Singh son of Ajaib Singh. Kartar was his cousin. He saw Kartar Singh while he was writing. He identified the signature of Kartar Singh, which was marked as A1 to A8 on D198/1, D198/2, D198/3 to D198/4, D199/1 and D199/2, respectively.

In cross-examination, P.W.24 had deposed that the name of the father of Kartar Singh was Ajaib Singh. Kartar Singh had served in the army and his name in army was Avtar Singh, who used to serve in army in his original name and the pension was disbursed to him in the name of Avatar Singh. He could not tell when Avtar retired from service. As in the Ration Card, Voter List, his name was Kartar Singh, hence he made the Passport in

the name of Kartar Singh. He further deposed that in the year 1981, Kartar was not in service and Kartar died at the age of 50 years. In 1962, after the war with China, Kartar was recruited and was retired before completion of 35 years. Kartar was recruited at the age of 18-19 years.

P.W.24 had further stated that he could slightly speak English. C.B.I. asked question on ‘Gurumukhi’, then, he answered in Gurumukhi. After that he put his signature on his statement in ‘Gurumukhi’. He did not give statement in English and if his statement was recorded in English, then, he could not tell the reason thereof. He denied the suggestion that Kartar Singh and Avtar Singh were two different person. He also denied the suggestion that Kartar Singh mentioned in D-6 was the resident of Pilibhit (U.P.). He stated that Kartar Singh was not a driver. Ext. Ka. 8 is the form of Fauji Kartar Singh, in which his job was mentioned as Driver. He further stated that he could not tell as to why Kartar Singh wrote his job as Driver. He also denied the suggestion that the aforesaid form was of another Kartar Singh.

- (46) P.W.25-Sudesh Lal Makhi had deposed before the trial Court that he was the expert of examining the disputed documents. In this case, on 30.08.1994, some document was sent by Shri S.K. Bhatnagar, S.P., C.B.I., STC-II, New Delhi to the Director, C.F.S.L., which was scientifically examined by him. On examining the document marked as ‘Q3’, he stated that some

original writing in Q3 document (Ext. Ka.6) was obliterated. He proved the Ext. Ka.30.

(47) P.W.26-Constable Rampal Sharma deposed before the trial Court on 17.12.2013 that on 11.07.1991, he was posted as Constable in G.D. Office, Police Line, Pilibhit. At that time, Head Constable was Umesh Chandra Shukla and three Constables were also posted there. On seeing D-18, he stated that this one is of G.D. of police line. Report No. 11 i.e. departure of force was written by him, which was shown to be departed to unknown place. Two parties left, out of which in one party, Additional S.P. Shri Badri Prasad Singh and in another party Shri Brijendra Sharma, Additional S.P.. On seeing Report No. 54 (D-20 (ii)), he stated that endorsement on it was made by him, wherein Shri Additional S.P. Badri Prasad Singh along with PAC armed personnel were shown to have returned. Vide Report No. 55 dated 12.07.1991 at 23:30 hour, on the direction of S.S.P., PAC Force was departed to police station Neuria and this entry was made by him. On seeing GD dated 12.07.1991 of Police Line Pilibhit and Report No. 56, he stated that he made entry of the same in the GD, wherein it was shown that Constable Driver Hoop Singh along with Additional S.P. returned from operation, out of which, Incharge Inspector Anis Ahmad was dropped in police station Bisalpur and S.I.. Veerpal Singh was dropped in police station Bisanda.

(48) P.W.27-S.I. Anek Pal Singh had deposed before the trial Court that in the year 1991, he was posted as Head Moharrir in police station Puranpur. He proved the report no.20 dated 11.07.1991 (Ext. Ka.33) written by him.

(49) P.W.28-Constable 91 Civil Police Ramswaroop had stated that he was posted as Constable Clerk in police station Bilsanda from 1988 to 1991. He was doing the office work. He proved the report no. 27 (Ext. Ka. 38) written in his handwriting.

In cross-examination, P.W.28 had stated before the trial Court that he could not write English nor speak or read English. He did not give statement to the Investigating Officer in English but he gave statement in Hindi. If the Investigating Officer wrote his statement in English, then, he could not say the reason for it.

(50) P.W.29-J.C. Prabhakar had stated before the trial Court that the investigation of Case Crime No. RC-1/S/93-SIU-5 was entrusted to him on 01.01.1993 by the then S.P. C.B.I./SIC-II/SIU-5 New Delhi. In the first F.I.R. (D-185) of the aforesaid case, there was signature of S.I. Sharad Kumar, which he identified. He also identified the signature of S.I. Sharad Kumar on Crime Case No. RC-II (S)/93-SIU-5 (D-186) and RC3 (S)/93-SIU-V (D-187). He prepared the site plan in Crime Case No. RC-1(S)/93-SIU-V/SIC-II CBI on the spot. During investigation, he recorded the statement of various

witnesses and also collected the concerned documents as well as articles/materials. He proved the production memo D-151, D-155, D-156, D-157, D-158, D-81-82-83, D-160, D-161. On seeing D-94/1 and 94/2 (Inspection Memo), he stated that he inspected the Tempo Traveller (Mini Bus), bearing No. UP-26/0634 in the presence of witnesses, Shri S.K. Bhatnagar, S.P. SIC-II, R.S. Dhankar Dy. S.P. (died), Shri D.S. Dagar, Inspector SIC.

P.W.29 had further deposed that between 1984 to 1995, he was posted as Inspector and Dy. S.P. in C.B.I. Branch S.I.C.-II, New Delhi and during that period, he worked with Shri R.S. Dhankar, Dy S.P., C.B.I. S.I.C.-II, Delhi and he recognized the handwriting and signature of Shri R.S. Dhankar. However, Shri R.S.Dhankar died in the year 2014. He further stated that after completion of investigation in RC1/S/93-SIU-V/SIC, New Delhi, RC-2/S/93-SIU-V/SIC-II New Delhi, RC-3/S/93-SIU-V/SIC-II New Delhi, one charge-sheet was filed by Shri R.S. Dhankar, the then D.S.P./C.B.I./SIC-II and reasons for filing only one charge-sheet was described in the charge-sheet. He identified the signature of R.S. Dhankar on the charge-sheet. The aforesaid charge-sheet was forwarded by Shri Kanwar Balwant Singh, S.P. SIC-II. He also identified the signature of Shri Kanwar Balwant Singh on the charge-sheet.

In cross-examination, P.W.29 had deposed before the trial Court that in page no.1 of Ext. Ka. 39, the name of Shri Chandra Pal

Singh, S.O. P.S. Neuria district Pilibhit was mentioned as complainant. In Ext. Ka. 39, Sections 149, 148, 149, 307 IPC and 25 of the Arms Act was also written and in the place of accused, six unknown Sikh terrorists was written. In similar terms, description was made in both R.Cs, in which some of the offence was of some different Act and the complainant was also different and this description was of police memos. On the basis of these police memos, C.B.I. had prepared the F.I.R. of R.C. He stated that he knew that R.S.Sodhi had filed a petition before Hon'ble Supreme Court but he could not know the averments made thereon by him. F.I.R. was not prepared on the basis of the petition.

P.W.29 had stated that he had not investigated RC 2(S)93/SIU-V. In all three F.I.Rs., the name of public witnesses was not written. The timing of starting entry and ending in the Case Diary was not mentioned by him. He, first of all, recorded the statement of Dr. P.N. Saxena on 18.05.1993, who conducted the post-mortem. In the permit (Ext. Ka.6), it was written as Bareilly to Sitarganj empty and Sitarganj to Patna Sahib, Huzur Sahib. This permit was valid from 30.06.1991 to 13.07.1991. He took the statement of A.R.T.O., Bareilly through Shri Brijesh. He further stated that Shri Brijesh, the then A.R.T.O. told him that D-3 annexed with Ext. Ka.6 was not the carbon copy of the list of passengers, which was given to the Additional S.P. Dayanidhi Mishra but in its place, photocopy of

the different list of passenger was given to him. This was written in the statement of Brijesh Kumar, A.R.T.O. On seeing the statement of Brijesh Kumar, A.R.T.O., P.W.29 had stated that in the statement of Brijesh Kumar, it was not written anywhere that after making forged photocopy of the carbon copy of the passenger list, the same was given to Shri Dayanidhi Mishra.

P.W.29 had stated that even after knowing the fact during the investigation that Dayanidhi Mishra had brought carbon copy of the list of passengers from the office of A.R.T.O., he had not recorded the statement of Dayanidhi Mishra. He stated that the police took the original copy of the list of passengers from owner of the bus and this was written in the statement of owner of the bus. In the list D-3 (2), which was exhibited in the Court, the name of the terrorists who were eliminated in encounter were not mentioned but the list was changed. The list which was proved was forged and copy of same was also given to the accused. On seeing D-3 (II), which was the list of the passengers, P.W.29 had stated that he could not tell whether name of prosecution witnesses Smt. Swarnjeet Kaur and Smt. Balwinderjeet Kaur alias Lado were in the list of passengers or not because the list of passengers was misprint and could not be read. However, he had tried to get the original list of passengers, which the police got earlier. He had not recorded the statement of Santosh and Ajeet Singh. He had recorded the

statement of Smt. Balwinderjeet Kaur alias Lado. He knew about witness Smt. Balwinderjeet Kaur alias Lado from reliable sources. He took the statement of Balwinderjeet Kaur alias Lado while going to Punjab. He further stated that in the whole statement of Balwinderjeet Kaur alias Lado recorded under Section 161 Cr.P.C., the name of the accused, who was challaned, were mentioned because the police personnel had deboarded her husband and other persons but the names of the police personnel were not known. He further stated that during the entire investigation of RC 1(S), identification of the accused from the prosecution witnesses was not made. He had not recorded the statement of P.W.15-Shri Mewa Lal, H.C.P. as his statement was recorded by D.S. Dagar. He also did not record the statement of P.W.16-Shri Om Prakash Yadav, who was the Constable of C.R.P.F. He recorded the statement of P.W.17-Kamaljeet Singh, who did not tell about the number of TATA 407 but he told him about TATA 407. P.W.29 had further stated that he could not make sure from the police line and S.P. Pilibhit that how many TATA 407 vehicles were with the police and what were the numbers, however, other Investigating Officer may have found out.

P.W.29 had further deposed that he recorded the statement of P.W.18-Gurmej Singh after getting information about him from reliable sources. He could not tell at this moment whether

P.W.17-Shri Kamaljeet Singh and P.W.18-Gurmej Singh were the Sikhs or not.

P.W.29 denied the suggestion that he made the Sikhs witnesses during investigation with a dishonest intention. He also denied the suggestion that he has not taken any paper from the shop of Shri Gurcharan Singh, Punjab Gun House and false testimony has been deposed before the Court.

P.W.29 had further stated that the whole document of the investigation of the F.I.R., which he was conducting, was handed over to Shri R.S. Dinkar, Dy. S.P., who, thereafter, filed charge-sheet. In all three cases, Shri R.S. Dinkar was the supervisor.

P.W.29 had further stated that P.W.19-Gurcharan Singh sold his gun to Sukhdev Singh but he could not remember whether he recorded the statement of Gurcharan Singh or not. He also did not record the statement of D.M., Pilibhit in connection with the sale of the said gun.

P.W.29 had further stated that during investigation, he recorded the statement of Constable Kulvinder Singh of Police Station Dhariwal, District Gurdaspur, who informed him about the criminal history of the Sikhs who were eliminated in encounter, namely, Balwinder Singh son of Ajit Singh, Baljeet Singh son of Basant Singh, Jaswant Singh son of Basant Singh and Surjan Singh son of Karnel Singh. He further stated that during

investigation, Head Constable Kulwinder Singh told him that F.I.R. No. 75 of 1986, under Sections 302, 307/34 I.P.C. and Section 25/54/59 of the Arms Act was lodged at police station Dhariwal on 22. 04.1986 against Baljeet Singh alias Pappu and three other accused and in addition, on 12.05.1986, F.I.R. No. 85 of 1986, under Sections 302/34 I.P.C. and Sections 25/27/54/59 of the Arms Act was registered against Baljeet Singh alias Pappu in police station Dhariwal; on 04.09.1986, FIR No. 141 of 1986, under Sections 302/34 I.P.C. and Section 25/54/59 of the Arms Act was registered against Baljeet Singh and three others; on 08.05.1990, F.I.R. No. 70 of 1990 under Sections 302, 452, 148, 149 I.P.C. and Sections 25/27/54/59 of the Arms Act was registered at Police Station Dhariwal against Baljeet Singh alias Pappu, Harmendra Singh alias Minta and six others; on 21.08.1990, F.I.R. No. 115 of 1990, under Sections 395, 396, 397, 148, 149 I.P.C. and Section 25/54/59 of the Arms Act was registered against Baljeet Singh alias Pappu, Jaswant Singh alias Bijli, Harmendra Singh alias Minta and sixteen others; on 10.10.1990, F.I.R. No. 130 of 1990, under Sections 307, 148, 149, 427 I.P.C. and Section 4/5 of the Explosive Act and Section 3/4 of the TADA Act was registered against Baljeet Singh alias Pappu, Jaswant Singh and three others; on 01.11.1990, F.I.R. No. 135 of 1990, under Sections 302, 148, 149 was lodged against Baljeet Singh alias Pappu and six others; on 12.11.1990, F.I.R. No. 147 of 1990, under Sections 302, 452, 148, 149 IPC, 25/54/59 of the Arms Act and 3/4 of

the TADA Act was lodged against Baljeet Singh alias Pappu, Jaswant Singh alias Bijli, Surjan Singh alias Bittu and four others; on 21.11.1990, F.I.R. No. 149 of 1990, under Sections 302, 364, 307 I.P.C. and Section 25/54/59 of the Arms Act and Section 3/4 of the TADA Act was registered against Baljeet Singh alias Pappu, Harmendra Singh alias Minta, Surjan Singh alias Bittu and three others; on 26.11.1990, FIR No. 152 of 1990, under Sections 302, 148, 149 IPC and Sections 25/54/59 of the Arms Act and Section 3/4 of the TADA Act was registered against Baljeet Singh alias Pappu, Harmendra Singh alias Minta, Surjan Singh alias Bittu and three others; on 11.12.1990, FIR No. 155 of 1990, under Sections 302/34 I.P.C. and 25/54/59 of the Arms Act and Section 3/4 of the TADA ACT against Baljeet Singh alias Jaswant Singh alias Jassa and two others was registered at police station Dhariwal.

P.W.29 had further stated that he sought a report from police station Gurdaspur about four deceased persons Harmendra Singh son of Ajeet Singh, Baljeet Singh son of Basant Singh, Jaswant Singh son of Basant Singh and Surjan Singh son of Karnail Singh, upon which Kulwinder Singh told him that the name of Baljeet Singh alias Pappu was mentioned in serial no.5 of the hardcore extremists; the name of Jaswant Singh alias Bijli was mentioned in serial no.1; the name of Baljeet Singh was also in the list of history-sheet. In addition to this, four cases were registered against them.

(51) P.W.30-Ranjeet Kaur had stated before the trial Court that her husband Kartar Singh was in the army and also got pension later on. Her husband Kartar Singh was also called Avtar Singh. She had four children; one boy and three daughters. She knew that her husband Kartar Singh and her brother-in-law Jaswant Singh were killed by the police in Pilibhit on 13.07.1991. The officer of C.B.I. came to her residence and she handed over some document of Kartar Singh in which there was signature of Kartar Singh, to the C.B.I. She identified the photograph of her husband Kartar singh.

In cross-examination, P.W.30 deposed that the name of her husband was Kartar Singh, who was in Army. She was paid the pension of Rs.8000/- . She did not know whether F.I.R. No. 367 of 1990, under Sections 307/302 I.P.C. and $\frac{3}{4}$ of the Dowry Prohibition Act was lodged at Police Station Kotwali, District Pilibhit against her husband. However, the Government had lodged false F.I.R. No. 67 of 1984, under Sections 148, 307/147 I.P.C. against her husband. She got information about the murder of her husband on 14.07.1991 and this was told by her to the Inspector of C.B.I.

(52) P.W.31-Dr. Bipul Kumar had deposed before the trial Court that he was posted as E.N.T. Surgeon in District Hospital, Pilibhit between 1990 to June, 2000. He stated that on 13.07.1991, he conducted the post-mortem of two dead-bodies at 10:00 p.m.,

which were brought by Constable C.P. No. 551 Collector Singh and CP540 Sugandh Chandra along with requisite documents.

After conducting the post-mortem of two dead-bodies, he prepared the post-mortem report (Ext. Ka. 24/2). He further stated that in respect of injury no.1, he could not tell about the direction of the deceased and fire arm, however, injury no.1 could be attributable in front and injuries no. 3 and 4 could be attributable upon upper direction. The deceased died due to shock and haemorrhage as a result of ante-mortem injuries.

- (53) P.W.32-Constable No. 271 Shri Siyaram had deposed before the trial Court that on 13.07.1991, he was posted as Constable in Police Station Gajraula, District Pilibhit. He proved the GD entry dated 13.07.1991 of police station Gajraula, district Pilibhit made in his handwriting. He stated that according to entry no.5 at 00:20 O'clock made in G.D. dated 13.07.1991, Constable Narayan Das with Rifle No. 9664, Constable Krishnaveer Singh with Rifle No. 2745, Constable Ram Swaroop with Rifle No. 8350, Constable Gyan Giri with Rifle No. 9427 went along with fifty cartridges each for duty on the direction of officers. As per G.D. entry No.7, at 04:20 a.m., information was received from the police station Neuria that in Muhuk forest near Dhamalkuan, encounter was going on, therefore, force be immediately sent. On this information, S.I. Shri Rajesh Bharti, Constable Yashvir Singh along with M.L.R. and 36 cartridge magazine, Constable Pomendra Kumar with rifle

and 50 cartridges, Constable Rajendra Singh and Constable Mahipal Singh were sent.

- (54) P.W.33-Amar Sarkar had stated before the trial Court that in the year 1991, his father was admitted in Government Hospital, Pilibhit. In the night, he was stayed in the hospital, however, in the morning when he was returning from the hospital through bicycle and reached Rasaula, then, police came and forcefully took away him to police station Neuria, wherein at about 04:00 p.m., the police got his signature on some papers, wherein something was written and some papers were blank. After that the police dropped him to Pilibhit, whereupon he went to his father and narrated whole story to his father, upon which his father became unconscious. He further stated that when the police took his signature on papers, then at that moment, no dead body was lying there, however, the police took signature from some labourers working behind the field of police station. He did not listen the sound of any fire. He further stated that on account of fear from police, he wrote his name as Amal Sarkar instead of Amar Sarkar.

- (55) P.W.34 had deposed before the trial Court that 23-24 years ago, at about 3-4 P.M., when he was returning from his field to the Farm House, then, he saw that two police vehicles were standing before half kilometers of his house, in which 15-16 police personnel armed with weapons and two Sikhs in each vehicle whose hair were open, were sitting. When he looked

the police vehicles carefully, then, the police used abusive languages against him and then, he came to his house. Later on, he saw that two vehicles of the police along with Sikhs went towards Mala Railway Crossing. After two days, Shyam Lal of his village met him and told him that the police brought his tractor-trolley for bringing four dead-bodies from the forest.

In cross-examination, P.W.34 had deposed before the trial Court that he is uneducated. He did not give any statement to C.B.I. In Pilibhit, fifteen thousands farms of Sikhs were situated. In the course of commission of offence in district, the people of all communities including Sikhs who committed offence were caught by the police.

- (56) P.W.35-Shyam Lal had stated before the trial Court that 23 years ago, the police came in the morning at about 07:00 a.m. and told that his tractor was required, upon which he brought his tractor-trolley to police station Gajraula, district Pilibhit, where S.I. Shri Bharti told him that they had to go in the forest. After that three Chaukidar, 2-3 Constables and Inspector Bharti sat on his tractor and reached Dhamalkuan, wherein he saw four dead-bodies were lying. At that moment, there was large number of police personnel. The S.H.O. of police station Neuria, Pilibhit and S.H.O. Haripal Singh of police station Gajraula, Pilibhit were also present there. After sealing all four dead-bodies, the police kept it on tractor-trolley and he brought these dead-bodies to Postmortem House, Police Line. At that

time, police and Chokidar were also along with the dead-bodies. After conducting the post-mortem, he brought ten dead-bodies to cremation ground along with Chowkidar and police officials, where all ten dead-bodies were cremated by the police. He reached the police line at about 12:00 O'clock in the night and he stayed there in the night and on the next day, in the morning, he came to his house.

- (57) P.W.36-Darshan Singh was declared hostile.
- (58) P.W.37-Surendra Kumar had deposed before the trial Court that from 1991 to 1992, he was posted as Constable at police station Amariya, district Pilibhit. He proved the G.D. entry dated 12.07.1991 made by him.
- (59) P.W.38-Mahendra Singh had deposed before the trial Court that on 13.07.1991, he was in his house situated in village Richaula, Police Station Gajraula, District Pilibhit and at about 02:00 p.m., two Constables came to his house for drinking water, upon which he provided them lemon water. In the meanwhile, S.O. Harpal Singh of police station Gajraula with 6-7 police personnel came to his house along with blue colour Tata mini bus of police station Gajraula and told that he was tired because he was busy in encounter whole night and he killed four persons. Meanwhile, a Constable, who came along with S.O. Harpal Singh, informed S.O. Harpal Singh that he got information from wireless that police of police station Bichinda

encountered Gurnam Singh Fauji and Jaswant Singh Fauji who was the Lt. General of the terrorist group, upon which S.O. Harpal Singh instructed that this was not to be leaked as all were kept confidential. He further stated that S.O. Harpal Singh also told him that they killed Baljeet Singh alias Pappu and his companions.

In cross-examination, P.W.38 had deposed that he knew S.O. Harpal Singh when he was posted at police station Gajraula. He is a Sikh by birth. The persons who were killed were also Sikh and not the terrorists but they were pilgrimage. He denied the suggestion that terrorism of Sikh was spread for making seven districts of *tarai* as Khalistan between 1989 to 1992.

- (60) P.W.39-Rajab had stated before the trial Court that he was doing the work of labour in Neuria area of district Pilibhit. When he was planting paddy in the field, the police personnel took him to the Inspector by saying that Inspector had called him. He went with him to police station, Neuria, where the Inspector took some signatures and also put thumb print on the papers, out of which, some of them were plain and some were written. He was uneducated, therefore, he did not know what was written in it. He did not go to Dhamelakuan even on the day the Inspector got his signature and thumb impression. No tuss or box were made in front of him, he did not see the cartridge weapon there and nothing was shown to him by the police. He had also not seen any corpse etc. wrapped in cloth. He further

stated that nothing was sealed in front of him; no *panchayatnama* was filed in front of him nor did he knew of any encounter. While seeing D-53/3, he stated that in D-53/3 (Ext.Ka.126), his name has been written as Rajab with thumb impression on it. He also proved his thumb impression on D-54/4 (Ext. Ka.127); D-55/3 (Ext. Ka. 128); and D-56/3 (Ext. Ka. 129).

In cross-examination, P.W.39 had stated that the police took him at about 03:00 O'clock. He denied the suggestion that he is not Rajab and by becoming a liar, he had come to give statement in Court.

- (61) P.W.40-Major Singh had stated before the trial Court that on 12.07.1991, around 04:00-04:30 p.m., he was coming to his house by tractor and behind his tractor, a wooden *Suhaga* was tied. At that time, one police vehicle belonging to police station Gajraula, which was driven by Harpal Singh's driver and Station Officer of Police Station Gajraula Harpal Singh was sitting nearby him, was coming from behind his tractor. He stated that wooden *suhaga* laid behind his tractor was moving, on account of which it collided with the police Jeep, upon which Inspector Harpal Singh hit upon his shoulder and also abused him. He further stated that behind the police Jeep, the Gipsy of Superintendent of Police was also coming, in which three Sikhs whose heads were cleaned; hands were tied behind;

and their heads were in lowered position, were also sitting on floor of it. Apart from these police vehicles, there was also a mini police bus, in which police personnel armed with firearms were also sitting. He further stated that on 13.07.1991, from the newspaper, he knew that Sikhs, who were killed in fake encounter, were not the terrorists but they were pilgrims.

In cross-examination, P.W.40 had stated before the trial Court that he did not know who was the S.O. in the year 1991. He never heard about the terrorists in Pilibhit. He read newspapers and in the newspaper, he never saw that Station Officer and Inspector were killed. He did not remember the facts that from 1989 to 1992, there was extreme terrorism in Pilibhit and no policeman travelled in train and bus by wearing the uniform. He also did not know the name of Gipsy of the Superintendent of Police. He also did not know the name of Superintendent of Police of Pilibhit. He could not tell how many police stations were there in Pilibhit in the year 1991. He further stated that he did not know when SI Harpal Singh was posted as Station Officer of Police Station Gajraula but at the time of the incident, he was posted in police station Gajraula. He did not go to police station Gajraula in the year 1991. He gave statement to C.B.I. before his statement in the Court, wherein he had stated to C.B.I. about the bus and truck but he did not state to C.B.I. about mini bus. He did not know that on

22.03.1992, Inspector of Puranpur was killed by the terrorists or not.

(62) P.W.41-Subhash Singh had stated before the trial Court that he was working in daily newspaper from 1990 to 1991. On 10.07.1991, he came to know from reliable sources that a bus from Pilibhit had gone for pilgrimage in which terrorists were also travelling; the said bus was to go for visit of Nanded Sahib and Patna Sahib and would return on 12.07.1991; Men and Women were travelling in the bus as pilgrims; and Baljeet Singh alias Pappu along with youth were also travelling. On the basis of the aforesaid information, he published a satirical article in daily newspaper on 11.07.1991 under the heading '*sau sau chuhe khakar billi.....*'. He proved the D-203, which was the newspaper, in which the aforesaid article was published by him.

In cross-examination, P.W.41 had denied to give status of reliable sources. He denied the suggestion that there was no press report nor there was any article and he falsely deposed before the Court in the pressure of C.B.I.

(63) P.W.42-Dhruv Kumar Singh had stated before the trial Court that in the year 1988, he was posted as a Sub-Inspector in the D-II Section of the Intelligence Head Quarter. On seeing the letters D-1 and D-2 dated 06.06.1991, he stated that both these letters were signed by Shri Ramesh Chandra, the then Deputy Inspector General of Police, Special Cell., Uttar Pradesh,

Lucknow. He further stated that as he was working with Shri Ramesh Chandra, therefore, he was acquainted with his handwriting and signature. He further stated that D-2 section was established in connection with Sikh terrorists and Kashmiri terrorists; the letter D-1 (Ext. Ka. 130) was related to the information of terrorist Jaswant Singh Fauji and his 6-7 accomplices being active in Pilibhit area; D-2 (Ext. Ka.131) letter was in relation to the activity in Nainital and Pilibhit area and recovery of money along with 6-7 companions of Baljit Singh Pappu alias Chanchal Singh. He further stated that both the aforesaid letters (D-1 and D-2) were sent to the concerned offices including Superintendent of Police, Pilibhit and Senior Superintendent of Police, Nainital. The letter D-2 was based on the report of S.I.B.

In cross-examination, P.W.42 had stated before the trial Court that in the D-1 letter, the facts were mentioned on the basis of information that terrorist Jaswant Singh Fauji along with his other associate terrorists would blast police vehicles by laying a mini tunnel. It was also mentioned in this letter (D-1) that Balvinder Singh alias Binda terrorist has set a target to sent his own party leaders to Punjab after recovering one crore rupees from the area, out of which he had stated to have collected sixty lakh rupees. He further stated that the second letter D-2 was also related to the activities of terrorists, in which Baljit Singh alias Pappu alias Chanchal Singh, resident of Arjun Pura Police

Station Dhariwal District Gurdaspur, was active in Nainital, Pilibhit etc. since the last four years.

- (64) P.W.43-Jitendra Sonkar had stated before the trial Court that he was posted as Additional Superintendent of Police in district Pilibhit from March, 1993 to August, 1993. During this period, on 11.06.1993, he gave Production Memo No. 139 of 1994 to Dy. Superintendent of Police Shri R.S. Prasad under his signature and he proved the same. On seeing seizure memo D-168 (Ext. Ka. 64), he stated that on 04.08.1993, he gave the case diary (serial no. 1 to 11, in total serial no. 1 to 146) of police encounter and final report in connection with Case Crime No. 136 of 1991 to 140 of 1991 of police station Bilsanda as well as special report file of Case Crime No. 136 of 1991 to 140 of 1991 of police station Bilsanda to Shri R.S. Dhankar, Dy. Superintendent of Police, C.B.I.
- (65) P.W.44-D.P. Awasthi had deposed before the trial Court that on 28.05.1994, he was posted as Pharmacist in District Hospital, Pilibhit. On seeing production memo D-158 (Ext. Ka. 47), he stated before the trial Court that OPD register, Duty Register of Doctor, Emergency Ward Daily Medicine, Issue Register mentioned in the production memo were given by him to the Investigating Officer of C.B.I. After that on seeing D-81, D-82 and D-83, he stated that OPD register, Emergency Ward Daily Issue Medicine Register and Duty Register was given by him to the Investigating Officer of C.B.I.

(66) P.W.45-Diwan Singh Rawal had deposed before the trial Court that in the year 1992, he was posted as Station Officer in police station Bilsanda. The investigation of Case Crime Nos. 136 of 1991 to 140 of 1991 was entrusted to him. Thereafter, he recorded the statements of witnesses; took the photo of the persons killed in the encounter; and went to Punjab, where he got them identified after showing the photo. In this regard, he recorded the statements of Village Sarpanch and the family members of the deceased and also took written report from them. The criminal history of the persons killed in encounter from the respective police stations who were punished by the Court were also compiled by him and included in the case diary. After completing the investigation and on the basis of the available evidence, he prepared the final report and forwarded the same on 30.03.1992.

In cross-examination, P.W.45 had stated before the trial Court that the terrorists, who were killed in encounter, were identified when he went to Punjab during investigation. He further stated that he investigated the Case Crime No. 136 of 1991 to 140 of 1991 in relation to the killing of four terrorists. During investigation, he knew the name of the terrorists, their father's name, village and district which they belonged. Out of four terrorists, the name of one terrorist was Lakhwinder Singh alias Lakha, however, he did not remember the name of rest of the terrorists. The cases of terrorism were registered against them in

Punjab. He was shown the photo of all four terrorists by the Investigating Officer of C.B.I. and he identified them.

(67) P.W.46-Pratap Singh Pangti had deposed before the trial Court that on 22.04.1994, he was posted in R.S.I. Police Line, Pilibhit. On seeing D-160 (Ext. Ka.48), he stated that he gave weapons etc. mentioned in the production memo to the Dy. S.P. of C.B.I. under his signature, out of which 303 bore of rifle no.1 mark-3 with magazine was given to him. On seeing production memo D-172 (Ext. Ka. 133), he stated that he gave weapons etc. by means of this production memo to the Inspector of C.B.I. under his signature. He proved the paper no. D-156 and D-144, which were given to the C.B.I. under his signature.

In cross-examination, P.W.46 had stated before the trial Court that from 1991 to 1994, Sikh terrorism was at peak and most of the police personnel used to go outside the police station in plain uniform. The terrorism lasted from 1989 to 1994.

(68) P.W.47-Anil Kumar Kamal had stated before the trial Court that in the year 1994, he was posted as Munsarim/Reader in the Court of 1st A.C.J.M., Pilibhit. On seeing D-90 (Ext. Ka.134), he stated that the documents mentioned therein had been handed over to him in the office of Justice K.P. Singh, who was conducting the judicial enquiry in the present case, which was handed over by him to S.P. of C.B.I. on 13.05.1994 under his signature.

In cross-examination, P.W.47 had stated that he had no knowledge about the outcome of the judicial inquiry.

(69) P.W.48-Narayan Singh had stated before the trial Court that in the year 1991, he was posted in H Company of P.A.C., 31 Battalion, Rudrapur. Before 12.07.1991, his company's tent was installed in the premises of Tehsil Puranpur. It was informed by the police station Puranpur, Pilibhit at around 02:30 O'clock to get ready as they had to go for duty. After that around one platoon, along with Subedar/Platoon Commander Shri Dayan Singh left for Puranpur police station in PAC Truck and reached at police station Puranpur at about 03:00 a.m. Thereafter, a constable of Police Station Puranpur sat on his vehicle and they went as per his instructions.

On seeing G.D No. 60 dated 12.07.1991 relating to Puranpur, he stated that arrival time shown in G.D. was 21:55 hours. He thereafter stated that the arrival time shown in G.D. was wrong as the arrival was of 13.07.1991 at 02:45. After that on seeing G.D. No. 64 dated 12.07.1991 of police station Puranpur, which was in relation to departure of police to the place of encounter, he stated that in this G.D., departure was shown as 22:30 hours. He thereafter stated that the date of department and time in the aforesaid G.D. has wrongly been shown as actually the departure took place on 13.07.1991 at 03:00 a.m.

P.W.48 had further stated before the trial Court that on 13.07.1991, they went along with a Constable of Police Line and after running about one hour, his vehicle got stuck in a culvert. After that they tried to remove his vehicle out and during that process, time was about 04:30 a.m. Thereafter, they went forward and after that, an Inspector came from the Jeep of Puranpur and stopped them and told them that now they need not go anywhere and put ambush herein in the field of paddy. After that they laid ambush there and sat there till 03:00 O'clock. Thereafter, a Constable came and asked them to return to police station Puranpur. After that they returned to police station Puranpur around 10:00 a.m. He further stated that if arrival time was shown in G.D.No. 15 dated 13.07.1991 as 15:40 hours, then it was wrong. He further stated that he and his team did not participate in the encounter related to this incident. The Investigating Officer of C.B.I. had recorded his statement.

In cross-examination, P.W.48 had stated before the trial Court that his 'H' Company came in July, 1991 but he did not remember the date of its arrival. He further stated that the movement of P.A.C. was entered in G.D. He further stated that on 13.07.1991, Company Hawaldar Shri Jagmohan Singh had informed him to get prepared about 02:30 a.m.

- (70) P.W.49-Dr. P.K. Singh had stated before the trial Court that on 13.07.1991, he was posted as Chief Medical Officer in District

Hospital, Pilibhit. On seeing D-167 (Ext. Ka. 135), he stated that as the post-mortem was to be conducted on 13.07.1991 after 05:00 p.m., therefore, after getting permission from District Magistrate for the same and after making arrangement of suitable light, he deputed Dr. P.N. Saxena, Dr. D.B. Kausik and Dr. Vimal Srivastava for post-mortem duty. On seeing Receipt Memo D-159, he stated that this document was handed over by him through Pharmacist Shri D.P. Awasthi to C.B.I.

- (71) P.W.50-Trilok Singh had stated before the trial Court that on 12.07.1991, his duty was in Pilibhit. At around 02:00-02:15 a.m., the Major of the Company told him that he had to go to police station Puranpur for duty. Thereafter, they left for police station Puranpur and reached there at around 02:45 a.m. He further stated that arrival time shown in GD No. 60 dated 12.07.1991 of police station Puranpur as 21:55 hours was wrong. He further stated that when they reached Puranpur police station, they were informed that encounter was going on with terrorist and as such they were departed from a Constable on 13.07.1991 at around 03:45 a.m. He further stated that the departure time in G.D. No. 64 dated 12.07.1991 as 10:30 p.m., was shown wrongly. After departure from Puranpur police station, his vehicle was struck and even after great efforts, his vehicle was not taken out from the stuck. After that they went ahead and saw that a Jeep came from the front, which was of Puranpur police station, in which S.O. Puranpur was sitting.

After that S.O. Puranpur asked him to lay ambush therein in the field of paddy. Thereafter, they laid ambush thereon till 08:00-08:30 a.m. After that a Constable of Puranpur Police Station came and told them to go to the police station Puranpur. After that they came to police station Puranpur around 10:00 a.m. on 13.07.1991. He stated that the arrival time in G.D. No. 25 dated 13.07.1991 as 15:40 hours was wrongly shown. His platoon did not participate in the encounter. The Investigating Officer of C.B.I. after calling him in Delhi recorded his statement.

In cross-examination, P.W.50 had stated before the trial Court that he did not remember the names of the members of platoon who went along with him at that relevant time. He also did not remember the count of how many members of platoon had left nor did he remember the number of vehicles in which he left. However, driver of the vehicle was Constable Ram Autar.

(72) P.W.51 had stated before the trial Court that in July, 1991, his one company of 15 Battalion, PAC, Agra including him was posted in Police Station Puranpur, District Pilibhit. On 13.07.1991 at around 01:30-02:00 a.m., Major Hukum Singh gathered them and asked them to go for duty. After that he along with Constable Rajvir, Head Constable Mewalal, Constable Udaiveer, Constable Om Prakash, Constable Rajendra Suman, Constable Gyan Singh, got ready after wearing the uniform. He stated that their arrival in report No.

62 of G.D. dated 12.07.1991 as 22:10 p.m. in police station Puranpur was wrongly shown.

(73) P.W.52-Balakram had deposed before the trial Court that in the year 1993, he was the Pradhan of Village Pattaboghi. A road had gone from his village to the forest. In the year 1991, he heard the sound of fire and in the morning, they went to the forest, wherein two Sikh terrorists were lying dead and police personnel were present there. After that '*panchayatnama*' of the dead-bodies was filled and his signature was obtained thereon. He proved the '*panchayatnama*' D-70/6 (Ext. Ka. 137). On seeing D-71/6 (Ext. Ka. 138), he stated that this *panchayatnama* was filled before him.

In cross-examination, P.W.52 had stated that at the time of the incident, Sikh terrorism was prevalent in the area and nearby area. Sikh terrorists were made for different types of action.

(74) P.W.53-Sohan Lal had stated before the trial Court that in the year 1991, the process of '*panchayatnama*' and seal of the dead-bodies of the persons killed in the police encounter was made in his presence and he put his signature thereon. He proved his signature on '*panchayatnama*' D-70/6 and D-71/6.

(75) P.W.54-Constable Kunwar Singh had deposed before the trial Court that in July, 1991, he was posted along with his platoon headed by Platoon Commander Yudhvir Singh. His camp was in the check post of forest department. On 12/13.07.1991, he

was in camp duty. Kailash Chandra Pandey was in the camp. The arrival in G.D. No. 60 dated 12.07.1991 as 21:55 hours was wrongly shown.

- (76) P.W.55-Netrapal Singh had deposed before the trial Court that in the year 1990-91, he was posted as Sub-Inspector in police station Bilsanda, district Pilibhit. At that time, Shri Devendra Pandey was posted as Station Officer in Police Station Bilsanda. On 12.07.1991, he was present in police station as his duty on that date was in police station. The photocopy of F.I.R. No. 135 of 1991, under Sections 397/395 I.P.C. was shown to him, which was lodged in the police station at 10:30 p.m. After that a police party under the supervision of S.O. Devendra Pandey departed for the place of incident, in which he did not participate. He further stated that on 13.07.1991, at about 06:30 a.m., S.O. Devendra Pandey and other police personnel lodged the report in relation to Case Crime No. 136 of 1991 to 140 of 1991, in which four terrorists killed in encounter were mentioned. On 13.07.1991 at 09:30 a.m., he was sent for conducting '*panchayatnama*' of the dead-bodies of four terrorists and when he reached at Phagunnaighat, then, he saw that S.D.M., Bisalpur was already present there and on his dictation, he filled in all four '*panchayatnama*' and prepared separate memos and documents of it. He also prepared the memo of plain soil and blood stained soil and after getting sealed the dead-bodies, he sent them for post-mortem. He

interrogated the peoples present there for the identification of the dead-bodies but none of them told anything about them, however, they stated that persons killed in encounter were not terrorists but Devendra Pandey had mentioned them in his F.I.R. as terrorists.

In cross-examination, P.W.55 had stated before the trial Court that Sikh terrorism was prevalent in district Pilibhit and nearby areas at that relevant time. He further stated that the name and address of Sikhs terrorists killed in encounter was not known as they belonged to outside the police station. He further stated that the gun and rifle which were looted in the case of robbery, were recovered from near the dead-bodies of those Sikhs who were killed in encounter. However, he did not remember whether the persons whose rifle and gun were looted, had identified it or not. He further stated that from the possession of one unknown terrorist (Ext. Ka.169), one rifle 315 bore number 83 AB 0507 was recovered and from another unknown terrorist (Ext. Ka. 167), SBBL No. 52390 12 bore and seven live cartridges were recovered. This rifle and gun was in relation to the case registered in respect of dacoity.

(77) P.W.56-Inspector Naresh Chandra had stated before the trial Court that on 13.07.1991, he was posted as Sub-Inspector in police station Neuria, district Pilibhit. On that date, SHO Shri Chandra Pal Singh Yadav had lodged the report in connection with Case Crime No. 144 of 1991 to 148 of 1991, under

Sections 147, 148, 149, 307 & 25 of the Arms Act. The investigation of the case was entrusted to him. After getting carbon copy of the F.I.R. and G.D., he along S.O. Shri C.P. Singh went to the place of accident at Dhamelakuan and reached there around 10:00 a.m., where they saw the dead-bodies of four unknown Sikhs who killed in encounter and also saw S.O. Gajraula, S.O Umaria and other police personnel as well as village Chowkidar and other villagers of nearby village were present. On the instruction of S.O., he brought a photographer from Neuria. After that he captured the photographs of the dead-bodies of the deceased and also conducted the '*panchayatnama*' of the dead bodies on spot. He also prepared the memos of '*panchayatnama*' and also prepared site plan. After conducting the '*panchayatnama*' of the dead-bodies, he sent the dead-bodies of four unknown Sikhs for post-mortem along with Constable Rajendra Singh, Mahipal Singh, SI Rajesh and Chowkidars through tractor. He stated that during investigation, on 14.07.1991, deceased was identified as Baljeet Singh, Jaswant Singh, Parminder Singh and Surjan Singh resident of Punjab.

In cross-examination, P.W.56 had deposed before the trial Court that from 1990 to 1994, district Pilibhit and nearby districts were badly affected from Sikh terrorism. In the year 1991, terrorism was extremely prevalent. Weapons including the weapons of police personnel were looted by the terrorists.

P.W.56 had further deposed that all four Sikhs killed in police encounter were terrorists and resident of Punjab and from their possession, illegal arms were recovered.

- (78) P.W.57-Dayan Singh Lakshpal had deposed before the trial Court that on 12.07.1991, he was posted as Platoon Commander in PAC camp of police station Puranpur, district Pilibhit. On 12.07.1991, around 12:00 O'clock, he received a paper for duty to the effect that on the next date i.e. on 13.07.1991, at about 04:00 a.m., he would have to go for duty. After that he woke up his companion personnel for duty at 02:00 a.m. on 13.07.1991 and reached the police station Puranpur at 03:30 a.m., where he asked for entry of their arrival and departure for duty, then, he was told that their arrival would be noted, however, they should go for duty along with the officer of the police station. After that he went along with the Constable of P.A.C. on truck. After running about 4-5 Kms, a drain was found, whose culvert was broken, on which when his truck was taken from below, the truck got stuck. After 8-9 minutes of pushing, the truck came out. Thereafter, they went ahead, then, they found a slopping path, wherein Sub-Inspector and Inspector met in a jeep and told them that they put their force in the defense on the edge of the forest and they were on the left side. After that they stayed about 7:00-08:00 a.m. at that place. Around 8:00-08:30 a.m., a policeman came and told that they should go back to Puranpur. After that they reached from

there around 09:30 a.m. at police station Puranpur and after getting the arrival there, they reached to their camp. He stated that entry of his arrival in GD No. 60 dated 12.07.1991 as 21:55 hours was wrongly shown as actually they reached police station Puranpur on 13.07.1991 at 09:30 a.m. and reached in his camp around 10:00 a.m.

(79) P.W.58-H.C.P.98 CP Harkesh Singh had deposed before the trial Court that in the year 1991, he was posted as Constable Moharrir in police station Bisalpur, district Pilibhit. At that time, Head Constable Nem Chandra Pal, Head Moharrir Netrapal Sharma, Constable Moharrir Pramod Kumar and Bachhu Singh were working in the office along with him and therefore, they knew their handwriting and signature. On seeing G.D. No. 15 of police station Bisalpur district Pilibhit 09:10 a.m. dated 11.07.1991, he proved that this G.D. was written by Head Moharrir Nem Chandra Pal. He also proved the G.D. No. 45/21:30 dated 12.07.1991; GD 46/2230 dated 12.07.1991 and G.D. 29/20:30 dated 13.07.1991.

In cross-examination, P.W.58 had deposed before the trial Court that Head Moharrir Nem Chandra Pal and Head Moharrir Netrapal Sharma were alive at that relevant time and posted in U.P. Police. He further stated that vide G.D. No. 46 time 22:30 hours dated 12.07.1991, it was informed by H.M. Nathu Singh of Police Station Bilsanda that a rifle and a gun were looted by the terrorists in the area of police station Bilsanda. After that

Inspector In-charge along with police personnels reached police station Bilsanda. On this information, S.H.O. Anis along with his personal DBBL gun, Constable Ashok Kumar with one rifle and cartridges; S.I. Ramesh Chandra Bharti with one rifle and cartridges, left police station Bilsanda for necessary action and this was entered in this G.D. This departure was entered in the handwriting of Head Moharrir Nem Chandra Pal, on which there was signature of S.H.O. Mohd. Anil.

- (80) P.W.59-Hind Prabhat Singh had deposed before the trial Court that in the year 1994, he was posted as Inspector in Reserve Police Line. The Deputy Superintendent of Police of C.B.I. Shri R.S. Dhanker took in custody a 303 bore rifle from him in Reserve Police Line, Pilibhit on 16.03.1994 and also prepared a memo D-175 (Ext. Ka. 57). After that on 25.09.1993, Inspector D.S. Dagar had obtained the related documents of the vehicles from him and also prepared receipt memo D-154 (Ext. Ka. 166). On seeing D-165 dated 26.09.1993, he stated that 10 rifles 303 bore in connection with this case was handed over by him to Shri D.S. Dangar. On seeing D-166, he stated that 7.62 MM A.K. 47 rifle was handed over by him to Dy. S.P. C.B.I. R.S. Punia, who thereafter prepared the receipt memo. These rifles were taken in custody by the C.B.I. and brought to them.
- (81) P.W.60-Dr. G.D. Gupta had deposed before the trial Court that he retired from the post of Principal Scientific Officer, Central Forensic Science Laboratory. In the year 1994, he was posted

as Senior Scientific Officer Grade-I on that place. He stated that D-97, D-100, D-133, D-136 and D-120 were prepared by him in connection with this case and all these reports were prepared on the request of S.P. C.B.I., New Delhi.

- (82) P.W.61-Naresh Pal Singh had deposed before the trial Court that in the year 1991, he was posted with his Company in Pilibhit district. His camp was set up at the police station Neuria. On 10.07.1991, Superintendent of Police Badri Prasad Singh called him to the Police Line Pilibhit, After that they reached Police Line Pilibhit, entry of which was made in G.D. Report No. 47 dated 10.07.1991 at 19:50 hours. On that night, they stayed there and on the next day i.e. on 11.07.1991, vide G.D. No. 11 at 08:00 a.m., he along with Badri Prasad Singh and other police personnels reached at police station Bisalpur through 2-3 vehicles, from where they took one Inspector and via Shajahanpur, they reached Allaganj Police Chowki around 3-4 O'Clock, wherein they had tea and snack and at about 05-06 O'clock, they walked near the river behind 3-4 Kilometers of Chowki and around 06-07 O'clock, they returned to police chowki Allaganj and stayed there whole night and also laid ambush over Ganga bridge till 4-5 p.m. on 12.07.1991. After that in the evening of 05:00 O'clock, they proceeded from Allaganj Police Chowki and reached police line Pilibhit via Puwaan Sahjahanpur forest road around 10:00-11:00 O'clock. He stated that their arrival was entered in G.D. Report No. 54

time 23:10 hours. After taking dinner, he reached to police station Neuria, entry of which was in GD Report No. 55 time 23:30 hours. He further stated that their party did not participate in any encounter.

- (83) P.W.62-H.C.P. 4006 Gopal Singh had stated before the trial Court that in the year 1991, his 9th Battalion of S.P.F. was camped in the ground of Block Office in police station Puranpur. On 12.07.1991, he was in the camp after returning from Bank duty. On that night, around 01:30-02:00 O'clock, C.H.M. Jagmohan woke him up and told him that they have to go for duty now. After that all of them sat in the vehicle under the supervision of Platoon Commander Dayan Singh and reached police station Puranpur around 02:45 O'clock in the night, from where a Constable went along with them. After 6-7 Kilometers at around 03:00 O'clock, his vehicle got stuck in the mud on a narrow road near a culvert. As soon as they took out their vehicle from the stuck and moved a little further, they saw a Jeep of Police Station Puranpur coming and the police personnel who sat in the Jeep told them that there is no need to go further and they should station on the right side with ambush in the fields. After that they sat by laying ambush at a distance of around 100 yards from the road. Around 09:00-09:30 a.m., a policeman came and told them that they should return back. After that they returned to police station Puranpur at about 10:00 a.m. and after that they returned to their camp. He

further stated that arrival in G.D. Report No. 60 dated 12.07.1991 was wrongly shown as 21:55 hours and similarly departure in G.D Report No. 64 dated 12.07.1991 was also shown wrongly as 22:30 hours. He and his team did not participate in any encounter in the intervening night of 12/13.07.1991 in Pattabhoji forest nor heard the sound of fire in the night. On 01.04.1994, the Investigating Officer had recorded his statement.

- (84) P.W.63-Randheer Singh Punia had deposed before the trial Court that in the year 1994, he was posted as Dy. S.P. C.B.I. in S.I.C.-II Branch. On 08.03.1994, the investigation of Case RC 2(S)/1993 SIU-V/SIC-II was transferred to him from Shri R.S. Prasad Dy. S.P. and he started the investigation of the case. On 09.03.1994, he along with other C.B.I. Officer went to Pilibhit in relation to the investigation of the case. On 16.03.1994, one AK47 rifle was taken in custody from Inspector Hind Prabhat vide production memo D-166 (Ext. Ka. 168). On 17.03.1994, he stayed in Pilibhit and investigation of the case was made. During investigation, he recorded the statements of Om Raj Singh, Inspector Ram Ratan Sharma, S.I. Diwan Singh Rawal, S.I. Netrapal Singh, Constable Aran Singh Kaurgo, Constable Balwan Singh and Constable Naresh Pal. These three Constables were of U.P. P.A.C. He also recorded the statement of S.D.M. Bisalpur Shri Ishwar Chandra Sharma, who prepared the inquest report of Lakhvinder Singh alias Lakha, Jaswant

Singh, Kartar Singh and Randhir Singh alias Dhira. He also recorded the statements of Ramesh Bharti, H.C. Nathu Singh, A.S.P. Vijendra Sharma, A.S.P. Badri Prasad Singh and the then Superintendent of Police R.D. Tripathi. Thereafter, on briefing the Inspector D.S. Dagar, Inspector K.S. Thakur, Sub-Inspector Chandradeep, he instructed them to inquire into the matter. Inspector K.S. Thakur took in custody the D.B.B.L. gun of Mohd. Anis and sent it for expert enquiry in C.F.S.L., New Delhi and after that he got expert opinion of it. On 30.09.1994, on the direction of Superintendent of Police, the investigation of Case Nos. RC-1 (S)/93 SIC-II and RC-2 (S)/93/SIC-II were transferred to Shri R.S. Dhankar, Dy. S.P. because it was found from the investigation at this stage that ten Sikhs killed in encounter by the police in all three places of district Pilibhit were deboarded from bus by the police at Kachalaghat and thereafter, in the intervening night of 12/13.07.1991, they were killed and the police had claimed that all of them were killed in the encounter. He further stated that from the investigation of the case, it was revealed that all the ten Sikhs were kidnapped from one place and killed in fake encounters at different places, therefore, investigation of all three cases were conducted by Shri R.S. Dhankar and after completion of investigation, charge-sheet (Ext. Ka. 90) was submitted against the accused persons by Shri R.S. Dhankar, Dy. S.P.

In cross-examination, P.W.63 had deposed before the trial Court that C.B.I., Case Diary is in printed performa. The statement has been recorded in plain papers and after that it has been attached with the printed performa case diary. The description of the investigation was made in printed case diary. This printed case dairy is kept in his office and the original Case Dairy is not filed in the Court. He further stated that he took in custody the fire arms used in the commission of incident after three years of the incident and in the meantime, it must have been used anywhere else. All these fire arms were official. He further stated that he did not conduct the investigation in relation to terrorism.

(85) P.W.64-Dewan Singh Dagar has deposed before the trial Court that in 1993-94, he was posted as Inspector C.B.I., S.I.C.-II, New Delhi. On 01.01.1993, three cases i.e. RC 1 (S)/93, 2 (S)/93 and 3 (S)/93 were registered. He stated that as he was Assistant Investigating Officer, therefore, he recorded the statement of the witnesses under Section 161 Cr.P.C. On seeing Ext. Ka. 10, which was the Pilgrims Record Register of Gurudwara Langad Sahib, he stated that he seized the said register from Gurudwara and at page no. 72, he put his signature.

In cross-examination, P.W.64 had deposed before the trial Court that he was told by the Investigating Officer Shri R.S. Dhankar that some team of pilgrims went to Nanded.

- (86) P.W.65-S.K. Chaddha had deposed before the trial Court that he had an experience of work as Finger Prints Expert w.e.f. 1984 to 2010. In the year 1994, he was posted as Senior Scientific Officer Grade-II in C.F.S.L., New Delhi. He had examined various documents relating to the incidents and after examination, he submitted his report to C.B.I.
- (87) P.W.66-Dr. S.C. Mittal had deposed before the trial Court that he was appointed in C.F.S.L. in the year 1970 and retired from the post of Principal Scientific Officer/Assistant Chemical Examiner on 30.11.2005. He had examined documents sent by the C.B.I. in relation to the case and after examining, he sent his report to the C.B.I.
- (88) P.W.67-Satya Pal Khanna had deposed before the trial Court that he was working in C.F.S.L., New Delhi from 1969 to 2006. In relation to the case, he went along with C.B.I. Special Director to Pilibhit and also inspected various places. A report was prepared by him but it was not on the file of the Court. He was shown a mini bus, which had holes on its roof from inside to outside and was covered with putty and when he removed the putty, then he found the bullet holes in it, which were in everted margin. He further stated that these marks are made in a situation when the bullet is fired from inside to outside of the bus and they were painted but their colour was different from the colour of the rest of the bus and any one could see them, therefore, a cloth sheet from inside was put up. When he got

suspicions, then he removed the veil of the cloth and then he found putty on scraping and found their colour changed. He thereafter went on the roof where the whole appeared, then, he found that area was of riveted sheet.

**(vi) STATEMENTS OF CONVICTS/APPELLANTS
RECORDED UNDER SECTION 313 Cr.P.C.**

- (89)** The statements of the convicts/appellants were recorded under Section 313 Cr.P.C., denying the allegations made by the prosecution against them. They have stated that on the pressure of C.B.I., the prosecution witnesses have concocted a false story and have falsely deposed; P.W.11-Smt. Swarn Kaur and P.W.13-Smt. Balwinderjeet Kaur alias Laddo are the wives of respective terrorists and they themselves are terrorists, therefore, they deliberately gave false testimonies; C.B.I., in support of its case, did not produce its own G.D. or any documentary evidence; Investigating Officer of the C.B.I with the meeting of P.W.17-Kamaljeet Singh and P.W.18-Gurmej Singh, being Sikh, recorded their false statements and falsely deposed against them; the prosecution did not record the statement of Sukhdev; the concerned gun was recovered from the possession of the slain terrorists; the Investigating Officer of the C.B.I. created a false evidence out of his own free will just to improve its case and also made false testimony of the witnesses; the investigation conducted by the C.B.I. has been forged; in the case, the Investigating Officer of the C.B.I while misusing his position, cooked up false and fraudulent evidence;

fake investigation was done by the C.B.I.; false evidence has also been recorded by exerting pressure upon P.A.C. and S.P.F. and intentionally, G.D. and others documentary evidence were not collected from P.A.C. and S.P.F.; in the absence of any documentary evidence, witnesses intentionally gave false evidence and made fraudulent story; F.I.Rs. lodged by them were correct and nothing was lie therein.

(vii) DEFENSE WITNESS

(90) From the side of the defense, Prahlad Singh was examined as D.W.1. in order to prove the facts that on 12.07.1991, at about 08:30 p.m., 315 bore of licensee rifle of D.W.1 and gun and cartridges of one Jagdish were looted by 7-8 Sikhs when they were returning to their home from the market of Bilsanda, for which he lodged the report at police station Bilsanda and later on, the aforesaid rifle, gun and cartridges were found lying near the dead bodies of four terrorists in the forest of Bilsanda.

(viii) FINDINGS OF THE TRIAL COURT

(91) The trial Court, after hearing the parties and going through the evidence on record, came to the conclusion that the convicts/appellants, while committing criminal conspiracy, abducted ten Sikh youths and killed them in fake encounter and thereafter prepared number of documents in order to convert the killings of these Sikhs into encounters and accordingly, the trial Court convicted the convicts/appellants under Section 120-B read

with Sections 364, 365, 218 and 117 I.P.C. and sentenced them in the manner stated in paragraph-2 hereinabove.

(92) Heard Ms. Chinu Chauhan, learned Counsel for the appellant no.4-Veer Pal Singh in Criminal Appeal No. 549 of 2016, Shri Daya Shankar Mishra, learned Senior Advocate assisted by Shri Umesh Chandra Yadav, learned Counsel for the appellants nos. 11, 13, 15 and 16 in Criminal Appeal No. 549 of 2016, Shri Sheikh Wali-Uz Zaman, learned Counsel for the appellant no.11-Register Singh in Criminal Appeal No. 513 of 2016, Shri Nagendra Mohan and Shri Ajay Singh, learned Counsel for the other appellants in the above-captioned appeals, Shri Anurag Singh, learned Counsel for the C.B.I. and Shri I.B. Singh, learned Senior Advocate assisted by Shri Harjot Singh, Shri Vivek Kumar Rai, Shri Ajai Kumar, Shri Ishaan Baghel, Shri Sajeet Singh and Shri Avinash Singh Vishen, learned Counsel for the victim.

C. ARGUMENTS ON BEHALF OF THE CONVICTS/ APPELLANTS

(93) Challenging the impugned order dated 04.04.2016 passed by the trial Court, Shri Nagendra Mohan, learned Counsel appearing on behalf of the convicts/appellants has argued that :-

I. It is a co-incidence that three incidents took place in district Pilibhit in the intervening night of 12/13.07.1991. The first incident took place at Dhamela Kuan in Mahof Jungle falling in the jurisdiction of police station Neoria;

the second at Phagunaighat falling in the jurisdiction of police station Bilsanda; and the third at Patta bojhi forest area falling in the jurisdiction of police station Puranpur.

- II. In between 1989 to 1993, number of groups of Sikh militants were active in *tarai* region of district Pilibhit and nearby districts of the State of U.P. There were vigilance reports vide D-1 and D-2 that Jaswant Singh alias Fauji (killed in Bilsanda encounter), Baljit Singh alias Pappu (killed in Neoria encounter) son of Basant Singh, resident of Arjunapura, PS Dhariwal, District Gurudaspur, Punjab were terrorists and effectively active in *Tarai* region along with 6 or 7 terrorists in District Pilibhit and engaged in extortion of money from the residents of Pilibhit and neighbouring areas for providing financial support to the terrorists' gang. The Investigating Officer/C.B.I. had also mentioned the aforesaid in the charge-sheet.

In order to combat rising Sikh militancy and criminal violence in *tarai* region of district Pilibhit, a high level meeting of higher authorities of police personnel was held on the basis of the aforesaid vigilance report (D-1 and D-2) on 10.07.1991 to decide the action to be taken against the terrorists. After that on basis of aforesaid vigilance reports (D-1 and D-2) as well as direction issued in pursuance of the higher authorities in its

meeting held on 10.07.1991, the police personnel including the appellants had laid ambush in three places i.e. Dhamela Kuan in Mahof Jungle falling in the jurisdiction of police station Neoria, Phagunaighat falling in the jurisdiction of police station Bilsanda and Pattabojhi forest area falling in the jurisdiction of police station Puranpur in the intervening night of 12/13.07.1991, whereby four terrorists were eliminated in Dhamelakuan falling in the jurisdiction of police station Neoria; two terrorists were eliminated in Phagunaighat falling in the jurisdiction of Bilsanda; and four terrorists were eliminated in Pattabojhi forest area falling in the jurisdiction of Puranpur, by the police personnels including the appellants in a self-defense.

From all three places of the incident, the fire-arms used by the terrorists were seized and proper procedure was followed by the police personnel including the appellants for preparing '*panchnama*' and other documents. In this regard, thirteen F.I.Rs. were registered by the appellants separately for the incident that took place in respective three places. The competent authority i.e. S.D.M. came to the incident and conducted the inquest on the dead-bodies of ten terrorists.

The post-mortem of ten unidentified dead-bodies of the terrorists were conducted and their dead-bodies were

cremated by the police at the cremation ground located by the side of police lines, Pilibhit during the night on 13.07.1991 as no person had complained any authority of the said occurrence/encounter either on 13.07.1991 or subsequent in any nature nor any one claimed the bodies of the terrorists eliminated in the encounter, even though a wide publicity as per Police Regulations 135 and 135-A were made for the unidentified terrorists and photograph of the deceased terrorists were published in newspaper on the date of occurrence. After due investigation, the local police of District Pilibhit had filed closure report 73/74/25. Submission is that action of the police personnel including the appellants to eliminate the ten terrorists were made by them in a self-defense as in all three places, the police party had first challenged the terrorists and on challenging them, the terrorists opened fire and in retaliation, the police party including the convicts/appellants had started firing. The closure reports were filed by the local police of district Pilibhit by collecting materials and proper investigation in all there F.I.Rs. and there is no infirmity in it. Till date, the said closure reports have not been challenged by anyone.

- III. On the basis of a news article published in newspaper ‘The Times of India’, R.S. Sodhi, Advocate had filed a Writ Petition (Criminal) No. 1118 of 1991 before the

Apex Court, wherein the Apex Court, vide order dated 15.05.1992, entrusted the investigation of the incidents to the C.B.I. After that the C.B.I., by referring the aforesaid judgments of the Apex Court, registered corresponding three F.I.Rs. viz. RC-1 (S)/93, under Sections 147, 148, 149, 307 I.P.C. and Section 25 of the Arms Act corresponding to crime no. 144 to 148/91 of police station Neoria, district Pilibhit; RC-2 (S)/93, under Sections 147, 148, 149, 307 I.P.C., Section 25 of the Arms Act and Section 3/7 of the TADA Act corresponding to Case Crime No. 136 to 140/91 of police station Bilsanda, district Pilibhit; and RC No. 3 (S)/93, under Sections 147, 148, 149, 307 I.P.C., Section 25 of the Arms Act corresponding to Case Crime No. 363 to 365 of 1991 of police station Puranpur, district Pilibhit.

Submission is that the Apex Court had only entrusted the investigation to C.B.I. and had never issued direction to C.B.I. to lodge three different cases (RCs.) or for re-investigation of the case but the C.B.I., without falsifying the earlier F.I.Rs. lodged by the local police of the district Pilibhit and without looking into the closure reports submitted by the local police of the district Pilibhit, added Section 302 I.P.C. He argued that C.B.I. took up the case for investigation not on the fresh F.I.R. but on the basis of three F.I.Rs. already registered by the accused/police personnel. The investigation cannot be

continued by the C.B.I. on the F.I.Rs. registered by the local police, on account of the fact that those F.I.Rs. were encounters, whereas C.B.I. took up the case for investigation after having formed the opinion that those are fake encounter. He argued that no reference was made in the impugned judgment by the trial Court about the materials which were elicited in the cross-examination of the witnesses in favour of the accused and there is no discussion on these aspects. His submission is that if fresh investigation is conducted on the basis of earlier F.I.Rs., then, the C.B.I. must have established that earlier F.I.Rs. and the investigation conducted by the local police on the basis of those F.I.Rs. was false but no evidence has been adduced by the C.B.I. to prove that the earlier F.I.Rs. and the initial investigation were fake. Therefore, all these circumstances show serious infirmities on the part of the C.B.I.

- IV. The claim of the prosecution that some affidavits have been filed by the family members of the deceased/terrorists before the Apex Court, is not reflected from the order of the Apex Court as none of the alleged affidavits said to be produced before the Apex Court was made part of the record of the Court below and further no witness to prove the content thereof was produced by the prosecution.

- V. Though sanction from the State Government for prosecuting the convicts/appellants being the employees/police personnel of the State Government was mandatory but admittedly no sanction was obtained from the State Government, which itself vitiates the entire proceedings of the prosecution. Furthermore, the point relating to the non-obtaining of sanction, was argued before the trial Court but the trial Court erred in not considering it nor decided it.
- VI. There were 87 accused persons, out of which 30 persons were not charge-sheeted by the C.B.I. and 57 were charge-sheeted by the C.B.I., who faced the trial. During trial, out of 57 accused persons, ten accused died and the trial was commenced against 47 accused persons. The trial Court had convicted and sentenced 47 accused persons by means of the impugned judgment and order dated 04.04.2016.
- VII. Admittedly, when the C.B.I. commenced the investigation, till then the local police had conducted investigation in respect of all the three F.I.Rs. and collected the materials, but to prove the said investigation conducted during this period, no police officer was examined. Furthermore, no details were furnished as to the nature of materials collected during that period,

neither C.B.I. in its investigation falsified the earlier F.I.Rs. or the materials collected during that period of investigation. Submission is that this is a very serious flaw on the part of the prosecution and proves the suppression of relevant materials collected in the initial investigation, hence it affected credibility of the prosecution case.

VIII. P.W.1-Brajesh Singh, ARTO, Bareilly, P.W.2-Ranveer Singh, Clerk of RTO Office and P.W.5-Amit Kumar, owner of the bus have proved the list of 45 passengers. According to him, the claim of the prosecution that list of passengers was changed by the police, is absolutely perverse. He argued that it is evident from the testimonies of P.W.1, P.W.2 and P.W.5 that the passengers list attached with the permit was never changed as they have clearly stated during their examination-in-chief that the original list is always given back to the bus owner after issuance of the temporary permit. According to the list, 45 passengers, who were traveling in the bus, was valid from 30.06.1991 to 13.07.1991. The list of passengers is the same as the carbon copy which was submitted on 28.06.1991 before the R.T.O. office. Submission is that when the list of passengers with permit was already circulated to the driver, hence the allegation that list was changed by police, does not stand.

- IX.** There was also allegation of changing the list of passengers through Additional Superintendent of Police, Bareilly Shri Daya Nidhi Mishra. This allegation of the prosecution cannot be substantiated as the prosecution failed to prove the link that on whose request Additional Superintendent of Police Daya Nidhi Mishra on 06.07.1991 took away the carbon copy of the list from R.T.O. Office.
- X.** Allegation was that the list of passengers was changed by Additional Superintendent of Police Daya Nidhi Mishra on 06.07.1991. The alleged bus was said to be intercepted on 12.07.1991 and the alleged incident i.e. deboarding of passengers and encounter of the terrorists happened in the night of 12/13.07.1991, are itself contradictory with each other, as in any case it was not possible to change the list by adding the name of the terrorists on 06.07.1991 i.e. much before the alleged fake encounter. Furthermore, the Additional Superintendent of Police Daya Nidhi Mishra, Bareilly was not examined by the prosecution nor he was arrayed as accused in this case by the prosecution. Hence the plea of the prosecution in this regard is not sustainable.
- XI.** The trial Court had placed reliance upon the list which was alleged to be changed and had observed that junior

family members of P.W.11-Smt. Swarn Kaur and P.W.13-Balwinderjeet Kaur were also travelling in the bus and as such, their names were not appearing in the list of passengers and their names are in extras, but the trial Court erred in not mentioning the name of Senior Member of the family of P.W.11 and P.W.13, behind whom their name is in extras.

- XII.** The allegation of the prosecution that the police acted on the news item published in the local newspaper under the heading '*Sau Sau Chuhe Khakar Billi.....*', does not stand proved by the prosecution because the police acted on the basis of the vigilance report dated 06.06.1991 and the direction issued by the higher authorities of the police in its meeting held on 10.07.1991.
- XIII.** The prosecution has come up with the case that 25-26 passengers were travelling in the bus but the prosecution has failed to prove the source of getting this list of 25-26 passengers nor any witness had proved the list of 25-26 passengers, however, surprisingly, only in charge-sheet, it has been shown that 24 named persons were passengers but there was no proof of it. Thus, it reflects that the story of the prosecution that named 25-26 passengers were travelling in the bus, is unreliable.

XIV. The provisions of Section 207 of the Code of Criminal Procedure, 1973 has not been complied with as though a request was made on behalf of the convicts/appellants to supply the documents so that they may cross-examine the witnesses but the same was not provided to the convicts/appellants. The trial Court had also not considered this aspect of the matter and by ignoring this fact, the trial Court erred in passing the impugned judgment.

XV. The witnesses of fact, in their depositions, had stated that de-boarding of Sikhs from travelling bus to the police bus was at the bank of some big river but none of the witnesses of fact had stated about ‘Kachlaghat’. But at very later stage, ‘Kachlaghat’ was introduced by CBI. Furthermore, the story was set up by C.B.I. that when the de-boarding of Sikhs from travelling bus to the police bus was going on, some of the Sikhs ran and villagers caught them up and again surrendered them to police but surprisingly, none of the villager residing near ‘Kachlaghat’ was made witness for the prosecution to proof this fact. Thus, the introduction of ‘Kachlaghat’ is doubtful.

XVI. During investigation, the Investigating Officer found the marks of bullet in the blue colour police bus. P.W.67-Sri Satya Pal Khanna, Retired Scientist, C.F.S.L., in his

deposition before the trial Court, has categorically stated that the marks of firearms were present in the blue colour bus, from which ten young Sikhs were brought by the police personnel. But no blood stains were found in the bus nor anywhere it was explained that how all the marks are on the roof of the bus as no angle of firing can be imagined by which during firing all the bullets will hit roof of the bus.

XVII. In all three encounters that took place in the intervening night of 12/13.7.1991, the fire arms used by the terrorists were seized and proper procedure had been followed by the police personnel for preparing '*panchnama*' and other documents. According to him, arms and ammunition of terrorists were also recovered by the police party and CBI in its investigation had accepted that these belonged to the terrorists because no charge for the offence under Section 25 of the Arms Act for planting the weapons on the places of encounters claimed by the police was levelled upon the convicts/appellants.

XVIII. The trial Court, by means of the impugned judgment, had convicted the convicts/appellants under Sections 302, 364, 365, 218, 217 I.P.C. with the aid of Section 120-B I.P.C. but the trial Court erred in not considering the fact that there is no evidence on record to show that the convicts/appellants had committed criminal conspiracy.

Thus, findings of guilt of the appellants in the said encounter by the trial Court for the offences with the aid of Section 120-B I.P.C. cannot be sustained.

XIX. P.W.16-Constable Om Prakash Yadav, C.R.P.F., had admitted the fact that C.R.P.F. was there in the police encounter. Further, in the site plan no. 148/1, the presence of C.R.P.F. and S.P.F. were shown and in the charge-sheet, it has been stated that S.P.F. participated in the encounters. His submission is that in the said encounters, along with the members of Police Arms Constabulary, members of S.P.F. and C.R.P.F. also participated but none of the members of S.P.F. and C.R.P.F. were made accused by the C.B.I., which itself creates doubt about the prosecution story.

XX. The prosecution has failed to examine any independent witness. The prosecution had only produced P.W.11 and P.W.13 as eye-witnesses of the incident who claimed to travel in the alleged pilgrims' bus. His submission is that P.W.11 and P.W.13 are the wives of the deceased terrorists, hence they are interested witnesses and their testimonies cannot be reliable. Furthermore, the prosecution had claimed that apart from P.W.11 and P.W.13, there were alleged 23 more passengers travelling in the said bus but the C.B.I. had failed to examine the other witnesses including the driver and conductor of the

bus, who have stated to have seen the police personnel taking away the deceased persons from the bus. Thus, non-examination of those independent witnesses casts doubt on the credibility of the prosecution case.

XXI. The credibility of the testimonies of the eye-witnesses P.W.11 and P.W.13 are extremely doubtful. He argued that the prosecution case is that all the passengers in the bus were Sikhs and they were all on pilgrimage, which was taken from one shrine to another, travelling for about more than eight days and as such, it is quite probable that they must have got to know each other. But P.W.11 and P.W.13 admitted in the cross-examination that they did not know anything about the other passengers, who travelled in the bus which seems to be quite artificial and proves the presence of P.W.11 and P.W.13 in the pilgrim bus is doubtful. Furthermore, P.W.11 and P.W.13 have stated that 10-11 persons belonging to Sikh community were travelling in the bus along with them and they were taken away by the police, however, on the next day their dead bodies were found but both these eye-witnesses did not identify any police personnels either in identification parade nor in Court that they were the police personnels, who took 10-11 persons belonging to Sikh community from the bus. P.W.11 and P.W.13 have also failed to disclose that who were the Sikhs who ran away while de-

boarding of bus whom the villagers of nearby handed over to the police again. He also argued that P.W.29, the Deputy Superintendent of Police (C.B.I)/Investigating Officer of the case, had examined P.W.11 and P.W.13 only after a lapse of 1½ years and during this period of 1½ years, both P.W.11 and P.W.13 did not whisper anything about the incident to any person nor was any complaint lodged about the same with the local police or with the C.B.I. and even during the course of examination in the Court, P.W.11 and P.W.13 did not explain as to why they kept silence for this long period. He also argued that P.W.11 had stated that immediately after the occurrence, she sent a telegram to her father-in-law (P.W.4-Ajeet Singh), informing about the incident but P.W.4-Ajeet Singh deposed that he got the information about the death of his son through the newspaper and not through the telegram, which shows P.W.11 was not present and was a got up witness. In these backgrounds, his submission is that these two witnesses P.W.11 and P.W.13 are cooked up witnesses set up by the C.B.I. to support the prosecution case, hence their testimonies are not reliable.

XXII. The C.B.I. introduced the story of pilgrims tour and the main witness Talwinder Singh who was the organizer of this pilgrim tour and the permit etc. disappeared and

story of the 11th terrorist was introduced by the C.B.I. But the C.B.I. has failed to establish the death of 11th Sikh which itself falsifies the story of prosecution.

XXIII. There is no motive on the part of the convicts/appellants to kill the deceased terrorists in fake encounter. His submission is that the trial Court had made assumption that the convicts/appellants appear to have encountered for promotion but this finding of the trial Court is erroneous and contrary to the promotion rules as the promotion rule came into existence on 03.02.1994.

XXIV. No question was put to the convicts/appellants in their statements recorded under Section 313 Cr.P.C. regarding change of list of 25-26 passengers to 45-46 passengers; de-boarding of terrorist from pilgrim bus to police bus; and the appellant entering in criminal conspiracy.

XXV. The chain of the prosecution case that the terrorists killed in encounter by police are the same persons who were de-boarded from the traveller bus, is not complete.

XXVI. P.W.29-J.C. Prabhakar, the Investigating Officer of the case, had admitted criminal history of the deceased terrorists; case diary is not on prescribed form; original case diary was not produced before the Court below; the list of passengers which had been proved and filed does not contain the name of terrorists; passengers list filed in

record is fake; no identification of the accused was done; through informant he came to know about the presence of Balvinder Jeet Kaur in the bus; and Head Constable Kulvinder Singh of Punjab Police, Police Station Dhariwal, District Gurdaspur, Punjab told him the criminal history of five terrorists and gave paper regarding criminal history. P.W.42-Dhruv Kumar Singh, Inspector, had proved the list of D1 and D2, where the name of terrorists were given. P.W.43-Jitendra Sonkar admitted the fact that special and final report of the case was handed over to C.B.I.

XXVII. The onus lies on prosecution to prove its case unless the defense had taken a new plea other than the story of prosecution but the prosecution had failed to prove its case beyond reasonable doubt, hence the impugned judgment passed by the trial Court is liable to be set-aside.

XXVIII. Lastly, it has been argued that the convicts/appellants are the police personnels and they, while performing the official duty on the direction of the higher officials, eliminated the deceased terrorists in the encounter and that too in self defense and there is no motive or previous plan to eliminate the deceased terrorists in encounter, hence some lenient view is liable

to be taken while awarding sentence to the convicts/appellants.

(94) Shri Sheikh Wali-Uz-Zaman, learned Counsel for the appellant no.11-Register Singh in Criminal Appeal No. 513 of 2016 has adopted the arguments advanced by Shri Nagendra Mohan. In addition, he only stated that the conviction of the convicts/appellants was made only on the basis of suspicion and, therefore, their conviction cannot be sustained. He placed reliance upon the judgment of the Apex Court in **Ram Niwas Vs. State of Haryana : Criminal Appeal No. 25 of 2012, decided on 11th August, 2022.**

(95) Ms. Chinu Chauhan, learned Counsel for the appellant no. 4-Veerpal Singh in Criminal Appeal No. 549 of 2016 has also adopted the arguments advanced by Shri Nagendra Mohan. In addition, her submission is as under :-

I. Highlighting the testimonies of P.W.26-Constable Rampal Singh and P.W.61-Naresh Pal Singh, she argued that on 11.07.1991, two police parties left the police line vide G.D.18. The first party was lead by Additional Superintendent of Police Shri Badri Prasad Singh and the second party was lead by Additional Superintendent of Police Brijendra Sharma. The G.D. of police line (D-18) shows that on 11.07.1991, at 08:00 a.m., Veerpal Singh (convict/appellant no.4) along with Constable Naresh Pal Singh (P.W.61) and Additional Superintendent of Police

Badri Prasad Singh left Pilibhit and reached Allaganj police chowki via Shahjahanpur at about 03:00-04:00 p.m. on 11.07.1991, wherein the police party made patrolling and also laid ambush on Ganga bridge till 12.07.1991 at 04:00-05:00 p.m. and after that on 12.07.1991, the police party left Allaganj police chowki and reached police line Pilibhit via Shahjanpur forest area in the night of 10:00-11:00 p.m. on 12.07.1991. Thereafter, in the night of 12.07.1991, S.I. Anis Ahmad was dropped at police station Bisalpur, whereas Veerpal Singh was dropped at police station Bilsanda. In these backdrops, she argued that the alleged incident was of the intervening night of 12/13.07.1991 and the distance between Shahjanpur to Bilsanda is 123 Kms, which even by modern infrastructure requires at least four hours to reach Bilsanda from police chowki Allaganj via Shahjahanpur. She also argued that in the charge-sheet, it was mentioned that SI Veerpal Singh reached at Police Station Bilsanda at 10:10 p.m. vide G.D. entry no. 45 on 12.07.1991. The distance between ‘Kachlaghat’ to ‘Allaganj’ is 123 Kms. Thus, it is quite improbable that convict/appellant Veerpal Singh was present at the place of the incident at Bilsanda or Kachlaghat and the presence of appellant no.4-Veerpal Singh at the place of the incident is highly doubtful.

- II. The story of the prosecution about the incident that took place at 'Kachalaghat' is extremely doubtful.
- III. The team headed by Additional Superintendent of Police Badri Prasad Singh with whom the convict/appellant Veerpal Singh left for Allaganj, should also have been made accused but he was not made accused by the Investigating Officer nor his statement was recorded.
- IV. Throughout the case, three fake encounters were described by the prosecution, wherein no police officer was killed or murdered but in fact in the intervening night of 12/13.07.1991, fourth encounter also took place across the river of Banda police station adjoining to district Pilibhit, wherein one Inspector, Driver, 3 PAC Constables were killed and one got injured and their arms and ammunitions were looted by the terrorists/murderers. The F.I.R. of the incident was made through a letter by a PAC Constable but the Investigating Officer (C.B.I.) had neither taken care of the aforesaid incident nor was pointed it out by the prosecution before the trial Court.
- V. Two out of four terrorists were named in vigilance report D-1 and were having a criminal background. The prosecution witnesses had admitted the same. There was vigilance report to the aforesaid effect. Thus, the encounter made in police station Bilsanda cannot be said

to be a fake encounter as the police party had eliminated four terrorists in encounter in self defense.

VI. The material collected and witnesses of the three F.I.Rs. lodged by the local police were not examined by the Investigating Officer,

VII. The investigation of the case is highly tainted.

VIII. Hence, she prays that benefit of doubt ought to have been granted to the appellant no.4-Veerpal Singh as the prosecution had failed to prove its case in respect of appellant no.4-Veerpal Singh beyond reasonable doubt, hence the impugned judgment and order in respect of appellant no.4 is liable to be set-aside.

(96) Shri Daya Shanker Mishra, learned Senior Advocate assisted by Shri Umesh Chandra Yadav, learned Counsel appearing on behalf of the appellants nos. 11, 13, 15 and 16 in Criminal Appeal No. 549 of 2016 has also supported the arguments advanced by Shri Nagendra Mohan and in addition, he argued as under :-

I. In between 1989-1994, terrorism was prevalent in district Pilibhit and around areas as is evident from the testimonies of P.W.46-Pratap Singh Pangati, P.W.51-Mahendra Singh Chandel, P.W.52-Balakram, P.W.55-Netrapal Singh, P.W.56-Naresh

Chandra, P.W.58-Harkesh Singh but the trial Court has failed to take note of this fact.

- II. Though the report of the Commission of Justice K.P. Singh is admissible as evidence in view of Section 3 of the Indian Evidence Act but the same was not produced by the prosecution to prove its case. In support of his submission, he placed reliance upon **Zakia Ahsan Jafri vs The State Of Gujarat : 2022 LiveLaw (SC) 558.**
- III. The provisions of Section 207 of the Code of Criminal Procedure, 1973 has not been complied with by the trial Court. In support of his submission, he relied upon the judgment of the Apex Court in **Manoj & others Vs. State of Madhya Pradesh : 2022 (0) SC 500.**
- IV. No where in the impugned judgment of the trial Court, the statement of defense witness i.e. D.W.1-Prahlad Singh has been discussed or mentioned by the trial Court.
- V. Though in three encounters, members of C.R.P.F., S.T.F. and P.A.C. were involved but none of the members of S.T.F. and C.R.P.F. were made accused.

VI. The convicts/appellants being a members of the discipline force, obeyed the direction of the higher authorities of the police and laid ambush in three places i.e. Neoria, Bilsanda and Puranpur on the report of vigilance and in all three places, police personnels including the convicts/appellants eliminated ten terrorists in encounter in self-defense. His submission is that the action of the convicts/appellants were as per the direction of the higher authorities of the police coupled with the vigilance report. He argued that if they disobeyed the direction of the higher authorities, they ought to have been punished in terms of Section 7 of the Police Act, 1861.

VII. The incriminating evidences under Section 313 of the Code of Criminal Procedure was put forward to the accused to explain but the trial Court had dealt with it in a very casual and cursory manner. According to him, the statement of accused recorded under Section 313 Cr.P.C. is the conversation of the Court with the accused but that has not been followed by the trial Court. In support of his submission, he relied upon the judgment of the Apex Court in **Jai Prakash Tiwari Vs. State of Madhya Pradesh** : 2022 (0) SC 646.

- VIII.** In respect of three encounters, due investigation was conducted by the local police and after due investigation, closure report was submitted in all three F.I.Rs but the C.B.I., on entrustment of the investigation of the case by the Apex Court, instead of making fresh investigation for the three incidents for which closure report was already submitted or instead of filing protest petition against the closure report, had started re-investigation of the case by lodging three F.I.Rs. corresponding to the thirteen F.I.Rs. lodged by the local police. His submission is that re-investigation of the case is unlawful and cannot be sustained.
- IX.** There is no motive of the convicts/appellants to eliminate the ten Sikhs in encounter. His submission is that the convicts/appellants being police personnel eliminated ten Sikh terrorists in encounter in self-defense.
- X.** The convicts/appellants were convicted on the basis of circumstantial evidence but the prosecution had failed to link the chain of circumstances and the trial Court has failed to consider this aspect of the matter.

- XI.** The convicts/appellants, while performing their official duties being police officers, had not made any criminal conspiracy, hence Section 120-B I.P.C. cannot be applied against the convicts/appellants.
- XII.** The prosecution had also failed to prove the facts that the convicts/appellants had incorrectly framed any record with intent to save any person from punishment and also failed to prove the fact that convicts/appellants had abetted any commission of crime, hence the offences punishable under Sections 218 and 117 I.P.C. are not applicable.
- XIII.** There is a serious dispute about the list of number of the alleged passengers travelling from the pilgrims bus. But the trial Court had not dealt with this aspect of the matter while passing the impugned order.
- XIV.** the story set up by the prosecution of ‘Kachalaghat’ has not been proved by the prosecution beyond reasonable doubt as except two alleged passengers i.e. P.W.11 and P.W.13, the prosecution had failed to produce any passengers/driver of bus/conductor of bus or any other eye-witnesses to prove its case and further the testimonies of P.W.11 and P.W.13 are contradictory to each other. The testimonies of

P.W.11 and P.W.13 are not reliable as they are highly interested witnesses as they are the wives of two terrorists who were eliminated in the encounter and on the story set up by the prosecution, they were granted compensation from the State.

XV. The provisions of Section 364 I.P.C. and 365 I.P.C. are also not applicable under the facts and circumstances of the case.

XVI. Hence the impugned judgment and order passed by the trial Court is liable to be set-aside.

XVII. So far as the sentence is concerned, he argued that as the convicts/appellants were performing their official duties with utmost delinquency, hence lenient view ought to have been granted to the convicts/appellants.

(D) ARGUMENTS ON BEHALF OF VICTIM

(97) Shri I.B. Singh, learned Senior Advocate, assisted by Shri Sajeet Singh, Shri Avinash Singh Vishen, Shri Vivek Rai, Shri Harjot Singh, Shri Ishan Baghel, appearing on behalf of the victim has vehemently opposed the aforesaid submissions advanced by the learned Counsel for the convicts/appellants and argued as under :-

I. on 20.06.1991, Talwinder Singh, aged about 17-19 years, resident of Shahjahanpur, contacted the bus

owner, namely, Amit Kumar (P.W.5), and booked his bus for pilgrimage and also submitted a list of 25 passengers for pilgrimage. On 28.06.1991, Amit Kumar (P.W.5) was granted temporary permit vide serial No. 872 for the period 30.06.1991-13.07.1991 for bus No. UP26/0245. On 29.06.1991, the bus was plying from Pilibhit to Bareilly to take passenger alongwith Talwinder Singh and then after taking passengers therefrom, the bus was plying from Bareilly to Nanakmatta. Thereafter, the bus reached in the evening of 29.06.1991 at Pilibhit, wherefrom Talwinder Singh along with 25-26 passengers left Pilibhit for pilgrims tour from Nanak Mattha Sahib, Sitaarganj, Varanasi, Patna Sahib, Huzur Sahib and Nanded Sahib.

On 10.07.1991, the Superintendent of Police, Pilibhit called an urgent meeting with the Station House Officers of three police stations of Pilibhit, namely, Neoria, Bilsanda and Puranpur.

On 11.07.1991, a news article '*100-100 chuhe kha kar bili.....*' was published in the local newspaper. However, the aforesaid news item was not exhibited before the trial Court as it was the photocopy of the newspaper.

On 12.07.1991, the pilgrims' bus was returning and as soon as it reached on the barrier of bridge at about 09:00-11:00 a.m. in the morning, the police officers stopped the bus at a bridge and deboarded 10-11 young Sikhs and only left ladies and children in the bus. After that the deboarded 10-11 young Sikhs were taken away on the blue police bus and few police personnels kept on roaming the bus around in which the passengers were sitting and in the evening dropped the remaining passengers in the bus at the Pilibhit Gurudwara.

Thereafter, it was not in dispute that within police station Neoria, on 13.07.1991, at 04:00 a.m., a police encounter took place in which three Sikhs alleged terrorists were killed; within police station Bilsanda, on 13.07.1991, at 04:30 a.m., a police encounter took place in which four Sikhs alleged terrorists were killed; and within police station Puranpur, in the intervening night of 12/13.07.1991, a police encounter took place, in which two Sikhs alleged terrorists were killed.

Thereafter, in regard to the incident which took place within police station i.e. Neoria, Bilsanda

and Puranpur, separate F.I.Rs. i.e. total 13 F.I.Rs. were registered in three police stations.

After that within five days of the incident, a news item was published in ‘Times of India’ newspaper to the effect that ten innocent Sikhs have been killed in a fake encounter by Pilibhit Police. On the basis of the aforesaid news article and at the instance of P.W.4-Ajeet Singh, on 18.07.1991, Mr. R.S. Sodhi had filed writ petition (criminal) before the Apex Court, wherein initially the Apex Court directed the Additional Chief Judicial Magistrate, Pilibhit to make an inquiry and submit its report.

On 30.03.1992, Station Officer Bilsanda, Pilibhit identified four deceased who were allegedly killed in the police encounter and submitted that they were terrorists and accordingly submitted final report.

After that in the year 1992, a judicial inquiry was conducted by a retired Judge of this High Court. Thereafter, considering all the material, the Apex Court, vide order dated 15.05.1992, decided the writ petition (Criminal) No. 1118 of 1991 on 15.05.1992 and directed C.B.I. investigation in the matter.

Thereafter, C.B.I. registered three F.I.Rs. i.e. RC 1 (S)/93-SIU.V., RC 2 (2)/93-SIU.V. and RC3(S)/93-SIU-V. The C.B.I., after due investigation, filed the charge-sheet on 09.06.1995.

The trial Court, after appreciating the evidence on record, had rightly convicted and sentenced the appellants by means of the impugned judgment and order.

- II. After placing the aforesaid facts, it has been argued by the learned Senior Counsel for the victim that the names of 25 passengers including Talwinder Singh, who was missing, were shown in the charge-sheet itself. He further argued that list of passengers ought to be attested/approved by M.P./M.L.A./Block Pramukh but the same has not been done. P.W.22-Ravindra Singh Yadav had denied his stamp and his signature on the list of passengers. The trial Court had also taken note of the aforesaid facts and on finding that the conduct of Daya Nidhi Mishra, who went to the RTO Office, was suspicious, had rightly directed for departmental inquiry against him. Thus, it is conclusive proof that list of passengers was changed. Therefore, the contention of the convicts/

appellants in regard to the list of passengers has no substance.

III. The contention of the convicts/appellants that no eye-witnesses, who had seen the incidence, were produced, is absolutely wrong as the eye-witnesses P.W.17-Kamaljeet Singh, P.W.18-Gurumej Singh, P.W.20-Bhagwat, P.W.34-Milkha Singh, P.W.38-Mahendra Singh, P.W.40-Major Singh, in their depositions, had clearly deposed that they had seen the Sikhs with hair open, hands tied in police vehicles including blue bus surrounded by policemen at around 05:00 p.m. near railway crossing.

IV. The police knew the names of the persons who were killed in fake encounter but even then the police personnel had shown them in *panchayatnama* and post-mortem report as unidentified and hurriedly disposed off the dead body of ten deceased who were killed in fake encounter as unidentified dead bodies. To substantiate his submission, he had drawn our attention to P.W.21-Brijesh Kumar, who was the Head Wireless Operator at Pilibhit. He argued that P.W.21, while seeing the photocopy of essentially certified radiogram D-88/2, had stated before the

trial Court that a copy of this radiogram message was sent by Superintendent of Police, Pilibhit at 08:36 a.m. on 13.07.1991 and it was transmitted to all police stations at around 09:40 a.m. and 10:30 a.m., wherein the name of two deceased, namely, Baljit Singh alias Pappu and Jaswant Singh alias Fauji, was stated. Thus, it is clear that the police though knew the names of the deceased persons but even then the police had shown the dead bodies of ten young Sikhs as unidentified and disposed them off in a hurried manner on 13.07.1991.

- V. The convicts/appellants have admitted that they had used arms and ammunition for killing of ten young Sikhs in encounter.
- VI. So far as the plea of the convicts/appellants that Additional Superintendent of Police and Superintendent of Police under whose direction the encounter took place, were not made accused, is concerned, his submission is that those Additional Superintendent of Police and Superintendent of Police were made accused but as no evidence was found against them, they were exonerated. However, the trial Court had opined that their

conduct was suspicious and should be investigated further.

VII. In district Pilibhit, there was a camp of 15 battalion P.A.C.; a camp of 32 battalion P.A.C.; and some police officers. From the aforesaid police personnel, a team was made, namely, Special Police Force and not Special Task Force (STF) as the Special Task Force (STF) came into existence in the year 1998 and there was no any STF in the year 1991. Therefore, the contention of the convicts/appellants that members of STF also participated in the incident, has no substance.

VIII. Ten deceased persons were not terrorists but they were innocent civilians. To substantiate his submission, he has drawn our attention to P.W.45-Dewan Singh Rawal, who was the Investigating Officer of the F.I.R. Nos. 136 of 1991 to 140 of 1991 and submitted the final report on 30.03.1992, has failed to state any cases registered against the ten deceased persons, hence the plea of the convicts/ appellants that deceased were terrorists, is without any basis.

- IX.** No shoes, no purse, no rupees were found from the spot. This puts light on the fact that they were tortured before the encounter.
- X.** Panch witness deposed that panchayatnama was not done in front of them and their signature was taken on blank papers. Only one panchayatnama was done by the Magistrate while others were done by the police officers. Furthermore, no efforts were made by the police to identify the bodies which is mandated under the Police Regulations Act. Thus, panchayatnama of the deadbodies of the deceased appears to be doubtful.
- XI.** In the year 1991, out of turn promotions were provided to police personnel for doing extra courageous job such as encounter. Therefore, in order to get the said benefit, the convicts/appellants being the police personnel had killed ten young sikhs by showing them to be killed in encounter.
- XII.** So far as the plea of the convicts/appellants that no compliance of Section 207 of the Code of Criminal Procedure was made, he argued that this plea of the convicts/appellants are contrary to record as all

the documents were provided to the convicts/appellants.

XIII. So far as the plea of the convicts/appellants that the report of the Commission is neither provided to the convicts/appellants nor it was exhibited, learned Senior Counsel appearing on behalf of the victim has placed reliance upon the judgment of the Apex Court in **T.T.Antony vs State Of Kerala & Ors** : 2001 (6) SCC 181, and has argued that the report of the Commission was a fact finding meant only to instruct the mind of the Government without producing any document of a judicial nature and those findings of the Commission of Inquiry were not definitive like a judgment.

XIV. The driver of the bus Musharraf Hussain had filed an affidavit before the Apex Court, stating therein about the kidnapping/abduction of Sikh youths by the police party from Kacchla Ghat but he could not be located and examined during the course of investigation.

XV. The convicts/appellants have failed to tender any plausible explanation as to how the deceased suffered abrasion/contusion injuries.

XVI. The number of fire arms allegedly used by the police personnel in the three alleged encounters could not be connected with the empty cartridges recovered from the spot.

XVII. Convict/appellant no. 4-Veerpal Singh had admitted the fact that he had fired four rounds. He, in his statement recorded under Section 313 Cr.P.C., also admitted his presence on the spot.

XVIII. Since criminal acts committed by the convicts/appellants do not form the part of discharge of their duties and as such, sanction for prosecution under Section 197 Cr.P.C. is not required. Even otherwise, the Investigating Officer had made efforts to get the the sanction under Section 197 Cr.P.C. from the Government Uttar Pradesh. This has been established from the charge-sheet itself.

(E) ARGUMENTS ON BEHALF OF THE INVESTIGATING AGENCY/C.B.I.

- (98)** Shri Anurag Kumar Singh, learned Counsel appearing on behalf of the C.B.I. has opposed the contentions of the learned Counsel for the convicts/appellants and argued that
- I. the convicts/appellants alleged that the encounter was committed by them in self-defence but the convicts/appellants have failed to show that they

had committed the encounter in a self-defense as the onus is on the convicts/appellants to prove the aforesaid facts. In support of his submission, he relied upon the judgment of the Apex Court in **Om Prakash and others Vs. State of Jharkhand and another** : (2012) 12 SCC 72 and **Rizan and another Vs. State of Chhattisgarh** : 2003 (2) SCC 661.

- II. The amount of ammunition fired during encounter by the police personnel to the recovered empty cartridges is too much, which shows that it was planted.
- III. The plea of the learned Counsel for the convicts/appellants that the C.B.I. had made re-investigation, which is not permissible under law, is concerned, pursuant to the order of the Apex Court, the C.B.I. took the investigation of the case and had registered three F.I.Rs corresponding to 13 F.I.Rs. registered by the local police, therefore, no permission from the Magistrate for investigation is necessary.
- IV. The trial Court has rightly convicted and sentenced the convicts/appellants by means of the impugned judgment and order and there is no illegality or

infirmity in the impugned order. Hence the above-captioned appeals are liable to be dismissed.

(F) ANALYSIS

(99) This Court has examined the submissions advanced by the learned Counsel for the parties and perused the statements of the prosecution witnesses, defense witnesses, the material exhibits tendered and proved by the prosecution, the statements of the appellants recorded under Section 313 Cr.P.C. and the impugned judgment.

FIRST INFORMATION REPORTS

(100) Three separate F.I.Rs. were lodged in respect of the alleged encounter occurred at three different places of district Pilibhit in the intervening night of 12/13.07.1991, which were as under :-

A. First Place of Incident : Dhamela Kuan in Mahof Jungle falling in the jurisdiction of police station Neoria, in the intervening night of 12/13.07.1991 :-

Name of police personnel/accused participated in encounter as well as Arms & Ammunition used by them in encounter (as per police records mentioned in charge-sheet)	F.I.R. lodged by local police	F.I.R. lodged by C.B.I.	Name of Deceased
1. Chander Pal Singh, SO police station Neoria, fired 47 rounds from AK 47 rifle no. 6048 out of which 3 empties recovered.	1. 144/91 2. 145/91 3. 146/91 4. 147/91	RC (1) (S) /93- SIU.V	1. Baljit Singh alias Pappu s/o Basant Singh, resident of village Arjunpura PS Dhariwal District
2. Rajinder Singh SO PS			

<p>Amaria fired 48 rounds from his AK 47 No. 4372 and recovered 8 empties.</p> <p>3. Harpal Singh SO PS Gajraula fired 24 rounds from his AK 47 No. 1017 and recovered 12 empties</p> <p>4. Brahmopal Singh SI PS Sungadi fired 4 rounds from .38 revolver of which no empty could be recovered.</p> <p>5. Satinder Singh HC PS Neoria fired 17 rounds from SLR and recovered 2 empties.</p> <p>6. Subhash Chander Const. P.S. Sungadi fired 10 rounds from SLR No. 569 and recovered 5 empties.</p> <p>7. Nazim Khan Const. No. 481 PS Barkehra fired 12 rounds from SLR No. 6214 and recovered 2 empties.</p> <p>8. Shamsher Ahmed Const. No. 375 PS Amaria fired 7 rounds from 303 rifle and recovered 5 empties</p> <p>9. Ram Swaroop Const. No 35 P.S. Gajraula, fired 5 rounds from 303 rifle No. 8350 and recovered 2 empties.</p> <p>10. Gyan Giri Const. No. 231 PS Sungadi fired 4 rounds from 303 rifle No. 9427 and recovered 1 empty.</p> <p>11. Krishan Veer Singh Const. No. 27, PS Gajraula fired 6 rounds from 303 rifle No. 2475</p>	<p>5. 148/91</p>	<p>Gurdaspur.</p> <p>2. Jaswant Singh alias Jassa son of Basant Singh resident of village Arjunpura police station Dhariwal, District Gurdaspur.</p> <p>3. Surjan Singh alias Bittoo son of Karnail Singh resident of village Manepur, police station Dhariwal, district Gurdaspur.</p> <p>4. Harminder Singh alias Minta son of Ajit Singh resident of village Satkoha, Police Station Dhariwal, district Gurdaspur.</p>

	and recovered 2 empties.		
12.	Sukhpal Singh Const. No. 71 Police Station Neoria fired 15 rounds from 303 rifle No. 8612 and recovered 10 empties.		
13.	Badan Singh Const. No. 247 Police Station Neoria fired 17 rounds from 303 rifle No. 9021 and recovered 16 empties.		
14.	Narayan Dass Const. No. 428 Police Station Gajraula fired 9 rounds from 303 rifle No. 9664 and recovered 2 empties.		
15.	Lakhan Singh Const. No. 410 Police Station Hazara fired 6 rounds from 303 rifle and recovered 3 empties		
16.	Karan Singh Const. No. 30 PS Gajraula fired 2 rounds from 303 rifle of which no empty could be recovered.		
17.	Rakesh Kumar Const. No. 125 PS Amaria fired 8 rounds from 303 rifle No. 15919 and recovered 3 empties		
18.	Nem Chand Const. No. 465, Police Station Amaria fired 9 rounds from 303 rifle No. 31959 and recovered 6 empties.		

B. **Second Place of Incident :** Phagunai Ghat in the jurisdiction of police station Bilsanda in the intervening night of 12/13.07.1991 :-

Name of police personnel/accused participated in encounter as well as Arms & Ammunition used by them in encounter (as per police records mentioned in charge-sheet)	F.I.R. lodged by local police	F.I.R. lodged by C.B.I.	Name of Deceased
1. Devendra Pandey SO Police Station Bilsanda fired 15 rounds from AK 47 rifle No. 92171 and recovered 3 empties.	1. 136/91 2. 137/91	RC 2(S)/93-SIU.V	1. Lakhwinder Singh alias Lakha s/o Gurmej Singh r/o Jagat, Police Station Amaria, District Pilibhit
2. Mohd. Anis, SHO PS Bisalpur fired 4 rounds from his personal DBBL .12 bore gun No. 52136 and recovered all the 4 empties.	3. 138/91 4. 139/91 5. 140/91		2. Kartar Singh s/o Ajaib Singh r/o Roorkhera, Police Station Kila Lal Singh, Police District Batala.
3. Ramesh Bharti, SI Pilibhit Police Lines, fired 5 rounds from 303 rifle No. 9800 and recovered all the 5 empties			3. Jaswant Singh, s/o Ajaib Singh, resident of village Roorkhera, Police Station Kila Lal Singh, District Batala.
4. Veerpal Singh, SI Police Station Bilsanda fired 4 rounds from 303 rifle No. 2927 and recovered all the 4 empties			4. Randhir Singh Dheera s/o Sunder Singh r/o Meerkachana, district Batala.
5. Nathu Singh HC No. 9 PS Bilsanda fired 5 rounds from 303 rifle No. 9067 and recovered all 3 empties.			
6. Dhani Ram Const. No. 567 PS Bilsanda fired 3 rounds from 303 rifle No. 9067 and recovered all 3 empties.			
7. Ugarpal Singh Const. of police station Bilsanda fired 3 rounds from 303 rifle No. 66235 and recovered 3 empties.			

8.	Sugam Chand Const. No. 540 Police Station Bilsanda fired 8 rounds from 303 rifle No. 9472 and recovered 6 empties.	
9.	Const. Collector Singh of Police Station Bilsanda fired 5 rounds from 303 rifle No. 8791 and recovered 7 empties.	
10.	Const. Kunwar Pal Singh of Police Station Bilsanda fired 4 rounds from 303 rifle No. 9154 and recovered 2 empties	
11.	Shyam Babu Const. of Police Station Bilsanda fired 8 rounds from 303 rifle No. 9017 and recovered 5 empties.	
12.	Ashok Kumar Const. of Police Station Bisalpur fired 7 rounds from 303 rifle No. 6705 and recovered all the 7 empties.	
13.	Banwari Lal HC, PAC 32 nd Bn. fired 2 rounds from SLR but could not recover any empties.	
14.	Dinesh Singh, Const. PAC fired 10 rounds from SLR and recovered 6 empties	
15.	Sunil Kumar Dixit, Const. PAC fired 6 rounds from SLR and recovered 2 empties.	
16.	Arvind Kumar Singh Const. PAC fired 4 rounds from SLR and recovered 2 empties.	

<p>17. Ram Nagina Const. PAC fired 8 rounds from SLR and recovered 7 empties</p> <p>18. Vijay Kumar Singh Const. PAC fired 2 rounds from SLR of which one empty could be recovered</p>			
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C. Third Place of Incident : Pattabhoji Jungle in the jurisdiction of Police Station Puranpur, in the intervening night of 12/13.07.1991 :

Name of police personnel/accused participated in encounter as well as Arms & Ammunition used by them in encounter (as per police records mentioned in charge-sheet)	F.I.R. lodged by local police	F.I.R. lodged by C.B.I.	Name of Deceased
1. Vijendra Singh, SHO Police Station Puranpur fired 38 rounds from AK 47 rifle, one shot of VLP which missed and recovered 3 empties	1. 363/91 2. 364/91 3.	RC 3 (S)/93-SIU.V	1. Narendra Singh alias Ninder son of Darshan Singh, r/o Pishtor, Police Station Amaria, District Pilibhit.
2. MP Vimal SI Police Station Puranpur fired 18 rounds from SLR and recovered 2 empties	365/91		2. Mukhwinder Singh alias Mukha son of Santokh Singh r/o Roorkhera, District Gurdaspur,
3. MC Durga Pal SI PS Puranpur fired 17 rounds from SLR and recovered 4 empties			
4. R.K. Raghav SI, Police Station Puranpur fired 5 rounds from .303 and could not recover any empty			
5. Surjit Singh SI PS Puranpur fired 45 rounds			

	from stern and recovered 5 empties		
6.	U.P. Singh SI Police Station Puranpur fired 7 rounds from .303 rifle and recovered 2 empties.		
7.	Munna Khan Const. 473, Police Station Puranpur fired 18 rounds from .303 rifle and recovered 10 empties		
8.	Dur Vijay Singh, Const. 584, Police Station Puranpur fired 15 rounds from .303 rifle and recovered 9 empties.		
9.	Manish Khan, Const. 23, Police Station Puranpur fired 2 rounds from .303 and recovered one empty.		
10.	Mahavir Singh, Const. 128, PS Puranpur fired 17 rounds from .303 rifle and recovered 8 empties.		
11.	Gaya Ram, Const. 30, fired 3 rounds from .303 rifle and recovered 2 empties		
12.	Register Singh Const. 371, Police Station Puranpur fired 2 rounds from .303 rifle and recovered one empty.		
13.	Rashid Hussain, Const. 80, Police Station Puranpur fired 2 rounds from .303 rifle and recovered one empty.		
14.	Dur Vijay Singh Const. 470 fired 14 rounds from SLR and recovered 4 empties.		

15.	Sayed Ale Raza Rizvi, Const./Driver, Police Station Puranpur fired 4 rounds from his personal .315 bore rifle and recovered 4 empties.	
16.	Rajesh Chander Sharma, SO, Police Station Madho Tanda fired 6 rounds from .38 revolver No. 788739 and recovered 6 empties.	
17.	M P Singh SI Police Station Madho Tanda fired 15 rounds from AK 47 rifle No. 36153 and recovered 10 empties.	
18.	S.P. Singh SI Police Station Madho Tanda fired 6 rounds from .303 rifle No. 9303 and 7 rounds from .9 pistol No. 1133 and recovered 4 and 5 empties respectively.	
19.	Harpal Singh, Const. 37 PS Madho Tanda fired 3 rounds from .303 rifle No. 92373 and recovered 2 empties.	
20.	Ram Chander Singh, Const. 429 PS Tanda fired 2 rounds from .303 rifle No. 2908 and recovered one empty.	
21.	Kishan Bahadur, Const. 165 Police Station Madho Tanda fired 6 rounds from .303 rifle No. 26210 and recovered 4 empties	
22.	Surajpal Singh Const. 257 Police Station Kotwali, Pilibhit fired 3 rounds from his .12 bore SBBL gun No. BE-826/1983	

and recovered 3 empties.			
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APELLANTS' VERSION

(101) The aforesaid police personnel/appellants had admitted the facts that they eliminated/killed ten Sikh terrorists in encounter in the incident that took place in the intervening night of 12/13.7.1991 in Dhamelkuan forest falling in the jurisdiction of Neoria; Phagunaighat falling in the jurisdiction of police station Bilsanda; and Pattabojhi forest falling in the jurisdiction of police station Puranpur, in district Pilibhit. Their case was that there was vigilance report to the effect that hardcore terrorists of 'Khalistan Liberation Front' were in adjoining areas and they might have committed heinous crimes like murder, loot, land grabbing etc. and have created panic in the public. In this regard, ambush was laid by the police personnel including appellants as well as members of C.R.P.F. & S.P.F. on the date of the incident i.e. in the intervening night of 12/13.07.1991 in three different places in district Pilibhit i.e. Dhamelkuan forest falling in the jurisdiction of Neuria; Phagunaighat falling in the jurisdiction of police station Bilsanda; and Pattabojhi forest falling in the jurisdiction of police station Puranpur, in district Pilibhit. During the course of ambush, 5-6 Sikh terrorists appeared in Dhamelkuan forest and challenged the police team, upon which in retaliation, four Sikh terrorists were eliminated in Dhamelkuan forest by the police party, whereas in Phagunaighat forest, 4-5 Sikh terrorists appeared and

challenged the police party, whereby in retaliation and in self-defense, three Sikh terrorists were killed and in Pattabojhi forest area of police station Puranpur, two Sikh terrorists were killed.

THE CASE OF THE PROSECUTION

(102) Public Interest Litigation No. 1118 of 1991 was filed by Shri R.S. Sodhi, Advocate, before the Apex Court, wherein the Apex Court, vide order dated 15.05.1992, entrusted the investigation of the cases relating to three incidents in district Pilibhit to C.B.I. In compliance of the order dated 15.05.1992 passed by the Apex Court, C.B.I. took over the investigation and started investigation of the case and registered three cases, as stated hereinabove.

(103) The case of the prosecution is that ten young Sikhs, who were eliminated by the police personnel/convicts in encounter, were not terrorists but they along with others (total 25-26 persons) had gone as pilgrims for paying obeisance in Huzur Sahib, Patna Sahib and Nanded from a bus, bearing registration No. UP 26/0245, on 29.06.1991. On 12.07.1991, at about 10-11 a.m., when they were returning from pilgrimage and reached 'Kachla Ghat' falling within the jurisdiction of police station Kotwali Soron, district Etah, the armed police personnel (convicts/appellants) intercepted the aforesaid bus; got into the bus; deboarded eleven Sikh persons; and boarded them in sky blue police bus. After that, some police personnel got into the

passenger's bus and kept the bus moving around throughout the day and left this bus at a Gurudwara in Pilibhit in the night. In the meanwhile, 11 Sikh youths, who were deboarded from the bus, were divided into three parts and in the intervening night of 12/13.07.1991, they were killed by the police personnel/appellants in the night itself and after that further action showing the encounter with the terrorists, FIRs in connection with the encounter in police station Neoria, Police Station Bilsanda and Police Station Puranpur were registered.

FINDING OF THE TRIAL COURT

(104) The trial Court believed the testimonies of two witnesses, namely, P.W.11-Smt. Swarnjeet Kaur and P.W.13-Balwinderjeet Kaur and convicted and sentenced the appellants by means of the impugned judgment and order in the manner as stated hereinabove in paragraph-2, on coming to the conclusion that ten Sikh youths were killed in fake encounter after being kidnapped from the pilgrims' bus by the police personnel/appellants.

QUESTION

(105) From the rival submissions of the parties and also going through the record, there is no dispute that ten Sikhs youth were killed in three different places of the district Pilibhit as stated hereinabove, but question is that whether ten Sikh youths were actually killed in encounter by the police personnel/appellants as ten deceased persons were terrorists or whether ten Sikh

youths/deceased persons were killed in fake encounter after kidnapping them from the pilgrim's bus by the police personnel/appellants.

**RELIABILITY OF THE EVIDENCE OF BOOKING OF BUS,
BEARING NO. UP26/0245 BELONGING TO PW5-AMIT
KUMAR FOR PILGRIMS**

(106) P.W.5-Amit Kumar was the owner of the bus, bearing No. UP 26/0245. His evidence shows that one Talwinder Singh (missing) had approached him for a bus for pilgrimage w.e.f. 29.06.1991 to 12.07.1991. After that he applied for temporary permit of his bus No. UP 26/0245 from 30.06.1991 to 13.07.1991 for plying it from Bareilly to Sitarganj (empty) and from Sitarganj to Patna Sahib and Huzur Sahib by enclosing two sets of the list of passengers. Pursuant to his aforesaid application, permit was granted to him from the office of R.T.O., Bareilly for plying his bus w.e.f. 30.06.1991 to 13.07.1991 in the aforesaid route. After that on 29.06.1991, Talwinder Singh came to his office and he handed over a copy of the temporary permit and list of passengers to him (P.W.5-Amit Kumar) as well as driver of the bus, namely, Musharraf. Thereafter, his bus went to pick up the passengers in Sitarganj and after picking up passengers, the bus returned to his office, wherein there were around 25-26 passengers in the bus. Thereafter, driver Musharraf returned around 08:00-08:30 a.m. on 13.07.1991 and told him that the bus was parked near the office.

(107) The testimony of P.W.5-Amit Kumar also established the fact that Talwinder Singh (missing) had booked the bus of P.W.5, bearing No. UP 26/0245, for pilgrims w.e.f. 29.06.1991 to 12.07.1991 as is evident from the Receipt of New Hindustan Travels belonging to P.W.5 dated 20.07.1991, which was exhibited as Ext. Ka-7. From perusal of Ext. Ka.7, it transpires that bus of the P.W.5-Amit Kumar was booked by Talwinder Singh (missing) for pilgrims for plying it from Bareilly to Sitarganj (empty) and from Sitarganj to Patna Sahib and Huzur Sahib and also there was signature of Talwinder Singh in the Receipt (Ext. Ka.7).

(108) The testimonies of P.W.1-Brajesh Singh, who was the A.R.T.O., Bareilly at that relevant time and P.W.2-Ranvir Singh, who was the Senior Clerk in the office of R.T.O. Office, also shows that P.W.5-Amit Kumar applied for temporary permit of his bus No. UP 26/0245 from 30.06.1991 to 13.07.1991 for plying it from Bareilly to Sitarganj (empty) and from Sitarganj to Patna Sahib and Huzur Sahib by enclosing two sets of the list of passengers. Pursuant to his aforesaid application, permit was granted to him from the office of R.T.O., Bareilly for plying his bus w.e.f. 30.06.1991 to 13.07.1991 on the aforesaid route.

(109) From the testimonies of P.W.1-Brajesh Singh, P.W.2-Ranvir Singh and P.W.5-Amit Kumar, it is established that permit was granted to P.W.5-Amit Kumar for plying his bus, bearing No. UP26/0245 w.e.f. 30.06.1991 to 13.07.1991, from Bareilly to

Sitarganj (empty) and Sitarganj to Patna Sahib and Huzur Sahib and also copy of permit along with list of passengers was provided to P.W.5-Amit Kumar from the office of R.T.O., Bareilly.

RELIABILITY OF THE EVIDENCE OF LIST OF PASSENGERS TRAVELING IN THE AFORESAID BUS, BEARING No. UP26/0245, BELONGING TO P.W.5-AMIT KUMAR

(110) Having dealt with the facts that bus of P.W.5-Amit Kumar was booked by Talwinder Singh (missing) for pilgrims and permit of bus, UP26/0245, was granted to the owner of the bus, namely, P.W.5-Amit Kumar for plying his bus, bearing No. UP26/0245 w.e.f. 30.06.1991 to 13.07.1991, from Bareilly to Sitarganj (empty) and Sitarganj to Patna Sahib and Huzur Sahib and also copy of permit along with list of passengers was provided to P.W.5-Amit Kumar from the office of R.T.O., Bareilly, now it is necessary to dwell upon the contentions put forth by the learned Counsel for the appellants which pertains to the acceptability and reliability of the factum of the list of passengers travelling in the bus, bearing No. U.P.26/0245.

(111) The contention of the learned Counsel for the appellants is that the list of passengers travelling in the bus belonging to P.W.5-Amit Kumar is highly doubtful and cannot be believable as the prosecution has failed to prove the facts that the list of passengers was the same which was provided to P.W.5-Amit Kumar by R.T.O. Office, Bareilly as the original list of

passengers were missing and copy of the list of passengers produced by the prosecution is not readable. Their contention is that P.W.1-Brajesh Singh and P.W.2-Ranveer Singh had clearly stated in their depositions that the then Superintendent of Police (Rural), Bareilly, namely, Dayanidhi Mishra came to his R.T.O. office and enquired about the permit of the bus as well as list of passengers and after that on the request of Dayanidhi Mishra, the then Superintendent of Police, photocopy of the original carbon copy of the list of passengers was provided to him. Later on, P.W.-2 Ranvir Singh made a complaint to the effect that from the file of permit, original carbon copy of the list of passengers is missing. Thus, the list of passengers produced by the prosecution is not reliable and is highly doubtful as list of passengers, which was placed on record by the prosecution, was also not legible, therefore, the prosecution's story of kidnapping ten Sikh youths from the pilgrims' bus cannot be believable. Furthermore, the prosecution though very well knew the fact that the then Superintendent of Police (Rural), Dayanidhi Mishra, took away the carbon copy of the list of passengers even though he had no concern with the same but it neither interrogated nor examined him. The prosecution has failed even to show the reason as to why the then Superintendent of Police (Rural) Dayanidhi Mishra was not examined by the prosecution. According to the appellants, except in the composite charge-sheet filed against the accused persons/appellants, none of prosecution witnesses

had stated complete names of the persons said to have been travelled in the bus, therefore, the list of passengers produced by the prosecution cannot be believable and trustworthy.

(112) Refuting the aforesaid contention of the learned Counsel for the appellants in regard to list of passengers, Shri I.B. Singh, learned Counsel for the victim as well as learned Counsel for the C.B.I have drawn our attention to the charge-sheet and contended that the C.B.I., after due investigation, mentioned the names of each passengers in the charge-sheet. Shri I.B. Singh, learned Senior Counsel, appearing on behalf of the victim, however, has stated that though Dayanidhi Mishra has no concern with the list of passengers but the Investigating Officer of C.B.I. had made serious lacunae by not examining Dayanidhi Mishra as prosecution witness.

(113) In response, learned Counsel for the C.B.I. has failed to show any cogent evidence which establishes the reason for not examining the then Superintendent of Police Dayanidhi Mishra as prosecution witness in order to testify the actual list of passengers who were said to have been travelling in the bus as pilgrims.

(114) It transpires from the evidence on record as well as rival submissions advanced by the parties that original list of passengers were not available either with the owner of the bus i.e. P.W.5-Amit Kumar or in the office of R.T.O., Bareilly

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during the course of investigation or during the course of trial as is evident from the evidence of P.W.1-Brajesh Singh and P.W.2-Ranvir Singh. P.W.1-Brajesh Singh had stated before the trial Court that after sometime of issuing the temporary permit to P.W.5-Amit Kumar, the then S.P. (Rural) Dayanidhi Mishra came to his office and inquired about the said permit and bus and requested to supply copy of permit of the bus, upon which copy of the permit was supplied to him. However, on the next day Ranvir Singh (P.W.2) made a complaint to R.T.O., Bareilly that original list of passengers were not tagged with the file, upon which R.T.O., Bareilly called an explanation from him.

(115) Ex Ka.5, which is an explanation sought by R.T.O. Bareilly to A.R.T.O. (E), Bareilly mentioned in the temporary application form, reads as under :-

“A.R.T.O. (E), बरेली

परमिट लिपिक ने बताया है कि याची सूची की कार्बन कॉपी आप ले गये थे। जो फोटो कॉपी संलग्न है वह अत्यन्त धृधूली है। कार्बन कॉपी के बारे में स्थिति से अवगत कराये।

R.T.O.,बरेली
4/12/1991

(116) Ex. Ka. 1, which is the reply of A.R.T.O. (E), Bareilly in response to the aforesaid explanation, reads as under :-

“स० परिवहन अधि. बरेली,
महोदय,

सूचित करना है कि S.P. (R), Bly के चाहने पर मैने तथा पान्डेय जी ने यात्री सूची की उपलब्ध कार्बन कॉपी की फोटो कापीयाँ राजन चपरासी के द्वारा करायी गयी थीं। परमिट शाखा से दूसरे दिन ज्ञात हुआ कि मूल कार्बन कॉपी वहा वापस नहीं पहुँची। मैने तत्काल S.P. (RA) से सम्पर्क साधा तो उन्होने बताया कि उनके पास केवल फोटो कॉपी है कार्बन कॉपी नहीं है।

A.R.T.O. (E), Bareilly

(117) It transpires from Ex. Ka.1 and Ex. Ka.5 coupled with the depositions of P.W.1-Brajesh Kumar and P.W.2-Ranveer Singh that though the then Superintendent of Police (Rural) Dayanidhi Mishra had no concern with the list of passengers but even then he went to R.T.O. Office, Bareilly and took it but the prosecution has failed to examine Dayanidhi Mishra in order to testify the list of passengers nor the prosecution had tendered any explanation as to why the then S.P. (Rural), Dayanidhi Mishra was not produced before the trial Court for adducing evidence. Thus, it is quite apparent from the evidence of P.W.1 and P.W.2 that original list of passengers travelling the bus was missing and the copy of the list of passengers which was available was not legible.

(118) It is pertinent to mention at this juncture that Talwinder Singh, who booked the bus w.e.f. 30.06.1991 to 12.07.1991 for pilgrimage; Mushrraf, driver of the bus; and cleaner of the bus, were not examined by the prosecution as they were said to be missing during trial and it appears that the C.B.I. had not investigated the missing of the aforesaid persons, though they are the most valuable witnesses.

(119) P.W.11-Swarnjeet Kaur, who is the wife of deceased Harminder Singh *alias* Minta and P.W.13-Smt. Balwinderjeet Kaur *alias* Lado, who is the wife of deceased Baljeet Singh *alias* Pappu and sister-in-law of deceased Jaswant Singh. Both these

witnesses stated in their testimonies that they were travelling with their relatives in the bus. P.W.11-Swarnjeet Kaur, in her cross-examination, had deposed that bus was big and 25-26 passengers were travelling but she did not know whether the bus was filled with passengers or not. P.W.11 had also stated that she did not know that out of 25-26 passengers, how many males; how many females; and how many children were travelling. P.W.11 had further stated that though she boarded from Nanakmatta but she did not know about other passengers and about the place of their boarding in the bus.

(120) P.W.13-Balwinderjeet Kaur *alias* Lado, in her examination-in-chief, had stated before the trial Court that total 25-26 passengers were travelling in the bus and out of 25-26 passengers, 10-11 young Sikh, 2-3 old persons, 2-3 children and others women were travelling in the bus.

(121) It transpires from the evidence of P.W.11-Swarnjeet Kaur and P.W.13-Balwinderjeet Kaur *alias* Lado that both these witnesses though stated to have travelled along with them as pilgrims in the bus for about 13 days in different places, but even then, in their testimonies, both of them could not name each other or any other passengers travelling in the bus. It appears that both these witnesses though stated that 25-26 passengers were travelling in the bus for about 13 days but even then they did not know each other nor knew the name of other passengers.

(122) Taking into consideration the evidence of P.W.1, P.W.2, P.W.5, P.W.11 and P.W.13 in connection with the list of passengers coupled with the evidence of Investigating Officer Shri J.C. Prabhakar (P.W.29) and also the fact that 25-26 passengers were said to have been travelling in the bus, but the prosecution had only produced P.W.11 and P.W.13 as the persons travelling in the bus and the prosecution had also failed to show as to why other passengers were not examined, it transpires that the list of passengers mentioned only in the charge-sheet appears to be not trustworthy. It also transpires that except mentioning the names of the passengers in the charge-sheet, none of the prosecution witnesses had stated the facts that the name of the passengers mentioned in the charge-sheet were the same passengers travelling in the bus in question at the time of the occurrence. Furthermore, the prosecution had only examined P.W.11 and P.W.13 as the witnesses travelling in the bus but even they did not know the names of the passengers. The prosecution had not produced other passengers in the witness box nor tendered any explanation for not producing them as prosecution witnesses.

RELIABILITY OF THE EVIDENCE OF P.W.11-SWARNEET KAUR, P.W.4-AJIT SINGH, P.W.13-BALWINDERJEET KAUR ALIAS LADO

(123) Now, we have considered the evidence of P.W.11-Swarkjeet Kaur, P.W.4-Ajit Singh, who is the father-in-law of P.W.11 and P.W.13-Balwinderjeet Kaur *alias* Lado. The evidence of P.W.11-Smt. Swarkjeet Kaur shows that she along with her husband Harminder Singh *alias* Minta (deceased) were boarded

in the bus from Nanakmatta on 29.06.1991 for darshan of Nanakmatta, Patna Sahib, Huzur Sahib and other places and returned on 12.07.1991. According to her, when they were returning on 12.07.1991, the police stopped their bus near the barrier of a big river's bridge and after that several police personnel boarded on their bus and deboarded 10-11 young Sikhs and only 2-3 old persons, children and women were left in the bus. After that some police personnel boarded on the bus and some police personnel boarded 10-11 young Sikhs in police bus. Thereafter, the police personnel kept moving their bus here and there and in the evening, rest of the passengers were left in Pilibhit Gurudwara. In the night, she stayed in the Gurudwara and in the next morning, through a Sewadar, she sent a telegram to her father-in-law, upon which her father-in-law came from Punjab and when she was brought by her father-in-law to home, then, her father-in-law told her that her husband was killed by the police.

(124) The evidence of P.W.4-Ajit Singh, who is the father-in-law of P.W.11, shows that his son Harminder alias Minta (deceased) went along with his wife Swarnjeet Kaur (P.W.11) for pilgrimage tour from Nanakmatta, from where his son sent a telegram to the effect that they would go for Huzur Sahib and return on 15th or 16th. He stated that he came to know from the newspaper that some pilgrims while returning from Huzur Sahib were killed, in which name of his son Harminder was

also there. After 2-3 days of reading the newspaper, he went along with his daughter-in-law to Pilibhit and after that he went to leave his daughter-in-law to home from Pilibhit. He further stated that he came to know about the death of his son in police encounter from newspaper on 14th -15th July, 1991.

(125) From the evidence of P.W.4-Ajit Singh and P.W.11-Swarnjeet Kaur, it transpires that statement of P.W.11-Swarnjeet Kaur that from a Sewadar of Pilibhit Gurudwara, she sent a telegram to her father-in-law (P.W.4-Ajit Singh), upon which her father-in-law (P.W.4-Ajit Singh) came and she was taken away to home where her father-in-law stated that her husband was killed, whereas P.W.4-Ajit Singh had stated before the trial Court that from the newspaper, he knew the killing of his son in a police encounter and thereafter he went along with his daughter-in-law (P.W.11) to Pilibhit. Thus, from the reading of the aforesaid, it is apparent that the statements of P.W.11-Swarnjeet Kaur and her father-in-law P.W.4-Ajit Singh are contradictory to each other, therefore, their statements in this regard cannot be said to be trustworthy.

(126) The evidence of P.W.13-Balwinderjeet Kaur alias Lado shows that on 29.06.1991, she along with her husband Baljeet Singh alias Pappu (deceased), her brother-in-law Jaswant Singh (deceased) and mother-in-law Surjeet Kaur, went for pilgrimage tour of Nanakmatta, Patna Saheb, Huzur Sahib etc. on a bus and after 12-13 days of tour, they were returning on 12.07.1991 and

while returning, the police had stopped their bus near a bridge and after that 8-10 police personnel boarded from both the door of the bus and deboarded 10-11 young Sikhs including her husband and brother-in-law from the bus and boarded them in blue colour police bus. After that police personnel sat in their bus and kept moving their bus here and there whole day and in the evening, their bus was left in Pilibhit Gurudwara. The policemen told them that they deboarded the Sikh terrorists from the bus, therefore, they should not tell anyone about this. She also stated that while deboarding Sikhs, 2-3 Sikhs tried to run but they were caught by the villagers and handed over to the police.

(127) It transpires from statements of both P.W.11-Swarnjeet Kaur and P.W.13-Balwinderjeet Kaur that their bus left them in the evening of 12.07.1991 at Pilibhit Gurudwara but they did not tell anyone about alleged kidnapping or abduction of their husband or brother-in-law to anyone nor made any complaint either to police, even though according to their testimonies, large number of Sewadar and other pilgrims were present there.

(128) From the aforesaid as well as from careful reading of the evidences of P.W.11-Swarnjeet Kaur and P.W.13-Balwinderjeet Kaur coupled with the evidence of P.W.4-Ajit Singh, it appears that the presence of P.W.11 and P.W.13 in the pilgrims bus are doubtful.

CRIMINAL CONSPIRACY

(129) Now, this Court intends to address the issue which pertains to criminal conspiracy. The appellants before this Court were, charge-sheeted for the offence of criminal conspiracy within the meaning of Section 120B IPC apart from other offences. The trial Court found all the appellants guilty of the offences under Section 120B IPC and awarded sentence in the manner as stated in paragraph-2 hereinabove.

(130) Before analyzing the present facts with reference to Section 120B IPC in order to find out whether the charge of criminal conspiracy is proved in respect of each of the appellants, it is pertinent to note that Section 120B I.P.C. which is reproduced below :-

“120B. Punishment of criminal conspiracy – (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

(131) A perusal of the above shows that in order to constitute an offence of criminal conspiracy, two or more persons must agree

to do an illegal act or an act which if not illegal by illegal means.

(132) The Apex Court on several occasions has explained and elaborated the element of conspiracy. In **Noor Mohammad Mohd. Yusuf Momin vs State of Maharashtra** : (1970) 1 SCC 696, the Apex Court has observed:

“Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence.”

(133) In **E.G. Barsay v. State of Bombay** : AIR 1961 SC 1762, the following was stated :-

“..... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted

separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

(134) A three-Judge Bench in **Yash Pal Mittal v. State of Punjab :**

(1977) 4 SCC 540 had noted the ingredients of the offence of criminal conspiracy and held:

"10. The main object of the criminal conspiracy in the first charge is undoubtedly cheating by personation. The other means adopted, *inter alia*, are preparation or causing to be prepared spurious passports; forging or causing to be forged entries and endorsements in that connection; and use of or causing to be used forged passports as genuine in order to facilitate travel of persons abroad. The final object of the conspiracy in the first charge being the offence of cheating by personation, as we find, the other offences described therein are steps, albeit, offences themselves, in aid of the ultimate crime. The charge does not connote plurality of objects of the conspiracy. That the appellant himself is not charged with the ultimate offence, which is the object of the criminal conspiracy, is beside the point in a charge under Section 120-B IPC as long as he is a party to the conspiracy with the end in view. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial court.

11. The principal object of the criminal conspiracy in the first charge is thus "cheating by personation", and without achieving that goal other acts would be of no material use in which any person could be necessarily interested. That the appellant himself does not personate another person is beside the point when he is alleged to be a collaborator of the conspiracy with that object. We have seen that some persons have been individually and specifically charged with cheating by personation under Section 419 IPC. They were also charged along with the appellant

under Section 120-B IPC. The object of criminal conspiracy is absolutely clear and there is no substance in the argument that the object is merely to cheat simpliciter under Section 417, IPC."

(135) As already stated, in a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act is the *sine qua non* but proving this by direct proof is not possible. Hence, conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. Moreover, it is also relevant to note that conspiracy being a continuing offence continues to subsist till it is executed or rescinded or frustrated by the choice of necessity. In **K. R. Purushothaman v. State of Kerala : (2005) 12 SCC 631**, the Apex Court has made the following observations with regard to the formation and rescission of an agreement constituting criminal conspiracy:

"To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every

incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement."

(136) From the law discussed above, it becomes clear that the prosecution must adduce evidence to prove that :-

- (i) the accused agreed to do or caused to be done an act;
- (ii) such an act was illegal or was to be done by illegal means within the meaning of IPC; and
- (iii) irrespective of whether some overt act was done by one of the accused in pursuance of the agreement.

(137) In the instant case, the prosecution has examined PW-11 Swarnjeet Kaur and P.W.13-Balwinderjeet Kaur to prove the charges of conspiracy in the bus on the date of the incident. They were presented to support the prosecution case that immediately preceding the fateful incident, when they were returning from pilgrimage through a bus, police personnel including the appellants had, in execution of their conspiracy, stopped the bus near the bridge of the river; deboarded 11 Sikhs youths from the bus and boarded them in a blue colour bus;

some police personnel were boarded in the bus and their bus were roaming here and there whole day and in the evening they were dropped in Pilibhit Gurudwara.

(138) The defence has controverted the testimony of PW-11 and P.W.13 on several aspects which has already been discussed hereinabove. It has been alleged that P.W.11 and P.W.13 are the interested and tutored witnesses and their presence in the bus at the time of the incident as well as in Pilibhit Gurudwara is doubtful. P.W.11 and P.W.13 were brought in by the Investigating Officer to fill the lacunae, if any, in their investigation and to further make a strong case against the appellants. The defence has further denied the presence of appellants on the bus.

(139) First of all, in order to prove kidnapping and abduction of ten Sikhs from the pilgrimage bus, the prosecution has relied upon the testimony of PW-11 and P.W.13. As stated hereinabove, the testimonies of the P.W.11 and P.W.13 shows that their presence on the said pilgrimage bus at the time when the alleged 10 Sikhs youths were deboarded from the bus is extremely doubtful.

(140) During the trial, the identification of the appellants were not done by the prosecution from P.W.11 and P.W.13 and further the prosecution witnesses have claimed that 25 persons/passengers were travelling in the pilgrimage bus but the prosecution has failed to show any reason as to why only two passengers i.e.

P.W.11 and P.W.13 out of 25 passengers were produced by them in order to prove its case.

(141) From the aforesaid, it transpires that the testimonies of P.W.11 and P.W.13 about kidnapping of 10-11 Sikhs by the police personnel appears to be not probable. It also transpires from statements of prosecution witnesses that except P.W.11 and P.W.13, the prosecution has failed to produce any other witnesses viz. other passengers travelling in the bus. The villagers who caught 2-3 young Sikhs while they tried to run in order to escape and handed them over to the policeman, have not been examined. No independent witnesses with regard to kidnapping of 10-11 young Sikhs were examined by the prosecution. It also transpires from the record that none of the prosecution witnesses had identified the convicts/appellants by stating that they were the appellants who kidnapped and abducted 10-11 Sikhs from the pilgrimage bus. Even no identification was made by the prosecution nor P.W.11 and P.W.13 had identified the convicts/appellants to the effect that they were the appellants who kidnapped or abducted their husbands/deceased.

(142) From the aforesaid, it is quite apparent that the prosecution has failed to prove the facts that the police personnel had kidnapped or abducted 10-11 Sikh persons and after that by making criminal conspiracy with common intention, bifurcated them in three groups and killed them at three separate places i.e. Neoria,

Bilsanda and Pooranpur. Thus, from the consideration in totality of circumstances and the evidence in the case, this Court is not inclined to accept that the prosecution had established the fact that the appellants committed criminal conspiracy in the kidnapping, abduction and murder of ten Sikh youths, hence conviction and sentence of appellants under Sections 302/120-B, 364/120-B, 365/120-B, 218/120-B, 117/120-B I.P.C. are not at all just and proper.

(G) CONVICTION

(143) Now, the question then would be what offence is made out. We have given our anxious thought to this question.

(144) The case of the appellants was that they killed ten terrorists persons as they eliminated them in self defense because when they saw the terrorists came out from the forest area, then, they challenged them and all of a sudden, the terrorists opened fire and in retaliation and in self-defense, the appellants had opened fire and in that way, ten terrorists persons were killed in the firing.

(145) The claim of the appellants that they killed ten terrorists persons in self-defense does not corroborate with the medical evidence as from perusal of the ante-mortem injuries of four deceased persons out of ten deceased persons killed in the forest area of Phagunai Ghat within the jurisdiction of Police Station Bilsanda, District Pilibhit, it transpires that apart from injuries of fire arm, lacerated and abrasion wounds as well as

amputation were found on the body of the four deceased persons. The appellants have failed to explain/prove the lacerated wounds, abrasions and amputation caused on the body of the deceased.

(146) It is not the duty of the police officers to kill the accused merely because he/she is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial.

(147) From the aforesaid, we are of the opinion that the case of the appellants would be covered by Exception 3 to Section 300 of the I.P.C., which provides that culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, thinks to be lawful and necessary for the due discharge of his duty as a public servant without ill-will towards the person whose death he has caused.

(148) Admittedly, it appears from the entire evidence and the material on record that the higher authorities on the basis of confidential police reports believed that there were some terrorists, who were travelling with the passengers/pilgrimage to Nanakmatta, Patna Sahib, Huzur Sahib, were intercepted by the appellants and out of those passengers travelling in the bus, 10-11 young Sikhs were taken in the police bus and they were killed by the appellants, who are police personnel in three different places i.e. Neoria, Bilsanda and Puranpur. The prosecution has shown

criminal antecedents of four to six deceased who were involved in various terrorist activities in Punjab and they in order to promote the Liberation of Khalistan were also operating in the *tarai* region of district Pilibhit and nearby areas, were eliminated in police encounters by the appellants who have also admitted this fact in their statements under Section 313 of the Cr.P.C. before the trial Court. They participated in the three respective police teams which shot dead ten Sikh terrorists within the jurisdiction of three police stations Neoria, Bilsanda and Puranpur.

(149) The act of the appellants in eliminating the terrorists who were involved in various criminal cases of murder, loot, TADA activities as has been demonstrated from the criminal antecedents of some of the deceased, namely, Baljit Singh alias Pappu, Jaswant Singh, Harminder Singh alias Minta, Surjan Singh alias Bittu, Lakhvinder Singh but the appellants have failed to lead any defence against the other deceased whether they were also involved in terrorist activities with the four to six deceased and it was only argued by the appellants Counsel that other deceased who were shot in encounter were the companions of the four deceased, hence they were also killed in encounter but this contention of the learned Counsel for the appellants is not at all acceptable as act of the appellants cannot be justified to kill innocent persons along with some terrorist taking them to be also terrorists.

(150) In the present case, there was no ill-will between the appellants and the deceased persons. The appellants were public servants and their object was the advancement of public justice. No doubt, appellants exceeded the powers given to them by law, and they caused the death of the deceased by doing an act which they, in good faith, believed to be lawful and necessary for the due discharge of their duty. In such circumstances, the offence that was committed by the appellants, was culpable homicide not amounting to murder punishable under Section 304 of I.P.C. Thus, we are of the view that the appellants should have been convicted under Section 304 Part-I I.P.C. instead of Section 302 I.P.C.

(H) CONCLUSION

(151) For reasons stated hereinabove, the above-captioned appeals are **partly allowed**. The conviction and sentence of the appellants under Sections 302/120-B, 364/120-B, 365/120-B, 218/120-B, 117/120-B I.P.C. by means of the impugned judgment and order dated 04.04.2016 passed by the trial Court are hereby set-aside. However, this Court convicts the appellants under Section 304 Part I of the Indian Penal Code and sentences them to seven years' rigorous imprisonment along with fine of Rs.10,000/-, which this Court considers adequate in the circumstances of the case. In default of payment of fine of Rs.10,000/-, appellants shall undergo additional imprisonment of three months.

[179]

Appellants Devendra Pandey and Mohd. Anish of Criminal Appeal No. 549 of 2016; appellants Vijendra Singh, M.P. Vimal, R.K. Raghav, Surjeet Singh, Rashid Hussain, Syed Aale Raza Rizvi, Satya Pal Singh of Criminal Appeal No. 513 of 2016; and appellants Harpal Singh, Subhash Chandra of Criminal Appeal No. 551 of 2016, are on bail and shall be taken into custody forthwith to serve out their sentence as directed hereinabove.

The other appellants, namely, Ramesh Chandra Bharti, Veer Pal Singh, Nathu Singh, Sugam Chand, Collector Singh, Kunwar Pal Singh, Shyam Babu, Banwari Lal, Dinesh Singh, Sunil Kumar Dixit, Arvind Singh, Ram Nagina and Vijay Kumar Singh in Criminal Appeal No. 549 of 2016; appellants Udai Pal Singh, Munna Khan, Durvijay Singh, Gaya Ram, Register Singh, Durvijay Singh son of Dila Ram, Harpal Singh and Ram Chandra Singh in Criminal Appeal No. 513 of 2016; and appellants Rajendra Singh, Gayan Giri, Lakhan Singh, Nazim Khan, Narayan Das, Krishan Veer, Karan Singh, Rakesh Singh, Nem Chandra, Shamsher Ahmad, Sailendra Singh, are in jail and shall serve out the sentence as directed hereinabove.

(152) Office is directed to transmit the lower Court record along with a copy of the judgment to the Court concerned forthwith.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date : 15th December, 2022
Ajit/-