

**IN THE COURT OF SH. DHARMENDER RANA,
ASJ-02, NEW DELHI DISTRICT, PATIALA HOUSE COURTS,
NEW DELHI**

**In Sessions Case No. 132/2013
CNR No. DLND01-000012-2008
Case No. 8542/2016**

State

Versus

- 1. Baljeet Singh @ Bahu @ Pahu** *(Convicted on 16.09.2014)*
S/o Sh. Daleep Singh,
R/o Village Kurli, PS Lalroo Distt. SAS Nagar,
Mohali, Punjab.
- 2. Bikkar Singh @ Bant Singh** *(Convicted on 16.02.2012)*
S/o Sh. Bholu Singh,
R/o Village Mour Distt., Sangrur,
Punjab.
- 3. Kulwinderjeet Singh @ Happy** *(Convicted on 22.02.2012)*
S/o Sardar Sampuran Singh,
R/o Village Khan Pur, PS Sadar Distt.,
Ludhiana, Punjab.
- 4. Trilochan Singh** *(Acquitted on 24.03.2022)*
S/o Sh. Karam Singh,
R/o Village Manka, PS Chandi Mandir,
Distt., Panchkula, Haryana.
- 5. Daya Singh Lahoria,** *(Convicted on 06.06.2019)*
S/o late Sh. Kripal Singh,
R/o Village Kasha Bhural,
Maler Kotla, Distt. Sangrur,
Punjab.
- 6. Sukhvinder Singh @ Sukhi** *(Convicted on 06.06.2019)*
S/o Sh. Gurjant Singh,
R/o Village Chhanawal Distt. Sangrur,
Punjab.

7. Jaswant Singh @ Kala (Convicted on 22.02.2012)
S/o Sh. Gurvinder Singh ,
R/o Village Sohnewala,
PS & Distt. Muktsar, Punjab.

8. Surender Singh @ Fauzi (Convicted on 22.02.2012)
S/o Sh. Prem Singh,
R/o Village Kasupur,
PS Shahkot, Distt. Jalandhar,
Punjab.

9. Gurdev Singh @ Toni (Convicted on 07.03.2012)
S/o Sh. Jagir Singh,
R/o Berta Weg -14, 4528 Zuchwil,
Switzerland.

FIR No. : 77/2007
U/s 121A/120B IPC, 17/18/20/38/39 UAPA
& 25 Arms Act
P.S Special Cell

Date of institution of the case : 24.04.2008
Date when the case reserved for
judgment : 24.03.2022
Date of pronouncement : 24.03.2022

J U D G M E N T

1. Accused Baljeet Singh @ Pahu, Kulwinder Jeet Singh @ Happy, Trilochan Singh, Bikar Singh @ Bant Singh @ Kala, Sukhvinder Singh @ Sukhi, Daya Singh Lahoria, Jaswant Singh @ Kala, Gurdev Singh and Surender Singh @ Fauzi had been sent up to face trial in this Court for the offences punishable under sections 121A/120B IPC, u/s 17/18/20/38/39 of UAPA and u/s 25 Arms Act.

2. **Facts adumbrated:** The genesis of the present cases dates back to the year 2005 when two bomb blasts took place in Liberty

Cinema and Satyam Cinema in Delhi. The analysis of the phone calls of the prime accused behind those bomb blasts, namely, Jagtar Singh Hawara, revealed certain international mobile numbers. Subsequently, after bomb blasts in Paharganj, Sarojini Nagar and Govind Puri, it was revealed that these international numbers belongs to one Cheema/Jeeta and one H. S. Gill; an absconder in the murder of Beant Singh, Ex-Chief Minister of Punjab. It was also revealed that one Gurpreet Singh and Paramjeet Singh Bheora were also in touch with these international numbers. The abovesaid Paramjeet Singh Bheora and Jagtar Singh Hawara are reported to be the main leaders of Babbar Khalsa International (hereinafter referred to as 'BKI'), a banned terrorist organisation, in India. They were also reported to be involved in the assassination of Sh. Beant Singh and they escaped from Burail Jail with one Jagtar Singh @ Tara @ Jondiya @ Jassi.

Meanwhile, surveillance of phone number 9876933745 used in Nabha Jail revealed that it was used to contact Cheema in USA by accused Daya Singh Lahoria (Accused No. 5) and Baljeet Singh @ Bahu @ Pahu (Accused no.1). The interception of this number further revealed that it was used by Sukhvinder Singh @ Sukhi (Accused no. 6), who was working under the command of Daya Singh Lahoria, for operating drugs/arms network with the help of overseas connections.

Meanwhile, Special Cell of Delhi Police received a secret information in the last week of July, 2007 that representatives of banned terrorist outfits BKI, ISYF and LeT held a meeting in Berlin, in the house of one Resham Singh Babbar on 06.06.2007, wherein it was resolved that LeT could be given full financial assistance to carry out terrorist activities in India. Consequently, surveillance was once again started on the above

mentioned international and local numbers after procuring sanctions from the competent authorities.

Surveillance revealed that Baljeet Singh @ Pahu (A-1) was using mobile number 9915309294 and 9915392282 to contact one Salinder Singh @ Chhinda in Germany and one Cheema in United States of America. Baljeet Singh @ Pahu (A-1) was also found in communication with Daya Singh Lahoria and Sukhvinder Singh @ Sukhi.

It was also revealed that Baljeet Singh @ Pahu was also mobilising the cadres of BKI to carry out terrorist and disruptive activities on behalf of BKI.

It was also revealed that Baljeet Singh @ Pahu recruited and trained Jaswant @ Sonu @ Kala (Accused No. 7), Surender Singh @ Fauzi (Accused no. 8), Bikkar Singh @ Bant Singh @ Kala @ Maur (Accused no. 2) and Trilochan Singh (Accused no. 4) and they were planning for terrorist action. The accused persons used to converse with each other in coded and guarded languages. Interception further revealed that accused Baljeet Singh was in constant touch with Salinder Singh @ Chhinda @ Shinda in Germany, Gurdev Singh in Switzerland/ United Kingdom, Cheema in USA and other cadres of BKI in other countries. Accused Baljeet Singh @ Pahu was receiving logistic support from overseas links and utilising it to mobilise the terrorists. Accused Baljeet Singh was also rendering financial support to local terrorists lodged in jail to retain them in terrorist organisation.

Surveillance further revealed that accused Baljeet Singh was re-organising the group of BKI. It was also revealed that cadres of BKI were trying to send arms and ammunitions from Pakistan through illegal channels. It was further revealed that an illegal consignment of ammunitions sent to Baljeet Singh

@ Pahu was used for causing blast in Shringar Cinema in Ludhiana.

It was revealed in surveillance that Baljeet Singh @ Pahu motivated Jaswant Singh (Accused No. 7), Surender @ Fauzi (Accused no. 8) and Trilochan Singh (Accused No. 4). Accused Jaswant Singh and Surender @ Fauzi were entrusted with the task to conduct reece of the dera of Baba Pyara Singh Paniharewala. Later on, one more person i.e. accused Bikar Singh (accused No. 2) joined this group and he was entrusted the task of eliminating Baba Pyara Singh Paniharewala. Pursuant to this objective, on 08.12.2007, accused Baljeet Singh alongwith Bikar Singh and Surinder @ Fauzi went to the fields in village Hulka, District Rajpura, Punjab to impart training. It was also revealed that accused Baljeet Singh @ Pahu wanted to arrange training programme for his associates in Pakistan and he requested his overseas links to make necessary arrangements in this regard, however due to the arrest of accused Sukhvinder Singh @ Sukhi in another case, the plan could not be executed.

It was further revealed that the group headed by accused Baljeet Singh @ Pahu was likely to carry out an action in the following days, therefore, sensing urgency, Special Cell of Delhi Police decided to swing into action. Consequently, upon the rukka/complaint (Ex. PW35/A) of Insp. Pankaj Sood (PW35), instant FIR (Ex. PW 36/A) was registered and investigation was accordingly carried out. It was reported in the FIR that :

“... Previously, after the arrest of Jagtar Singh Hawara and Paramjeet Singh Bheora (active members of Babbar Khalsa International, terrorists outfit) and their associates and as well as the arrest of Gurdeep Singh Lahoria s/o Sh. Kripal Singh (an earlier associate of Ranjeet Singh neeta of Khalistan Zindabad Force and now associated with Daya Singh Lahoria of Khalistant Liberation Front) and Jagdev Singh @ Jagga @ Doctor s/o

Balwinder Singh by Special Cell, North Region, some domestic and international contact were emerged who are providing logistic support to carry out destruction of lives and public property. This information was being developed through technical surveillance as well as secret sources. In the mean time, another secret input was received through other sources that Punjab militants absconders of Babbar Khalsa International, terrorist outfit based in Germany, negotiated with Lashkar-e-Toiba militant outfit and they together are conspiring to create panic in the public at large in order to overawe the statutorily formed government of India/state by using/showing criminal force. Now it has further transpired that they have trained the militants to do these acts. The information was further developed and there are reasons to believe the above input to be true...”

Consequently, a case u/s 121A/120B IPC was registered at P.S Special Cell on 19.12.2007. Keeping in view the sanctity of the matter, five raiding teams were constituted of, (1) Insp. Attar Singh for Baljeet Singh @ Pahu, (2) Insp. Brahmjeet Singh for Jaswant @ Sonu @ Kala, (3) Insp. Yugraj Krishan Bhatia for Bikar Singh, (4) SI Ramesh Sharma for Surender Singh @ Fauzi and (5) Insp. Pankaj Sood for coordination of all teams and accordingly teams were sent to Punjab for investigation.

3. On 31.12.2007, Insp. Attar Singh (PW12) apprehended accused Baljeet Singh @ Pahu alongwith his Maruti Zen car bearing no. HR 10E 8653 near Rajpura, Punjab. He was arrested vide memo Ex. PW16/C, and the car was also seized vide memo Ex. PW16/B Accused Baljeet Singh was brought to the office of Special Cell, North Region, Delhi and his custody was entrusted to Insp. R. K. Singh (PW16). Accused Baljeet Singh disclosed that he is active member of BKI, a banned terrorist outfit and he was involved in anti-national activities and associated with Jagtar Singh Hawara, Chief of BKI in India, Paramjeet Singh Bheora and Daya Singh Lahoria He also disclosed that he managed four pistols and some

ammunitions for the assassination of Baba Pyara Singh Paniharewala. He further revealed that he entrusted three pistols and some ammunitions to accused Kulwinderjeet Singh @ Khalsa @ Happy (Accused no. 3) and the remaining one pistol and some ammunitions were given to accused Trilochan Singh. It was disclosed that these pistols were procured through the network of Daya Singh Lahoria and Sukhvinder Singh @ Sukhi.

Team of Insp. Yugraj Krishan Bhatia, on 31.12.2007 apprehended accused Bikar Singh @ Bant from Patra, Punjab. He was arrested vide memo Ex. PW16/F. He was also brought to the office of Special Cell, Delhi for interrogation and his custody was also handed over to Insp. R. K. Singh (PW16). Accused Bikar Singh also disclosed about his association with BKI and design to eliminate Baba Pyara Singh Paniharewala. To accomplish this task, accused Bikar Singh conducted reeve of dera of Baba Pyara Singh Paniharewala at Itihas Garh Sahib and his visit was corroborated with the help of visitor's register of Dera (Ex. PW6/A and C). Accused Baljeet Singh and Bikar Singh were remanded to police custody. Accused Baljeet Singh led the police party, headed by Insp. R. K. Singh (PW16), to village Khanpur, Ludhiana, Punjab and identified the house of accused Kulwinderjeet Singh @ Happy (Accused no. 3). Accordingly, the house of accused Kulwinderjeet Singh was raided by the police team and accused Kulwinderjeet Singh was apprehended, who upon interrogation disclosed to have received three pistols, three spare magazines and large quantity of live cartridges from accused Baljeet Singh. Consequently, at the instance of accused Kulwinderjeet Singh, one polythene bag containing three pistols, three spare magazines and 112 live cartridges were recovered from the double bed kept in the room of accused Kulwinderjeet Singh. The recovered arms and ammunitions were seized vide

memo Ex. PW 12/B by Insp. R. K. Singh. The accused was arrested vide arrest memo Ex. PW 16/J.

Accused Baljeet Singh @ Pahu, thereafter, led the police party to Village Manka (Mankya), District Panchkula, Haryana and identified the house of accused Trilochan Singh (Accused no. 4) and at the pointing out of accused Baljeet Singh, accused Trilochan Singh was arrested vide arrest memo Ex. PW7/E. Upon interrogation, accused Trilochan Singh got recovered one star marked pistol with one spare magazine and 12 live cartridges from his house which was seized vide memo Ex. PW7/D. The personal search of accused Trilochan Singh also yielded one mobile phone bearing no. 9417506152. Subsequently, thereafter, accused Kulwinderjeet Singh and Trilochan Singh were also remanded to police custody.

During Police Custody remand, voice samples of all the four accused persons, namely Baljeet Singh, Bikkar Singh, Kulwinderjeet Singh and Trilochan Singh were obtained with the help of CFSL experts. The intercepted conversations of accused Baljeet Singh with Kulwinderjeet Singh @ Happy (Marked as Q1), with Trilochan Singh (Marked as Q2) and with Bikkar Singh @ Maur (Marked as Q3) were also seized vide memo Ex. PW35/I by the IO. The voice sample of the accused persons alongwith the questioned conversation of the accused persons, seized arms and ammunitions were deposited in CFSL for analysis. Subsequently, accused Sukhvinder Singh @ Sukhi @ Sarpanch (Accused no. 6) was arrested from Ludhiana Jail and accused Daya Singh Lahoria (Accused no. 5) was arrested from Nabha Jail. Accused Daya Singh Lahoria and Sukhvinder Singh @ Sukhi were also remanded to police custody. During the search of premises of Nabha Jail and the cell where Daya Singh Lahoria was lodged, one telephone diary having some numbers and some personal

letters was seized on 22.02.2008 vide memo Ex. PW13/A. Specimen handwriting of Daya Singh Lahoria was obtained and was sent to CFSL for comparison. Voice sample of accused Sukhvinder Singh @ Sukhi was also procured and sent to CFSL for comparison.

On 19.03.2008, accused Jaswant Singh @ Kala (Accused No. 7) and Surender Singh @ Fauzi (Accused no. 8) were arrested by the team of Insp. Attar Singh from near Satluj Bridge, Moga Road, Shahkot, Jalandhar, Punjab. One .30 star make pistol alongwith six live cartridges was recovered from accused Jaswant Singh and one .22 star make pistol alongwith five live cartridges was recovered from accused Surinder Singh. The recovered arms and ammunitions were sent to CFSL for ballistic opinion. The voice sample of accused Jaswant Singh and Surinder Singh were also obtained which were sent for expert opinion. The specimen hand writing of accused Surinder Singh was also obtained and was sent for expert opinion.

After completion of investigation qua Baljeet Singh @ Pahu, Bikkar Singh @ Bant Singh, Kulwinderjeet Singh @ Happy, Trilochan Singh, Daya Singh Lahoria, Sukhvinder Singh @ Sukhi, Jaswant Singh @ Kala and Surender Singh @ Fauzi, the charge-sheet was filed. However, investigation qua accused Salinder Singh @ Chhinda, Gursharan Singh @ Jeeta @ Kala @ Cheema and Gurdev Singh @ Toni was kept open. LOCs were also issued against them. Subsequently, on 11.05.2011, pursuant to LOC opened against accused Gurdev Singh @ Toni, he was apprehended from IGI Airport, he was arrested in the present case. Investigation accordingly culminated into filing of a supplementary charge-sheet against accused Gurdev Singh @ Toni but the investigation was kept open for above mentioned absconding accused persons.

4. After taking cognizance, documents were supplied to the accused persons and the case was committed to the court of Sessions.
5. During the course of trial, vide order dated 16.02.2012, charge was framed against accused Kulwinderjeet Singh, Jaswant Singh, Bikkar Singh and Surender Singh for the offences punishable under Section 20 of the Unlawful Activities (Prevention) Act, 1967. Separate charge was also framed against accused Kulwinder Singh, Jaswant Singh and Surender Singh for the offence punishable under Section 25 of the Arms Act to which they pleaded guilty and vide order dated 22.02.2012, they were convicted for the offences for which they were charged and sentenced to a term of imprisonment for the period already undergone by them apart from payment of fine.
6. Vide orders dated 06.03.2012 and 07.03.2012, charge for the offence punishable under Section 40 of UAPA was framed against accused Gurdev Singh to which he pleaded guilty and was accordingly convicted for the offence and sentenced to a term of imprisonment already undergone by him apart from payment of fine.
7. Vide order dated 13.12.2012, charge under Sections 18/20 of Unlawful Activities (Prevention) Act was framed against accused Daya Singh Lahoria, Sukhvinder Singh @ Sukhi, Baljeet Singh @ Pahu and Trilochan Singh. Charges were also framed under Section 25 of the Arms Act against accused Baljeet Singh @ Pahu and Trilochan Singh. All the accused persons pleaded not guilty and claimed trial.

8. While recording of Prosecution Evidence, accused Baljeet Singh @ Pahu also pleaded guilty to the charges framed against him and vide order dated 16.09.2014, he was also convicted for the said offences and sentenced to the term of imprisonment already undergone by him apart from payment of fine. Accused Daya Singh Lahoriya and Sukhvinder @ Sukhi also pleaded guilty to the charges framed against them and vide order dated 06.06.2019, they were also convicted and sentenced to the term of imprisonment already undergone by them.

The trial thereafter continued only against accused Trilochan Singh as all the remaining accused persons were convicted and sentenced accordingly.

9. In order to prove its case, prosecution has examined as many as 39 witnesses which are as under :-

PW1 HC Syed Shakeel from PS Rajkot, District Ludhiana, Punjab produced the record of case FIR No. 23/88 u/s 302/148/149 IPC and u/s 25 Arms Act and also produced the record of FIR No. 27/88 u/s 302/307/34 IPC and u/s 25 Arms Act which on record are EX.PW1/A and EX.PW1/B respectively.

PW2 Rajkumar is a public witness. He has deposed that on 07.01.2008, at the request of officials of Special Cell, he joined the investigation and on that day, voice sample of accused Trilochan Singh and Bikar Singh were recorded in two separate blank cassettes Mark S-1 and S-2 which were sealed with the seal of RKS bearing his signatures and seized by the IO vide memos Ex. PW 2/A and B respectively. PW2 has deposed that both the accused persons had voluntarily agreed to give their voice samples.

PW2 on 08.01.2008 again joined the investigation with the IO and on that day, voice sample of accused Kulvinder Singh and Baljeet Singh Pahu were recorded in two separate blank cassettes Mark S-3 and S-4 which were sealed with the seal of RKS bearing his signatures and seized by the IO vide memos Ex. PW 2/C and D respectively. The four cassettes have been proved as Ex. PW 2/E to H respectively.

PW3 Sh. A.K. Arora, Sr. Scientific Officer conducted the examination of four pistols, cartridges and the magazines in which the test fire was successfully conducted. He prepared detailed report EX.PW3/A.

PW4 Sh. A.D. Tiwari, Sr. Scientific Officer alongwith Sh. V.T. Abraham, Laboratory Assistant recorded voice sample of accused Trilochan Singh and of co-accused Bikkar Singh @ Bant Singh on 07.01.2008. On 08.01.2008, PW4 alongwith Sh. V. T. Abraham, Laboratory Assistant took the voice sample of co-accused Kulvinder Singh and Baljeet Singh in the presence of public witness Raj Kumar (PW2). The said voice samples were recorded in separate cassettes which were given Mark S1 to S4 and were taken into possession by the IO vide seizure memo EX.PW2/A, EX.PW2/B, EX.PW2/C and EX.PW2/D respectively. PW4 Sh. A.D. Tiwari on 22.02.2008 alongwith Sh. V.T. Abraham, Laboratory Assistant recorded voice sample of co-accused Daya Singh Lahoria in two ways i.e. one was recorded directly and the other was recorded through telephone into the cassette which was seized by the IO vide seizure memo EX.PW4/A. On 27.02.2008 and on 25.03.2008, PW4 Sh. A.D. Tiwari, Sr. Scientific Officer alongwith Sh. V.T. Abraham, Laboratory Assistant recorded voice sample of co-accused Sukhvinder Singh @ Sukhi, Jaswant Singh and Surinder Singh which were seized by the IO vide seizure memos EX.PW4/B to Ex. PW 4/D

respectively. PW4 has proved the cassettes on record as EX.PW2/E, EX.PW2/F, EX.PW2/G, EX.PW2/H, Ex. PW4/E to H respectively.

PW5 Swarn Singh is another public witness. He has deposed that about 6/7 years ago, in the month of February, he joined the investigation at the request of the IO when some recording was going on. He failed to identify accused Daya Singh Lahoria due to lapse of time.

PW6 SI Harbir Singh has deposed on the lines of investigation. He has deposed that on 07.01.2008, he had gone to Dharam Kalasthan Village, Dhimana, District Ropar, Punjab from where he seized one register having names of visitors including the name of co-accused Bikkar Singh @ Bant Singh from the Guard HC Harbhajan vide memo EX.PW6/B. He has proved register as EX.PW6/C and the copy of its relevant four pages i.e. page No. 81 to 84 as EX.PW6/A.

On 19.02.2008, on the instructions of the IO, PW6 went to CFSL and collected the FSL result and six sealed parcels sealed with the seal of CFSL which he deposited in the Malkhana and result was handed over by him to the IO. He has specifically deposed that till the exhibits remained in his possession, no one tampered with the same. On 20.02.2008, PW6 again joined the investigation with the IO PW39 ACP Ravi Shanker and on that day, co-accused Daya Singh Lahoria was arrested vide arrest memo EX.PW6/D and his personal search was taken vide memo Ex. PW 6/F. Similarly on 26.02.2008, he alongwith the IO joined the investigation and pursuant to production warrants, accused Sukhvinder Singh @ Sukhi was arrested vide memo Ex. PW 6/E and his personal search was taken vide memo Ex. PW6/G. PW6 on 17.03.2008 deposited two sealed parcels in CFSL.

PW7 SI Pankaj Kumar has joined the investigation with Insp. R. K. Singh (PW16) on 01.01.2008 and went to Ludhiana alongwith accused Baljeet Singh Pahu and at his instance, accused Kulwinder Jeet Singh was apprehended from whose possession, three pistols, three spare magazine and 112 live cartridges of 7.62 bore were recovered.

Thereafter, accused Baljeet Singh Pahu led the police party to village Manyaka, Haryana and on the way, they arranged the conversation between Baljeet Singh Pahu and Trilochan Singh on telephone. He has deposed that at the pointing out of accused Baljeet Singh Pahu, accused Tirlochan Singh was arrested from his house vide memo Ex. PW 7/E who was interrogated and his disclosure statements Ex. PW7/A and Ex. PW7/G were recorded. He has deposed that as per the pointing out memo Ex. PW7/B, accused Trilochan Singh got recovered one pistol and one spare magazine containing six cartridges each which were seized vide memo Ex. PW 7/D. PW7 has proved the personal search memo of accused Trilochan Singh as Ex. PW 7/F, sketch of pistol and one spare magazine Ex. PW 7/C.

He has deposed that on the instructions of the IO, he went to District Ropar, Punjab on 07.01.2008 from where seized one register Ex. PW6/C vide memo Ex. PW 6/B which was handed over to the IO. He has deposed that on 17.01.2008, he has deposited eleven exhibits alongwith road certificates in CFSL. He has proved the pistol as Ex. P7/1, two magazines Ex. P7/2 and Ex. P7/3 and 12 rounds have been collectively proved as Ex. P7/4.

PW8 SI Vikram Singh has proved the attested copy of account opening form and bank statement of accused Baljeet Singh for the period w.e.f 09.01.2006 to 27.12.2007 and letter regarding freezing of his debit operation card and account as Ex. PW 8/A to

Ex. PW8/C. He has also proved the attested copy of FIR No. 271/2005 and copy of charge-sheet collected from Operation Cell, Sector-26, Chandigarh as Ex. PW 8/D and Ex. PW8/E.

PW9 HC Sanjeevan had deposited one sealed parcel alongwith specimen handwriting of accused Bikar Singh and FSL form in FSL, Rohini vide RC No. 07/21/2008.

PW10 ASI Heera Lal, as per the directions of the IO ACP Ravi Shankar obtained the orders from competent authority regarding intercepted voice of accused Kulwinderjeet Singh, Bikkar Singh and Trilochan Singh, he prepared three compact discs and after marking the CDs as Q1 to Q3 (Ex. PX1) bearing his signatures on each CD, the same were seized vide memo Ex. PW 10/A, the transcripts of which were already prepared. He had downloaded all the three CDs from the computer system.

PW11 Insp. Satish Kumar has joined the investigation with the IO ACP Ravi Shanker on 21.02.2008, 28.02.2008 and 23.05.2008 and on these dates, disclosure statement of accused Daya Singh Lahoria Ex. PW11/A, of accused Sukhvinder Singh Ex. PW 11/B were recorded and exhibits were deposited in CFSL and he also handed over the ballistic report to the IO.

PW12 Insp. Attar Singh has led the police team to Patiala, Punjab on 22.12.2007, as per the directions of IO ACP Ravi Shankar, to arrest accused Baljeet @ Pahu and on 31.12.2007, accused Baljeet was intercepted in his car, he was brought to Delhi and his disclosure statement Ex. PW 12/A was recorded by Insp. R. K. Singh (PW16). He has deposed that pursuant to the disclosure statement, accused Baljeet Singh led the police party to the house of accused Kulwinderjeet in Village Khanpur, Ludhiana who got recovered three pistols alongwith magazine and three spare magazines and 112 live cartridges from his room which were seized vide memo Ex. PW 12/B.

PW12 has further deposed that pursuant to the disclosure statement of accused Baljeet @ Pahu and pointing out memo Ex. PW7/B, accused Trilochan Singh was arrested from his village Manyaka, Haryana who was interrogated and his disclosure statement Ex. PW 7/A was recorded to the effect that one pistol and 12 live cartridges and one spare magazine were handed over to him by co-accused Baljeet @ Pahu which he got recovered from his house and the same were seized vide memo Ex. PW 7/D. He has proved the supplementary disclosure statement of accused Trilochan Singh as Ex. PW 7/G.

PW12 as per the directions of IO ACP Ravi Shankar, went to Nabha Jail and while conducting search of the cell of accused Daya Singh Lahoria, he seized one diary of Daya Singh Lahoria alongwith 6/7 letters vide memo Ex. PW 8/A. He has further deposed that on 18.03.2008, as per the directions of the IO ACP Ravi Shankar, he arrested accused Jaswant Singh @ Kala and Surender Singh @ Fauzi from Moga Road, Punjab from whose possession two pistols with eleven cartridges were recovered. He also interrogated them and recorded their disclosure statements. PW13 Sukhwinder Singh, who was Deputy Superintendent, Nabha Jail, Punjab on 22.02.2008 and on that day, pursuant to the orders of Ld. MM, search was conducted in the cell of accused Daya Singh Lahoria and in search, one telephone diary Ex. PW 13/B8 belonging to Daya Singh Lahoria alongwith seven letters Ex. PW 13/B1 to B7 was recovered from his cell which was seized vide memo Ex. PW 13/A.

PW14 Sh. Gurpal Singh Sarowa, Superintendent Jail, Nabha, District Patiala, Punjab forwarded the details of confinement of accused Baljeet Singh @ Pahu in Jail to IO/ PW39/ACP Ravi Shanker, Special Cell, Delhi which on record is Ex. PW14/A and also forwarded the details pertaining to the confinement of co-

accused Daya Singh Lahoira in Jail to PW-35/ Ins. Pankaj Sood which on record is Ex. PW14/B.

PW15 Ct Naresh Kumar has proved the record of pending cases and duration of custody of co-accused Baljeet Singh @ Pahu as well as one Jagtar Singh Hawara which was received vide detailed letter of Deputy Superintendent, Model Jail, Chandigarh Ex. PW15/A and annexure Ex. PW15/B, as per which, one case bearing FIR No. 25/1994, PS West Chandigarh was pending against accused Baljeet Singh whereas 27 cases were pending cases against accused Jagtar Singh Hawara.

PW16 Insp. R. K. Singh was the part Investigating Officer and he has deposed on the lines of investigation. He was handed over the custody of accused Baljeet @ Pahu on 01.01.2008 by Insp. Attar Singh who also handed over two mobile phones recovered from accused Baljeet @ Pahu which he seized vide memo Ex. PW16/A. He also seized Zen car bearing No. HR 10E 8653 alongwith documents vide memo Ex. PW 16/B. He has deposed that he arrested accused Baljeet Singh @ Pahu vide arrest memo Ex. PW 16/C and personal search memo Ex. PW 16/D, recorded his disclosure statement Ex. PW 12/A. He has deposed that he was also handed over the custody of accused Bikkar Singh @ Bant Singh alongwith one mobile phone and one extra chip which he seized vide memo Ex. PW 16/E. He has deposed that he arrested accused Bikkar Singh vide arrest memo Ex. PW 16/F and personal search memo Ex. PW 16/H.

PW16 has proved the pointing out memo of accused Baljeet Singh as Ex. PW 16/I, arrest memo and personal search memo of accused Kulwinderjeet Singh as Ex. PW16/J and K, disclosure statement of accused Kulwinderjeet Singh as Ex. PW 16/L-1 and L-2, seizure memo of three pistols with three spare magazines and 112 live cartridges as Ex PW 12/B recovered from

accused Kulwinderjeet Singh and their sketch as Ex. PW16/M1 to M4, seizure memo of mobile phone and sim card recovered from accused Kulwinderjeet Singh as Ex. PW 16/N and O.

PW16 has further deposed that thereafter, they went to the house of accused Trilochan Singh where at the pointing out of accused Baljeet @ Pahu vide memo Ex. PW7/B, accused Trilochan Singh was arrested vide arrest memo Ex. PW 7/E and personal search memo Ex. PW 7/F, recorded his disclosure statement Ex PW 7/A and G and pursuant to the disclosure statement, accused Trilochan Singh got recovered one pistol (Ex. P7/1) with magazine (Ex. P7/2) having six rounds alongwith one additional magazine (Ex. P7/3) and six rounds (i.e. 12 rounds Ex. P7/3 collectively) which were seized vide memo Ex. PW7/D, its sketch was prepared Ex. PW 7/C. He has further deposed that he has seized 26 copies of interception orders Ex PW16/Q collectively from Insp. Pankaj Sood which were seized vide memo Ex. PW 16/P. PW16 has further deposed that he got recorded the voice sample of accused Trilochan Singh, Beekar Singh, Kulwinderjeet Singh and Baljeet Singh in the presence of public witness Raj Kumar which was seized vide memos Ex. PW 2/A to Ex. PW 2/D, he also seized four copies of interception orders Ex. PW 16/Q2 vide memo Ex. PW 16/Q1, he also obtained specimen signatures and handwriting of accused Beekar Singh on ten sheets Ex. PW 16/R1 to R10 and thereafter provisions of UAPA were added and investigation was transferred to PW39/IO ACP Ravi Shanker.

PW17 Sh Surendra Singla, Officer, PNB, Lalru Main, District Mohali, Punjab produced certified copy of the account opening form alongwith specimen signatures and the statement of account for the period w.e.f 01.09.2006 of account no. 0751000100203438 in the name of Baljeet Singh which on

record are Ex.PW17/A, Ex.PW17/B and Ex. PW17/C respectively coupled with the forwarding letter of the Manager Sh. T. R. Gulati which is Ex. PW8/C.

(After recording PW 17, inadvertently, the next witness was given number PW19 instead of PW18)

PW19 ASI Satender Singh has proved the copy of interception order pertaining to mobile number including phone number 9876933745 as Ex. PW 19/A. He has also proved the copy of 30 interception orders as Ex. PW 35/B1 to B26 and Ex. PW 36/C1 to C4.

PW20 Ct. Harish Chander has produced the report Ex. PW20/A regarding the cases in which co-accused Daya Singh Lahoria remained in custody in Central Jail, Jaipur, Rajasthan bearing the signatures of Superintendent, Central Jail, Jaipur.

PW21 Sh. G. P. Singh, Sub Divisional Engineer, BSNL, Chandigarh has produced the CAF Ex. PW21/C, CDRs for the relevant period Ex. PW21/B(colly.) of mobile phone number 9417506152 which was in the name of accused Trilochan Singh alongwith the forwarding letter of Divisional Engineer Ex. PW21/A and also proved on record the certificate u/s 65B of the Indian Evidence Act Ex PW21/D.

PW22 Sh. Ashish Kumar, Deputy Secretary, LG Secretariat conveyed the sanction accorded by the Lt. Governor, NCT of Delhi to prosecute eight accused persons including accused Trilochan Singh, co-accused Sukhvinder Singh and Daya Singh Lahoria vide order Ex. PW22/A. He has deposed that the sanction was accorded after perusal of the draft charge-sheet and documents enclosed with the same.

PW23 V. T. Abraham has corroborated the version given by PW4 A. D. Tiwari, SSO, CFSL.

PW24 Dinesh Sharma, the public witness. He has joined the investigation on 27.02.2008 at the request of the IO and in his presence, voice sample of accused Sukhwinder Singh was recorded in an audio cassette first directly and then through telephone and the said cassette was seized by the IO vide memo Ex. PW 4/B.

PW25 Sh Alok Kumar has accorded the sanction u/s 39 Arms Act to prosecute accused Trilochan Singh and co-accused Baljeet Singh and Kulwinderjeet Singh. He has proved the sanction order as Ex. PW25/A.

PW26 Insp. Yugraj Krishan has testified on oath that on 19.10.2008, he visited village Swaddikhurd, District Jagron, Ludhiana, Punjab where one Sh Girwal Singh handed him over his mobile phone make Samsung with Airtel SIM card which was seized vide memo Ex. PW26/A and was handed over by him to the IO who sealed the same with the seal of RKS vide his noting Ex. PW26/B.

PW26 has further deposed that on 01.02.2008 he had gone to PS Sidwan Bet, District Jagron, Punjab where as per the instructions of the SHO, the MHC(M) handed over to him six SIM cards and five mobile phones containing SIM Cards alongwith the copies of relevant documents which he brought to Delhi and handed over the same alongwith the documents to the IO which were seized vide memo Ex. PW26/C.

PW27 Sh. Yogesh Tripathi, Nodal Officer of M/s Reliance Communication Ltd has proved the certified copy of the CAF Ex. PW27/A, the CDRs for the relevant period Ex. PW27/B and the Cell ID chart Ex. PW27/C of mobile phone no. 9317534945 which was in the name of one Ranjeet Singh. He has also proved

the CD containing the soft copy of the same as Ex. PW27/D, the covering letter Ex. PW27/E vide which these documents were supplied and also proved on record the certificate u/s 65B of the Indian Evidence Act which is Ex. PW27/F.

PW28 Sardar Avtar Singh was the Sarpanch of Village Swadi Khurd, Tehsil Jagraon, District Ludhiana, Punjab in the year 2008. He has deposed that the voice sample of Sardar Iqbal Singh Garewal, resident of the same village, was recorded by the IO in his presence on 28.01.2008 in an audio cassette Ex. PW 28/P1 and thereafter, his voice was also recorded by the IO as a witness. He has deposed that in his presence the IO played the intercepted conversation of Sardar Iqbal Singh Garewal with his son Salinder Singh who was residing in Germany and he later came to know that he was having involvement with terrorists.

He has further deposed that on 19.01.2008, the officials of Special Cell had come to his village to interrogate Sardar Iqbal Singh Garewal about his son Salinder Singh and they had seized the mobile phone Ex. PW 28/P2 of Sardar Iqbal Singh Garewal for investigation purpose vide seizure memo Ex. PW 26/A.

PW 29 Insp. Sandeep Malhotra has also deposed on the lines of investigation. He has deposed that on 10.01.2008, he downloaded the intercepted voice calls of accused Baljeet Singh, Kulwinderjeet Singh, Bikar Singh and Trilochan Singh from the computer system in CDs mark Q1 to Q3 (Ex. PW 29/P1 to P3) which were seized vide memo Ex. PW 10/A. He further deposed that on 29.01.2008, he downloaded the intercepted voice calls of Iqbal Singh Garewal and his son Salinder Singh from the official computer into a CD Mark Q4 (Ex. PW29/P3) and sealed the same with the seal of RKS which was seized by the IO vide seizure memo Ex. PW29/A.

PW29 has further deposed that he was handed over

five mobile phones with five SIM Cards and six other SIM Cards (Ex.P25/2) by PW26/Insp. Yugraj Krishan from PS Sidwabet Punjab, he checked the same and noted down the IMEI, SIM Number, missed calls, received calls, detailed numbers from the said phones and prepared a detailed chart Ex. PW29/C running into nine pages which was seized by the IO vide memo Ex. PW29/B. He has proved the seizure memo of mobile phones and sim cards as Ex. PW 26/C.

He has further testified that on 13.03.2008, he downloaded intercepted conversation into 17 CDs Mark Q5 to Q21 which were also put in one separate CD which alongwith the 17 CDs were sealed with the seal of RKS and were taken into possession vide seizure memo Ex. PW29/D. He has proved the CDs on record as Ex. PW 29/P4 and Ex. PW29/P5 to Ex. PW29/P21. He has also proved on record the certificate u/s 65B of Indian Evidence Act as Ex. PW29/I establishing the authenticity of computer generated report.

PW29, as per the directions of the IO, has analyzed the mobile phone numbers used by previously arrested accused persons namely Jagtar Singh Hawara, Paramjeet Singh, Gurdeep Singh and Jagdev Singh Jagga etc and prepared a detailed analysis report Ex. PW29/E and he also prepared a CD of the analysis report with relevant CDRs which were sealed with the seal of RKS and were seized vide memo Ex. PW29/F. He has proved the CD on record as Ex. PW29/P22.

On 08.04.2008, Sh. Amit Dabra, Assistant, Nodal officer of M/s Vodafone, Mohali, Punjab had produced record of mobile phone connection including CAF, CDR and Cell ID chart in hard copy and in soft copy on CD in duplicate, one for judicial file and one for police file. He has deposed that the CD for Court was put in a white cloth pulanda and sealed with the seal of BKA and

was taken into possession by the IO vide seizure memo Ex. PW29/G. He has proved the CD on record as Ex. PW29/PW23.

PW29 has also proved the seizure memo of CAFs, CDRs and the Cell ID charts received from thirteen service providers in hard copy as well as in Soft copy as Ex. PW29/H and certification u/s 65B of Indian Evidence Act as Ex. PW 29/I.

PW30 Sh. Devak Ram, FSL expert, had examined the questioned documents and the specimen handwriting and signatures of accused Daya Singh Lahoria, Bikkar Singh and Surender Singh and prepared a detailed report Ex. PW30/A. He has proved the specimen signature and handwriting of accused Bikkar Singh consisting of ten sheets as Ex. PW16/R1 to Ex. PW16/R10, specimen handwriting of accused Daya Singh Lahoria consisting of sixteen sheets as Ex. PW30/B1 to Ex. PW30/B16 and specimen signature of accused Surender Singh consisting of five pages as Ex. PW30/C1 to Ex. PW30/C5.

PW30 Sh. Devak Ram also examined the diary Ex. PW13/B8, register Ex. PW30/D containing questioned signature of accused Bikkar Singh as Ex. PW30/E and the questioned signatures of accused Surender Singh as Ex. PW30/F.

PW31 Sh. Deepak Kumar Tanwar, Senior Scientific Officer, CFSL had examined the transcript of intercepted conversations and also examined the CDs, the cassettes and other exhibits pertaining to accused Trilochan Singh and other co-accused persons and prepared detailed reports Ex. PW 31/A and Ex. PW31/B respectively. He has proved the cassettes/ CDs on record as Ex. PW29/P1 to Ex. PW29/P3, Ex. PW29/P3A, Ex. PW29/P5 to Ex. PW29/P21, Ex. PW35/P1 and Ex. PW31/P1 to Ex. PW31/P8.

PW32 Insp. Pritam Singh of PS Sidwabet, District Ludhiana Rural, Punjab has deposed that on 21.08.2007, accused

Sukhvinder Singh @ Sukhi and his associate Kulwant Singh were arrested in case FIR no. 164/2007, PS Sidhwabet, District Ludhiana Rural, Punjab. He has proved the certified copy of FIR no. 164/2007 as Ex. PW32/A. PW32 has further deposed that he took into possession the five mobile phones and eleven SIM cards recovered in case FIR no. 164/2007 which were seized vide memo Ex. PW32/C. He has proved the copy of relevant entry in Register No. 19 regarding regarding five mobile phones and eleven SIM cards brought by the official of Special Cell to Delhi as Ex. PW32/B. He has deposed that the pistol given by accused Sukhvinder Singh @ Sukhi to one Satpal Singh was recovered from Satpal Singh in case FIR no. 173/2007, copy of said FIR has been proved as Ex. PW32/D. He has deposed that both the FIRs bearing no. 164/2007 and 173/2007 PS Sidwabet, District Ludhiana Rural, Punjab resulted in conviction and he has proved the relevant record as Ex. PW32/E and Ex PW32/F.

PW33 Sh. S. R. Yadav, Deputy Superintendent, Tihar Jail upon receipt of letter from IO PW39 ACP Ravi Shanker Ex. PW 33/A on 07.03.2008, gave reply Ex. PW 33/B. He again received letter for specific query regarding accused Daya Singh Lahoria and vide his endorsement Ex. PW33/C, PW33 specifically mentioned about involvement of co-accused Daya Singh Lahoria in two cases at Jodhpur, Rajasthan.

PW 34 ASI Paramjeet Singh, who was MHC(M), has proved the relevant entries in register no. 19 and 21 regarding the deposition of case properties in Malkhana and of sending the same to FSL/CFSL on various dates as Ex. PW 34/A to Ex. PW 34/Z respectively.

PW35 Insp. Pankaj Sood was the first Investigating Officer of the present case. He has testified on oath that upon the strength of the intercepted conversations and also on the strength of a

written information received from the intelligence agency vide letter Mark 35/X to the effect that efforts were being made to revive militancy in Punjab, on 19.12.2007, he prepared rukka Ex. PW35/A on the basis of which present FIR Ex. PW36/A was registered.

He has deposed that on 04.10.2008, he handed over 26 interception orders of phones to Insp. R. K. Singh (PW16) who seized the same vide memo Ex. PW16/P and also on 07.01.2008 which were seized vide memo Ex. PW16/Q1. He has proved the interception orders as Ex. PW 35/B1 to B26 and Ex. PW35/C-1 to C4. PW35 also handed over the transcripts of important intercepted conversation between accused Trilochan Singh and accused Baljeet Singh @ Pahu, Kulvinderjeet Singh and Bikkar Singh @ Bant Singh to Insp. R. K. Singh (PW16) who seized the same vide memo Ex. PW35/D. He has proved the transcript of intercepted voice of co-accused Baljeet Singh @ Pahu with Kulvinderjeet Singh comprising seven calls in folder Q1 as Ex. PW35/E1, the transcript of intercepted voice of accused Trilochan Singh and accused Baljeet Singh @ Pahu comprising seven calls in folder Q2 as Ex. PW35/E2, the transcript of intercepted voice of accused Baljeet Singh @ Pahu with Bikkar Singh @ Bant Singh comprising eight calls in folder Q3 as Ex. PW35/E3 and the transcript of intercepted voice (special words) used by co-accused Baljeet Singh @ Pahu during his conversation running into two pages as Ex. PW35/E4 (colly.).

PW35 has further deposed that on 28.01.2008, the provisions of UA(P) Act were invoked in the present case and the investigation was thereafter conducted by PW39 Sh Ravi Shanker, ACP and on that day, he had handed over the transcript of intercepted conversations between accused Shailender Singh @ Shinda, an absconder cadre of BKI settled at Germany with his

father Iqbal Singh and transcript of intercepted conversations with Iqbal Singh and Sachin, an employee of ICICI Bank to the IO ACP Ravi Shanker (PW39) who seized the same vide memo Ex. PW35/F. He has proved the said conversation comprising of five calls in folder Q4 as Ex. PW35/G1.

PW35 has further deposed that prior to 17.03.2008, he also handed over 27 transcripts of intercepted conversations and on 17.03.2008 he handed over 114 transcripts of intercepted calls alongwith the Hindi analysis of these calls to the IO ACP Ravi Shanker (PW39) who converted the transcripts into 21 folders Q1 to Q21 and seized the same vide memo Ex. PW35/I. He has proved the disclosure statement of accused Daya Singh Lahoria recorded in his presence by the IO as Ex. PW 35/H. He has also proved the folders Q5 to Q21 as Ex. PW35/J1 to PW35/J17. He has further deposed that on 24.03.2008, he handed over 19 documents Ex. PW 35/L1 to L17 and Ex. PW35/Q1 and Q2 qua orders / requests for interception to IO ACP Ravi Shanker (PW39) which were seized vide memo Ex. PW35/K.

PW35, pursuant to the orders of the court and as per the directions of the IO, on 23.10.2009, alongwith the CFSL experts visited Central Jail Tihar and served notices upon Devender Pal Singh Bhullar and Jaspal Singh, Ex.PW35/M and Ex. PW35/N for obtaining their voice samples but they refused to give the same. Similarly on 05.11.2009 pursuant to the orders received from the Court and as per the directions of the IO, PW35 alongwith the CFSL experts visited Burail Jail (Chandigarh) and Nabha Jail (Patiala) and served notices Ex.PW35/O and Ex. PW 35/P upon Paramjit Singh Bheora and Jasbir Singh Hulka for obtaining their voice samples but they refused to give the same.

PW36 SI Mohan Lal was the Duty Officer who on receipt of

rukka Ex. PW35/A got registered the present FIR, the copy of which has been proved as Ex. PW36/A.

PW37 Sh. Sushil Kumar Chopra, Nodal Officer, Bharti Airtel has proved the CAFs as well as the CDRs for the relevant period of the mobile phone numbers 9876933745, 9815462226 and 9872587953 in name of accused Sukhvinder Singh @ Sukhi, Harmeet Singh and Dinesh Sharma as EX.PW37/A, Ex.PW37/B, Ex.PW37/C, Ex.PW37/D, Ex.PW37/E and EX.PW37/F and also of mobile phone numbers 9915309294, 9915409302 and 9915392282 in the name of Baljeet Singh, Manjeet Singh and Pargat Singh as Ex.PW37/G, Ex.PW37/H, Ex. PW37/I, Ex. PW37/J, Ex.PW37/K and Ex.PW37/L respectively. PW37 has also proved on record the certificate u/s 65B of Indian Evidence Act EX.PW37/M.

PW38 Sh. Sunil Rana has corroborated the statement of PW37 of handing over the CAFs and CDRs of mobile phone numbers 9876933745, 9815462226, 9872587953, 9915309294, 9915409302 and 9915392282 in name of accused Sukhvinder Singh @ Sukhi, Harmeet Singh, Dinesh Sharma, Baljeet Singh, Manjeet Singh and Pargat Singh. PW38 has also proved on record the certificate u/s 65B of Indian Evidence Act as Ex.PW38/A and also proved two letters Ex.PW38/B and EX.PW38/C written by him to PW39 IO / ACP Ravi Shanker.

PW39 DCP Ravi Shanker was the Investigating Officer of the present case. He has deposed on the lines of investigation. He has deposed that in the year 2007 certain national and international numbers were taken under the lawful interception and the recorded / intercepted conversations revealed that efforts were being made to revive the militancy in Punjab and the present module which was under surveillance was being headed by co-accused Baljeet Singh @ Pahu. He was being given financial

support and was assigned the job to recruit new members in BKL, which arranged weapon training for them. It also transpired from the intercepted conversation that accused Baljeet Singh @ Pahu tried to send newly recruited militants to Pakistan for training purpose.

He has further deposed that interception further revealed that accused Baljeet Singh had recruited accused Kulwinder Singh, Bikkar Singh and Trilochan Singh to kill Baba Paniyare Wala and they were receiving the place and for the said purpose, accused Surinder Singh and Jaswant Singh were deputed and they were in the process of visiting place where Baba Paniyare Wala was living. He has deposed that arms and ammunitions were arranged by Daya Singh Lahoria through Sukhwinder Singh @ Sukhi to Baljeet Singh Pahu. He has deposed that pursuant to the said information, FIR was registered and during investigation, accused persons were arrested and arms and ammunitions were also got recovered from their possession.

PW39 has also deposed on the lines of investigation. He has corroborated the testimony of SI Harbir Singh (PW6), Insp. Satish Kumar (PW11), Insp. Attar Singh (PW12), Insp. R. K. Singh (PW16), Insp. Sandeep Malhotra (PW29) and Insp. Pankaj Sood (PW35). PW39 has also proved the disclosure statement of accused Jaswant Singh and Surinder Singh as Ex. PW 39/A and B. He has deposed that he also got verified the visits of accused Sukhwinder Singh @ Sukhi to Pakistan vide reply of Passport Officer, Chandigarh Ex. PW39/C and documents Ex. PW 39/D. He has proved the account details of Iqbal Singh as Ex. PW 39/E. He has deposed that he had sent illegal arms and ammunitions and other case property to CFSL, procured sanctions u/s 39 Arms Act and 196 CrPC, recorded the statement of witnesses and after completion of investigation, charge-sheet and supplementary

charge-sheets were filed.

10. After conclusion of Prosecution Evidence, statement of accused Trilochan Singh was recorded u/s 313 CrPC wherein he has denied the prosecution case. Accused Trilochan Singh has claimed that he is innocent and he has been falsely implicated in the present case. He further submitted that he has no acquaintance with any of the accused persons.

11. In defence, accused Trilochan Singh has examined following two witnesses.

DW1 Avtar Singh is one of his fellow villager. He has deposed that on 02.01.2008 at about 2.00/2.30 p.m, while he was returning back from his farms, when he reached near the house of accused Trilochan Singh, he noticed crowd outside the house of accused Trilochan Singh. He has deposed that around 10-12 police officials, who were in civil dress, got down from the vehicles and within 5-7 minutes, they left alongwith accused Trilochan Singh. DW1 has deposed that when they enquired from the police officials, they were asked by the police officials not to interfere in the proceedings.

DW1 has further deposed that for past few days, accused Trilochan Singh was engaged in some construction work in his bathroom. He has further deposed that accused Trilochan Singh is known to him since his birth who is driver in Haryana Roadways.

DW2 Desraj is another person from the same village who has also corroborated the version of DW1 Avtar regarding taking away of accused Trilochan Singh by the police officials from his house.

12.I have heard and considered the submissions made by Sh. Maninder Singh, Ld. Senior Advocate for accused and Sh. Irfan Ahmed, Ld. Addl. PP for State and also carefully gone through the material available on record alongwith the written arguments filed by both the sides.

13.Accused Trilochan Singh has been charged for commission of offences punishable u/s 18/20 of UAPA and under Section 25 of Arms Act.

14.Let us deal with the case of the prosecution for the alleged offence in seriatim.

Section 18 of Unlawful Activities (Prevention) of Atrocities Act.

Punishment for conspiracy, etc-- Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be held liable.

15.With regard to **Section 18 of the UA (P) Act**, the Hon'ble Gauhati High Court in **Malsawmkimi v. NIA, 2012 SCC OnLine Gau 897 : (2014) 1 Gau LR 409 (para 27)**, stated as follows:

“...The words conspire or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act are sufficient to bring the case of the appellants within the ambit of section 18 of the UA(P) Act...”

16.In order to bring home the charge for commission of offence punishable u/s 18 of UAPA, the prosecution is required to bring

on record that accused Trilochan Singh conspired, attempted, advocated, abated, advised or incited or facilitated the commission of a terrorist act or that he was indulged in any preparatory act for the commission of a terrorist act.

Ld. Addl. PP for State has forcefully argued that accused Trilochan Singh was part of a larger conspiracy to revive militancy in Punjab and with this objective, he conspired to eliminate Baba Pyara Singh Paniharewala and he was indulged in preparatory acts to eliminate Baba Pyara Singh Paniharewala. It is submitted by Ld. Addl. PP that on account of the very nature of offence, direct evidence in a case of conspiracy is seldom forthcoming. It is submitted that the circumstantial evidence available on record unambiguously points towards the guilt of the accused Trilochan Singh.

17. There cannot be any quarrel with the proposition that direct evidence for the crime of conspiracy is very rarely available and the existence of a criminal conspiracy is invariably required to be inferred from the circumstantial evidence available on record.

18. The law relating to the conspiracy has been summarised by the Hon'ble Apex Court in the matter of **State v. Nalini, (1999) 5 SCC 253 (Rajiv Gandhi Assassination case) in Para no. 583** which is as under:

Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and

joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

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

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

4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

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

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or

in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

19. Having reproduced the law related to the offence of conspiracy, let us now deal with the evidence available on record against accused Trilochan Singh with respect to the alleged offence u/s 18 of UAPA.

20. The evidence pointed out by Ld. Addl. PP against accused Trilochan Singh can be broadly categorised into following three heads :

1. Intercepted conversations between convict Baljeet Singh @ Pahu and accused Trilochan Singh Ex. PW 35/E2 (Mark Q2).
2. Recovery of arms and ammunitions i.e one pistol with six live cartridges and one spare magazine having six rounds (Ex. PW 7/D) from the possession of accused Trilochan Singh.
3. The plea of guilt and consequent conviction of the remaining accused persons.

1. Intercepted conversations between convict Baljeet Singh @ Pahu and accused Trilochan Singh Ex. PW 35/E2 (Mark Q2).

21. In the case at hand, there are glaring defects in the case of the prosecution with respect to the intercepted conversations.

It would be pertinent to point out herein that ASI Heera Lal (PW10), in his testimony, has categorically testified

that it was he who downloaded the intercepted conversations and prepared the CD Mark Q2 (Ex. PW 35/E2) before handing over the same to the concerned IO. In his cross-examination, he has admitted that no requisite certificate u/s 65B of Indian Evidence act was provided by him with respect to downloading of the intercepted conversations. However, in contradiction to the claim of PW10 ASI Heera Lal, Insp. Sandeep Malhotra (PW29) has claimed that it was he who downloaded the intercepted conversations Ex. PW 35/E2.

It has been attempted to be explained by Ld. Addl. PP that ASI Heera Lal has inadvertently testified that he downloaded the CD Mark Q2 whereas it is infact Insp. Sandeep Malhotra (PW29) who downloaded the said conversation. However the said explanation is not borne out from the material available on record and the contention of the Ld. Defence counsel that feeble explanation now tendered by ld. Addl. PP is clearly now an afterthought sounds convincing. It is submitted by Ld. defence counsel that having realized the irreparable dent in the prosecution version on account of non-availability of the requisite statutory certificate u/s 65B of Indian Evidence Act, prosecution mischievously improved upon its case and introduced certificate u/s 65B of Indian Evidence Act through Insp. Sandeep Malhotra (PW29) discarding on oath statement of its own witness ASI Heera Lal (PW10) that it was he who downloaded the intercepted conversation Ex. PW 35/E2. I concur with the Ld. Defence counsel that it was incumbent upon the prosecution to explain the contradictory stand of its witnesses on record rather than coming up with an explanation of inadvertence or unmindful errors.

Further, even the subsequent certificate u/s 65B of Indian Evidence Act Ex. PW 29/I placed on record by Insp.

Sandeep Malhotra (PW29) fails to meet the statutory requirement u/s 65B of Indian Evidence Act.

It is rightly pointed out by Ld. Defence counsel that as per Section 65(4) of Indian Evidence Act, it is mandatory that the requisite certificate must specify the particulars regarding the device used for the production of the electronic record.

In the case at hand, the requisite certificate u/s 65B of Indian Evidence act fails to specify from which device the impugned intercepted conversation was downloaded by the prosecution witness. Further, Insp. Pankaj Sood (PW35) has admitted in his cross-examination that the conversation was stored in various computers. Now, in the absence of any particulars regarding the identity of the device where the intercepted conversation was stored and subsequently downloaded, the very identity of the device becomes shrouded in doubt and the very sanctity of the evidence becomes tainted. Hon'ble Bombay High Court in the matter of **Arshad Hussain v. State of Maharashtra, 2018 SCC OnLine Bom 1390** while upholding the acquittal of the accused on account of discrepancies in downloading the intercepted conversations in the CD has observed as under :-

“...After the conversations were intercepted, they were recorded on 3 CDs. The CD no. 1 was pertaining to the phone number attributed to Salauddin. The CD no. 2 was in respect of the phone number attributed to the accused no. 2 and the third CD was in respect of the intercepted conversations in respect of the phone number of the accused no. 4. This witness heard the conversations and dictated the transcripts on 17/01/2006. After the transcripts were prepared, the CDs were kept in a separate cover. Significantly, this witness, in the cross-examination, has admitted that he did not remember the date on which these CDs were prepared. He further admitted that the expert technician recorded the conversations in the computer and the communication was directly recorded on the hard disc. The prosecution has not

brought any evidence to show as to how the conversations from the hard disc were transferred on CDs and what precautions were taken at that time. This link is an important factor and therefore, the prosecution has failed to prove that the CDs were the exact copies of the conversations, intercepted by these officers. In this view of the matter, the further evidence in respect of the voice samples, voice analysis, voice matching, etc. becomes doubtful and therefore, it cannot be said that the prosecution has proved that these conversations could be attributed to any of the accused. Moreover, the evidence of PW 8, and PW 10 who was the pancha when the transcripts were made, does not show that the CDs were kept in sealed condition. Therefore, the possibility of tampering with these voice recordings cannot be ruled out, as is rightly held by the learned trial Judge in paragraph 103.

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.....
.....

33. The learned trial Judge has discussed the matching of the voice and the intercepted conversations from paragraph 77 to paragraph 105 and ultimately has discarded this piece of evidence. Since he has rightly observed that there was no evidence on record to show how the conversations were transferred on the CDs and in the absence of any evidence to show that they were kept in safe custody and that there was no possibility of any tampering; this evidence could not be held as having been proved by the prosecution against any of the accused. Thus, once this link of inter se communication between the accused is snapped, there is no material to show that the accused no. 4 was in conspiracy with the other accused. In this view of the matter, we are of the opinion that the learned trial Judge has rightly acquitted the accused no. 4...”

22. Furthermore, even if for the sake of arguments, the above said defects in the electronic evidence pertaining to the said intercepted conversation is ignored, even then the intercepted conversation is not sufficient to bring home the guilt against accused Trilochan Singh.

23. For the sake of convenience, the intercepted conversation Mark Q2 (Ex. PW 35/E2) has been reproduced herein for ready reference :-

11.09.2007 Starting Time: 16:54:31 Duration: 2:47
End Time: 16:57:18 Call I.D.11Q5431I.071
Baljeet and Trilochan

त्रिलोचन - वाहे गुरु जी !

बलजीत - वाहे गुरु है की हाल है !

त्रिलोचन - वाहे खालसा, वाहे गुरु की फत्ते !

बलजीत- ठीक ठाक हों !

त्रिलोचन - हाँ औ मुडके दर्शन नहीं दित्ते !

बलजीत- दर्शन मैं ते ऐथे ही हूंना - समझगए कौन बोलंदा !

त्रिलोचन- हाँ जी हाँजी !

बलजीत- नंबर पता ही है तुवाणु मेरे !

त्रिलोचन- हाँ पता है जी !

बलजीत- अच्छा- अच्छा !

त्रिलोचन- हाँ जी !

बलजीत- होर सुनाओ की हाल चाल है !

त्रिलोचन-चढ़ड़ी कला है वीर जी त्वाडी किरपा है !

बलजीत-परिवार

त्रिलोचन- सब आनंद मंगल है !

बलजीत - अच्छा अच्छा

त्रिलोचन- मैं इंतजार करदा रेहा की मैं चल देखांगे कोई प्लाट प्लूट !

बलजीत - हाँ न ओ चंगी गल है ! औ देखने वी चाहिदा !

त्रिलोचन- ते फेर मैं कहा चल कोई काम हो गया होना !

बलजीत - न काम ता ईदा दी कोई सिगी ! वे पा गल ऐ सी की वेले नी सी !

त्रिलोचन- अच्छा अच्छा

बलजीत - अपना कोई मित्र सिगा ! औदा कोई चक्कर पै गया सी!

त्रिलोचन- ओ पाजी मिले सी !

बलजीत -हाँ

त्रिलोचन-हाँ औ बाबा जी कोल ! ते आवांगे अस्सी तां औ सिंगनी दा वी कोई नौकरी

नुकरी दा चक्कर सी !

बलजीत -कौन !

त्रिलोचन-औ जेड़ा सिंग शहीद होया सी ओदी घरवाली सी !

बलजीत -अच्छा अच्छा

त्रिलोचन-ओ कैंदे सी की अस्सी आवेंगे ता मैं कया आजाएओ मै केहा मैनु दास देओ तां मैं छुट्टी

कार लेआगा ! इक दो दिन पहले !
बलजीत-ठीक-ठीक ठीक ठीक !
तिरलोचन-ओ गल होइ सी फेर मुडके कोई फोन नहीं आया आनादां !
बलजीत-अच्छा होर
तिरलोचन-होर सुनाओ पाजी
बलजीत-सब ठीक है -वदिया वीर
तिरलोचन-किन्दा, किन्दा किरपा कीती !
बलजीत- मैं वैसे लाया सी! मैं केहा चलो याद कार लईये !
तिरलोचन-बोत वदिया कित्ता ! बोत वदिया गल किती !
बलजीत- मैं केहा कि खालसा जी केनगे कि मुडके याद ही नहीं कित्ता !
तिरलोचन-नही, मै ते इंतजार कार रेहा सी !
बलजीत-अच्छा अच्छा होर सुना ! होना सुना अपने खेत किंवं ने !
तिरलोचन-वा बोत वदिया ! चढ़दी कला च हैं ! पानी पूनी लाइदा ! वा वा !
बलजीत- चलो चंगी गल है !
तिरलोचन- हाँ ठीक ने
बलजीत- हाँ हाँ !
तिरलोचन- होएगी फसल कोई गल नहीं !
बलजीत- ठीक है वीर !
तिरलोचन- चंगी है ! अगे नाली नदिया है वैसे !
बलजीत-अच्छा ठीक है जी !
तिरलोचन- हां जी ! ठीक है आजाओ जदी वी होआ ! पहले गल कार लेओ !
बलजीत-ठीक है, मैं इसी हफ्ते दा लास्ट वीच प्रोग्राम बनाना !
तिरलोचन- ठीक है बाबा जी देख लेयो फिर ! औ स्प्रे जई कारनी है !
बलजीत-हाँजी हाँजी !
तिरलोचन- औ दवाई जेहि देख लांगे ! इथो देख लांगे या फेर तुस्सी उथो देख लेयो !
बलजीत-ना-ना कोई गल नी आपा देख लांगे ! बेफिक्र रे !
तिरलोचन- ठीक है कोई वदिया जई होए कंपनी दी ! नकली दवाईया बोत आ रही है !
बलजीत-ना बोत वदिया यार !
तिरलोचन- ठीक है ! कोई नी देख लांगे !
बलजीत- ठीक है !
तिरलोचन- ठीक है जी ! वाहे गुरु जी दा खालसा, वाहे गुरु जी की फत्ते !.....

10.12.2007

File No.1053042L

Starting Time : 18:30:42 End Time : 18:33:12

Duration Time:2:31
Baljeet Singh and Trilochan

त्रिलोचन-वाहे गुरु जी !
बलजीत-बाबेओ कि हाल है !
त्रिलोचन-चड़दी कला है वीर जी, तुसी सुनाओ !
बलजीत-किमथे हो, ठीक ठाक हो !
त्रिलोचन-मैं पिण्ड हूँ !
बलजीत-होर सब ठीक ठाक परिवार
त्रिलोचन-हाँ इक मैरिज सिगी भतीजी दी
बलजीत-है जी !
त्रिलोचन-शादी सिगी भतीजी दी !
बलजीत-अच्छा अच्छा ठीक है !
त्रिलोचन-उदर आये सिगे !
बलजीत-ठीक है जी ठीक है !
त्रिलोचन-होर सुनाओ जी !
बलजीत-काल किथे हो !
त्रिलोचन-काल फिरि हूँ !
बलजीत- फिरि हो !
त्रिलोचन-हाँ !
बलजीत-अच्छा ! फिर आजायो उदरों साडे इलाका वाल नू !
त्रिलोचन-देख लो जिदर कहो के उदर आजाऊंगा !
बलजीत-मैं तां सोचया सी अम्बाले होओगे ! तां मैं उदरनु आजाऊंगा !
त्रिलोचन-नहीं मैं फ़िलहाल पिंड हूँ, लेकिन मैं आ जांगा ! कोई गल नहीं एहजी !
बलजीत - ठीक है फेर तुसी फेर मैनु ऐ करओ मैं सवेर १२ बजे ताक अपना काम कार लैओ ,
मैं १२ बजे ताक घर है होवांगा यानी पिण्ड ही !
त्रिलोचन - जे इधर आन दा होवे डेराबासी एरिया दा जुगाड़, इधर पंचकुला, जीरखपुर डेराबासी
दा है जुगाड़!
बलजीत- डेराबासी दा ऐदा हूँ , मैं ता दरसल काल नु नवां शहर जाना हूँ !
त्रिलोचन- अच्छा नवां शहर जाना हूँ !
बलजीत - हूँ मैं होके ता जवांगा, यानी के लेहरी तुरदा होना चलो मैं जीरखपुर ताक ता मैं आ
जवांगा !
त्रिलोचन - हूँ जीरखपुर कठे हो जवांगा !
बलजीत - हूँ ठीक है, जीरखपुर कठे हो जवांगा !
त्रिलोचन - जीरखपुर मिलन लांगे !

बलजीत - मैं तुवानी जीरखपुर तुरन लगया पिंडी फोन कार लूंगा , फेर तुस्सी आ जाएओ !
तिरलोचन - हाँ, ऐ ठीक है
बलजीत - ठीक है !
तिरलोचन - हाँ ऐ गल वादिया है !
बलजीत - तुवानु ता नेड़े ही पैनदगा !
तिरलोचन - हाँ जी !
बलजीत - तुहाडी जेडी अमानत परई सी ! मैं कहा ओ ई दर्ई !
तिरलोचन - हाँजी ठीक है जी ठीक है !
बलजीत - ता फेर आपा काल नू जीरखपुर कठे ही जावेंगे ! मैं तुवानु फोन कार दागा !
तिरलोचन- ठीक है ! लोड है कपड़या दी ! ढांड उतर आई नाले !
बलजीत - हाँजी , हाँजी , हाँजी , हाँजी !
तिरलोचन - ठीक है जी फेर !
बलजीत - ऐदा हैं ना तुसी जराबां पानदे हो ता थले पजामा मेरा ख्याल पान्दे नही, कुखया आला
त्वादा हिसाब किताब ही अलग होंदा हैं !
तिरलोचन - हाँ -हाँ आई गल है !
बलजीत - ठीक है फेर !
तिरलोचन - ठीक है फेर सवेरे फोन कार दे ओ !
बलजीत - ठीक है ! वाहे गुरु जी खालसा, वाहे गुरु जी फत्ते !

11-12-2007 (file no. 11M2108L)

Starting time 12:21:08

End time 12:24:16 duration 3:08

तिरलोचन - वाहे गुरु जी !

बलजीत - हाँ, वीर की हाल - चाल ने !

तिरलोचन - हाँ जी !

बलजीत - पोन्च गए वारा सिंगा ते

तिरलोचन - हाँ जी, हाँ जी !

बलजीत - अच्छा होर सुनाओ ठीक ठीक हो !

तिरलोचन - हाँ जी, चरदी कलां, तुसी दसो !

बलजीत - कित्ये हो !

तिरलोचन - मैं पिण्ड ही हाँ !

बलजीत - ते फेर त्वानु वैनूर तक आना पैना है मेरी वीर !

तिरलोचन - ठीक है !

बलजीत - पत्ता गल कि है , मैं नू ना नंदा शहर जाना पैना, अपना कोई मित्र आया होया है, ओ

कैन्दा कि आज्ञा ! काल में सगो ओदी वैट कांदा रेहा, काल ता मरा पिछे लेट हो गया ।

तिरलोचन - ठीक है !

बलजीत - तां ओ फेर मैनु सवेरे फोन आया । कैन्दा कि उथे ही, घरे आज्ञाओ

तिरलोचन - वैनूर !

बलजीत - तुसी वैनूर तक पोन्च जाओ !

तिरलोचन - अच्छा

बलजीत - जित्थे आंसी पैला मिले सी ना एक दिन !

तिरलोचन - हां हां

बलजीत - ओत्थे पोंच के मैनु मिस कॉल मार देओ !

तिरलोचन - ठीक है, तुसी किन्नी देर तक चलोगे !

बलजीत - मैं फेर तूरये । जैड़ा पिण्ड आएगा फेर आवांगा वैनूर !

तिरलोचन - चल ठीक है मै पाग -पूग वांन के आन्ना फेर त्यार हो के !

बलजीत -

तिरलोचन - मैं फेर अददेक घेन्टे तक चलुंगा घरी !

बलजीत - किन्ना क टाइम लगदा है वैनूर तक

तिरलोचन -

बलजीत - त्वादे कौल दा गड़डी होऊगी !

तिरलोचन -

बलजीत - है

तिरलोचन -

बलजीत - इक मिनट हुन दसी कही गई वाज !

(काल कट गई)

कंटिन्यू इन नेस्ट कॉल

तिरलोचन - हां जी वीर जी !

बलजीत -..... ..

तिरलोचन - वॉयस नॉट क्लियर

!!!!!!!!!!!!!!!!!!!!!!!!!!!!

!!!!!!!!!!!!!!!!!!!!!!!!!!!!

बलजीत - मैं किन्ना गड़डी ले आओ नाले तुसी थेती पोंचोगे नाले वादिया रहेंगे !

..... ..

तिरलोचन - हाँ हाँ , चलो गड़डी ले आवाँगा

बलजीत - ठीक है , आ जाओ फेर उथे ही है !

तिरलोचन - हाँ ठीक है , मैं पोन्चदां अददे-पौने घण्टे ताक !

बलजीत - हां, माडा जे हे चेती मारेयो है !

तिरलोचन - हां हां ओके

बलजीत - ओके

11-12-2007 file no. 11N3906L, start time- 13:39:06

end time - 13:39:51

duration time - 00:45

तिरलोचन - हाँ जी , तुसी पॉन्चो मैं लेंटा ते हाँ !

बलजीत - अच्छा जगीया आ गए ! आजाओ फेर !

तिरलोचन - आ गया हुन नेड़े ही । !

बलजीत - जित्थे ग्रांड लस्सी आला नी हेगा !

तिरलोचन - है !

बलजीत - ग्रांड लस्सी आला !

तिरलोचन - ग्रांड लस्सी आला !

बलजीत - तुसी ऐ करो !

तिरलोचन - औदार ही आ जाना !

बलजीत - कदे ते ही !

तिरलोचन - मेरे कोल गाड़ी है !

बलजीत - बस मैं एदर दे पासे खड़ा, मतलब की खावे पासे, दुज्जे पासे जवां !

तिरलोचन - ठीक है मैं आया बस !

11.12.2007 file no. 1102246L

Starting time- 20.22.46 End time- 20.23.45,

Duration -00.59

तिरलोचन - हैलो

बलजीत - हाँ जी , पोन्च गए !

तिरलोचन - हाँ जी पाऊ जी आजाओ हुन !

बलजीत - चल ठीक है !

तिरलोचन - कित्थे ही हुन !

बलजीत - मैं ता इधर, रोपड़ तो राजपुरा नू आ रेहा सिगा !

तिरलोचन - रोपड़ !

बलजीत - हाँ

तिरलोचन - चलो आ जाओ मिलंदे है फेर

बलजीत - ओके, ओके, मैं दरसल सफर वीच सिगा, मैं कहा बाद बीच पुछदे हाँ !

तिरलोचन - ठीक है, मिलंदे हाँ आके !

बलजीत - चंगा वीर

21.12.2007, file no. 21Q5521L, Starting time-16.55.21
End time – 16.56.47, Duration 01.26

बलजीत - हाँ जी !

तिरलोचन - हाँ जी , हाँ जी वाहे गुरु जी दा खालसा, वाहे गुरु जी दी फत्ते !

बलजीत - की हाल है बाबेयो ठीक ठाक है !

तिरलोचन - हाँ चारदी कलां !

बलजीत - है !

तिरलोचन-

बलजीत - है !

तिरलोचन - घरे मिस्त्री लगे सी, लैदिरन- बाथरूम बना रहे सी !

बलजीत - अच्छा अच्छा अच्छा अच्छा !

तिरलोचन -

बलजीत - दुपेरे टरई कित्ता सी मिल नही रहा सी !

तिरलोचन - हां कई बार ना टावर जेडा लाग जान्दा है, कई बार नही लगदा ! हुन लाग
रहा है बड़ा अच्छा !

बलजीत - हां हां, ओ फेर हवा हुवा नाल कई बारी प्रॉब्लम आ जान्दी है !

तिरलोचन - हाँ इस कारके, पान्ज - छ: दिन ही गए, उरां ही है !

बलजीत - अच्छा - अच्छा, अच्छा ठीक है ! मैं तां अम्बाले नू गया सी, मैं कहा ओथे ना होन!

तिरलोचन - दरसल मैं ना, छ: तरीख तो वाद गया नहीं ! पहले मैं इधर गया सिगा !

बलजीत - अच्छा

तिरलोचन - फिर थोड़ा जेड़ा लैदिरन- बाथरूम दा काम करा रहा सिगा घंरी !

बलजीत - ठीक है वीर

तिरलोचन - आ जाओ इधर नू !

बलजीत - इदर नू ता नही समा लगदा ! मैं नू ता ऐ सी कि किते अम्बाले न होवे !

तिरलोचन - नहीं अम्बाले ता हवे इक - दो दिन होर लाग जाने है !

बलजीत -चलो करा लो ! होर ठीक ठाक हो !

तिरलोचन - हाँ चढ़दी कला है !

बलजीत - मैं ता वास हाल चाल ही पूछना सी !

तिरलोचन - तुसी दसो !

बलजीत - हाँ वदिया - वदिया- वदिया !

तिरलोचन - ठीक है वीर वैले हो के करारंगे गल !

बलजीत - चंगा

तिरलोचन - चंगा ! वाहे गुरु जी का खालसा !

24. On a plain and simple reading of the above conversation, any conspiracy to commit a terrorist act is not discernible to an ordinary man. With respect to the above said intercepted conversations, it has been forcefully argued by Ld. Addl. PP that since the accused persons were quite conscious of the fact that their conversation would come under surveillance, therefore, they were talking in coded language. It is submitted that when the conversation is decoded, the design to revive militancy and eliminate Baba Pyara Singh Paniharewala surfaced.

25. Ld. Addl. PP has specifically pointed out the conversations dated 11.09.2007 and 10.12.2007 held between accused Trilochan Singh and convict Baljeet Singh @ Pahu which is once again reproduced here as under for ready reference alongwith the Hindi translation and the interpretation rendered by prosecution:-

त्रिलोचन- मैं इंतजार करदा रेहा की मैं चल देखांगे कोई प्लॉट प्लूट !
(त्रिलोचन-मैं आपका इंतज़ार कर रहा था कि कोई प्लॉट बगैरह देख लेते हैं)
बलजीत - हाँ न ओ चंगी गल है ! औ देखने वी चाहिदा !
(बलजीत- अच्छी बात है देखना चाहिए !)
* (प्लॉट देखने से मतलब है कि आप आओगे तो बाबा पनिहारे की रेकी करके आएंगे)

त्रिलोचन-हाँ औ बाबा जी कोल ! ते आवांगे अस्सी तां औ सिंगनी दा वी कोई नौकरी नुकरी दा चक्कर सी !
(त्रिलोचन-एक दिन बाबा जी के पास चलेंगे ! एक सरदारनी को नौकरी दिलवाने का चक्कर है)
बलजीत-कौन?
(बलजीत -कौन !)
त्रिलोचन-औ जेड़ा सिंग शहीद होया सी ओदी घरवाली सी !
(त्रिलोचन-जो एक सरदार शहीद (Encounter) हो गया था उसकी घरवाली है!)
बलजीत -...
त्रिलोचन-ओ कैंदे सी की अस्सी आवेंगे ता मैं कया आजाएओ मैं केहा मैंनु दास देओ तां मैं छुट्टी कार लेआगा ! इक दो दिन पहले !

(वो सरदारनी कह रही थी मैं वहीं आउंगी तो मैंने कहा एक दिन पहले बता देना मैं 1-2 दिन की छुटी कर लूंगा!)

त्रिलोचन-ओ गल होइ सी फेर मुड़के कोई फोन नहीं आया आनादां !
(उससे बात होने के बाद उसका दोबारा फ़ोन नहीं आया)
*(त्रिलोचन सिंह ने किसी औरत को बाबा पनिहारे पर अटैक करने के लिए तैयार किया है!)

बलजीत-अच्छा अच्छा होर सुना ! होना सुना अपने खेत किवं ने !
(बलजीत- अच्छा और सुना अपने खेत कैसे हैं ?)
त्रिलोचन-वा बोत वदिया ! चढ़दी कला च हैं ! पानी पूनी लाइदा ! वा वा !
(त्रिलोचन-बहुत अच्छे हैं ! पानी देता रहता हूँ !)
बलजीत- चलो चंगी गल है !
(बलजीत-चलो अच्छी बात है !)
*(खेत से मतलब जो आदमी तंजीम के लिए तैयार किये हैं वे ठीक हैं)
त्रिलोचन-चिंता की बात नहीं है फसल होगी
*(मतलब काम बनेगा)

बलजीत - तुहाडी जेडी अमानत परई सी ! मैं कहा ओ ई दर्ईए !
(बलजीत - जो आपकी अमानत मेरे पास रखी है उसको ले जाते आप!)
त्रिलोचन - हाँजी ठीक है जी ठीक है !
त्रिलोचन- ठीक है ! लोड है कपड़या दी ! ढांड उतर आई नाले !
(त्रिलोचन - ठीक है अब ठण्ड बहुत हो गई है कपड़ो की जरूरत भी है !)
*(बलजीत पाहु, त्रिलोचन को हाथियार देने की बात कर रहा है !
त्रिलोचन कहता है मैं अब तैयार भी हूँ !)

बलजीत - ऐदा हैं ना तुसी जराबां पानदे हो ता थले पजामा मेरा ख्याल पान्दे नहीं,
कुखया आला त्वादा हिसाब किताब ही अलग होंदा हैं !
(बलजीत - तुम जुराब पहनते हो पाजाम नहीं पहनते, मेरे हिसाब से
आपका हिसाब अलग ही तरह का होता है!)
त्रिलोचन - हाँ -हाँ आई गल है !
*(त्रिलोचन सिंह हरियाणा रोडवेज में ड्राइवर है और पैंट -कमीज़ या कुर्ता -पजामा पहनता है ! यह सुरक्षा एजेंसी को मिसगाइड करने के लिए इस तरह की बात कर रहे है !)

बलजीत - मैं किन्ना गड़डी ले आओ नाले तुसी थेती पॉचोगे नाले वादिया रहेंगे
!
त्रिलोचन - हाँ हाँ , चलो गड़डी ले आवाँगा
बलजीत - ठीक है , आ जाओ फेर उथे ही है !
त्रिलोचन - हाँ ठीक है , मैं पोन्चदां अददे-पौने घण्टे ताक !
बलजीत - हां, माडा जे हे चेती मारेयो है !
त्रिलोचन - हां हां ओके
बलजीत - ओके

(बलजीत - मैं कह रहा था कि आप गाड़ी ले आना ! जल्दी पहुँचोगे

और ठीक रहोगे !
तिरलोचन - ठीक मैं गाड़ी लेकर आ जऊंगा !
बलजीत - वही आ जाना जहाँ पहले मिले थे !
तिरलोचन - ठीक है १/२ | ३/४ घन्टे में पहुँच रहा हूँ !
बलजीत - थोड़ा जल्दी करके आना
*(बलजीत पाहु गाड़ी इसलिए मँगा रहा है क्योंकि उसने तिरलोचन सिंह को असला देना है !)

*(The portion in bold is Hindi translation of the conversation and * denotes the meaning attempted to be ascribed by the prosecution to the coded words)*

26. However, it is rightly pointed out by Ld. Defence counsel that PW35 Insp. Pankaj Sood has admitted that interpretation of the coded words is based upon his personal subjective interpretation.

27. In my considered opinion, the meaning attempted to be ascribed by the prosecution to the general words like plot, khet, fasal, paani, etc can only be accepted when it rules out the possibility of any error on the part of the police official. The possibility of any enthusiastic police officer misinterpreting plain and simple words on account of suspicion and over jealous approach cannot be ruled out. There must be some credible material available on record justifying the meaning ascribed to plain and general words by the prosecution. The words should have either been established as standard phrases in lingua franca used by the criminals or atleast there must be a pattern discernible in the words used so that they can be interpreted in a particular manner. Now, in the absence of any material available on record, the doubt attached with the, perhaps prejudiced or atleast loaded, interpretation rendered by the prosecution cannot be dispelled with. I concur with the Ld. Defence counsel that the ambiguity attached is not removed by the subjective interpretation rendered

by the IO as he is neither an expert on the subject nor he is neutral. It has been attempted to be argued by Ld. Addl. PP that the intercepted conversation when viewed in light of the recovery of arms and ammunitions at the instance of accused Trilochan Singh, the case of the prosecution is firmly established. However, as we shall later see, even the alleged recovery of arms and ammunitions from accused Trilochan Singh is not free from difficulties. Therefore, it would be unjustified to rely upon the interpretation rendered by Insp. Pankaj Sood (PW35). Thus, I am of the opinion that the intercepted conversation is not of much help for the cause of the prosecution to establish that the accused Trilochan has entered into some sort of conspiracy to carry out a terrorist act and deserves to be discarded.

2. Recovery of arms and ammunitions i.e one pistol with six live cartridges and one spare magazine having six rounds (Ex.P7/1 to Ex. P7/4) from the possession of accused Trilochan Singh.

28. It is submitted by Ld. Addl. PP that pursuant to the disclosure statement of accused Trilochan Singh, one pistol with six live cartridges and one spare magazine having six rounds were recovered from his possession. It is submitted that recovery of arms and ammunitions at the instance of accused Trilochan Singh is a very strong incriminating piece of evidence establishing on record that accused Trilochan Singh in collusion with his associates was preparing to eliminate Baba Pyara Singh Paniharewala.

However, in my considered opinion, the contention that accused Trilochan Singh has collected arms and ammunitions to eliminate Baba Pyara Singh Paniharewala is based more upon conjectures and surmises and lacks a sound

foundation backed by credible evidence. Except for the above discussed hazy and obscure intercepted telephonic conversation, there is no evidence available on record to suggest that the alleged weapons were collected by the accused to eliminate Baba Pyara Singh Paniharewala. In the absence of any evidence, leave aside the credible one, it cannot be presumed that the arms were collected by the accused to murder Baba Pyara Singh Paniharewala. Further, as we shall later see in the succeeding portion of the judgment, even the recovery of arms and ammunitions alleged to be effected at the instance of accused Trilochan Singh, is not free from doubt and suspicion.

3. The plea of guilt and consequent conviction of the remaining accused persons.

29.Ld. Addl. PP has forcefully argued that the conviction of the co-accused persons is too strong a circumstance to be ignored against the accused Trilochan regarding the existence of a criminal conspiracy.

30.In my considered opinion, accused Trilochan Singh cannot be held guilty for commission of offence u/s 18 of UAPA merely because the co-accused persons have pleaded guilty and have been convicted. The case of the accused is required to be judged independently on its own merits and he cannot be convicted simply because the other co-accused persons have pleaded guilty. Thus, the contention of the Ld. Addl. PP deserves to be discarded on this count also. In this regard, a reference may be made to **Suresh Kr. Bubharmal Kalani v. State of Maharashtra (1988) 7 SCC 377** (para 7), where the Court held that - the confession of one Sri Surjya Rao cannot be used to frame charges against the accused Kalani, in the absence of other materials to do so.

Similarly, reliance can also be placed upon the judgment of Hon'ble Delhi High Court in the matter of **Navneet Singh v. State 2019 SCC OnLine Del10928 (Para22)** wherein Hon'ble Delhi High Court has observed that plea of guilt of an accused cannot be used for affixing guilt on any other accused.

31. Evidently, the evidence brought on record against accused Trilochan Singh is neither conclusive in nature nor it is inconsistent with the sacrosanct principle of presumption of innocence of the accused Trilochan Singh.

32. Thus, I cannot but disagree with the Ld. Addl. PP that prosecution has successfully proved its case against the accused for commission of offence u/s 18 of UAPA.

33. Now let us deal with the second charge against the accused Trilochan Singh framed under Section 20 of Unlawful Activities (Prevention) of Atrocities Act.

Section 20 of Unlawful Activities (Prevention) of Atrocities Act reads as under :

Punishment for being member of terrorist gang or organisation—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be held liable.

34. In order to bring home a charge for commission of the offence punishable u/s 20 of UAPA, it is incumbent upon the prosecution to prove that accused Trilochan Singh was a member of a terrorist gang or terrorist organisation.

35. It is submitted by Ld. Addl. PP that accused Trilochan Singh alongwith convict Baljeet Singh @ Pahu were trying to revive militancy in Punjab. It is submitted that convict Baljeet Singh @ Pahu is indisputably a member of banned terrorist organisation Babbar Khalsa International (hereinafter referred to as 'BKI'). It is submitted that the intercepted conversations Ex. PW 35/E2 coupled with the recovery of arms and ammunitions establishes on record that accused Trilochan Singh was member of banned terrorist organisation BKI.

36. Doubts regarding the probative value of intercepted telephonic conversation and the recovered arms and ammunitions has already been discussed above. Once the intercepted conversations Ex. PW 35/E2 and recovery of arms and ammunitions from accused Trilochan Singh are discarded, there is no material available on record to connect accused Trilochan Singh with BKI. Therefore, I am convinced that prosecution has miserably failed to prove on record that accused Trilochan Singh was member of banned terrorist organisation Babbar Khalsa International and he accordingly deserves to be acquitted for the charge of offence punishable u/s 20 of UAPA.

37. Now let us deal with the last charge against accused Trilochan Singh framed under section 25 of Arms Act which reads as follows:

25. Punishment for certain offences.—1 [(1) Whoever—
(a) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or
(b) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of section 6; or

2 * * * * *

(d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of section 11,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(1A) Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine.

(1AA) whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(1AAA) Whoever has in contravention of a notification issued under section 24A in his possession or in contravention of a notification issued under section 24B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than 2 [three years, but which may extend to seven years] and shall also be liable to fine.

(1B) Whoever—

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

(c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or

(g) transports any arms or ammunition in contravention of section 12; or

(h) fails to deposit arms or ammunition as required by sub-

section (2) of section 3, or sub-section (1) of section 21; or
(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept,

shall be punishable with imprisonment for a term which shall not be less than 3 [one year] but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than 3 [one year].

(1C) Notwithstanding anything contained in sub-section (1B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this sub-section, “disturbed area” means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by notification under section 24A or section 24B.

(2) Whoever being a person to whom sub-clause (i) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever sells or transfers any firearm, ammunition or other arms—

(i) without informing the district magistrate having jurisdiction or the officer in charge of the nearest police station, of the intended sale or transfer of that firearm, ammunition or other arms; or

(ii) before the expiration of the period of forty-five days from the date of giving such information to such district magistrate or the officer in charge of the police station,

in contravention of the provisions of clause (a) or clause (b) of the proviso to sub-section (2) of section 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(4) Whoever fails to deliver-up a licence when so required by the

licensing authority under sub-section (1) of section 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both.

(5) Whoever, when required under section 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to two hundred rupees, or with both.

38. In the case at hand, accused Trilochan Singh has also been charged under Section 25 Arms Act as one pistol, one spare magazine and twelve live cartridges are alleged to have been recovered at his instance. However, the alleged recovery of arms and ammunitions at the instance of accused Trilochan Singh comes under the scanner of doubt for the following reasons :-

39. Prosecution has failed to prove on record any departure entry made at P.S Special Cell before leaving for village of accused Trilochan Singh i.e. Village Mankya, Panchkula, Haryana.

40. Chapter 22 rule 49 of the Punjab Police which is reproduced herein for ready reference reads as under :-

Chapter 22 Rule 49 of Punjab Police Rules, 1934, provides as under:

"22.49 Matters to be entered in Register No. II The following matters shall, amongst others, be entered :

(c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal.

Note : The term Police Station will include all places such as Police Lines and Police Posts where Register No. II is maintained.

41. In the present case, the above said provision seems to have not been complied with by the investigating agency. The relevant entries regarding the arrival and departure of the police officials have not been proved on record.

42. At this juncture, it would be relevant to refer to a case law reported as **Rattan Lal v. State, 1987 (2) Crimes 29**, wherein the Hon'ble Delhi High Court has held that, "if the investigating agency deliberately ignores to comply with the provisions of the Act the courts will have to approach their action with reservations. The matter has to be viewed with suspicion if the provisions of law are not strictly complied with and the least that can be said is that it is so done with an oblique motive. This failure to bring on record, the DD entries creates a reasonable doubt in the prosecution version and attributes oblique motive on the part of the prosecution.

43. Furthermore, the alleged recoveries were effected from the house of accused Trilochan Singh situated in Village Mankya, Panchkula, Haryana. IO has admitted the presence of public witnesses at the spot and yet no independent public witness in stark violation of Section 100(4) of Indian Penal Code was joined in the investigation at the time of alleged recovery. It has been attempted to be explained by the police officials of raiding team that the public persons present at the spot refused to join the investigation, despite the request of the IO. However, no explanation has been tendered on record that as to why no notice

was served upon the said public witnesses. In my considered opinion, failure of police officials in joining independent witnesses in the investigation raises a serious doubt upon the alleged recovery.

In the present case, IO has not made any endeavour to join the public witnesses in police proceedings. At least in the facts and circumstances of the present case, IO could have very well served the persons present at the spot with notice in writing requiring them to join the police proceedings or to face action u/s 187 IPC in as much as in the present case there was no possibility of accused escaping his apprehension/arrest or crime going undetected in as much as by the said time, accused stood already apprehended by the police. Failure on the part of IO to make sincere efforts for joining independent public witnesses in the proceedings, when they are available, creates reasonable doubt in the prosecution in view of the following case laws.

44. In a case law reported as *Anoop Joshi V/s State, 1992 (2) C.C. Cases 314 (HC)*, Hon'ble High Court of Delhi has observed as under:

"18. It is repeatedly laid down by this Court that in such cases it should be shown by the police that sincere efforts have been made to join independent witnesses. In the present case, it is evident that no such sincere efforts have been made, particularly when we find that shops were open and one or two shopkeepers could have been persuaded to join the raiding party to witness the recovery being made from the appellant. In case any of the shopkeepers had declined to join the raiding party, the police could have later on taken legal action against such shopkeepers because they could not have escaped the rigours of law while declining to perform their legal duty to assist the police in investigation as a citizen, which is an offence under the IPC".

45. *Roop Chand V/s The State of Haryana, 1999 (1) C.L.R 69*, the Hon'ble Punjab & Haryana High Court held as under:-

“...It is well settled principle of the law that the Investigating Agency should join independent witnesses at the time of recovery of contraband articles, if they are available and their failure to do so in such a situation casts a shadow of doubt on the prosecution case. In the present case also admittedly the independent witnesses were available at the time of recovery but they refused to associate themselves in the investigation. This explanation does not inspire confidence because the police officials who are the only witnesses examined in the case have not given the names and addresses of the persons contacted to join. It is a very common excuse that the witnesses from the public refused to join the investigation. A police officer conducting investigation of a crime is entitled to ask anybody to join the investigation and on refusal by a person from the public the Investigating Officer can take action against such a person under the law. Had it been the fact that the witnesses from the public had refused to to join the investigation, the Investigating Officer must have proceeded against them under the relevant provisions of law. The failure to do so by the police officer is suggestive of the fact that the explanation for non-joining the witnesses from the public is an after thought and is not worthy of credence. All these facts taken together make the prosecution case highly doubtful...”

46. Further, it has been testified by Insp. Attar Singh (PW12) that recovered arms and ammunitions were sealed with the seal of RKS and seal after use was handed over to him. However, Insp. R. K. Singh (PW16) has not corroborated this fact of handing over seal to Insp. Attar Singh (PW12) after use. Further, no handing over memo was prepared in this regard and thus the possibility of the alleged recovery not being tampered with cannot be ruled out. *Reliance is placed upon Safiullah vs State (Delhi Administration) 49 (1993) DLT 193 decided on 09.11.1992 wherein it has been held as under :-*

"It is nowhere the case of the prosecution that the seal after use was handed over to the independent witness Public Witness 5. Even I.O. Public Witness 7 does not utter a word regarding the handing over of the seal after use. Therefore, the conclusion which be arrive at is that the seal remained with the Investigating Officer or with the other member of the raiding party, therefore, the possibility of interference or tempering of the seal and the contents of the parcel cannot be ruled out. Since

the Inspector Omveer Singh, appearing as Public Witness-8, has tried to improve his statement in the Court, to my mind, no reliance can be placed on his statement, particularly when the Investigating Officer and the Moharrar Malkhana do not say anything about the deposit of the CFSL form with the Moharrar Malkhana. In these circumstances, I am clearly of the view that the prosecution has failed to prove this link evidence to show that the sample parcel was not tampered with by anyone before it was examined by the CFSL and the benefit of the same must go to the appellant...”

47. Further, It has also been correctly pointed out by Ld. Defence counsel that as per the claim of the prosecution, police went to the village of accused Trilochan Singh at Village Mankya, Panchkula, Haryana upon the disclosure statement of accused Baljeet Singh @ Pahu. Evidently, in the disclosure statement of accused Baljeet Singh @ Pahu, he has claimed that accused Trilochan Singh is resident of Dera Bassi, Punjab, however the house of accused Trilochan Singh is admittedly situated in Village Mankya, Panchkula, Haryana and no explanation has come on record as to how the police team visited Village Mankya, Panchkula, Haryana even without bothering to go to Dera Bassi. It appears that certain vital links are missing between the disclosure statement of accused Baljeet Singh @ Pahu and the recovery effected from the house of accused Trilochan Singh situated in Village Mankya, Panchkula, Haryana.

48. Thus I am of the considered opinion that shadow of doubt appears upon the prosecution version and the evidence available on record is not of sterling quality to hold accused Trilochan Singh liable for the commission of offence punishable u/s 18/20 of UAPA and u/s 25 Arms Act.

49. In the case of **Sadhu Singh v. State of Punjab 1997(3) Crime 55** the Hon'ble Punjab & Haryana High Court observed as under:-

“...In a criminal trial, it is for the prosecution to establish its case beyond all reasonable doubts. It is for the prosecution to travel the entire distance from may have to must have. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused...”

50. It is settled proposition of law that in a criminal trial, the prosecution is required to prove its case beyond a shadow of reasonable doubt and in the case at hand, the prosecution has miserably failed to prove its case and accused deserves the benefit of doubt.

51. With these observations, accused Trilochan Singh is acquitted of the offences charged with. His bail bonds and surety bonds stands cancelled. However, PB/SB in the sum of Rs.20,000/-, in terms of Section 437A CrPC has been furnished, as per the directions of the court, and the same are accepted.

52. Instant judgment be uploaded on the website immediately.

53. File be consigned to Record Room after due compliance.

**Announced in the open court
on 24.03.2022**

**(Dharmender Rana)
ASJ-02: NDD: PHC:ND**

Sessions Case No. 132/2013
CNR No. DLND01-000012-2008
Case No. 8542/2016
State v. Baljeet & ors

24.03.2022

Present: Sh. Irfan Ahmed, Ld. Addl. PP for State.

Accused Trilochan Singh on bail.

Sh. Maninder Singh, Ld. Senior Advocate with Ms. Smriti Asmita, Sh. Harsh Vashisht and Ms. Anshika Batra, Ld. counsel for accused.

Vide separate judgment of even date, accused Trilochan Singh is acquitted of the charges framed against him for commission of offence punishable u/s 18/20 of UAPA and u/s 25 of Arms Act. He is on bail. His bail bonds and surety bonds stands cancelled. He has already furnished PB/SB in the sum of Rs.20,000/- each in terms of Section 437A CrPC which have already been accepted by this court.

Copy of the judgment be given dasti.

File be consigned to Record Room after due compliance.

(Dharmender Rana)
ASJ-02: NDD: PHC:ND
24.03.2022