IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRA-D-738-2021
Reserved on: 20.03.2024
Date of decision: 28.05.2024

JASBIR SINGH (DECEASED) THROUGH HIS LRs

...Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION

...Respondent

(2) CRA-D-725-2021

AVTAR SINGH @ AVTAR SINGH GILL

...Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION

...Respondent

(3) CRA-D-726-2021

BABA GURMEET SINGH @ MAHARAJ GURMEET SINGH @ GURMEET RAM RAHIM SINGH

...Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION

...Respondent

(4) CRA-D-728-2021 (O&M)

KRISHAN LAL

...Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION

...Respondent

(5) CRA-D-715-2021 (O&M)

SABDIL SINGH

...Appellant

Versus

CENTRAL BUREAU OF INVESTIGATION

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate,
Mr. Anurag Arora, Advocate,
Ms. Radhika Mehta, Advocate and
Mr. Farhad Kohli, Advocate
for the appellant (in CRA-D-738-2021).

Mr. R. Basant, Senior Advocate with
Mr. Akshay Sahay, Advocate,
Mr. Amar D. Kamra, Advocate,
Mr. Jitender Khurana, Advocate,
Mr. Aman Jha, Advocate and
Mr. Rishu Tutu, Advocate
for the appellant(s) (in CRA-D-726-2021).

Ms. Sonia Mathur, Senior Advocate with
Mr. Amit Tiwari, Advocate,
Mr. Harish Chabra, Advocate,
Mr. Nikhil, Advocate,
Mr. Madhav Singhal, Advocate and
Mr. Mayank Aggarwal, Advocate
for the appellant(s) (in CRA-D-728-2021).

Mr. P.S. Ahluwalia, Advocate and
Mr. Balraj Singh Sidhu, Advocate
for the appellant(s) (in CRA-D-725-2021).

Mr. Mohinder S. Joshi, Advocate and
Ms. Ravneet Joshi, Advocate
for the appellant(s) (in CRA-D-715-2021).

Mr. Ravi Kamal Gupta, Advocate with
Ms. Kompal Arora, Advocate for CBI.

Mr. R.S. Bains, Senior Advocate with
Mr. Aman Raj Bawa, Advocate
Mr. Anmol Deep Singh, Advocate and
Mr. Amarjeet Singh, Advocate for the complainant.

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SURESHWAR THAKUR, J.

Since all the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence all the appeals (supra) are amenable for a common verdict being made thereons.

2. The instant appeals are directed against the verdict drawn, on 08.10.2021, upon case No. CHI/1864/2013, by the learned Special Judge, (CBI), Haryana at Panchkula, wherethrough, in respect of charges drawn for offence(s) punishable under Sections 302, 506 read with Section 120-B IPC, besides under Section 27 of the Arms Act, 1959, he recorded a verdict of conviction against the convicts. Moreover, through a separate sentencing order of 18.10.2021, the learned trial Judge concerned, imposed upon, the convicts both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

I Baba Gurmeet Ram Rahim Singh

Sr. No.	**Under section**	**Sentence**	**Fine**	**Sentence in default of payment of fine**
1.	120-B IPC read with 302 IPC	Rigorous Imprisonment for life	Rs.30,00,000/-	Rigorous imprisonment for two years.
2.	506 IPC read with Section 120-B IPC	Rigorous imprisonment for three years	Rs.1,00,000/-	Rigorous imprisonment for Six months.

II Avtar Singh

Sr. No.	**Under section**	**Sentence**	**Fine**	**Sentence in default of payment of fine**
1.	120-B IPC read with 302 IPC	Rigorous Imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.
2.	506 IPC read with Section 120-B IPC	Rigorous imprisonment for three years	Rs. 25,000/-	Rigorous imprisonment for Six months.

III Sabdil Singh

Sr. No.	**Under section**	**Sentence**	**Fine**	**Sentence in default of payment of fine**
1.	302 IPC read with 120-B IPC	Rigorous Imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.

2.	120-B IPC read with Section 302 IPC	Rigorous imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.
3.	506 IPC read with Section 120-B IPC	Rigorous imprisonment for three years	Rs. 25,000/-	Rigorous imprisonment for Six months.
4.	27 of Arms Act, 1959	Rigorous imprisonment for three years	Rs. 25,000/-	Rigorous imprisonment for Six months.

IV Jasbir Singh

Sr. No.	**Under section**	**Sentence**	**Fine**	**Sentence in default of payment of fine**
1.	302 IPC read with 120-B IPC	Rigorous Imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.
2.	120-B IPC read with Section 302 IPC	Rigorous imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.
3.	506 IPC read with Section 120-B IPC	Rigorous imprisonment for three years	Rs. 25,000/-	Rigorous imprisonment for Six months.

V Krishan Lal

Sr. No.	**Under section**	**Sentence**	**Fine**	**Sentence in default of payment of fine**
1.	302 IPC read with 120-B IPC	Rigorous Imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.
2.	120-B IPC read with Section 302 IPC	Rigorous imprisonment for life	Rs. 50,000/-	Rigorous imprisonment for two years.
3.	506 IPC read with Section 120-B IPC	Rigorous imprisonment for three years	Rs. 25,000/-	Rigorous imprisonment for Six months.

3. The period spent in prison by the convicts, thus during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convicts. It was further ordered that out of the aforesaid amount of fine imposed the accused, fifty percent (50%) of the said fine amount shall be paid to the legal heirs/ dependents of victim/ deceased Ranjit Singh in equal proportions, as per rules.

4. The convicts become aggrieved from the above drawn verdict of conviction besides also become aggrieved from the above drawn order of sentence, thus, they are led to institute thereagainst their respective appeals before this Court.

5. Since accused-Jasbir Singh died on 15.10.2023 thus during the pendency of the appeal, thereby through an order made by this Court, on 05.02.2024 he has been substituted by his LRs.

FACTUAL BACKGROUND

6. The genesis of the prosecution is that that one Joginder Singh son of Amar Singh, resident of Khanpur Kolia, Kurukshetra (hereinafter referred as the complainant) made a statement to the police that on 10.07.2002 while he was in his fields at about 05:00 p.m, his son Ranjit Singh brought tea for the labourers working in the fields and after giving tea, he (Ranjit Singh) left the fields when four persons with pistols in their hands came out of the fields and fired indiscriminately at his son Ranjit Singh. He (Ranjit Singh) was taken to LNJP Hospital, Kurukshetra, where he was declared dead. The complainant raised suspicion that Ram Kumar Sarpanch and Raj Singh son of Sahdev Singh Malik, residents of Khanpur Kolia, in conspiracy with other persons, got his son killed as they have dispute with him since the Panchayat elections and had been threatening him. On the aforesaid statement, FIR No.312 dated 10.07.2002 under Section(s) 120-B, 302, 34 IPC was registered by the police against Ram Kumar Sarpanch, Raj Singh and four unknown persons. However, during the course of investigation by the local police, the complainant told them that from the facts verified, the followers of Dera Sacha Sauda, Sirsa had killed his son as they suspected him behind the circulation of the anonymous letter of a Sadhvi alleging sexual exploitation of sadhvis in the Dera by Baba Gurmeet Singh,

Chief of Dera. On 24.08.2002, the complainant gave further statement indicating involvement of Jasbir Singh son of Rohtas Singh Randhi of the Dera. The investigation of this case was transferred to CID Crime Branch, Haryana on 22.11.2002. Thereafter, on 24.11.2002, the complainant named Sabdil Singh, Constable, gunman of Baba Gurmeet Singh as he along with Jasbir Singh had visited his house and threatened his son Ranjit Singh before his murder. The Crime Branch, CID at Madhuban arrested accused Jasbir Singh and Sabdil Singh on 02.12.2002. The accused were identified by Joginder Singh-complainant as the persons who had visited his house and threatened Ranjit Singh. Investigation by CID Crime Branch disclosed that Ranjit Singh was shot dead with a .455 revolver. Investigation also revealed that Constable Sabdil Singh was issued a .455 revolver No.24707 on 29.12.1997 by the Police Lines Kot in Mansa but he had deposited another .455 revolver No.424703 on 05.07.1999. After investigation, CID Crime Branch filed charge sheet dated 17.02.2003 against accused Jasbir Singh and Sabdil Singh in the Court at Kurukshetra under Sections 120-B, 302, 34 IPC. After further investigation, they filed a supplementary charge sheet dated 07.10.2003 against the above mentioned two accused persons.

7. Not satisfied with the investigation conducted by the local police, Joginder Singh, father of deceased Ranjit Singh, sent a petition to the Chief Justice of Punjab and Haryana High Court requesting for CBI investigation into the matter. The Hon'ble High Court of Punjab and Haryana, Chandigarh treated the said petition of Joginder Singh as Crl. Misc. Petition No.47485 in Crl. Misc. No.26994-M/2002 and passed an order dated 10.11.2003 transferring the investigation of the case to the CBI and accordingly, the CBI registered case RC-8(S)/2003/SCB/CHG dated 09.12.2003 and took up the investigation.

INVESTIGATION

8. Investigation conducted by the CBI disclosed that accused Krishan Lal, Prabandhak of Dera; Jasbir Singh, an active follower of the Dera and Sabdil Singh, gunman of Baba Gurmeet Singh, Chief of the Dera, suspected Ranjit Singh to be behind the anonymous complaint of sexual exploitation of Sadhvis by Baba Gurmeet Singh and therefore, visited the house of Ranjit Singh and threatened him to apologize to Baba Gurmeet Singh for circulating the said complaint or otherwise they had the orders of Baba Gurmeet Singh to kill him and when Ranjit Singh did not agree to apologize, accused Krishan Lal, Jasbir Singh and Sabdil Singh in conspiracy with other accused persons eliminated Ranjit Singh on 10.07.2002. Accused Krishan Lal, Prabandhak of the Dera, was arrested by the CBI on 31.08.2005. A supplementary charge sheet dated 25.11.2005 was filed by the CBI against accused Krishan Lal, Sabdil Singh and Jasbir Singh under Section 120-B IPC read with Sections 302, 506 IPC and substantive offences thereof. Inder Sain, Manager of the Dera and Avtar Singh, an active member of the Dera Management, absconded and therefore, further investigation in respect of them and other suspects including Baba Gurmeet Singh, Chief of the Dera, continued.

9. During the course of further investigation, Inder Sain and Avtar Singh surrendered before the Court at Ambala on 06.11.2006 and they were arrested in this case. It was revealed during investigation that Ranjit Singh was called to the Dera by Inder Sain and Avtar Singh and others on 16.06.2002 and was threatened to apologize to Baba Gurmeet Singh, but Ranjit Singh did not apologize and returned back from the Dera and therefore, accused Inder Sain, Avtar Singh, Krishan Lal, Jasbir Singh, Sabdil Singh and others hatched a criminal conspiracy to eliminate Ranjit Singh and in furtherance of the said

criminal conspiracy, Ranjit Singh was shot dead by accused Krishan Lal, Jasbir Singh and Sabdil Singh at Khanpur Kolian on 10.07.2002. Accordingly, another Supplementary Charge sheet dated 01.02.2007 was filed against accused Avtar Singh and Inder Sain for commission of offences under Section 120-B IPC read with Sections 506 and 302 IPC along with the accused already charge sheeted. Further investigation to ascertain the involvement of other persons in the murder of Ranjit Singh continued.

10. Further investigation conducted by the CBI disclosed that Joginder Singh, father of Ranjit Singh stated that his son Ranjit Singh was a member of 10 members committee of the Dera and was a staunch disciple of Baba Gurmeet Singh, Chief of Dera. Ranjit Singh had admitted his two daughters Ritu and Gitu in the Dera in the year 1997 and his sister S* (name not disclosed in view of law laid down in case **"State of Punjab** v. **Gurmit Singh"** reported in **1996(1) R.C.R. (Criminal) 533**), also joined the Dera as a Sadhvi in the year 1999. In the year 2000, Ranjit Singh lost interest in the Dera and stopped going to the Dera and told him (Joginder Singh) that he did not like to go to the Dera anymore. He withdrew his sister S* and daughters Ritu and Gitu from the Dera in April, 2001 and stopped his association with the Dera. Ranjit Singh had told him (Joginder Singh) many times that he had wasted his 20 years of life in the Dera. In May, 2002, an anonymous complaint referred to above regarding sexual exploitation of Sadhvis by Baba Gurmeet Singh got into circulation. When Joginder Singh asked Ranjit Singh about the veracity of the complaint, Ranjit Singh had told him that whatever was written in the complaint, was true. Ranjit Singh also told his father that in the said complaint it was alleged that a Sadhvi belonging to Kurukshetra district had left the Dera and told everything to her family members and her brother pointed a finger at him and that Baba Gurmeet

Singh and Dera management suspected him to be behind the said anonymous complaint. Joginder Singh further stated that Balwant Singh son of Tarlok Singh, a teacher residing in the same village Khanpur Kolian and belonging to the Tarksheel Society, had circulated copies of the said complaint due to which the Dera people had a strong suspicion on Ranjit Singh. On 15.06.2002, Ranjit Singh obtained a LIC Policy for ₹ 5.00 lacs in his name, which according to Shri Joginder Singh, was on account of threat to his life from Dera people. On 15.06.2002, Ranjit Singh had told him (Joginder Singh) that Krishan Lal, Prabandhak of the Dera, had called him to the Dera on the next day i.e. 16.06.2002. Ranjit Singh was seen to be frightened and in tension. On 16.06.2002, Ranjit Singh went to the Dera along with his friend Subhash Khatri and returned the same night. On arrival, Ranjit Singh was found worried. When asked, he told his parents that Inder Sain, Manager of the Dera had asked him to beg pardon from Baba for having circulated the anonymous complaint. Thereafter, Avtar Singh, Krishan Lal (Prabandhak) and Jasbir Singh etc. threatened him for circulating the anonymous complaint and asked him to seek pardon from Baba or otherwise he would be killed. Ranjit Singh told his father that he refused to beg pardon from Baba Gurmeet Singh because he had not circulated the said complaint. Ranjit Singh also told his father that he had met Baba Gurmeet Singh in the Dera and the latter had enquired about the said complaint and was very angry.

11. Joginder Singh further stated that on 26.06.2002, Jasbir Singh and Sabdil Singh came to their house and told Ranjit Singh that Baba Gurmeet Singh was angry with him (Ranjit Singh) on account of anonymous complaint of sexual exploitation of Sadhvis and therefore, he should seek pardon from the Baba. After they left, Ranjit Singh was found to be frightened and worried. On

06.07.2002 also, Jasbir Singh and Sabdil Singh came to their house and threatened Ranjit Singh that if he did not seek forgiveness from Baba Gurmeet Singh, they had the orders of Baba Gurmeet Singh to kill him. On 10.07.2002, Ranjit Singh was shot dead by Jasbir Singh, Sabdil Singh and Krishan Lal. After murder of Ranjit Singh, S* told him (Joginder Singh) that sexual exploitation of Sadhvis was going on in the Dera. Further that, S*, sister of Ranjit Singh was examined on 25.02.2005 and she had stated that Maharaj Gurmeet Singh used to stay in the *gufa* (cave) and sadhvis used to be put on sentry duty at the *gufa* in the old Dera. She was also put on such sentry duty once in about 20 days cycle in the night and during the day, she used to teach in the school. In the hostel, she came to know that Sadhvis used to go to the *gufa* of Maharaj Gurmeet Singh in the night once at a time. When she was on sentry duty at the gate of the *gufa*, she had seen sadhvis B* and G* going to the *gufa* of Maharaj Gurmeet Singh in the night. Later, B* had left the Dera and before leaving, she had abused Maharaj Gurmeet Singh. S* also stated that Sadhvi Sp* was found weeping after returning from the *gufa* of Maharaj Gurmeet Singh. Next day, parents of Sp* and her sister Rajni came and took them away from the Dera. Sadhvi N* had also left the Dera after abusing Baba Gurmeet Singh as ‘Rakshas’. Sadhvi P* had also left the Dera on account of misbehavior of Baba Gurmeet Singh. S* stated that she also wanted to leave the Dera, but could not do so on account of the education of her brother Ranjit Singh’s daughters. After Ritu’s B.A. examination, she and Ranjit Singh’s two daughters came out of the Dera. In May, 2002, an anonymous complaint of a sadhvi regarding sexual exploitation of sadhvis by Baba Gurmeet Singh got into circulation. Suspecting her brother Ranjit Singh to be behind the said anonymous complaint, Inder Sain (Manager), Avtar Singh (an important functionary of Dera management), Krishan Lal (Prabandhak), Jasbir Singh and

Sabdil Singh had threatened him to seek pardon from Baba; otherwise he would face dire consequences. Finally, Ranjit Singh was murdered by these people on 10.07.2002. S* further stated that she is married and has a child and the Dera people have already killed her brother. Dera people are very dangerous people and they may kill her and her family. She wants to forget her life spent in the Dera and what happened with her in the Dera and therefore, will not state anything more because she wants to live a peaceful life with her family. She was found to be withholding the truth on account of societal problems and fear from Baba Gurmeet Singh and his followers.

12. During the further investigation, further statement of S* was recorded on 27.07.2006, in which she stated that Maharaj Gurmeet Singh, Chief of Dera had raped her twice in the Dera but she had not stated so in the previous statement for the sake of family reputation and apprehension that her husband may divorce her. Besides this, Baba Gurmeet Singh and the Dera have large number of followers including politicians, police officers and local administration etc. against whom people like her could not stand up. However, she had now mustered courage to come out with the truth, encouraged by the action taken by CBI by arresting Krishan Lal (Prabandhak) and issuing warrants of arrest against Inder Sain and Avtar Singh. She also stated that she had taken her husband and her parents into confidence and they had encouraged her to come out with the truth. She has stated that when she was living in the Dera, the Sadhvis would often ask her whether Baba had ‘forgiven’ her. When she asked them what it meant, they used to laugh at her, but never told its meaning. She further stated that on 28th or 29th August, 1999 at about 08:00 P.M. Prabandhak Sudesh told her that Baba Gurmeet Singh had called her to the *gufa*. When she went there, she saw Baba Gurmeet Singh alone in the *gufa*. He told her to close

the door and sit. When she sat on the floor, he asked her to sit on the bed near him. She hesitated, but on the insistence of Baba, she sat near Baba Gurmeet Singh on the bed. He asked her about her life and experience in the Dera. Then he asked her about her earlier life and mistakes committed by her in life. He also showed her some letters written by a boy to her which had come to the Dera and asked her about the said boy. She explained everything to the Baba. On this Baba Gurmeet Singh told her that now she needs not to worry about the said boy as by becoming a Sadhvi, she had given her body and mind in his name. Thereafter, he kissed her forehead and started fondling her body. She protested but Baba Gurmeet Singh told her that he has right over her body. She went on protesting and resisting. When Baba Gurmeet Singh threatened her and boasted that he had connections with big leaders and officers and he could do whatever he wished and nobody could do anything to him. She told him that she and other sadhvis considered him as Bhagwan, whereupon Baba Gurmeet Singh told her that if she considered him as Bhagwan, then he had right on her and everything of her. Inspite of her continued protests, Baba Gurmeet Singh forcibly removed her salwar and raped her. He also told her that by remaining in the outside world, she had become ‘Apavitr’ and he was making her ‘Pavitr’ and he had forgiven whatever mistakes she had committed. As she was physically weak compared to Baba Gurmeet Singh, she could not physically ward off Baba Gurmeet Singh and was raped. When she was coming out of the room, Baba Gurmeet Singh threatened her not to tell anything about the incident to anybody or otherwise it would not be good for her. She told him that she did not want to stay in the Dera. After this incident, she was shifted from New Dera to the Old Dera at the instance of Baba Gurmeet Singh. She further stated that there was also a *gufa* of Maharaj Gurmeet Singh in the old Dera. Later on, she came to know that

whenever, Baba Gurmeet Singh used to stay in old Dera, then Sadhvis used to be put on duty at the gate of the *gufa*. She also came to know that Baba Gurmeet Singh used to call sadhvis to the *gufa* in the nights there also. Once sadhvi Sp* was found weeping on return from the *gufa*. When she asked her, she started abusing Baba Gurmeet Singh and said that he was not a good man. The next day, parents of sadhvi Sp* came to the Dera and took away Sp* and her sister Rajni from the Dera. Then she came to know that Rajni was also called to the *gufa* many times by Baba Gurmeet Singh in the night. While leaving the Dera, Sadhvi Sp* had advised S* to leave the Dera, but did not explain the reasons thereof. She also stated that Sw* and P* were also called to the *gufa* in the night and all of them had left the Dera. About a year after the first incident of rape on her, the Prabandhak Paramjit Kaur called her and told her that Babaji had called her to the *gufa*. She was scared due to the previous incident and refused to go to the *gufa*, but the Prabandhak told her that if she did not go to the *gufa*, she would not get food from the langar. On repeated instructions from the Prabandhak, she went to the *gufa*. When she reached the *gufa*, she saw Baba Gurmeet Singh at the door of the *gufa*. On seeing her, he went inside the *gufa*. When she entered the *gufa*, Baba Gurmeet Singh closed the door of the *gufa* and caught hold of her and started forcing himself on her. On this, she told him that if he did not leave her alone, she would shout. Baba Gurmeet Singh told her that her voice would not go out of his room and there was nobody nearby. She then told Baba that she would tell everything to her brother Ranjit Singh. Then Baba told her that Ranjit Singh would not believe her because Ranjit Singh was his staunch disciple. She told him that her brother would definitely believe her. Then Baba Gurmeet Singh told her that he would get Ranjit Singh killed with bullets and buried and nobody would come to know about it. She tried to get herself released from the clutches

of the Baba and screamed and begged of Baba to let her go but to no avail and Baba forcibly raped her against her will and consent. When she was coming out of the *gufa*, Baba again, threatened her not to disclose about the rape to anybody otherwise it would not be good for her. She further stated that 5-6 months after this incident, the Warden told her that Baba Gurmeet Singh has called her to the *gufa*. It was day time. When she went, Baba Gurmeet Singh was standing near the outer door of the *gufa*. She did not enter the *gufa* but from outside itself asked him the reason for calling her then he started shouting at her and tried to put her upstairs. She, somehow, got herself released and told him that if he attempted to force himself on her, she would shout. Then Baba Gurmeet Singh threatened her that if she told anything about the incident to anybody, then he would get her whole family killed. A few days later, when her brother Ranjit Singh came to the Dera, she told everything to him. On hearing her, he told her not to disclose about the incidents to anybody, including parents. He promised that he would take her and his two daughters out of the Dera. After some time, Ranjit Singh took S* and his two daughters out of the Dera and thereafter, stopped going to the Dera. She was married in October, 2001. On 01.07.2002, Ranjit Singh came to her in-laws house and met her. By that time, the anonymous complaint of a sadhvi regarding sexual exploitation of sadhvis by Baba Gurmeet Singh had got into circulation. On that day, Ranjit Singh told her that a few days earlier, on being called by Baba Gurmeet Singh, he had gone to the Dera and Baba Gurmeet Singh was very angry with him. Inder Sain, Krishan Lal and Avtar Singh etc. pressurized him to come back to the Dera and seek pardon from Baba for circulating the anonymous complaint, otherwise Baba had ordered that he would be killed. Ranjit Singh told her that he had told them that if they put more pressure on him then he will tell people in the Sangat what Baba

Gurmeet Singh had done to his sister. Her brother Ranjit Singh was murdered on 10.07.2002.

13. During further investigation, Paramjit Singh, brother-in-law of Ranjit Singh, has stated that when Ranjit Singh withdrew his sister S* and two daughters Ritu and Gitu from the Dera, his brother-in-law Paramjit Singh asked him the reason for the same. Ranjit Singh told him that Dera was a fraud and sexual exploitation of girls was going on there and Maharaj Gurmeet Singh was raping sadhvis residing in the Dera. Ranjit Singh also told him that S* had told him (Ranjit Singh) that Maharaj Gurmeet Singh had raped her. On account of this, Ranjit Singh was worried about the future of his daughters Ritu and Gitu and taken out S* and his daughters from the Dera. Ranjit Singh also told him that he had wasted 25-30 years of life in the Dera and what he got in return was the spoiling of life of his sister by Baba Gurmeet Singh. Further, about 15-20 days before his murder, Ranjit Singh had told his brother-in-law Paramjit Singh that Dera people were suspecting him behind the anonymous letter of sadhvi and some people from the Dera asked him to beg pardon from Baba Gurmeet Singh and when he refused, they threatened him and went away.

14. During further investigation Smt. Rani wife of deceased Ranjit Singh stated that for the annual Bhandara on 25.01.2002, she along with Ranjit Singh visited the Dera one day in advance. Ranjit Singh offered a gold ring to Baba Gurmeet Singh but after touching the gold ring Baba refused to accept it saying that Ranjit Singh had not come few days earlier for the Bhandara as he used to do. Thereafter, Smt. Rani went inside the *gufa* to offer prayers to Baba Gurmeet Singh, whereas, Ranjit Singh waited outside. Baba Gurmeet Singh expressed his unhappiness and anger. Thereafter, she along with Ranjit Singh returned to their village.

15. Smt. Kamlesh wife of Gurpal Singh, aunt of Ranjit Singh stated that about 1½ months before his murder, Ranjit Singh had told her that her Gods of stones are better than Maharaj Gurmeet Singh as they do not cause any harm to anybody. About 15 days prior to his murder, Ranjit Singh came to her house and straightway went upstairs without talking to anyone and slept in one of the rooms. He was looking worried and depressed. She went upstairs and asked him if he required anything. He told her that he was afraid that Baba Gurmeet Singh and management of the Dera were suspecting that he had a hand in the circulation of the anonymous complaint of a sadhvi alleging sexual exploitation of the girls in the Dera and they had sent two persons, Jasbir Singh and Sabdil Singh, to warn him and to ask him to seek pardon of Maharaj Gurmeet Singh and they would not spare him. They would definitely cause harm to him or to his family members.

16. Further, Shri Raja Ram Handiaya and Shri Balwant Singh of Tarksheel Society, Haryana stated that in May, 2002, an anonymous letter by a sadhvi addressed to Prime Minister of India alleging sexual exploitation of sadhvis by Maharaj Gurmeet Singh of the Dera got into circulation. On the directions of Baba Gurmeet Singh, the Dera management launched a massive hunt for the person who had written and circulated the anonymous letter. On the instructions of Management of the Dera, followers of the Dera suspected them to be behind the anonymous letter and beat them up. While beating, they asked whether they had got the letter from Ranjit Singh resident of Khanpur Kolian who was defaming the Dera. They told Raja Ram Handiaya that they had orders from Baba Gurmeet Singh and Krishan Lal, Pradhan of the Dera to trace and eliminate the person who had written and circulated the anonymous letter. Around 15 days before the murder of Ranjit Singh, accused Jasbir Singh and Sabdil Singh visited

the house of Master Balwant Singh and asked him whether he had got the anonymous letter from Ranjit Singh. They told him that they would not spare Ranjit Singh for this.

17. During further investigation, Khatta Singh, Ex-Driver of Baba Gurmeet Singh in his statement dated 21.06.2007 has stated that in 2001, when Ranjit Singh withdrew his two daughters and sister S* and distanced himself from the Dera, he had asked Ranjit Singh the reason for the same and Ranjit Singh had told him that he had become disillusioned with the Dera. After this, Khatta Singh came to know from some members of Dera management that Baba Gurmeet Singh had raped S*, sister of Ranjit Singh, and therefore, Ranjit Singh had left the Dera. When the anonymous complaint of a Sadhvi regarding sexual exploitation of sadhvis in the Dera by Baba Gurmeet Singh got into circulation in May, 2002, on the orders of Baba Gurmeet Singh, Krishan Lal (Prabandhak), Inder Sain and Avtar Singh etc. had tried to identify the persons behind circulation of the said complaint and some followers of the Dera had threatened newspaper people and assaulted many others. Baba Gurmeet Singh and the above persons suspected the hand of Ranjit Singh behind circulation of the said complaint. On 16.06.2002, Ranjit Singh was called to the Dera by Baba Gurmeet Singh and the above persons. He was surrounded by accused Avtar Singh, Inder Sain, Krishan Lal etc. who pressurized him to seek pardon from Baba Gurmeet Singh for distribution of the above said complaint. Thereafter, Ranjit Singh was called by Baba Gurmeet Singh who asked him to return to the Dera. After Ranjit Singh left the Dera, Baba Gurmeet Singh held a meeting in which accused Avtar Singh, Inder Sain, Krishan Lal, Sabdil Singh, Jasbir Singh were present. He (Khatta Singh) was also present in the meeting. Baba Gurmeet Singh was quite angry and told the above mentioned persons present in the meeting to go to the

village of Ranjit Singh and eliminate him before he would say anything further against him and the Dera. On 10.07.2002, Ranjit Singh was murdered in his village. He (Khatta Singh) further stated that on account of sexual exploitation of Sadhvis by Baba Gurmeet Singh, murder of Ranjit Singh and Ram Chander Chhatarpati on the orders of Baba Gurmeet Singh, he was disturbed and worried but could not do anything because Baba Gurmeet Singh and his associates were very dangerous and powerful and had connections with big people on account of which, whoever mustered courage to say anything against them, he risked his life. For these reasons, he remained quiet. He was also worried about the safety of his family and himself because Baba Gurmeet Singh and his associates could cause harm to him and his family. When the case was transferred to the CBI by the Hon'ble High Court, he wanted to make a true and correct statement, but out of fear of Baba Gurmeet Singh and his hatchet men, he decided to keep quiet. Therefore, whenever CBI officers contacted him, he was afraid of speaking the truth for the above reasons. When CBI arrested Krishan Lal, Prabandhak of the Dera during investigation and obtained arrest warrants against Inder Sain and Avtar Singh leading to their abscondance and when questioned by the CBI, and when Inder Sain and Avtar Singh were taken into custody by CBI after their surrender before the Court, he mustered courage to come out with the truth. Hence, in December, 2006 he visited CBI Office at Chandigarh and made a statement regarding involvement of Baba Gurmeet Singh in Ranjit murder case and decided to make a further detailed statement about Baba's other crimes when the security scenario was more favourable. Thereafter, he stopped going to the Dera and meeting Baba Gurmeet Singh and his men. On the instructions of Baba Gurmeet Singh, he and his family were kept under surveillance by Baba Gurmeet Singh's men and his movement was restricted. He, somehow, dodged them and

came to CBI office to make further detailed statement. He also stated that Baba Gurmeet Singh and his men had got his signatures on many blank and typed papers by force and they might misuse these documents for their benefit.

18. During further investigation, Mai Chand, a friend of deceased Ranjit Singh, stated that on 06.07.2002, accused Jasbir Singh and Sabdil Singh came to the residence of Ranjit Singh in Khanpur Kolian and told him that Baba Gurmeet Singh was angry with him on the anonymous letter and he should go and seek pardon from the Baba otherwise they had orders of Baba to kill him. After they left, Ranjit Singh was found scared and worried.

19. Investigation conducted by the CBI has, thus, established that suspecting Ranjit Singh to be behind circulation of anonymous complaint of a sadhvi alleging sexual exploitation of sadhvis in the Dera by Baba Gurmeet Singh, accused Baba Gurmeet Singh, Chief of Dera Sacha Sauda, Sirsa; Inder Sain, Manager of the Dera; Avtar Singh, an important functionary of Dera Management; Krishan Lal, Prabandhak; Jasbir Singh and Constable Sabdil Singh, body guard of Baba Gurmeet Singh entered into a criminal conspiracy to eliminate Ranjit Singh and in furtherance of the said criminal conspiracy hatched by the aforesaid accused, accused Jasbir Singh, Sabdil Singh and Krishan Lal shot dead Ranjit Singh on 10.07.2002 at Khanpur Kolian and thereby, the aforesaid accused committed offences punishable under Section 120-B read with Section 302, 506 and further accused Krishan Lal, Prabandhak, Jasbir Singh and Constable Sabdil Singh also committed substantive offences punishable under Section 302, 506 IPC. Hence, the final report was filed by the CBI in the competent Court of jurisdiction.

20. Copies of final report filed u/s 173 Cr.P.C and the relied upon documents were supplied to all the accused as envisaged u/s 207 Cr.P.C. and the

case was committed to the Court of Sessions by the then Special Judicial Magistrate, CBI, Haryana-cum-ACJM, Ambala.

21. On finding a *prima facie* case, all the accused were charge-sheeted for the commission of offence punishable under Sections 120-B and 506 IPC; accused Sabdil Singh, Jasbir Singh and Krishan Lal were also charge-sheeted for the commission of offence under Section 302 IPC; further accused Baba Gurmeet Ram Rahim Singh, Avtar Singh and Inder Sain were also charge-sheeted for the commission of offence punishable under section 302/120-B IPC; and further accused Sabdil Singh and Jasbir Singh were also charge sheeted for committing offence punishable under Section 25/27 of the Arms Act, vide order dated 12.12.2008, passed by the Court of the then learned ASJ-1/Special Judge, CBI at Ambala. The accused pleaded not guilty to the charges framed against them and accordingly, claimed trial.

TRIAL PROCEEDINGS

22. The prosecution examined as many as 60 witnesses and, subsequently, the Public Prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., whereins, the accused pleaded innocence, and, claimed false implication. However, they choose to lead 33 defence witnesses.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANT-BABA GURMEET SINGH IN CRA-D-726-2021

23. Learned Senior counsel appearing for the said appellant-Baba Gurmeet Singh (hereinafter referred to as ‘accused No.1’) submits, that the prosecution pointedly ascribes to accused No.1, a motive to murder the deceased Ranjit Singh. The said motive is purportedly founded upon circulation of Ex.P-1, in May, 2002, exhibit whereof is an anonymous letter, whereins became exposed the dubious role of accused No.1, in committing rapes upon his disciples at the

Dera. The relevant paragraphs of Ex.P-1, whereins, the said echoing occurs are extracted hereafter.

"To

Respected Prime Minister Ji
Shri Atal Behari Vajpayee, (Govt. of India)

Subject: Investigation against rape of hundreds of girl by Maharaj of Dera

R/Sir,

I am a girl hailing from Punjab State. I have been serving as a 'Sadhwi in 'Dera Sacha Sauda', Sirsa (Haryana) (Dhan Dhan Satguru Tera Hi Asra) for the last five years. Beside me, there are hundreds of others girl here, who serve for 18-18 hours daily. But we are sexually exploited here. The 'Dera Maharaj' Gurmit Singh rapes the girls in the 'dera'. I am a graduate. My family has blind faith in the 'Maharaj'. It was at my family's bidding that I became a 'Sadhwi. Two years after I became a 'Sadhwi', a special woman-Gurjot of Maharaj Gurmit Singh came to me one night at 10 o' clock and said that the Pita Ji had summoned me to his gufa. I felt elated that Maharaj himself sent for me. I was going to him for the first time. After climbing the stairs, when I went into his gufa, I saw that he was holding a remote in his hand and was watching a blue film on the TV. Beside his pillow on the bed, lay a revolver. Seeing all this, I was frightened and became nervous. I had never imagined that Maharaj was a man of this type? Maharaj switched off the TV and seated me beside him. He offered me water and said that he had called me because he considered me very close to him. This was my first experience. Maharaj took me in his embrace and said that he loved me from the core of his heart. He also said that he wanted to make love with me. He told me that at the time of becoming his disciple, I had dedicated my wealth, body and soul to him and he had accepted my offering. When I objected he said, "There is no doubt that I am God." When I asked if God also indulges in such acts, he shot back:

1. Sri Krishna too was God and he had 360 'gopis' (milkmaids) with whom he enacted 'Prem lila'. Even then people regarded him as God. So there is nothing to be surprised at it.

2. I can kill you with this revolver and bury you here. The members of your family are my devoted followers and they have blind faith in me. You know it very well that members of your family cannot go against me.

3. I have considerable influence with governments also, Chief Ministers of Punjab and Haryana and central Ministers come to pay obeisance to me. Politicians take help from us. They cannot take any action against me. We will get the members of your family dismissed from govt. jobs and I will get them killed by my 'Sewadars' (servants). We will leave no evidence of their murder. You know that earlier also we got the 'dera' Manager Fakir Chand killed by goondas. His murder remains untraced till this day. The 'dera' has a daily income of one crore rupees with which we can buy leaders, police and the judges.

After this, the Maharaj raped me. The Maharaj has been doing this with me for the last three years. My turn comes after every 25-30 days. Now I have learnt that before me too, the Maharaj had been raping the girls he had summoned. Most of these women are now 35 to 40 years old and they are past the age of marriage. They have no other option but to remain in the 'dera'. Most of the girls are educated from B.A., M.A., B.Ed, etc. But they are living a life of hell in the 'dera', simply because the members of their families have blind faith in the Maharaj. We wear white clothes, tie a scarf on the head, cannot even look at men and as per Maharaj's commands, and talk with men from a distance of 5-10 feet. To the people we look like 'devis' (goddesses), but we are living like harlots. This time I tried to tell my family that all was not well at the 'dera'. But they rebuked me saying that there was no better place than the 'dera' for here they were in the company of God (Maharaj). They said that I had formed a bad notion about the 'dera' and that I should recite the name of 'Satguru'. I am helpless

here because I have to obey every command of the Maharaj. No girl is permitted to talk with another, according to the commands of the Maharaj.

Girls are not permitted to talk to their families even on the telephone. If any girl. talks about the reality of the 'dera', she is punished according to Maharaj's commands. Sometimes ago, a Bhatinda girl revealed the wrong doings of the Maharaj. At this, all the women disciples gave her a sound thrashing. Because of a fracture in the backbone, she is now bed-ridden. Her father gave up the service in the 'dera' and went home. For fear of the Maharaj and his own disgrace, he is not revealing anything.

Similarly, one Kurukshetra girl has also left the 'dera' and has gone home. Where she narrated the events in the 'dera' to her family, her brother who worked in the 'dera' gave up his job. When a Sangrur girl left the 'dera', went home and narrated the wrong-doings in the 'dera' to the people, the dera's armed Sewadars/ hooligans reached the girl's house and threatened to kill her and warned her not to leak anything about the 'dera'. Similarly girls from Mansa (Punjab), Ferozepur, Patiala and Ludhiana districts are afraid of revealing anything about the 'dera'. Although they have left the 'dera', yet they do not say anything for fear of loosing their lives. Similarly, girls from Sirsa, Hissar, Fatehabad, Hanuman Garh and Meerut disclose as to what happened to them in the 'dera'. If I reveal my name, I and my family will be killed. I want to reveal this truth for the benefit of the common man, because I cannot bear all this tension and harassment. My life is in danger. If a probe is conducted by the press or some govt. agency, 40 to 45 girls living in the 'dera' will come forward to reveal the truth. We can also be medically examined to find out whether we are still celibate disciples or not. If we are no longer virgins, the matter should be gone into to find out who has violated our chastity.

The truth will then come out that Maharaj Gurmit Ram Rahim Singh of 'Sacha Sauda' has ruined our lives.

Applicant
One innocent forced to live humiliated Life
(Dera Sacha Sauda Sirsa)"

24. He argues that thereons the prosecution has erected the plank for the accused No.1 nursing a motive against the deceased, for therebys his allegedly conspiring with the principal accused Sabdil Singh (hereinafter referred to as 'accused No.3') and Jasbir Singh (hereinafter referred to as 'accused No.4'), thus for theirs committing the charged offence. He has further submits that the attribution of the above motive to accused No.1, rather staggers.

25. In his making the above submission, he argues that since no admissible evidence was led to prove rape becoming committed by the accused No.1, upon the sister of the deceased, inasmuch as, the sister of the deceased was given up by the prosecution as an "unnecessary". Moreover, when he submits that for proving the circulation of Ex.P-1, the prosecution relied, upon the depositions of PW-1, and, PW-2, who are members of the Tarksheel society, who however nursed rivalry with the Dera headed by accused No.1. Moreover, when he submits that when the said witnesses testified that some persons from the Dera, were holding the deceased responsible for authoring the anonymous letter Ex.P-1, therefroms an inference becomes garnered that Ex.P-1, thus was ridden with malice or inimicality nursed by a society holding rivalry with the Dera headed by accused No.1. Resultantly, the motive as attributed to the accused No.1 arising from his esteem or reputation becoming purportedly lowered on account of circulation of Ex.P-1 rather looses evidentiary vitality. Consequently, he argues that as such, the motive arising from Ex.P-1 and inhering in accused No.1, thus becomes completely eclipsed. Therefore, he argues that with the motive embodied in Ex.P-1, loosing its evidentiary vitality, thereby the ascription of any incriminatory role to accused No.1, thus as a conspirator with the principal offenders i.e. accused Nos.3 and 4 also, but naturally becomes completely underwhelmed.

26. Though, the prosecution has further made an attempt to fortify the said motive from the deceased becoming purportedly summoned to the Dera on 16.06.2002, where he was allegedly threatened by co-accused to apologize to accused No.1, thus for his ill act, qua his purportedly circulating Ex.P-1, or his also viralizing the same, thereby causing harm to the reputation of accused No.1. He however, argues that though for proving the said fact, the prosecution relies upon the deposition of PW-9, and, PW-31. However, when there is *inter se* contradiction *inter se* the deposition of the above prosecution witnesses inasmuch as, PW-9 stating that Krishan Lal (hereinafter referred to as 'accused No.2'), accused No.4, Avtar Singh @ Avtar Singh Gill (hereinafter referred to as 'accused No.5'), Inder Sain, and, Darshan Singh rather being there, whereas, PW-31 testifying that accused No.2, accused No.5, Inder Sain and, Darshan Singh, thus to be available at the relevant place, whereas, PW-31 omitting to state that accused No.4 was present at the relevant site. Therefore, he argues that the summoning of the deceased to the Dera for his apologizing to accused No.1, for his purportedly lowering the esteem and reputation of accused No.1, and, as such, becomes ridden with an aura of falsity.

27. Though the prosecution has also attempted to adduce evidence for its exemplifying that when the deceased on his becoming summoned to the Dera for his making an apology to the accused No.1, though did respond to the said summons, and, also had met accused No.1, but when the deceased spurned the offer made to him by the accused No.1 to rejoin the Dera, and, though the said fact is spoken by PW-31 but since PW-9, the father of the deceased, who is the informant-complainant rather has omitted to state the said fact in his complaint. Therefore, with the genesis of the prosecution case becoming founded upon FIR (Ex.PW-10/A), whereas, when in the said FIR the said fact remains unechoed.

Therefore, he submits that the speaking of the said fact by PW-31, whose testification, on anvil of hereinafter made submissions is completely tainted therebys, the attribution of the incriminatory role to the principal accused by the prosecution, and, as made dependent upon a tainted testification of PW-31, thus does not carry any evidentiary potency. In support of his argument that the motive in the absence of any other evidence is insufficient to rope in an accused for the charge of conspiracy, he relies upon a judgment rendered by the Hon'ble Apex Court in case titled '***Saju V. State of Kerala***', reported in ***(2001) 1 SCC 378***, relevant paragraph whereof becomes extracted hereinafter.

> *"12. The other important circumstance relied by the prosecution and believed both by the trial and the High Court is the presence of the appellant in the company of Accused No. 1 near or about the place of occurrence on the date of incident. It is true that a number of witnesses have deposed that they had seen both the accused together on the date of occurrence but it is equally true that such meeting was not unusual as admittedly they were working together in the plantation. Mere meeting would by itself not be sufficient to infer the existence of a criminal conspiracy. There is no suggestion, much less legal evidence to the effect that both the accused were so intimate which would have compelled Accused No. 1 to agree to be a conspirator for the killing of the deceased at the instance of the appellant. The Accused No. 1 is also not stated to be a habitual criminal. There is no suggestion of the accused No. 1 being hired for the purpose of killing the deceased."*

28. Though the prosecution further relies, upon the deposition of PW-31 whereins, he had stated that after the deceased left the Dera, subsequent to his spurning the offer of the accused No.1 to rejoin the Dera, thus accused No.1 held a meeting with accused Nos.2 to 5, Inder Sain, Darshan Singh, and, Khatta Singh (PW-31), where the accused No.1 directed them to forthwith kill the deceased. However, he submits that since the above fact occurs only in the tainted

testification of PW-31, thereby the prosecution cannot make any well founded argument that therebys any incriminatory findings can be made against accused No.1.

29. He subsequently argues that though accused Nos.2 to 4 did not immediately act, at the behest of accused No.1 to, thus murder the deceased, and, though the prosecution canvasses, that yet accused Nos.2 to 4 proceeded to the house of the deceased, and, threatened him to apologize to accused No.1. Moreover, he submits that though the prosecution rests the above incriminatory role on the deposition of PW-9, PW-35, and, PW-38, but since PW-9 testifies, that he was present at the stage (supra), and also witnessed the meeting dated 26.06.2002 of accused Nos.3 and 4, thus with the deceased, and, yet PW-9 not stating the said fact in his complaint, therebys and also, when PW-35 and PW-38 state that PW-9 had not witnessed accused No.3 and 4 visiting the deceased for his apologizing to accused No.1. Therefore, he argues that the said *inter se* contradiction *inter se* the depositions of PW-9, PW-35 and PW-38 assumes relevance, and, as such, the said *inter se* contradiction belies the testifications of PW-35 and PW-38, as relates to the above fact of accused Nos.2 to 4 visiting the house of the deceased where PW-9 was purportedly present, and, where a threats were meted to the deceased by accused Nos.3 and 4, to re-apologize to accused No.1.

30. It is in furtherance of the conspiracy hatched by the accused to murder the deceased, thus on account of infamy brought to accused No.1 through circulation of Ex.P-1, at the purported instance of deceased, that the prosecution alleges that four assailants, 2 of whom are accused Nos.3 and 4 murdered the deceased Ranjit Singh. Thereafter, accused Nos.2 to 5 were seen by PW-31 on

the evening of 10.07.2002, to celebrate the murder of deceased Ranjit Singh at Kashish Restaurant at Sirsa.

31. He further argues that the testification of PW-2 as relates to speakings made thereins by him *qua* 15 to 20 days prior to the murder of the deceased, two persons coming to his residence and threatening him to kill him unless he apologized to accused No.1 for circulating Ex.P-1, rather also is tainted. He submits that therebys the prosecution attempts to connect accused Nos.3 and 4 with the said visit, besides attempts to connect accused No.1, in his thus, conspiring with the other co-accused in committing the murder of the deceased, thus on the score that the reputation of accused No.1, was harmed through circulation of Ex.P-1, circulation whereof is stridently canvassed by the prosecution to be at the co-behest of PW-1, PW-2, and, of the deceased. However, he submits that the said stated fact becomes belied from PW-2 during the course of his deposition identifying accused Nos.3 and 4, who were then present, in Court, but he submits that the said made identification, in Court, is false, as prior thereto, no validly conducted test identification parade was made.

32. Moreover, when during the course of cross-examination of PW-2 by the learned defence counsel, he was confronted with his earlier deposition made on 26.07.2004, whereins, rather the said allegation against accused Nos.3 and 4 is amiss, therebys the improvements (supra), made by PW-2 on his stepping into the witness box as PW-2, whereins he attributed the role (supra), to accused Nos.3 and 4, is thus ridden with falsity on two counts: a) no prior thereto test identification parade being conducted, despite the fact that they were admittedly not known to him; b) the said fact appearing in the testification of PW-2, only when he stepped into the witness box, whereas, he omitted to state them, when he earlier stepped into the witness box as PW-2.

33. Predominantly, he forcefully argue before this Court that all the said facts did not appear in the FIR (Ex.PW-10/A), whereas, when the FIR, but imperatively embodies therein thus the entire genesis of the prosecution case. Resultantly, the suspicion of any purported motive, founded on the above made testification by the PW-2, is a result of ill stratagem and ill engineerings of facts by the prosecution, to merely falsely implicate accused No.1, and, also to implicate the principal accused No.3, who allegedly wielded the charged firearm, at the crime site, and, also fired therefrom the pellets at the body of the deceased Ranjit Singh.

34. He further submits that there was no withdrawal of deceased from the Dera nor he was disenchanted with the Dera or with accused No.1, therefore, he argues that there is complete falsity in attribution of any purported nursing of any ill-will by the deceased against the Dera or accused No.1, as became purportedly stemmed from accused No.1, violating the dignity and modesty of the sister of the deceased, and/or becoming engendered from subsequent theretos, the deceased allegedly along with PW-1 and PW-2, thus circulating Ex.P-1, thus rather for tarnishing the image of accused No.1.

35. In making the above submission, he submits that as deposed by PW-3, the marriage of the sister of the deceased was solemnized in the October, 2001, whereas, Ex.P-1 was circulated in May, 2002, thereby when the marriage of the sister of the deceased occurred prior to the viralization of Ex.P-1. Resultantly, the deceased would not have taken such step to harm the marital life of his sister. In consequence, he submits that the entire head of the prosecution case erected on Ex.P-1, and, the therefroms generated germinating motive, but becomes collapsed in its entirety.

36. He further submits that the above argument is also supported from the fact that the deceased Ranjit Singh, and, his wife gifted gold ring to accused No.1 on the annual Bhandara, as organized respectively in the year 2001 and 2002, and, the same fact stands admitted in CBI's first charge sheet dated 25.11.2005.

ARGUMENTS FOR REPELLING THE ATTRIBUTION OF INCRIMINATORY ROLE TO ACCUSED NO.1 IN HIS ALLEGEDLY CONSPIRING WITH THE PRINCIPAL OFFENDERS IN THE LATTER MURDERING DECEASED RANJIT SINGH

37. He submits, that the prosecution alleges that accused No.1 allegedly conspired with the principal offenders in the first degree i.e. accused Nos.3 and 4 in the latters' murdering the deceased on the ill fated day, and, time, thus upon the deposition of Khatta Singh, who stepped into the witness box as PW-31. He argues that the said conspiracy is alleged to be hatched on 16.06.2002, at the *gufa* in the Dera. He submits that the said propagation is rested upon the deposition of PW-31 (Khatta Singh).

38. He further argues, that the testification of PW-31 is not amenable for an apt evidentiary creditworthiness becoming assigned to it. In his making the said submission, he argues that since PW-31 has made depositions respectively in the year 2012 and in the year 2018, but when thereins there are but *ex facie inter se* blatant and rife *inter se* contradiction, thereby the said witness cannot be construed to be a credible witness, thus for proving the incriminatory role of accused No.1, who allegedly conspired with the alleged principals in the first degree.

39. In his making the said submission, he relies upon the factum of PW-31 filing an application dated 29.03.2007, before the learned Special Judicial Magistrate, CBI, Ambala. He further submits that to the said application, Mark PW-31/Def.4, becomes assigned and, it became proven by PW-31 on

10.03.2012. He further submits that the said application was filed by PW-31, through his advocate Faquir Chand Aggarwal, but since the said advocate died, on 28.08.2010, thereby he could not be examined, but yet the clerk of the said advocate namely Jitender Kumar (DW-32), was examined, who during the course of his testification identified the existence thereons of the signatures of Khatta Singh existed at point 'A', and, also identified the signature of the above counsel existing at point 'B'. Moreover, he also submits that DW-14 namely Roshan Lal Aggarwal, who notarized the supporting affidavit (Ex.DW-14/2), also while stepping into the witness box proved the factum of attesting the said affidavits in the presence of Khatta Singh, and, that too after his verifying Khatta Singh's identity by seeing his Ration Card, and, Voter Identity Card. Furthermore, since DW-14 also produced notary register and the entry in the name of Khatta Singh.

40. In addition, when the signatures of Khatta Singh exist respectively at point 'A', 'B' and 'C', and, which were also identified by him, when he stepped into the witness box as PW-31, in the year 2012. Resultantly, he argues that therebys, it was but only on Khatta Singh, becoming subjected to torture by the CBI, that he made a tainted statement, thereby the previously made statement by Khatta Singh, and, that too belatedly since the crime event taking place, but when is hit by the bar of limitation, besides when is a result of torture becoming inflicted upon him, thereby no credence is to be assigned to the said statement.

41. PW-31 filed an application (Mark PW-31/Def.3) before the learned Additional Sessions Judge, Ambala, through registered post, wherein, he categorically denied having recorded any statement under Section 161 Cr.P.C., before the investigating agency. He further submits that the said application was proven by PW-31, on 10.03.2012.

42. Further, an application under Section 164 Cr.P.C., (Mark PW-31/Def.4) was filed by PW-31 for recording his statement, but the same was dismissed by the learned trial Court on 30.03.2007, stating that the matter already stands committed to the learned Special Judge, CBI, on 29.03.2007. Against the said dismissal order, PW-31 filed a revision petition No.06/2007, dated 20.04.2017 (Mark PW-31/Def.6), before the Addl. Sessions Judge-cum-Special Judge, CBI, Ambala. The said revision petition stood dismissed through an order made, on 17.08.2007, by the Court of Addl. Sessions Judge-cum-Special Judge, CBI, Ambala (Ex.DW-16/3). Therefore, he argues that since before the Revisional Court, the CBI did not raise any contention with respect to Khatta Singh not filing any application for getting his statement recorded under Section 164 Cr.P.C., nor when any communications were made before the learned Addl. Sessions Judge-cum-Special Judge, CBI, Ambala, thereby he submits that as a matter of fact, the contents of this application are truthful and consequently, he submits that therebys the previous statement made by Khatta Singh to the CBI on 26.12.2006, and, on 21.06.2007, are doctored statements or are a sequel of coercion becoming exercised upon him by the CBI.

43. He further submits that PW-31 filed a complaint dated 26.04.2007 (Ex.PW-31/Def.1), to the Superintendent of Police, Sirsa against the CBI. On the said complaint, Deputy Superintendent of Police, conducted the inquiry and recorded the statement of PW-31, wherein, PW-31 reiterated his allegations against the CBI. Subsequent to the inquiry, Deputy Superintendent of Police submitted his report (Ex.PW-31/Def.2) stating that the complainant (PW-31) has requested for protection from CBI, and, from the Dera enemies.

44. Consequently, he submits that when PW-31 was re-examined in the year 2018, the prosecution failed to prove that the above-mentioned applications

were not made by him. PW-31 in his deposition very vaguely states that his signatures were taken on blank papers by the Dera people, as he did not mention in his deposition any particulars, as to who, and, when his signatures were obtained on blank papers, therefore his testimony cannot be believed, as the same is vaguely made.

45. He further argues before this Court that PW-31 while being re-examined in the year 2018, tried to prove that he resiled from his previously made statement under Section 164 Cr.P.C., owing to the fear of Dera persons, but he failed to prove the same for the following reasons:

a) The ground of threat as raised by PW-31 stands falsified from the fact that when he recorded his statements under Section 161 Cr.P.C., respectively on 26.12.2006, and, 21.06.2007 and, in his statement recorded under Section 164 Cr.P.C., on 22.06.2007, at that point of time accused No.1 was not in custody. Even when PW-31 recorded his statement under Section 161 Cr.P.C., in castration case, before the investigating agency on 19.01.2015 (Ex.DW-29/P1), and, on 08.10.2015 (Ex.DW-29/1), then also accused No.1 was not in custody. Consequently, he submits that the earlier statements were voluntarily made and the subsequently made statements were tainted, thus with a stain of theirs made under torture becoming meted to PW-31 by the CBI.

b) PW-31 attended the bhog ceremony of maternal grandmother of accused No.5 in the presence of accused No.5, on 03.07.2009. He was even invited to attend the bhog ceremony of the mother of accused No.5, in the year November 2016.

c) PW-31 tendered evidence, in the present case during the period 11.02.2012 to 10.03.2012, when he was declared hostile.

IDENTIFICATION

46. He further submits that the identification of accused Nos.3 and 4 as made by PW-9, in Court, is not reliable for the reason that even despite knowing accused Nos.3 and 4, thus prior to the alleged date of incident, he did not refer to them in his previous statement, which led to registration of FIR. PW-9 in the FIR did not either advert to the incidents which had taken place prior to the date of incident nor made any description of any physical features/characteristics of the assailants. When PW-9 was examined with respect to his omission (supra), he responded that "*After the murder of my son, Mai Chand (PW4), Ritu (PW35), Paramjit (PW3), S* (not examined) and Saroj (PW38) had told me the names of Jasbir and Sabdil. Both these persons had visited my home on 26.06.2002 in my presence. On 06.07.2002 also they had visited my house, however, I was not at my home on that day. After Mai Chand (PW4) and other persons mentioned above had disclosed to me about Jasbir (accused No.4) and Sabdil (accused No.3) I was able to co-relate that these persons had caused the murder of my son Ranjit Singh as I had seen them mannerism (chal dhall) on the day of occurrence.*" Therefore, he argues that failure to name the known assailants i.e. accused Nos.3 and 4 in the FIR even when they were known to him, weakens the prosecution case. In support of his argument, he has referred to the judgment rendered by Hon'ble Supreme Court, in case titled '***Raju alias Rajendra V. State of Maharashtra***' reported in ***(1998) 1 SCC 169***, relevant paragraph whereof becomes extracted hereinafter.

> *"9. It is of course true that the prosecution led evidence through P.W. 1, father of the deceased, to prove that about an hour earlier before the incident both A-1 and A-2 came, and accompanied*

by the deceased left his house. The evidence of P.W. 1, so far as it relates to identification of A-1, cannot also be relied upon for even though he claimed to have known A-2 from before, in the F.I.R. he did not mention the name of A-2. When he was confronted with his such material omission he asserted that he mentioned the name of A-2 but he could not assign any reason why it did not find place in his report. The evidence of P.W. 1, therefore, does not come in aid of the prosecution to prove that A-2 was the other miscreant. As from the other circumstantial evidence such an irresistible conclusion cannot be drawn, he is therefore entitled to the benefit of doubt."

47. He further submits that the identification of accused Nos.3 and 4 by Sukhdev Singh (PW-6), who happens to be the nephew of PW-9, also cannot be relied upon, for the reason that there is no evidence on record to show that PW-6 knew or had seen accused Nos.3 and 4, thus prior to the date of occurrence. Therefore, he argues that the identification of accused Nos.3 and 4, as made by PW-6, in Court, on 14.08.2010, is an unreliable identification. He further submits that as per the prosecution, PW-6 was an eye-witness, as such, when he was present along with PW-9 at the time of incident but they did not disclose to the CBI about any physical features/characteristics of the assailants.

WEAPON

48. He further submits that in this case, there is no recovery of the weapon of offence either by the State Police or by the CBI during investigation of the case from accused No.3. Accused No.3 was never issued service revolver bearing No.24707 and that the service weapon bearing No.424703 was issued to him, which he deposited in the Armoury on 05.07.1999, and then on 05.07.1999, he was issued a .9 mm pistol, but after deposit of the previously issued service weapon.

49. He further submits that weapon No.24707 was never in existence or has appeared only once by mistake in entry (Ex.PW-48/1), in distribution register of Arms and Ammunition, as weapon of .455 bore having date of issuance as 29.12.1997 and date of deposit as 05.07.1999. There exist another entry Ex.PW-48/2 in Yaddasht Register (Ex.PW-32/G) of weapon No.424703, built of 0.455 bore having date of issuance 29.12.1997, and, date of deposit as 05.07.1999. He submits that prosecution has relied on two factors to argue that accused No.3 was in possession of weapon No.424703, at the time of incident. Firstly PW-48, who was posted as KHC, Kot Mansa, deposing that in Ex.PW-48/2, the date of issuance of weapon No.424703 is mentioned as 29.12.1999. Secondly PW-48 has not deposed anything with respect to the date of deposit of the weapon No.424703. In this regard, he submits that there is no mention in the charge sheet that the weapon No.424703 was surrendered to the Court after 10.07.2002 (the date of murder) and before 01.04.2003 (the date of recovery of 13 weapons from Kot Mansa by CID through Ex.PW-49/1). He further submits that entry (Ex.PW-48/1) in Distribution register of Arms and Ammunition and entry (Ex.PW-48/2) in Yaddasht Register (Ex.PW-32/G) are corresponding entries of the same transaction. He further submits that PW-48 in his deposition dated 13.10.2004 has deposed that both the entries (supra), pertain to the same weapon but there was mistake in numbering. Therefore, he argues that, that part of deposition of PW-48 where he states that the date of issuance of weapon No.424703 as 29.12.1999, is a falsely made deposition, as entry (Ex.PW-48/1) in Distribution register of Arms and Ammunition, and, entry (Ex.PW-48/2) in Yaddasht Register (Ex.PW-32/G), are corresponding entries of the same transaction. Resultantly, the date of issuance of Ex.PW-48/2 which relates to weapon No.424703 is 29.12.1997 and not 29.12.1999. Therefore, it proves that the weapon No.424703

was deposited on 05.07.1999, as mentioned in entry (Ex.PW-48/2) in Yaddasht Register (Ex.PW-32/G).

50. To substantiate his above submission that weapon No.424703 was issued on 29.12.1997 and deposited on 05.07.1999, he relied on paragraph No.4 of communication (Ex.PW-58/3), which was received by CBI from SSP Mansa, on 14.11.2005, which confirms that weapon No.424703 was issued on 29.12.1997 and deposited on 05.07.1999. The said letter dated 14.11.2005 has been relied upon by the CBI, and, the said letter was proved by PW-58 in his examination-in-chief. Even CBI in their first charge sheet dated 25.11.2005 and also in the third charge sheet dated 30.07.2007 mentioned that the date of deposit of weapon No.424703 was 05.07.1999. The recovery memo (Ex.PW-49/1) dated 01.04.2003, wherebys weapon No.424703 was seized by the CBI from Kot Mansa, also mentions the date of issuance of the said weapon as 29.12.1997 and the date of deposit as 05.07.1999.

51. He further submits that the case of the prosecution, is that, accused No.3 used .455 bore revolver bearing No.424703 to kill the deceased on 10.07.2002. *Per contra*, he submits that only weapon No.424703 was issued on 29.12.1997 and deposited on 05.07.1999, and another weapon No.24707 was never traced by the CBI. Further all the 0.455 weapons seized from Kot Mansa, on 01.04.2003 were sent to FSL for examination, but weapon No.24707 could not be sent for examination, as the same was never traced, therefore he argues that accused No.3 was not in possession of any weapon at the time of crime event.

52. He further submits that the report of the FSL dated 22.01.2004 (Ex.PW-30/B), was in respect of examination being made of .455 weapon bearing No.424703. The result of the said examination is that the said weapon

was not in working order, as such it is to be concluded that the said weapon was never used in the commission of crime.

INCIDENTS

53. He further submits that PW-35, who is the daughter of the deceased deposed that she was present in the house when accused Nos.3 and 4 came to threaten the deceased on 26.06.2002. PW-35 was questioned for the first time only by the CBI on 25.10.2005 i.e. after more than 3 years from the date of crime event. Therefore, he submits that the inexplicable delay in the recording of the statement of PW-35 under Section 161 Cr.P.C., is fatal to the case of the prosecution. In support of his argument he relies upon a judgment rendered by the Hon'ble Apex Court in case titled '***Harbeer Singh V. Sheeshpal and others***', reported in ***(2016) 16 SCC 418***, relevant paragraphs whereof become extracted hereinafter.

> *"15. We have given careful consideration to the submissions made by the parties and we are inclined to agree with the observations of the High Court that PW3 and PW9 were not witnesses to the alleged conspiracy between the accused persons since not only the details of the conversation given by these two prosecution witnesses were different but also their presence at the alleged spot at the relevant time seems unnatural in view of the physical condition of PW9 and the distance of Sheeshpal's Dhani from Sikar road. Besides, it appears that there have been improvements in the statements of PW3. The Explanation to Section 162 Cr.P.C. provides that an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161 Cr.P.C., may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, while it is true that every improvement is not fatal to the*

prosecution case, in cases where an improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. [See ***Ashok Vishnu Davare v. State Of Maharashtra, (2004) 9 SCC 431****;* ***Radha Kumar v. State of Bihar (now Jharkhand), (2005) 10 SCC 216****;* ***Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra, 2011(1) RCR (Criminal) 57 : 2010(6) Recent Apex Judgments (R.A.J.) 419 : (2010) 13 SCC 657*** *and* ***Baldev Singh v. State of Punjab, 2014(1) RCR (Criminal) 212 : 2013(6) Recent Apex Judgments (R.A.J.) 555 : (2014) 12 SCC 473]****. In our view, the High Court had rightly considered these omissions as material omissions amounting to contradictions covered by the Explanation to Section 162 Cr.P.C. Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of PW3 and PW9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for shock meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.*

16. As regards the incident of murder of the deceased, the prosecution has produced six eye-witnesses to the same. The argument raised against the reliance upon the testimony of these witnesses pertains to the delay in the recording of their statements by the police under Section 161 of Cr.P.C. In the present case, the date of occurrence was 21.12.1993 but the statements of PW1 and PW5 were recorded after two days of incident, i.e., on 23.12.1993. The evidence of PW6 was recorded on 26.12.1993 while the evidence of PW11 was recorded after 10 days of incident, i.e., on 31.12.1993. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The Court may rely on such testimony if they are cogent and credible and the delay is explained to the satisfaction of the Court. [See ***Ganeshlal v. State of Maharashtra, 1992(3) RCR (Criminal) 294 : (1992) 3 SCC 106****;* ***Mohd. Khalid v. State of W.B.,***

(2002) 7 SCC 334*; **Prithvi (Minor) v. Mam Raj & Ors., (2004) 13 SCC 279** and **Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), 2010(2) RCR (Criminal) 692 : 2010(3) Recent Apex Judgments (R.A.J.) 1 : (2010) 6 SCC 1]**.*

*17. However, **Ganesh Bhavan Patel v. State Of Maharashtra, (1978) 4 SCC 371**, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also **Balakrushna Swain v. State Of Orissa, (1971) 3 SCC 192**; **Maruti Rama Naik v. State of Maharashtra, (2003) 10 SCC 670** and **Jagjit Singh v. State of Punjab, 2005(3) RCR (Criminal) 647 : (2005) 3 SCC 689]**. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case."*

54. He further submits that there are *inter se* contradictions *inter se* the testifications of PW-35 and PW-38 with respect to the incident dated 26.06.2002, the date on which accused Nos.3 and 4 alleged to have visited the house of the deceased Ranjit Singh, and, threatened him. Even though both PW-35 and PW-38 were allegedly the eye-witnesses to the incident dated 26.06.2002 but PW-38 in her statement under Section 161 Cr.P.C., recorded on 05.12.2002 did not mention about the presence of PW-35. PW-38 deposed that she welcomed accused Nos.3 and 4 and asked them to sit in the drawing room, whereas PW-35 in her statement stated that PW-38 did not know that accused Nos.3 and 4 had come and only after enquiry from PW-35, PW-38 came to know about the presence of accused Nos.3 and 4.

55. He further submits that there are *inter se* contradictions *inter se* the testifications of PW-6 and PW-9, who are the alleged eye-witnesses to the crime site with respect to the place of firing as well as the persons who had taken the

deceased to the hospital. PW-9 in his deposition speaks that the firing took place between GT road and the place where he and PW-6 were standing, whereas, PW-6 in his deposition states that the firing took place between the tube well and the place, where he and PW-9 were standing. Admittedly, both the places i.e. the GT road and the tube well are at different directions. Moreover, PW-9 in his deposition speaks that he along with PW-6 had taken the deceased to the hospital in the car, but PW-6 in his deposition did not speak about his accompanying PW-9 who took the deceased to the hospital. The said material contradictions in the statements eye-witnesses casts a shadow of doubt on the credibility of the versions rendered by both these eye witnesses, and, are fatal to the prosecution case.

WANT OF CORROBORATION

56. He further submits that CBI failed to adduce necessary corroborative evidence to corroborate the testimony of PW-31, *qua* PW-31 in his testification stating that Darshan Singh was present in the conspiracy meeting held on 16.06.2002, which was corroborated by PW-9, but the said material witness Darshan Singh never became cited as a witness by the CBI. Further, the other persons namely Subhash Khatri (friend of the deceased Ranjit Singh), Shiv Kumar Sharma, and, Hema Sharma, who accompanied the deceased to the Dera on 16.06.2002 were also not examined by the CBI. Therefore, he argues that the giving up such crucial witnesses by the CBI does not provide necessary corroborative sanctity to the testimony of PW-31.

57. He further submits that the scaled site plan of the place of crime event was prepared by Parveen Kumar Patwari, on 17.07.2003, wherein it is mentioned that Tikku, who is one of the labourers, was present at the place of incident, and, had seen the assailants fleeing from the place of crime event. Further PW-9 in his

statement has also acknowledged the presence of two more labourers i.e. Sumitra Devi and Satya Devi at the place of crime event. Moreover, PW-4 stated in his statement that one more labourer namely Sita Ram was present at the place of crime event, who had first lifted the deceased after he was shot. Therefore, he argues that firstly the Patwari, who prepared the site plan dated 17.07.2003 was given up by the prosecution as a witness being “unnecessary”; four labourers namely Tikku, Sumitra Devi, Satya Devi and Sita Ram, who were cited as witnesses but were later on given up “as having been won over by the accused”. Even the sister of the deceased, who could have proven the prosecution’s theory of motive, was dropped by the prosecution as a witness on 05.07.2014, as “unnecessary”. In support of his argument, he referred to the judgment of Hon’ble Supreme Court in case titled ‘***Hem Raj and others V. State of Haryana’***, reported in ***(2005) 10 SCC 614***, relevant paragraph Nos.8 and 9 become extracted hereinafter.

> *“8. Two days after the incident i.e. on 5.4.1996, the investigation was entrusted to PW10-Inspector, CIA at the instance of Superintendent of Police, Jind. PW10 stated in cross examination that he inspected the place of occurrence and examined the persons staying near the place of occurrence and recorded the statements of such persons. The names of those five persons were given. Then he added that "from their statements, it was revealed that Hemraj, Chunnilal and Omprakash were innocent". He further stated that the investigation done by him was verified by DSP. Ultimately he filed the final report showing only Kala as the sole accused. However, as already noticed, all the four accused mentioned in the FIR were committed to Sessions and the Sessions Judge framed charge against all of them under Section 302. PW10 did not choose to give all the relevant details of his investigation. However, the version of this Investigating Officer itself casts a cloud on the*

reliability of the prosecution case as unfolded by PWs 4 and 5 that four accused were involved.

9. The fact that no independent witness - though available, was examined and not even an explanation was sought to be given for not examining such witness is a serious infirmity in the prosecution case having regard to the indisputable facts of this case. Amongst the independent witnesses, Kapur Singh was one, who was very much in the know of things from the beginning. Kapur singh is alleged to have been in the company of PW5 at a sweet stall and both of them after hearing the cries joined PW4 at Channi Chowk. He was one of those who kept the deceased on a cot and took the deceased to hospital. He was there in the hospital by the time the first I.O.-PW9 went to the hospital. The evidence of the first I.O. reveals that the place of occurrence was pointed out to him by Kapur Singh. His statement was also recorded, though not immediately but later. The I.O. admitted that Kapur Singh was the eye-witness to the occurrence. In the FIR, he is referred to as the eye-witness along with PW5. Kapur Singh was present in the Court on 6.10.1997. The Addl. Public Prosecutor 'gave up' the examination of this witness stating that it was unnecessary. The trial court commented that he was won over by the accused and therefore he was not examined. There is no factual basis for this comment. The approach of the High Court is different. The High Court commented that his examination would only amount to 'proliferation' of direct evidence. But, we are unable to endorse this view of the High Court. To put a seal of approval on the prosecution's omission to examine a material witness who is unrelated to the deceased and who is supposed to know every detail of the incident on the ground of 'proliferation' of direct evidence is not a correct approach. The corroboration of the testimony of the related witnesses-PWs 4 & 5 by a known independent eye-witness could have strengthened the prosecution case, especially when the incident took place in a public place."

INADEQUATE INVESTIGATION

58. He further submits that the investigation conducted by the CBI was not properly done, therefore, it raises suspicion about the prosecution case. He submits that (a) the car, which was allegedly used in the commission of the crime event was never seized; (b) PW-5, PW-6 and PW-9 in their respective statements stating that all the four assailants were armed with firearm weapons, but none of those weapons were seized by the CBI; (c) there was no site plan prepared by the CBI of the place where the alleged conspiracy was hatched on 16.06.2002, (d) besides CBI did not collect any evidence about Kashish restaurant where PW-31 had allegedly seen accused Nos.2 to 5 openly celebrating the successful execution of their conspiracy to commit the murder of deceased.

59. Further no test identification parade of accused Nos.3 and 4 was conducted by the investigating agency when PW-5 and PW-6, did not know accused Nos.2 to 4 prior to the date of incident. PW-32 who was the Inspector, CID Branch deposing that after the arrest of accused Nos.3 and 4 on 02.12.2002, he took steps to get the test identification conducted but the accused No.4 refused to give his consent. Thereafter, PW-32 did not take any further steps to get conducted the test identification parade of accused No.4. Further the test identification parade of accused No.3 was scheduled on 09.12.2002, for which accused No.3 also refused to give his consent for the test identification parade stating that his identity has also been shown to the witnesses. The said statement was recorded by PW-7 (Tehsildar) and, the same is exhibited as Ex.PW-7/C. Even after the investigation being taken over by the CBI no steps were taken to get conducted the test identification parade of accused Nos.3 and 4. Only a sham photo identification from magazine was done for accused No.2. Therefore, in this case, where the witnesses PW-5 and PW-6 did not know accused Nos.2 to 4

prior to the date of incident, therefore, it had become rather obligatory on the part of the investigating agency to get a valid test identification parade conducted. In support of his argument, he relies upon a judgment rendered by the Hon'ble Apex Court, in case titled '***Mukesh Singh V. The State (NCT of Delhi)***', reported in ***(2023) SCC OnLine SC 1061***, relevant paragraph whereof becomes extracted hereinafter.

> *"35. Thus we are of the view that after the introduction of Section 54A in the CrPC referred to above, an accused is under an obligation to stand for identification parade. An accused cannot resist subjecting himself to the TIP on the ground that he cannot be forced or coerced for the same. If the coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the constitutional guarantee as enshrined under Article 20(3) of the Constitution will step in to protect him. However, if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have no application. The accused while subjecting himself to the TIP does not produce any evidence or perform any evidentiary act. As explained very succinctly by the learned Judges of the Calcutta High Court as above, it may be a positive act and even a volitional act, but only to a limited extent, when the accused is brought to the place where the TIP is to be held. It is certainly not his evidentiary act. The accused concerned may have a legitimate ground to resist facing the TIP saying that the witnesses had a chance to see him either at the police station or in the Court, as the case may be, however, on such ground alone he cannot refuse to face the TIP. It is always open for the accused to raise any legal ground available to him relating to the legitimacy of the TIP or the evidentiary value of the same in the course of the trial. However, the accused cannot decline or refuse to join the TIP."*

60. Therefore, he argues that the entire prosecution case erected upon the statements PW-9 and PW-31, which led to the charge(s) becoming drawn, and, also led to a consequent thereto verdict of conviction and resultant thereto sentence (supra), becoming imposed, does ultimately become stagger and thereby the verdict of conviction, and consequent thereto sentence(s) are liable to be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANT-KRISHAN LAL IN CRA-D-728-2021

61. Learned Senior counsel appearing for accused No.2 submits, that PW-9 in FIR dated 10.07.2002 disclosed that four assailants had opened fire upon his son and he along with PW-6 can identify all the assailants. She further submits that there is no mention in the FIR about his son being threatened by the Dera people or that his son was asked to tender apology to accused No.1. FIR does not disclose about visit of any of the accused to his house prior to the murder of his son. Similarly, PW-3 does not state about any threat posed to the deceased. PW-4 does not state about accused Nos.3 and 4 visiting the house of the deceased on 06.07.2002. She further submits that PW-5 does not speak about sighting the driver of the car, as became used by the assailants for escaping from the crime event nor PW-9 states about PW-5's presence at the crime site. Therefore, she argues that even though the FIR was lodged on the basis of statement of PW-9, which was registered after discussing with PW-3, PW-4, PW-5 and PW-6, yet all the relevant facts of the case was amiss.

62. She submits that as per the version of the prosecution, the role attributed to accused No.2 was that he was present at the time when the conspiracy was hatched at the *gufa* of the Dera on 16.06.2002. Further on 26.06.2002 when accused Nos.3 and 4 visited the house of the deceased to threaten him, accused No.2 was alleged to be present in the blue coloured jeep,

which was parked outside the house of the deceased. Further the allegation levelled against accused No.2 was that he made phone call on the landline to the house of the deceased which was received by PW-35. On the day of incident, PW-5 saw accused No.2 sitting on the driver seat of the car, which was used by the assailants to flee from the site of crime after committing the murder of Ranjit Singh. Lastly, on 10.07.2002 itself, accused No.2 was spotted along with other assailants by PW-31 celebrating the successful execution of the conspiracy to murder the deceased at Kashish Restaurant. She further submits that the prosecution has relied upon the depositions of PW-5, PW-9, PW-31, PW-35, PW-38 to prove the above attribution levelled against accused No.2. She argues that there is *inter se* contradiction *inter se* the statements made by the above PWs, and, thereby the said defectively made testifications do not cogently establish the guilt of the accused.

63. She submits that there is no mention of accused No.2 in the FIR dated 10.07.2002, and, in his subsequent statements of PW-9 i.e. first supplementary statement dated 24.08.2002 (Ex.PW-9/1), dated 04.10.2002 (Ex.PW-9/8), and, in his second supplementary statement dated 24.11.2002 (Ex.DW-32/D1), nor any affidavit dated 06.05.2003 filed in CRM-M-26994-2002. The name of accused No.2 surfaced for the first time in the statement made by PW-9, on 20.01.2004 (Mark-X page H-2/17), recorded by CBI, wherein PW-9 named accused Nos.2, 5 and 6 along with others who had threatened the deceased at the Dera on 16.06.2002. The said statement was recorded when there was stay operating on the investigation by Hon'ble Apex Court vide order dated 15.12.2003. Therefore, she argues that the names of accused Nos.2, 5 and 6 do not find mention prior to the statement of PW-9 dated 20.01.2004, the same appears to be ante-dated, and, an afterthought to falsely incriminate accused No.2 in this case, besides the

subsequent statements wherein PW-9 introduced certain incriminatory role to accused No.2, when the same was amiss, in his initial statements, as such, the same cannot be relied upon, being highly doubtful. In support of her arguments, she relies upon a judgment rendered by Hon'ble Apex Court in case titled '***Kehar Singh and others V. State (Delhi Admn.)***', reported in ***(1988) 3 SCC 609***, relevant paragraphs whereof becomes extracted hereinafter.

> *"70. It could not be doubted that the two versions, given out by this witness are not such which could easily be reconciled. In fact in his first version there is nothing against Balbir Singh. In his second statement he has tried to introduce things against him. This apparently is a clear improvement. It is well-settled that even delay is said to be dangerous and if a person who is an important witness does not open his mouth for a long time his evidence is always looked with suspicion but here we have a witness who even after 25 days gave his first statement and said nothing against the present accused and then even waited for one more month and then he suddenly chose to come out with the allegations against this accused. In our opinion, therefore, such a witness could not be relied upon and even the High Court felt that it would not be safe to rely on the testimony of such a witness alone.*
>
> *71. Apart from it, the evidence which he has given is rather interesting. According to him Beant Singh and Balbir Singh were so close to him that they used to keep him informed about their plans to assassinate the Prime Minister of India. But relation with Balbir was such that he was not even invited when Balbir Singh was married and therefore it was nothing but casual but still he claims that he had so much of close association that he used to be taken in confidence by these two persons. That means that he is one of the conspirators or otherwise he would not have kept quiet without informing his superiors as it was his duty to do when the Prime Minister was in danger."*

64. To strengthen her above argument, she further relies upon a judgment rendered by the Hon'ble Apex Court, in case titled '***Awadesh V. State of Madhya Pradesh***', reported in ***(1988) 2 SCC 557***, relevant paragraph whereof become extracted hereinafter.

> *"8. From the evidence on record it is apparent that the Chungi Chowki (Octroi Toll Barrier) was manned by the employees of the Municipal Board and they were present at the spot and in addition to them there was Home Guard Office quite adjacent to the Toll Barrier and there were other residential houses near the Barrier and the place of occurrence was a busy public place. It has further come into evidence that large number of persons had gathered at the scene of occurrence but surprisingly enough no employee of Toll Barrier, Home Guard or local resident came forward to support the prosecution case. The District Magistrate, Superintendent of Police and other officers had also reached the spot within few minutes of the incident but none of them entered the witness box to support the prosecution case. The prosecution produced Udai Singh PW 17 and Kali Charan PW 19 who deposed that they had seen the appellants running away with weapons and that they had recognised them. It is interesting to note that Udai Singh and Kali Charan are residents of Uttar Pradesh and they are close relatives of the deceased, their presence at the scene of occurrence was highly doubtful and their testimony is not free from doubt, as they are highly interested persons. The Trial Court rightly discarded their testimony as their statement had been recorded by the police after two months of the occurrence without there being any explanation for the delay."*

65. She further submits that PW-5, who is the neighbour of PW-9, and is a chance witness, claim to have seen the assailants fleeing from the crime site, in a car being driven by accused No.2. His statement was recorded for the first time on 13.12.2002 by the CBI, i.e. after 5 months of the date of incident. She submits that no plausible explanation was given by the prosecution for the delay in the

recording of the statement of PW-5, thereby grave doubt is cast on the credibility of his belated statement. She, therefore, argues that when a validly made statement of a chance witness was recorded after a delay of almost 5 months, as such, such a validly made statement ought to loose its evidentiary value, and, thereby the presence of the said witness at the crime site becomes highly doubtful, and ought to be discarded. In support of her arguments, she relies upon a judgment rendered by Hon'ble Apex Court in case titled '***Ravi Mandal V. State of Uttarakhand***', reported in ***2023 SCC OnLine SCC 651***, paragraphs whereof become extracted hereinafter.

> *"23. Insofar as PW-2 is concerned, admittedly, he is not listed as a witness in the police report/charge sheet. He gave his statement to the police on an affidavit for the first time on 18.02.2002, that is, the date when the police report was prepared. This implies that he remained silent for as long as three and a half months. In* ***Kali Ram*** *v.* ***State of Himachal Pradesh1,*** *a three Judge bench of this Court, while discarding the testimony of one of the witnesses who made a delayed disclosure of the incriminating circumstances of which he was aware much earlier, held/ observed:*
>
> > *"14. … We find it difficult to accept this part of the deposition of Parma Nand. Parma Nand admits that he came to know of the murder of Dhianu and Nanti about four days after those persons were found to have been murdered. It would, therefore, follow that Parma Nand came to know of the murder of Dhianu and Nanti on or about October 4, 1968. Had the accused left for the house of Dhianu deceased on the evening of September 29 and had Parma Nand PW come to know that Dhianu and Nanti were murdered in their house, this fact must have aroused the suspicion of Parma Nand regarding the complicity of the accused. Parma Nand, however, kept quiet in the matter and did not talk of it. The statement of Parma Nand was recorded by the police on December 11, 1968.* ***If a witness professes to know about a gravely incriminating circumstance against a person accused of the offence of murder and the witness keeps silent for over two months regarding the said incriminating circumstance against the accused, his***

statement relating to the incriminating circumstance, in the absence of any cogent reason, is bound to lose most of its value. *No cogent reason has been shown to us as to why Parma Nand kept quiet for over two months after coming to know of the murder of Dhianu and Nanti about the fact that the accused had left for the house of the deceased shortly before the murder. We are, therefore, not prepared to place any reliance upon the second part of the deposition of Parma Nand."*

(Emphasis supplied)

24. Taking note of the legal principle extracted above, we have to examine whether, for the delay in disclosure, there was a cogent explanation offered by PW-2. In the instant case, the only explanation offered by PW-2 for his three and a half month's silence is that he felt threatened. With regard to his threat perception, PW-2 stated that in the night of the incident when he witnessed Ravi Bangali and Shabbir Ahmad emerging from the forest, soon after the incident, he noticed their hands and clothes blood stained. On spotting PW-2, those two accused threatened him by saying that if he (PW-2) tells to anyone about what he has seen, he would meet the same fate. PW-2 stated that with the arrest of the two accused his fear vanished, therefore, he is now appearing as a witness. In our view, if this was the reason for him not to make the disclosure earlier, there should have been a prompt disclosure by him once the accused were arrested. Notably, the two accused were arrested on 24.11.2001, yet, till 18.2.2002 no disclosure was made by him. Therefore, in our considered view, the explanation offered by him for the delay in making disclosure is not confidence inspiring.

25. Assuming that we accept the explanation for the delay in making the disclosure, considering the place and time of occurrence, the presence of PW-2 at the spot does not appear natural, particularly, at that odd hour of the night. To explain his presence at the scene of crime, PW-2 stated that his parents stay at another place in Mohalla Khatta and, therefore, to meet them he visited them that fateful night and on way return he could witness the incident. During cross examination, PW-2 stated that he usually takes dinner at 2100 Hours with his family; and that he used to visit his parents at least once a

week. According to PW-2, that fateful night he left his house to visit his parents after having dinner in his own house and on way return, at 0030 Hours he witnessed the incident. This explanation is not confidence inspiring, particularly, because his parents have not been interrogated or examined to corroborate PW-2's visit to their house at that odd hour of the night. In our view, PW-2 is a mere chance witness, whose presence at the spot, at that hour, is not satisfactorily explained therefore, bearing in mind that he kept silent for unusually long i.e. for more than three and a half months, his testimony is not worthy of any credit. In our view, the courts below erred by placing reliance on his testimony.

26. As regards the testimony of PW-5 (Mahender Khurana) he too, is a chance witness. As to when testimony of a chance witness could be relied, the law is settled, which is, that the evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded."

66. She further submits that rough site plan was prepared on 11.07.2002 (Ex.PW-28/B) and a scaled site plan thereto was also prepared, which is Ex.PQ. Both these exhibits do not mention the position of PW-5 despite the fact that PW-5 had mentioned about his presence, at the site to the CBI, and, to PW-9. Therefore, she argues that omission of any material witness in the site plan creates a heavy dent in the prosecution story, and, the same can be termed as a lapse on the part of the investigating agency. In support of her argument, she relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***Shingara Singh V. State of Haryana and another***', reported in ***(2003) 12 SCC 758***, relevant paragraph whereof becomes extracted hereinafter.

"29. So far as the ladder is concerned, PW-5, Balbir Singh stated that the ladder was in the same position when the Investigating Officer came to the place of occurrence but he could

> *not explain why it was not shown in the site plan prepared by the police. Even PW-10 the Investigating Officer had to admit that in the site plan the position of the ladder was not shown. These features of the prosecution case also support the conclusion reached by the trial Court that the occurrence must have taken place in a manner different than the one deposed to by the alleged eye-witnesses. The evidence on record with regard to the existence of cots in the courtyard of Gurdeep Singh, the existence of a bicycle, as also about the existence of a ladder is rather unsatisfactory and creates a serious doubt as to whether the prosecution witnesses are telling the truth. The omission to show them in both the site plans cannot be attributed to a mere lapse on the part of the investigating agency. In fact so far as the site plans are concerned, the case of the prosecution is that they were prepared in the presence of PW-5 and another witness and on their pointing. However, PW-5 denied that the plans were prepared in his presence. The other witness was not examined."*

67. She submits that PW-5 did not mention the fact of having seen the assailants fleeing from the crime site either to PW-9 or to the police, nor it is so reflected from the FIR, therefore, an eye-witness remaining silent, and, not disclosing the relevant information for a long time, makes his statement highly doubtful, thus is required to be discarded. In support of her argument, she relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***Joseph V. State of Kerala***', reported in ***(2003) 11 SCC 223***, relevant paragraph whereof becomes extracted hereinafter.

> *"18. For the reasons discussed above, we have serious doubt about PW-3 having actually witnessed the occurrence. There was hardly sufficient light to identify the assailant at the time of occurrence. The conduct of the sole eye witness PW-3 in remaining silent for a long time, and his failure to disclose the facts to the persons who had gathered near the place where the deceased lay*

injured, creates a serious doubt about the truthfulness of this witness."

68. She further submits that on 29.10.2005, PW-5 was made to identify accused No.2 from the photograph in a magazine "*Sachi Sakhi*", which was not valid as per law, besides PW-5 failed to corroborate the above identification, in Court, as his eye sight was weak. Further as per his deposition, no one was present in the room, at the time of identification of accused No.2 from the magazine, but the presence of independent witnesses (PW-18, and, PW-20) was shown by the CBI. Therefore, she argues that the entire identification of accused No.2, is just an eye wash by CBI to falsely incriminate him.

69. The polygraph test of accused No.2 was conducted twice, prior to his arrest on 31.08.2005 merely on the basis of any improved statement made by PW-9. Accused No.2 was subjected to polygraph test with regard to RC-8, when he was not even an accused as per the charge-sheet. As per the report of first polygraph test dated 14.07.2005 (Ex.PW-44/3), question Nos.1, 3, 4 and 5 were found to be deceptive but nothing was mentioned with regard to question Nos.2 and 6. In the second polygraph test conducted on 21.07.2005 (Ex.PW-15/B), only question Nos.VII, VIII, X to XIV were related to the present case. However, answers to these questions were found to be deceptive. Moreover, as per the testimony of PW-15 (Dr. Amod Kumar Singh) who conducted the said polygraph test, reveals that reports of polygraph test are not a perfect science, and there is no basis of the analysis mentioned in the report (*supra*). She further submits that no document was produced by PW-58 with regard to any consent being obtained from the Magistrate concerned, to conduct the polygraph test. Therefore, she argues that polygraph test is not a substantive piece of evidence, but is just a tool for investigation. The consent of the subject concerned, should be taken in the

presence of Magistrate, and, such consent is essential not only when the accused in custody, but also when the individuals who are not in custody. In support of her argument, she relies upon a judgment rendered by Hon'ble Apex Court, in case titled '**Smt.** ***Selvi and others V. State of Karnataka and others***', reported in ***(2010) 7 SCC 263***, relevant paragraph whereof becomes extracted hereinafter.

> *"223. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872. The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test. The text of these guidelines has been reproduced below:*
>
> *(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.*
>
> *(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.*

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record."

70. She further submits that one of the questions as put to accused No.2 in his polygraph test dated 21.07.2005, was that "*whether he knows the other two persons Makkhan Singh and Jagdev Singh who killed Ranjit Singh*"? Therefore, she argues that if such a question has been put to accused No.2, then the CBI should have conducted investigation regarding Makkhan Singh and Jagdev Singh, but no investigation in this regard was conducted by CBI and their names do not find any mention in any of the charge-sheet.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT-AVTAR SINGH @ AVTAR SINGH GILL IN CRA-D-725-2021

71. Learned counsel appearing for accused No.5 submits that the role assigned to accused No.5 was that he was one of the persons present in the meeting of 16.06.2002, when the conspiracy to murder the deceased was hatched, and, subsequently on 10.07.2002, it was alleged that accused No.5 was seen celebrating the murder of the deceased along with the other assailants.

Therefore, he submits that accused No.5 has been arrayed as an accused with the aid of Section 120-B IPC. It has remained uncontroverted that neither accused No.5 was present at the time of offence nor any active role has been assigned to him. The fact that he has been arrayed only on the basis of Section 120-B IPC, can be extracted from the impugned judgment of the trial Court, relevant paragraph whereof becomes extracted hereinafter.

> *"79. It is the case of the prosecution that accused Gurmeet Ram Rahim Singh, Avtar Singh, Krishan Lal, Jasbir Singh, Sabdil Singh and Inder Sain (now deceased) entered into a criminal conspiracy to eliminate Ranjit and in pursuance of the same, accused Jasbir Singh and Sabdil Singh committed murder of Ranjit Singh by causing gunshot injuries on 10.07.2002 resulting into his death while accused Krishan Lal was waiting for accused Jasbir Singh and Sabdil Singh in the car on the GT Road near the spot of occurrence so as to escape from the spot of crime."*

72. It has been alleged by the prosecution that the deceased was threatened on 3 dates i.e. 16.06.2002, 26.06.2002 and 06.07.2002. The presence of accused No.5 in the *gufa* at the Dera is alleged to be only on 16.06.2002, but the accused No.5 had no role whatsoever to play on two subsequent dates i.e. 26.06.2002 and 06.07.2002.

73. The prosecution further alleges that accused No.5 was one of the important members of the management committee of the Dera, and, thereby was holding an important position. Contrarily, it is a matter of fact, and, is on record that accused No.5 did not hold any position whatsoever at the relevant point of time, neither was he part of any committees of the Dera. For the same reason, PW-9 did not mention the name of accused No.5, when he filed his affidavit before this Court, disclosing the names of the members of the committees of Dera.

74. He further submits that similar to accused No.2, accused No.5 was also not named by PW-9 in the FIR dated 10.07.2002 nor in the subsequent statements as rendered by him on 24.08.2002, 24.11.2002, 03.12.2002, and, letter dated 04.10.2002 addressed to this Court. The name of accused No.5 surfaced for the first time in the statement made by PW-9 on 20.01.2004 (Mark-X page H-2/17), recorded by CBI, wherein PW-9 named accused Nos.2, 5 and 6 along with others, who had threatened the deceased at the Dera on 16.06.2002. The said statement was recorded when there was stay operating on the investigation by Hon'ble Apex Court vide order dated 15.12.2003.

75. He further submits that the statement made by PW-9 is admittedly hearsay in nature inasmuch as, he was not present on 16.06.2002 in the *gufa* of the Dera, where the alleged conspiracy to murder the deceased was hatched. The prosecution claims that the facts incriminating accused No.5 were disclosed to PW-9 by the deceased, thus such a statement as rendered by PW-9 with regard to accused No.5 are liable to be rendered inadmissible being hearsay in nature.

76. He argues that in the present case, the testification of PW-31 is uninspiring and his conduct during the course of trial is of such nature that his testification does not become trustworthy as such.

77. He further submits that similar to accused No.2, accused No.5 was also not produced before any Magistrate, insofar as, to enable him to give consent for the polygraph test, and, nor any lawyer was made available to accused No.5, at the time when the test was being conducted. PW-58 has deposed that he has not obtained any order from any Magistrate or Court concerned, to conduct the polygraph test upon accused No.5, and, PW-15 deposed that he did not record any note that the subject of the polygraph test had refused the presence of any defence lawyer. The fact of no consent being taken in the presence of a

Magistrate is further corroborated from the statement made by PW-15, wherein, he has deposed that no document was produced before him by PW-58 showing that the necessary consent of the subject has been obtained in the presence of a Magistrate. Therefore, he argues that the polygraph test as conducted, upon the accused Nos.2, 5 and 6 stands in dire contradiction to the law laid down in **Smt. Selvi's case (supra)**.

78. He further submits that the perusal of the record shows that name of Darshan Singh surfaced in the statement recorded by PW-9, being one of the persons who had threatened the deceased on 16.06.2002 yet no reason has been assigned by the prosecution as to why Darshan Singh was never arrayed as an accused, which remained unexplained by PW-58. Therefore, he argues that accused No.5 has been convicted on a set of allegations which are lesser in their degree when juxtaposed to the allegations levelled against Darshan Singh, yet the latter not even arrayed as an accused in the instant case.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANT-JASBIR SINGH IN CRA-D-738-2021

79. The learned Senior counsel for the appellant *inter alia* submits that PW-9 in the FIR has named Ram Kumar Sarpanch, Raj Singh, and, four unknown persons as accused. PW-9 in the FIR alleged that due to political rivalry Ram Kumar Sarpanch and Raj Singh have killed his son but PW-58 in his cross-examination stated that there was no political rivalry between PW-9 and Ram Kumar.

80. He further submits that as per the inquest report as prepared on 10.07.2002 (Ex.PW-8/C), the time of death was mentioned as 7:40 p.m. As per the statement of PW-9, his clothes along with the clothes of PW-6, and, Rajbir became smeared with blood stains, during transporting the deceased in the car to the hospital. The investigating officer failed to collect the clothes of the PW-6,

PW-9 or Rajbir Singh or examine the said car. As per post mortem report dated 11.07.2002 (Ex.PW-8/B), the autopsy as conducted on the dead body was conducted at 8:40 a.m., wherein, the cause of death mentioned in the PMR as "*injury to the vital structure that is brain as a result of firearm...*". The recovery of four metallic pieces of different sizes, and, shapes from the brain tissue and skull cavity was noted in the PMR. When PW-8 during his cross-examination, became confronted with a question that whether these firing have been shot on the person falling on the ground, no answer was provided by the PW-8. Further PW-58 in his cross-examination has admitted that three bullets have gone through the deceased's body, but the same were never recovered. Moreover, neither any opinion on the distance of firing has been mentioned nor any blackening around any of the injuries was mentioned in the PMR, therefore, the PMR is inconsistent with the statement of PW-9, who had stated that the deceased was shot from close range, but there was no mention of blackening near the injuries, as per the PMR.

81. As per the FSL report dated 03.07.2003 (Ex.PY) no comparison has been carried out between the blood stained earth with the surrounding unstained earth, the same fact is admitted by PW-23 in his cross-examination, where he has stated that he does not remember whether the investigating officer concerned, had taken the sample of unstained earth from the place of occurrence, besides blood stained earth.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE CBI

82. Learned counsel for the CBI submits that the learned counsel for the appellant has argued that the name of accused No.2 surfaced for the first time in the statement made by PW-9 on 20.01.2004 (Mark-X page H-2/17), recorded by CBI, wherein PW-9 named accused Nos.2, 5 and 6 along with others who had

threatened the deceased in the *gufa* at the Dera, on 16.06.2002. The said statement was recorded when there was stay operating on the investigation by Hon'ble Apex Court vide order dated 15.12.2003. Contrarily, learned counsel for the CBI submits, that the stay against the investigation was operating in a case pertaining to the murder of Anshul Chattarpati, bearing SLP (Criminal) No.5222-2003 arising out of CRM-M-7931-2003 and not in the present case. Therefore, he argues that no stay was operating regarding the investigation of the instant case, thus the investigating officer concerned, has not violated any order of Hon'ble Apex Court.

WEAPON OF OFFENCE

83. The learned counsel further submits, that it has been cogently established that the deceased died owing to bullet injuries caused by user of .455 revolver. Resultantly, he submits that PW-48, testifies that on 29.12.1997 he was posted as KHC, Kot Mansa. On that day accused No.3 was issued .455 revolver No.24707 on the oral directions of SSP. The said weapon was deposited by him (accused No.3) in the armoury on 5.7.1999. Original register Ex.PW-19/A and entry Ex.PW-48/1 is in the handwriting of PW-48. In Yadhasht register entry No.Ex.PW-48/2 pertains to revolver No.424703. Yadasht register is Ex.PW-32/G and entry Ex.PW-48/2, therein relates to issuance of .455 bore revolver No. 424703 dated 29.12.1999. There is no evidence with respect to deposit of revolver No. 424703 and 30 cartridges. Even the trial Court noticed that nobody knows how revolver No.424703 got deposited in the Malkhana or Kot Mansa. The prosecution has cogently proved the issuance of revolver No.424703 to accused No.3 and the onus was on accused No.3 to prove the deposit of revolver No.424703 by showing roznamcha entry but he could not prove the said fact.

Resultantly, he submits that thereby recovery memo (Ex.PW-49/1), does connect the said weapon with the weapon in respect whereof a charge was drawn.

84. He further submits that though Ex.DW-33/A is a reply under RTI Act, dated 9.3.2020, wherein it is mentioned that revolver No.24707 has not been allotted till date to District Mansa. Resultantly, there was no suggestion being put by the defence counsel that revolver No.24707 never existed or was never issued to accused No.3. Even accused No.3 does not deny his signatures on Ex.PW-48/1 and in his deposition made under Section 313 Cr.P.C. nor has he denied the issuance of revolver No.424703. Therefore, he argues that accused No.3 somehow managed to get revolver No.424703 deposited in the Malkhana by use of some other means/ influence of accused No.1.

85. He further submits that according to Punjab Police Rule 6.22, a Committee of 3 officers is constituted when a weapon is not functional and further to see as to who shall bear the cost of the replacement. No explanation or enquiry was ever conducted as to how the trigger of revolver No.424703, got free nor any report *qua* non working condition of the said weapon was prepared. DW-33 further states "*and that if the weapon develops some defect then the same is examined by the armour and after examining the said weapon the armour submits his report to the In-charge*". Here DW-33 specifically stated that he has not seen any such report about weapon No.424703 i.e. revolver of .455 bore developing any defect or ever produced before the armour or examined by him (DW-33).

86. He further submits that though in the letter (Ex.PW-58/3) issued by the SSP, Mansa, there is a reference that revolver bearing No.424703 (.455 bore) and AK 47 were issued to accused No.3 and it was deposited in Kot Mansa, on 05.07.1999, but the said fact fails to render any assistance to the case of defence

since there is nothing mentioned in the said letter that the said fact with respect to the deposit of weapon (supra), was disclosed by the SSP concerned, on the basis of any record, which is sufficient to *infer* that the said reference has been passed without verification of record. Even document Ex.DW-33/A i.e. RTI information does not speak that the information was correct according to public record maintained in due course. DW-33 further states that no report or document was shown regarding any entry having been made incorrectly regarding the issuance of revolver No.24707.

INSPECTION OF WEAPONS

87. He further submits that PW-49 stated that on 01.4.2003 revolver No.424703 was handed over to SI Hawa Singh by Gurcharan Singh and recovery memo Ex.PW-49/1 bear signatures of PW-49. PW-50 further states that on 1.4.2003 he had handed over revolver No. 424703 to Hawa Singh, the hammer and trigger of the said revolver were free and not in working condition as mentioned in Ex.PW-49/1. On 4.7.2003, PW-49 handed over six more revolvers of .455 bore for inspection and, on 16.7.2003 six more revolvers of .455 were handed over to Hawa Singh. PW-49 was shown the actual register, in Court, to confirm that revolver No. 24707 was deposited. After seeing the register, PW-49 confirmed that revolver No.24707 of .455 bore has been shown deposited on 05.07.1999 and that there is no entry of deposit of revolver No.24707 in the stock prior to entry Ex.PW-48/1.

88. PW-51 (Hawa Singh) stated that on 1.4.2003, he had taken into possession revolver No.424703 for inspection. Hammer and trigger of the said revolver were free and were not in working condition, as mentioned in the recovery memo. Similarly on 4.7.2003 he had taken into possession six more

revolvers of .455 bore, and, again on 16.7.2003 he taken into custody the six more revolvers of .455 bore.

89. He further submits that the first polygraph test was held between 18-21.07.2005 of accused Nos.2, 5 and Inder Sain, report whereof was submitted on 29.07.2005. Accused No.2 was arrested on 31.08.2005, and, accused No.5 and, Inder Sain had surrendered on 6.11.2006 before the Special JMIC, Ambala. Therefore, learned counsel for the CBI submits that till the receiving of the report of polygraph test, all the three accused (supra), were not in custody, and, they were free to give consent out of their free will. He further submits that the purpose of judgment rendered in **Smt. Selvi's case (supra)** is to see that if the accused has been tortured/duressed/induced/coerced to undertake such test. Further the necessity of recording the consent before a Judicial Magistrate is only a safeguard to check if the accused has been physically or mentally tortured. In the instant case, consent of all the three accused (supra), to undergo the polygraph test was taken by the CBI by issuing notice/letters dated 15.07.2005 (Ex.PW-58/D2) to the accused concerned, who had given their respective consents (Ex.PW-15/1, Ex.PW-15/2 and Ex.PW-15/3) for undertaking polygraph test.

90. Therefore, he submits that the polygraph test was conducted by PW-15 in compliance with the mandate provided under law. Report of the said polygraph test was received on 29.07.2005 (Ex.PW-15/B) which shows deceptive responses of all three subjects (supra).

91. As regard to non-examination of some witnesses, the learned counsel for the CBI submits that it would have been mere repetition because the prosecution has examined sufficient number of witnesses to establish the chain of events thus establishing the guilt of accused persons. The prosecution has

examined PW-6 and PW-9 as eye witnesses to the incident dated 10.07.2002 and given up on other persons, who were working near the place of occurrence as labourers, being "unnecessary". Further PW-9 and PW-31 have been examined to prove the visit of deceased at the *gufa* in the Dera on 16.06.2002, therefore, all other witnesses in this regard were not examined. He further submits that as per Section 134 of Indian Evidence Act, 1872 provisions whereof becomes extracted hereinafter, it is mandated that no particular number of witnesses shall in any particular case is required for the proof of any fact.

> *"**134. Number of witnesses.** - No particular number of witnesses shall in any case be required for the proof of any fact."*

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE COMPLAINANT

IDENTITY OF THE ACCUSED NOS.3 AND 4

92. Learned Senior counsel appearing for the complainant submits that PW-6 has stated that when on 10.07.2002 at about 5 p.m., he along with PW-9 was present in the fields, there they saw four persons wielding firearms like revolvers and they fired at the deceased. At that time two of the accused were wearing kurta pajama, and, other two were wearing jeans pant. PW-6 and PW-9 chased the assailants, and all four of them boarded the car in which a driver was already sitting and they fled towards Pipli side. Subsequently, PW-6 identified two of the four assailants in Court, to be accused No.3 and accused No.4. He relied on the fact that when the occurrence took place, PW-6 had the opportunity to clearly see the face(s) of the accused(s) because he had chased the assailants, for almost 500 yards from the place of occurrence. Therefore, the presence of PW-6 was natural at the place of occurrence, as he is a neighbour of PW-9 and of the deceased.

93. He further submits that even though PW-5 was not an eye witness to the firing incident, rather he had reached the place when the assailants were fleeing after committing the crime towards the car which was already parked there at GT road, and, he had seen those assailants boarding the car while they were carrying firearms. PW-5 also identified the driver of the car, who was already sitting in the car. The presence of PW-5 and PW-6 cannot be doubted as their labourers were working in their respective fields, and, they were supervising the work at the time of the incident.

94. PW-9 also explained that accused Nos.3 and 4 had visited his house on 26.06.2002 and also on 06.07.2002, when he was not present at his residence, and, that when Mai Chand (PW-4), Ritu (PW-35), Paramjeet Singh (PW-3), S* and Saroj (PW-38) told him the names of accused Nos.3 and 4, then he was able to co-relate that these are the persons who had committed the murder of his son, as he had seen their mannerisms on the day of occurrence. PW-9 has also correctly identified the accused(s), in Court, and no objection was raised either by accused or by their counsels.

95. He further submits that the identification of accused Nos.3 and 4 has never been in doubt, especially under the circumstances that both the accused were seen by PW-5, PW-6 and PW-9 at the place of occurrence. In support of his argument, he relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***Heera and another V. State of Rajasthan***', reported in (***2007) 10 SCC 175***, relevant paragraph whereof becomes extracted hereinafter.

> *"7. It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the*

Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. ***Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.****" [Emphasis supplied]*

NO DISCREPANCIES *INTER SE* MEDICAL AND ORAL EVIDENCE

96. He further submits that the deceased had received firearm injuries and PW-6 and PW-9 have stated in their testifications that assailants fired at the deceased and the medical evidence produced by the prosecution has proved that the deceased succumbed to the firearm injuries. PW-8 who conducted the post mortem examination upon the body of the deceased, has found as many as 7 firearm injuries, and, size(s) of all the injuries were different. PW-8 found 4

metallic pieces of different size(s) and shape(s) in the brain tissues and skull cavity.

97. PW-6 and PW-9 in their respective statements stated that two assailants each came out of sugarcane fields, situated on either side of the rasta, and fired shots upon the deceased. The assailants firing indiscriminately, upon the deceased from both the sides of the fields stand proved from injury No.6 which is on the left side of the face, whereas, injuries Nos.2 and 4 are respectively on the right side of the face and of the head. The exit wounds of injury Nos.2, 4 and 6 are injury Nos.3, 5 and 7. Resultantly, the oral evidence corroborate with the medical evidence. Merely because the witnesses have not stated the distance between the gun and the deceased, it is only a minor discrepancy which is bound to occur with the fading of memory arising from much time being consumed since the statement being recorded and the witness stepping into the witness box. In support of his argument, he relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***State of Rajasthan V. Daud Khan***', reported in ***2016 (1) RCR (Crl.) 123***, relevant paragraph whereof becomes extracted hereinafter.

> *"46. Five witnesses have testified to the events that took place at Bathra Telecom on the night of 19th June 2004. We see no reason to disbelieve any of them, particularly since they have all given a consistent statement of the events. There are some minor discrepancies, which are bound to be there, such as the distance between the gun and Nand Singh but these do not take away from the substance of the case of the prosecution nor do they impinge on the credibility of the witnesses."*

98. The oral evidence is to the effect that the accused had fired on deceased. The bullets recovered from the body of the deceased have been established to have been fired from .455 bore revolver, and, the same fact is

mentioned in the FSL report (Ex.PW-30/A). Therefore, the chain of oral as well as the forensic evidence about the weapon used in the crime is established beyond doubt.

NON RECOVERY OF WEAPON

99. The main point involved in the instant case is with regard to non recovery of the weapon of offence either by the State police or by the CBI during investigation from accused Nos.3 and 4. The prosecution has examined PW-48 (ASI Gursewak Singh of Police Lines, Mansa) who was posted as KHC, Kot Mansa, on 29.12.1997, at the time when a service revolver was issued to accused No.3. It has been proved on the record by way of recording of substantive statement of PW-48 that on 29.12.1997, when this witness was posted as KHC Kot Mansa, on that day when revolver .455 was issued to accused accused No.3 along with thirty bullets and the number of the said revolver was 24707 and the said revolver was issued to accused No.3, who was deputed as gunman with accused No.1, on the oral directions of SSP and that entry in this regard was made by him in the distribution register of Arms and Ammunition and the original register was proved as Ex.PW19/A and the entry which was made by this witness in his handwriting was proved as Ex.PW48/1. This witness has also stated that after seeing original Yaddasht register being separately maintained at Kot Mansa about the distribution of arms and ammunition that entry Ex.PW48/2 was made by him in his own handwriting and that the said entry pertains to the issuance of one .455 bore revolver No.424703 to accused No.3 along with thirty cartridges on 29.12.1999 and the register was also proved to be Ex.PW32/G by this witness.

100. As per entry Ex. PW48/1, the revolver No.24707 which was issued by PW-48 was deposited along with thirty cartridges by accused No.3 on 5.7.1999

and in this case, the weapon which is issued to an official, the same very weapon is to be deposited in the Armoury concerned. He was given a suggestion that the portion B to B1 of Ex.PW43/1 was not recorded on 29.12.1997 and that the same was incorporated later on at the instance of CBI. In the last portion of his cross examination dated 6.4.2013, again PW-48 has admitted that revolver No.24707 which was issued by him was deposited by accused No.3 and that there appears to be some mistake in the number as per deposit entry. The number of revolver was mentioned as 424703 and that the number 424703 was inadvertently mentioned. Meaning thereby the accused are taking specific plea that revolver No.24707 was issued to accused No.3 by PW-48 and that the weapon No.424703 was not the correct number but on the other hand, a contradictory plea has been taken by accused No.3 that the accused No.3 was issued weapon No.424703 and in this regard, a report/ certificate has been obtained by accused No.3 by moving an application under Right to Information Act before Public Information Officer, who has given a report Ex.DW33/A that revolver of bore .455 bearing No.24707 has not been allotted to District Mansa till date. In such like situation, when on one hand, the accused No.3 is admitting by cross-examining the issuing witness i.e. PW-48 about issuance of revolver No.24707 to accused No.3 and are saying that the weapon No.424703 was inadvertently mentioned whereas, on the other hand, they are claiming that revolver No.24707 was not issued to Kot Mansa. Hence, both the pleas are contradictory to each other and in that eventuality, the first argument of the accused No.3 that charge was not correctly framed and it is a defective charge when the number of the revolver has been mentioned as 424703 and then they claim that the revolver No.24707 was deposited with Kot Mansa vide entry Ex. PW48/1 on 5/7/1999 and that the revolver used in the commission of crime was not recovered as accused No.3 was not in possession

of the revolver issued and deposited vide entry Ex.PW48/1. The stand of accused No.3 is also vague because as per the settled law of the land in case of oral eye witness account coupled with medical evidence, if it is proved that the offence was committed with firearms then recovery of weapon for convicting a person for the commission of murder is not *sine-qua-non*. In support of his argument, he relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***Rakesh and another V. State of U.P. and another***', reported in ***(2021) 7 SCC 188***, relevant paragraph whereof becomes extracted hereinafter.

> *"11. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the fire arm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW1 & PW2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A1- Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr. Santosh Kumar, PW5. Injury no.1 is by gun shot. Therefore, it is not possible to reject the credible ocular evidence of PW1 & PW2-eye witnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW1 & PW2 that A1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW2 & PW5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW1 & PW2."*

101. Hence, it is proved on the record that the deceased was murdered by the accused Nos.3 and 4 while using the firearms and bullets were recovered from the dead body of the deceased and the witnesses PW-6 and PW-9 identified both these accused, in Court, to be the two assailants out of four who committed the murder of the deceased by using firearms and the medical evidence i.e. post mortem report issued by PW-8 corroborates the version of eye witnesses. To strengthen his argument, he further relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***Sidhartha Vashisht alias Manu Sharma V. State (NCT of Delhi)***', reported in ***(2010) 6 SCC 1***, relevant paragraph whereof becomes extracted hereinafter.

> *"54. ...The pistol could not be recovered despite extensive efforts made to trace the pistol pursuant to the disclosures of the accused and the arms license was however surrendered on 06.05.1999 vide seizure memo Ex. PW 80/B. It is thus the case of the counsel for Manu Sharma that he was in possession and custody of his P. Beretta pistol on 29/30.04.1999 as even according to him it has been taken away on 30.04.1999/01.05.1999. This was a licensed pistol and thereby the onus was on the accused to show where it was and that the possession and whereabouts of the pistol are in the special knowledge of accused Sidharth Vashisht @ Manu Sharma and having failed to produce the same an adverse inference has to be drawn against him in terms of Section 106 of Evidence Act. In this regard reliance may be placed on* ***Sucha Singh v. State of Punjab 2001(2) RCR (Criminal) 298 : (2001) 4 SCC 375*** *at page 381 :*
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> > *"It is pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any*

explanation which might drive the court to draw a different inference.""

102. He further relies upon a judgment rendered by Hon'ble Supreme Court rendered in case titled '***Yogesh Singh V. Mahabeer Singh and others***', reported in ***(2017) 11 SCC 195***, relevant paragraph whereof becomes extracted hereinafter.

"47. The next line of contention taken by the learned counsel for the respondents is that the recovery evidence was false and fabricated. We feel no need to address this issue since it had already been validly discarded by the Trial court while convicting the respondents. In any case, it is an established proposition of law that mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence. [See ***Lakahan Sao v. State of Bihar and Anr., (2000) 9 SCC 82****;* ***State of Rajasthan v. Arjun Singh & Ors., 2011(4) RCR (Criminal) 270 : 2011(5) Recent Apex Judgments (R.A.J.) 194 : (2011) 9 SCC 115*** *and* ***Manjit Singh and Anr. v. State of Punjab, (2013) 12 SCC 746****]."*

DISCREPANCY IN SITE PLAN

103. During the cross-examination of PW-9, he has minutely given the details of the entire scene of occurrence, at the time when the site plan was prepared by the State police. The investigating officer had marked the necessary spots/points in the site plan prepared by him on the next day of the incident. In view of the same, no further site plans were prepared by the CBI when they took over the investigation. In the cross-examination of PW-6, he submitted that there were sugarcane crops existing on both sides in an area of around 4 killas of land i.e. 2 killas on each sides of the passage dividing those 4 killas. It is undisputed fact that the incident took place on the said passage, and, both the witnesses i.e. PW-6 and PW-9 have supported and corroborated the said version. Therefore, he

submits that even if there are omissions to mention some circumstances in the site plan, such omissions do not affect the case of the prosecution, if there are other credible witnesses corroborating the incident. In support of his argument, he relied upon a judgment rendered by Hon'ble Apex Court, in case titled '***Prithvi (Minor) V. Mam Raj and others***', reported in ***(2004) 13 SCC 279***, relevant paragraph whereof becomes extracted hereinafter.

> *"17. A further reason for disbelieving the evidence of Prithvi is that, while Prithvi stated that he could see the assailants because there was light on the spot coming from a bulb fitted in an electric pole near the chakki of Birbal, (which was situated about 15 steps from the place of occurrence) the Investigating Officer (PW-36) when cross-examined said that he did not remember anything about it nor did he include any electric pole in his site plan. Assuming that this was faulty investigation by Investigating Officer, it could hardly be a ground for rejection of the testimony of Prithvi which had ring of truth in it. We may recount here the observation of this Court in* ***Allarakha K. Mansuri v. State of Gujarat, (2002) 3 SCC 57*** *at p. 64 (para 8) that :-*
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> > *"The defects in the investigation holding it to be shaky and creating doubts also appears to be the result of the imaginative thought of the trial Court. Otherwise also, defective investigation by itself cannot be made a ground for acquitting the accused.""*

IMPROVEMENTS AND CONTRADICTIONS IN THE TESTIFICATIONS OF PROSECUTION WITNESSES IN COURT

104. He further submits that the behaviour of the witnesses would differ from situation to situation and exception of uniformity in the reaction of witness would be unrealistic and no hard and fast rule can be laid down to the uniformity of the human reaction as there is no set rule that one would react in a particular way. The first reaction of a prudent man under the circumstances when he sees some person killing his son would be that he will suspect the persons to be behind the incidents with whom he may be having previous rivalry and enmity,

as such in the present case the first thought which struck the mind of PW-9 about the suspicion in respect of the murder of his son was immediately about his political rivals Ram Kumar and Raj Singh. He told the name of accused No.3 and accused No.4 as suspect after some days, hence it cannot be said that he made improvements in his statement while making such statement before the CBI or before the Court. When PW-9 saw his son being fired, his first concern was to take his son to the hospital and provide medical aid to save his life, and, it cannot be expected from a father in such like situation that he will first see the persons accompanying him to take the injured to the hospital. In support of his argument, he relied upon a judgment rendered by Hon'ble Apex Court, in case titled '***Dilawar Singh and others V. State of Haryana***', reported in ***(2015) 1 SCC 737***, relevant paragraphs whereof become extracted hereinafter.

> *"15. In **Rana Partap and Ors. v. State of Haryana, 1983(2) RCR (Criminal) 532 : (1983) 3 SCC 327**, while dealing with the behaviour of the witnesses, this Court opined thus:*
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> > *"6.....Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."*
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> *16. In **State of H.P. v. Mast Ram, 2004(4) RCR (Criminal) 401 : (2004) 8 SCC 660** it has been stated that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable. Everyone reacts in his own way and, hence, natural human behaviour is difficult to prove by credible evidence.*

> *It has to be appreciated in the context of given facts and circumstances of the case. Similar view has been reiterated in* ***Lahu Kamlakar Patil and Anr. v. State of Maharashtra, 2013(1) RCR (Criminal) 393 : 2012(6) Recent Apex Judgments (R.A.J.) 439 : (2013) 6 SCC 417****.*
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> *17. Behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses would be unrealistic and no hard and fast rule can be laid down as to the uniformity of the human reaction. The evidence of PW-6 is not to be disbelieved simply because he did not react in a particular manner. PW-6 explained how he happened to be there in the place of occurrence and had cogently spoken about the occurrence and his evidence remained unscathed despite searching cross examination."*

105. This Court on the basis of letter written to it by PW-9, entrusted the investigation of the case to the CBI and during the course of investigation, the witnesses made statements before the investigating officers which were recorded as it is and, when *prima facie* it was found that the accused facing trial in this case are involved in the murder of deceased, thereafter CBI presented challan against the accused.

106. He further submits that many other persons had gathered at the place of occurrence, which includes PW-5. Police has examined PW-5 after 10-15 days where PW-5 narrated the entire incident as was seen by him when the assailants were fleeing from the place of occurrence, and the said witness has specifically stated that his statement was not recorded by the police in the presence of PW-9. PW-5 has also stated that when he visited the fields of deceased, PW-9 and PW-6 were already there. It cannot be said that there is material contradiction or improvement in the statement of PW-9, when he did not mention in his statements dated 10.07.2002, 24.08.2002, 24.11.2002, 03.12.2002 and

application dated 04.10.2002 about the presence of PW-5, who had also reached the place of occurrence after the incident.

107. At the time when PW-9 Joginder Singh was making his statement on 10.07.2002, he was not having the suspicion against the Dera people and he was also not present at the house on 06.07.2002, when accused Nos.3 and 4 visited his house. Furthermore, PW-4 was present in the house of the deceased on 06.07.2002, when accused Nos.3 and 4 visited the latter's house, but PW-4 was not an eye witness to the incident dated 10.07.2002, therefore there was no occasion for PW-4 to apprise PW-9 about the incident dated 06.07.2002, and, to co-relate the incident dated 06.07.2002 with the incident dated 10.07.2002. Therefore, it cannot be said that there is contradiction between the statements of PW-4 and PW-9, when PW-4 did not intervene to suggest PW-9 about the incident dated 06.07.2002 when the statement of PW-9 was being recorded on 10.07.2002 by the police.

108. He further submits that in the present case, the crime event took place on 10.07.2002 and the witnesses started making statements, in Court, in the year 2009, and, 2010. The long gap in between the taking place of crime event and the testifications of the witnesses, in Court, may have some impact on the memory i.e. by way of efflux of time, some discrepancies will always occur if a witness is examined after a gap of such long time. It cannot be said that the alleged discrepancies in the statements of prosecution witnesses are of such magnitude that it would materially affect the case of the prosecution. In support of his argument, he relied upon a judgment rendered by Hon'ble Apex Court, in case titled '***Takdir Sumasuddin Sheikh V. State of Gujarat and another***', reported in ***(2011) 10 SCC 158***, relevant paragraph whereof becomes extracted hereinafter.

> *"9. We are of the view that all omissions/contradictions pointed out by the appellants counsel had been trivial in nature, which do not go to the root of the cause. It is settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions/ improvements/ embellishments etc. had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution should not be made the court to reject the evidence in its entirety. The court after going through the entire evidence must form an opinion about the credibility of the witnesses and the appellate court in natural course would not be justified in reviewing the same again without justifiable reasons."*

109. To strengthen his above argument (supra), he further relies upon a judgment rendered by Hon'ble Apex Court, in case titled '***Kuria and another V. State of Rajasthan***', reported in ***(2012) 10 SCC 433***, relevant paragraphs whereof become extracted hereinafter.

> *"18. 'Sterling worth' is not an expression of absolute rigidity. The use of such an expression in the context of criminal jurisprudence would mean a witness worthy of credence, one who is reliable and truthful. This has to be gathered from the entire statement of the witnesses and the demeanour of the witnesses, if any, noticed by the Court. Linguistically, 'sterling worth' means 'thoroughly excellent' or 'of great value'. This term, in the context of criminal jurisprudence cannot be of any rigid meaning. It must be understood as a generic term. It is only an expression that is used for judging the worth of the statement of a witness. To our mind, the statements of the witnesses are reliable, trustworthy and deserve credence by the Court. They do not seem to be based on any falsehood.*
>
> *19-20 ****

> *21.… Improvements or variations of the statements of the witnesses should be of such nature that it would create a definite doubt in the mind of the court that the witnesses are trying to state something which is not true and which is not duly corroborated by the statements of the other witnesses. That is not the situation here. These improvements do not create any legal impediment in accepting the statements of PW3, PW4, PW7 and PW15 made under oath. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements."*

MOTIVE OF ACCUSED(S)

110. He further submits that accused No.1 was the head of the Dera, at the relevant time when an anonymous letter was circulated and public in media. The deceased was suspected to be the person responsible for the circulation of the anonymous letter and for the same reason he was summoned to the premises of Dera on 16.06.2002 to seek an apology from accused No.1, else face dire

consequences. In furtherance of the same, accused Nos.3 and 4 threatened the deceased soon before his murder by visiting his house on two occasions i.e. 26.06.2002 and 06.07.2002. The culmination of all these events shows that there was prior motive attributable to all the accused and the incident dated 10.07.2002 was committed in furtherance of the motive as assignable to all the accused, for circulation of purported anonymous letter by the deceased. Therefore, he argues that there was no need for the prosecution to prove the motive part, as there is other direct prosecution evidence about the involvement of the accused in the commission of crime by them. In support of his argument, he relied upon a judgment rendered by Hon'ble Apex Court, in **Yogesh Singh's case (supra),** relevant paragraph whereof becomes extracted hereinafter.

> *"46. It has next been contended by the learned counsel for the respondents that there was no immediate motive with the respondents to commit the murder of the deceased. However, the Trial Court found that there was sufficient motive with the accused persons to commit the murder of the deceased since the deceased had defeated accused Harcharan in the Pradhan elections, thus putting an end to his position as Pradhan for the last 28-30 years. The long nursed feeling of hatred and the simmering enmity between the family of the deceased and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident. It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as*

to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. ***[Hari Shankar v. State of U.P., 1996(2) RCR (Criminal) 800 : (1996) 9 SCC 40****; Bikau Pandey & Ors. v. State of Bihar, (2003) 12 SCC 616****; State of U.P. v. Kishanpal & Ors., (2008) 16 SCC 73****; Abu Thakir & Ors. v. State of Tamil Nadu, 2010(3) RCR (Criminal) 237 : (2010) 5 SCC 91*** *and* ***Bipin Kumar Mondal v. State of West Bengal; 2010(4) RCR (Criminal) 101 : 2010(5) Recent Apex Judgments (R.A.J.) 9 : (2010) 12 SCC 91****].”*

EXAMINATION OF KHATTA SINGH (PW-31)

111. PW-53 (JMIC Chandigarh), who has recorded the statement of PW-31 under Section 164 Cr.P.C., has clearly stated in his testification that he was satisfied that PW-31 was making the statement voluntarily and there was no pressure upon him when he appeared, in Court, for making such statement. PW-31 while appearing, in Court, as witness on 08.05.2018, had given reasons for resiling from his previously made statement during investigation, and, explained that he was under extreme fear of Dera people on account of the fact that threats were extended to him. Thereafter, when he stepped into the witness box as PW-31, on 08.05.2018, he recorded his testification, in Court, wherein he stated detailed facts about the incident dated 16.06.2002 and hatching of conspiracy in the *gufa* of the Dera. PW-31 is a direct eye witness of incident dated 16.06.2002 when the alleged conspiracy hatched and incident dated 10.07.2002 when he witnessed accused(s) celebrating at Kashish Restaurant. PW-31 was a close associate of accused No.1 being his driver and member of 5 Members Committee constituted by the Dera, hence being a confidant of accused No.1, therefore his testification holds much evidentiary vigor. The only objection raised is that he did not make his statement before the police or CBI for about

four and half years but PW-31 has duly explained the reasons for the delay in his making those statements.

112. PW-31 further states that he was pressurized to sign some blank papers by the Dera people and that he never filed any application for making statement under Section 164 Cr.P.C., before the Special Judicial Magistrate, CBI Ambala, much less any revision petition before the Addl. Sessions Judge-cum-Special Judge, CBI, Ambala. The aforesaid fact was stated by PW-31 in his statement under Section 161 Cr.P.C., recorded on 21.06.2007 by the investigating officer, and, he also withstood the said statement when his substantive evidence/testification was recorded during the trial in the year 2018. The statement of PW-31 was recorded on 21.06.2007 under Section 161 Cr.P.C., and, under Section 164 Cr.P.C., on 22.06.2007, after a decision being made on the application by Special Judicial Magistrate, CBI Ambala, on 30.03.2007 but before the dismissal of revision petition. Therefore, the prosecution submits that had PW-31 not been interested in making two statements before the CBI, and, the JMIC at Chandigarh, then he would have not made the statements rather would have struck to the circumstances, as mentioned in the application and revision petition. Therefore, no question arises for the CBI to pressurize PW-31 to become a witness in the instant case against the accused persons, and, since he also testified in alignment of the said previous statement, thereby statement made, in Court, enjoys creditworthiness.

113. PW-31 was declared hostile with the permission of the trial Court when he was previously examined in this case and during his cross-examination, he has admitted some material points and he had also admitted about his signatures appended on his statement recorded under Section 164 Cr.P.C., by the JMIC, Chandigarh. Further, in order to prove the circumstances, the prosecution

has also examined PW-53, the then JMIC, Chandigarh, who had recorded the statement of PW-31 in his own handwriting and as per the version given by the said witness. Hence, the statement of PW-31 recorded under Section 164 Cr.P.C. stood proved beyond any reasonable doubt and in the said statement PW-31 has admitted and has stated that accused No.1 gave direction to other co-accused, to eliminate Ranjit Singh before he discloses any fact about the Dera to any other person and in consequence thereof, the crime was committed by accused Nos.3 and 4 in connivance with the active help and assistance of accused No.2 on 10.07.2002 and the deceased was murdered in the fields of his father Joginder Singh, in the presence of PW-6 and PW-9, by firing at him.

114. Therefore, he argues that the Court has to scrutinize the testimony of hostile witness with care and caution and the Court can rely upon the testimony of the hostile witness if found to be creditworthy or stands strengthened or corroborated by any other evidence. Moreover, merely because a witness is declared hostile thereby his entire evidence should not be excluded or rendered untrustworthy of consideration. However, such evidence remained admissible in trial and there is no legal bar to base conviction upon the testimony of such witness, as the Court can rely upon the part of testimony of such witness, if that part of the deposition is found to be creditworthy. Furthermore, the principle of *falsus in uno falsus in omnibus* is not applicable in India, meaning thereby that if a witness was found unreliable on a particular aspect the remaining portion of his statement can be relied upon, if the same is found to be creditworthy. In support of his argument, he relies upon a judgment rendered by Hon'ble Apex Court, in case titled "***Azad Singh and another V. State of Haryana***", reported in ***2005 (3) RCR (Criminal) 150***, relevant paragraphs whereof become extracted hereinafter.

"20. ...It has been settled by Hon'ble Supreme Court in the judgment reported as ***Balu Sonba Shinde v. State of Maharashtra, 2002(4) RCR (Criminal) 95 (SC) : 2002 Cri. L.J. 4650,*** *that even the statement of a witness who has gone hostile need not be rejected ipso facto on that account. Their Lordships quoted with approval the observations made in an earlier judgment as under:-*

"It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

21. It has also been held by Hon'ble Supreme Court in a number of judgments that theory of "falsus in uno falsus in omnibus" has no application in India. It means, therefore, that if a witness is found unreliable on a particular aspect the remaining portion of his statement can be relied upon if it is found truthful. It was observed by Hon'ble Supreme Court in Rizan's case (supra) as under:-

"It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status or rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence"."

FOR THE REASONS TO BE ASSIGNED HEREINAFTER THE SUBMISSIONS ADDRESSED BEFORE THIS COURT BY THE LEARNED COUNSELS FOR THE APPELLANTS ARE ACCEPTED AND THOSE ADDRESSED BY THE LEARNED COUNSELS FOR THE COMPLAINANT AND CBI ARE REJECTED

WEAKNESS OF EVIDENCE ADDUCED BY THE PROSECUTION IN PROOF OF THE MOTIVE ASCRIBED TO ACCUSED NO.1

115. The principal offenders or the principals in the first degree are accused Nos.3 and 4 (since deceased (accused No.4) who is now represented by his LRs). They are alleged to commit the charged offence through the firing of pellets from firearm bearing No.424703. The role attributed to accused Nos.1, 2, and 5, is of theirs conspiring with the principals in the first degree (supra), in the latters' committing, thus at the crime site (Ex.PW-28/B), the murder of deceased-Ranjit Singh, son of PW-9, who is the informant in the instant case.

116. Before proceeding to determine the validity of the impugned verdict of conviction, and, the consequent thereto sentence(s) as became imposed upon the appellants in respect of the charges, as became drawn against them, it is deemed apt and appropriate to extract the contents of the FIR, to which Ex.PW-10/A is assigned, contents whereof become extracted hereinafter. Imminently Ex.PW-10/A became lodged at the instance of the father of the deceased, who stepped into the witness box as PW-9.

> "*Stated that I am the resident of the above address and am an agriculturist. I was having a son Ranjit Singh, aged about 39 years. My land is situated in village Khanpur Kolian on Delhi Road, opposite Dhillon Farm. Today on 10.07.2002, I was watering the fields with my labourers. Then Sukhdev Singh son of Inder Singh, caste Jat of my village came to me. I was talking to him in respect of the electricity. Then my son Ranjit Singh, as a daily routine, came on his motorcycle at about 5.00 PM bringing tea for the labourers. After giving tea to the labourers, he sat on his motorcycle for going back to the village at the distance of about one killa from me. In the*

meantime, two youths from the sugarcane fields and two youths from the sugarcane fields from the other side came with carrying pistols in their hands and immediately started unprecedented firing on my son Ranjit Singh. I and Sukhdev Singh ran towards them by raising lalkara. Then all these four youths fled towards GT road alongwith their weapons and boarded the car parked on the G.T. Road and ran away towards Delhi side. I and Sukhdev Singh brought the car from the village and took Ranjit Singh to LNJP Hospital, Kurukshetra. Upon seeing him, the doctor declared Ranjit Singh dead. I am sure that this attack has been got made by Ram Kumar at present Sarpanch Khanpur Koliya and Raj Singh son of Sehdev Singh, Jat, resident of Khanpur Koliyan in connivance with someone. I was having enmity with them due to the panchayat elections. These two persons had earlier also given me threats that either you arrive at a compromise otherwise, we would see you when time would come. Today, both of them in connivance with each other, got my son Ranjit Singh murdered. I and Sukhdev Singh can identify all these four youths if produced before me. I have read the statement and is correct. Action be taken. Sd/- Joginder Singh. Today on 10.07.2002 at 05.45 PM an information has been received through telephone that firing is going on in the fields of Joginder Singh."

117. Having done so, the strength of the motive as ascribed to the appellants is required to be evaluated and is also required to be adjudged upon.

118. The motive for the crime event taking place, is grooved in the trite factum, of accused No.1 becoming defamed, and, thereby his also becoming enraged, thus at the viralization of anonymous letter Ex.P-1, at the purported instance of deceased. In the said exhibit disparaging ascriptions are made to accused No.1. The said viralization is alleged by the prosecution, thus to groom the motive for the crime event, becoming committed. Ex.P-1 becomes endeavoured to be proven by the prosecution through its leading into the witness box PW-1 and PW-2.

119. The contents of Ex.P-1 have already been extracted hereinabove. The corner stone of the disparaging outburst, as made against accused No.1, and, as manifested in Ex.P-1, is *qua* accused No.1 outraging the modesty of the sister of the deceased. The author of Ex.P-1 is alleged by the prosecution to be some Sadhvi at the Dera concerned. However, apparently Ex.P-1 is an anonymous letter. Since as stated (supra), the corner stone of the disparaging outbursts made against accused No.1, and, as embodied in Ex.P-1, thus relate to the accused No.1, outraging the modesty of the sister of the deceased, thereupon firm and cogent evidence was required to be adduced by the prosecution *qua* the said allegation. Though, the said evidence is enclosed in a separate session trial entered into by the learned trial Judge concerned, and, which resulted in a verdict of conviction becoming pronounced, upon, accused No.1. However, though therefroms *prima facie,* the said attributed motive to accused No.1, which ultimately did allegedly lead him to thus goad or instigate the other co-accused to commit the murder of deceased, thus on the ground, that he suspected him to be behind the viralization of Ex.P-1, rather may only have a *prima facie* well laid foundation, as on the said session trial, a verdict of conviction has been rendered against accused No.1.

120. Be that as it may, though a verdict of conviction has been returned on the said sessions trial by the trial Judge concerned, but since an appeal thereagainst has been instituted by accused No.1 before this Court, and, which is still *subjudice*. Therefore, merely upon a finding of conviction becoming returned on the said sessions trial by the learned trial Judge concerned, rather may not sway this Court to conclude that merely therebys, this Court is to assign credence to the motive (supra), as became ascribed to accused No.1, which

ultimately purportedly goaded him to instruct the other co-accused to commit the murder of the brother of the prosecutrix.

121. Consequently, this Court is to, on the basis of the evidence existing on the record of this case, thus determine whether, as such, the said ascribed motive to the accused rather is a well ascribed motive. In that endeavour the sister of the deceased was the most material witness. However, she was given up by the prosecution as "unnecessary". Resultantly, the giving up, by the prosecution of the said material witness, mobilizes an inference that thereby the motive ascribed to accused No.1, inasmuch as, his being enraged from the infamy brought to him through circulation of Ex.P-1, purportedly authored by some Sadhvi at the Dera concerned, thus necessarily weakening the evidentiary strength of the said ascribed motive to accused No.1.

122. For proving the circulation of Ex.P-1, the prosecution has relied upon the testification of PW-1, and, PW-2 who are members of the Tarksheel society, who however were suggested by the learned defence counsel, qua theirs rather holding animosity, to the Dera headed by accused No.1. PW-1 in his cross-examination expressly admitted the rearing of an animosity by the said Tarksheel society towards accused No.1, relevant portion whereof becomes extracted hereinafter.

> *"xxx*
>
> *I and the Taraksheel society are against the Dera and Gurus because the society believes in eradication of superstitions etc. It is wrong to suggest that I was never given any beating by the Dera people i.e. Amar Nath Arora etc. nor I was threatened by the Dera people including Amar Nath etc. It is also incorrect to suggest that Amar Nath Arora etc. had never named Ranjit Singh."*

Therebys an inference becomes mobilized that, rather than the circulation of Ex.P-1 being made by the deceased. Contrarily therebys the prosecution thus admitting that the circulation of Ex.P-1 was made by PW-1 and PW-2. Resultantly, therebys the prosecution also admits that as such accused No.1 did not suspect that the deceased was making circulation of Ex.P-1, also therebys it can be forthrightly concluded, that he became neither enraged against the deceased nor became infuriated, nor he nursed any motive against the deceased thus from the latter purportedly viralizing Ex.P-1. Consequently, accused No.1, thus cannot be concluded to be led to goad and instigate the other co-accused to commit the murder of deceased. Therefore, the said ascribed motive to accused No.1 becomes immobilized.

123. For proving the said motive, the prosecution has also depended upon the testification of PW-2, relevant part whereof becomes extracted hereinafter.

> *"I am working as lecturer Govt. Senior Secondary School, Adhoya, Dist. Ambala. I am working as teacher since 1981. We have organized a society named Taraksheel Society, Haryana since 1987. However, formally it was registered in 1992. I was editor of Tarakjyoti Magazine having been published by Taraksheel society. In the month of May, 2002 I received a sealed envelop addressed to me being editor of the said magazine. All my letters used to be delivered by the postman at Kumar Book Depot, Pipli from where i used to collect all my letters. I opened the sealed envelop which was addressed to me as editor at the cloth shop of Mohan Aggarwal in the presence of Shri Jai Chand, Private teacher and after reading the contents of the letter 1 was astonished. I was purchasing cloths at the said shop at that time. This letter was in Hindi and was containing many objectionable facts including sexual exploitation of Sadvis by Baba Gurmeet Ram Rahim Singh in Dera Sacha Souda, Sirsa (Objected to). Said letter was addressed to Prime Minister of India and the said letter purported to have been written by one Sadvi. It was also mentioned in the letter that*

some sewadar belonging to Kurukshetra had left the Dera on account of sexual exploitation of the sadvis in the said Dera (objected to being not admissible). After reading the letter I had shown this letter to Shri Mohan Aggarwal as well as Shri Jai Chand who also read the letter. They asked me to give the photocopies of said letter to them. I gave the letter to them and they returned back the letter to me after getting the photocopies of the same with them.

Since there was no name of the sender on the letter, therefore, I retained the letter with me without discussing it to anyone. On 17.5.2002 similar type of letter was published in Amar Ujala Paper containing the same allegations. Similar News was published in Punjab Kesari Newspaper on 19-20.5.2002. Shri Raja Ram Handiya, who was the president of Taraksheel Society also received this letter. On 19.5.2002 a meeting of Taraksheel society was held at Kurukshetra in which this letter was discussed as I as well as Raja Ram both had shown the letter. Thereafter we concluded that the persons belonging to the similar thinking may be approached in order to find it out as to whether the contents of the letters were correct or not. After some days Sohan Lal alongwith 10-15 persons came to me and they inquired from me as to from where I had received this letter. I told them that I had received this letter through post and after discussing the matter they satisfied and went back. After few days one Ran Pal sarpanch of village Murthala accompanied by Virender son of Jai Bhagwan and others whose name I do not know came to me and they also inquired from me about the said letter. I told them that I had received this letter by post. One of them asked me as to whether this letter was given to me by Ranjit Singh of Khanpur but I told him that I have not received this letter from Ranjit Singh and I have received the same through post. After that they told me to talk the matter with a committee comprising of 5 members. One Jai Bhagwan resident of Pipli, who was the follower of Dera informed me, that today in the evening five members of the committee would come and have a talk with me. On the same day at about 8/8.30 p.m. five members of the committee alongwith Jai Bhagwan and two others came to my house and discussed the issue

with me. As the discussion continued for 4-5 hours said persons persuaded me that I had received this letter from somewhere else and not by post. They further told me that I being the President of Taraksheel society should not consider such type of anonymous letter. I told them that as this letter was anonymous one and it does not bear the name of sender, therefore, it cannot be treated as authentic. They told me that as to why I had distributed the photocopy of the said letter. I told them that I had not distributed the photocopy of the said letter except the two photocopies of this letter which were got done by Jai Chand and Mohan Aggarwal. They asked me that I have to apologies for having distributed the photocopies of this letter. But I told them that I have not committed any mistake and there was no question of apologizing. They told me that there was large number of followers of the Dera and I should apologies otherwise anything could happen to me. Thereafter I sought apology from the said above persons who were members of the society under pressure. On the next day I gave press note to the effect that sender should come forward and to identify himself, failing which the letter should not be treated as authentic. On 1.6.2002 Shi Raja Ram Handiya alongwith one Vijay Kumar had come to my residence in the night and they asked me to hand over the anonymous letter alongwith the envelop which was received by me and they further told me that the Dera Followers have Gheraod their house and they are threatening them to bring the letter otherwise they will finish his family. Thereafter I handed over the original anonymous letter alongwith envelop to them and retained the photocopies of the same with me. Thereafter aforesaid persons left my house. On the next day in the morning I alongwith Raja Ram and Vijay Kumar went to Karnal and met Mr. Gandhi, a press reporter of Punjab Kesari and I asked Mr. Gandhi to hand over the letter which was published in Punjab Kesari because the Dera followers again pressurizing me to collect all the photocopies of the said letter. Mr. Gandhi told me that he could not give the letter to me and he could give the letter only at the asking of Chief Editor, Punjab Kesari. I knew Ranjit Singh who belongs to my village and moreover father of Ranjit

Singh was sarpanch of the village. I was aware that Ranjit Singh was staunch follower of the Dera and Parmukh which I mean leader of the Dera but I was not aware that he had left the Dera alongwita his family. Around 15-20 days before the murder of Ranjit Singh of my village when I was holding a camp of Taraksheel society at my residence in village Khanpur koliyan at about 3-3.30 p.m. two unknown persons came there and told me that they want to get examined some patient from me. I told them to wait as I was already examining the patients, thereafter said persons told me that they want to talk with me alone. Said persons told me that they had come from Dera Sacha Souda and they knew that the letter had been written by Ranjit Singh and I had circulated the same. I told them that I have already handed over the photocopies of said letter and I had not distributed any such letter. Thereafter they threatened me and said that they would not spare me and Ranjit Singh and then they left. I did not disclose this fact to anyone due to fear."

124. A reading of the abovesaid testification reveals, that the persons mentioned therein, and, who allegedly came from Dera Sacha Sauda, thus to his residence, rather came to threaten him in relation to his allegedly circulating Ex.P-1. He however, states that owing to fear the said fact was not disclosed in his previously made statement in writing to the police officer concerned. Though, a reading of the contents of the above extracted examination-in-chief also reveals that when his statement was recorded in the month of November, 2005 by Addl. Sessions Judge, Kurukshetra, that then he had identified the said two persons to be accused Nos.3 and 4, and also then he identified accused No.1, when the latter appeared to face trial, in the Court of Shri Y.S. Rathore, at Ambala. However, the said made identification by PW-2 in Court, thus of both accused Nos.3 and 4, hence in the month of November 2005, rather does not carry any evidentiary vigor nor thereby the fact as spoken in the above extracted portion of his examination-in-chief, *qua* the said persons threatening him and the

deceased against theirs subsequently circulating Ex.P-1, also becomes eclipsed in a shroud of doubt.

125. The reason being that, even though, he states that out of fear, he did not disclose the said fact to anybody but when he in his previously made statement, in writing, to the police officer concerned, his rather also omitting to narrate the names of accused Nos. 3 and 4, nor when he proceeded to declare in the said previously made statement, their key characteristics/physical features rather for thereafters a valid test identification parade becoming conducted, thus for thereins, their respective identities becoming established. Preeminently when in his previously made statement in writing, he thus failed to describe the key characteristic features of the said unknown persons, therebys when, upon, a valid test identification parade, rather becoming conducted, thereupons yet the said witness would have likewise failed to validly identify accused Nos.3 and 4. Consequently, the first time identification, by him in Court, of the respective identities of the accused concerned, thus is a weak identification and, theretos no credence can be assigned. Moreover, the story propagated (supra), by PW-2 in his examination-in-chief, relating to threats being meted to him, and, to the deceased, thus does concomitantly rather holds no evidentiary vigor. Resultantly, therebys also the propounded motive, is a result of deployments of ill stratagems besides is a sequel of ill engineerings of facts, thus by the prosecution, rather for merely falsely implicating accused No.1, and, also for falsely implicating the principals in the first degree i.e. accused Nos.3 & 4.

MOTIVE STRIVED TO BE PROVED THROUGH THE SUMMONING OF THE DECEASED AT THE DERA ON 16.06.2002

126. Though for the reasons (supra), the validity of the above ascription of motive vis-a-vis, accused No.1 becomes weakened yet the prosecution

attempted to establish, the said ascribed motive to accused No.1, through its propagating that the deceased was purportedly summoned to the Dera, on 16.06.2002. For proving the said fact the prosecution has relied upon the deposition of PW-9 and PW-31. In their respective examinations-in-chief, a narrative becomes carried, that on 16.06.2002, the deceased was allegedly threatened by accused(s) to apologize to accused No.1, thus for his ill act *qua* his purportedly circulating Ex.P-1, and/or in his viralizing the same thereby harm becoming caused to the reputation of accused No.1.

127. However, when as stated (supra), when the said factum of the deceased becoming suspected by accused No.1 to circulate Ex.P-1 rather has become weakened, but yet the evidentiary vitality of the propagation (supra), with ascritpions thereins vis-a-vis accused No.1, is thus also required to be determined. As stated, the said evidence is brought on record by PW-9 and PW-31. A reading of the deposition of the said witnesses brings forth certain rife and blatant *inter se* contradictions. The foremost *inter se* contradiction, *inter se* the deposition of said witnesses, is comprised in the factum, that (a) PW-9 in his examination-in-chief stating that accused No.2, accused No.4, accused No.5, one Inder Sain, and, one Darshan Singh, rather being present at the relevant site, whereas, PW-31 testifying that accused No.2, accused No.5, one Inder Sain, and, one Darshan Singh, thus being available at the relevant site. Consequently, PW-31 reveals the names of all accused(s) excepting accused No.4, whereas, PW-9 names all the above. The sequel of the said omission by PW-31, is that, the evidence *qua* threatenings becoming purportedly meted, vis-a-vis the deceased, but at the behest and at the instance of accused No.1, through the co-accused(s) concerned, rather visiting the house of the deceased, visit whereof, became purportedly engendered, from the ill conduct of his purportedly circulating

Ex.P-1, besides therebys the accused(s), directing the deceased to visit the Dera, on 16.06.2002 for his apologizing to accused No.1, rather for ill conduct (supra), but also loosing its probative strength. In consequence, the motive ascribed to accused No.1 as became purportedly nursed from the accused Nos.2 to 4**,** visiting the relevant site on 26.06.2002, where PW-9 was also present, thus for theirs meteing threatenings to the deceased, when does but stagger. Resultantly, the genesis of the prosecution case founded upon accused No.1, nursing a motive and therebys his instigating the accused (supra), to visit the house of the deceased, thus for theirs handing down threats to him for his ill conduct of his viralizing Ex.P-1, and also theirs directing the deceased to apologize to accused No.1, also does not garner any evidentiary strength and therebys reiteratedly the strength of the motive (supra) becomes completely capsized.

128. Furthermore, even if assuming that there was some truth in Ex.P-1, whereins allegations are carried against accused No.1, inasmuch as, his outraging the modesty of the sister of the deceased, wherebys the deceased was purportedly led to viralize Ex.P-1, and, which ultimately brought infamy to accused No.1, resulting him to goad and instruct other accused(s) to eliminate, the deceased, but yet for reasons assigned hereinafter, the said *iota* of truth as carried therein, apart from the factum that the prosecutrix was given up, rather is an unsuccessful attribution of motive vis-a-vis the accused concerned.

129. Primarily for the reason that the marriage of the sister of the deceased was solemnized in the month of October 2001, whereas, Ex.P-1 was circulated in May 2002, thereby when the marriage of the sister of the deceased occurred prior to the viralization of Ex.P-1. Consequently, and, but naturally the deceased would not have taken any precarious steps, comprised in his viralizing Ex.P-1 as therebys the marital life of his sister would become injured. Resultantly, therebys

the suspicion attributed to accused No.1, as arising from the deceased, thus through his viralizing anonymous letter Ex.P-1, rather harming his reputation, thus also is unable to acquire any evidentiary strength. Therefore, when there was as such no vestige of any suspicion in the mind of accused No.1. Resultantly, also no wrath was reared by accused No.1 against the deceased, arising from his purportedly viralizing Ex.P-1 nor there was any occasion for accused No.1, to rather instruct the other accused(s) to visit the house of the deceased for theirs meteing threatenings to him or directing him to apologize to accused No.1. Moreover, thereby there was no occasion for the deceased to visit the Dera rather for his errant conduct *qua* his purportedly omitting to apologize to accused No.1, nor thereby the deceased inviting the wrath of accused No.1, nor there was any occasion for the deceased to spurn the offer of accused No.1 to rejoin the Dera. In addition, therebys the story propagated by PW-2, besides by PW-9, and PW-31, about the relevant meeting becoming witnessed by them does also hold no evidentiary vitality.

130. Preeminently also with the emergence of the evident fact *qua* the deceased, and, his wife, gifting a gold ring to accused No.1, in the annual Bhandara, as became organized in the year 2001, and, the event (supra), occurring in the month of July 2002. Moreover, since the crime event occurred almost in close proximity to the happening of the crime event, therebys the story of disenchantment of the deceased with accused No.1, besides the story *qua* his being asked to apologize to accused No.1, which he failed to do so, and, the further story that, upon, the deceased spurning the apposite offer to rejoin the Dera rather inviting the wrath of accused No.1, do all also but loose their evidentiary vigor. Thereby it appears that no animosity spurred *inter se* the deceased and accused No.1 nor therebys there was any motive etched in the

mind of accused No.1, thus for his directing the other co-accused to eliminate the deceased.

131. The prosecution canvasses that despite the said threats being meted to the deceased by the accused(s), for his visiting the Dera, for making an apology to accused No.1, for his ill act (supra), yet rather did not result in a favourable response from the deceased, thereby resulting in accused No.1 becoming enraged. The said evidence is stated by the prosecution to become comprised in the testifications rendered by PW-9 and PW-31. However, when a reading of the contents of the FIR, thus reveal, that thereins no such echoings became spoken, whereas, the FIR was his signatured previously made statement in writing. Resultantly the said made statement in the tesification of PW-9, is but both a blatant digression and also a rife embelishment, over his previously made signatured statement in writing to the police officer concerned, and, which led to the registration of FIR to which Ex.PW-10/A is assigned. Furthermore, it also appears that therebys the subsequent thereto adduced evidence but thus is only disingenuously created by the prosecution to prove the said motive. Resultantly the said spoken evidence is but an invented and premeditated evidence, and, to which no reliance can be placed by this Court. In sequel, reiteratedly the speakings made by PW-9 *qua* the facts (supra), thus in his examination-in-chief, despite his omitting to state the said facts in his previously made signatured statements, do bolster an inference, that the said ascribed motive to accused No.1, is but an invented and premeditated motive, to which no credence can be assigned by this Court.

132. Fortifying strength to the above inference becomes garnered from a highly tainted and blemished testification rendered by PW-31. The reason for concluding so shall be alluded to hereinafter.

PURPORTED CONSPIRACY MEETING

133. Furthermore, though the prosecution canvasses, through PW-31, that subsequent to the deceased leaving the Dera, post his spurning the offer made to him by accused No.1 to rejoin the Dera, thus the accused No.1, holding a meeting on 16.06.2002 with accused Nos.2, 5, one Inder Sain, one Darshan Singh, and, PW-31, whereins, confabulations with incriminatory overtones of conspiracy to eliminate the deceased, thus were held. However, since the above fact occurs in the tainted testification of PW-31, and, when one Darshan Singh who was also a confederate to the purported conspiracy, rather became neither cited as a witness, nor became arrayed as an accused, whereas, with his being not only a co-confederate in the conspiracy hatched at the relevant site, rather thus required his being either arrayed as an accused or his becoming cited as a prosecution witness. Resultantly, the non arraying of the said Darshan Singh, thus as an accused besides also with the prosecution omitting to cite him as a witness, but begets an inference that the prosecution story vis-a-vis the said meeting, whereins, accused No.1, directed the other accused(s) to kill the deceased, is but a concocted and invented story by the prosecution.

FIRST VISIT OF ACCUSED NOS.2 TO 4 TO THE HOUSE OF THE DECEASED TO METE THREATENINGS TO HIM

134. Though, the prosecution alleges that the directions as became meted to the co-accused in the meeting (supra), did not become immediately complied with but yet accused Nos.2 to 4, proceeded to the house of deceased on 26.06.2002, and, threatened him to apologize to accused No.1. The said allegation becomes attempted to be proven by the prosecution, through the prosecution leading into the witness box PW-9, P-35 and PW-38. Though PW-9 in his examination-in-chief testifies about his being present at the said stage, and, also testifies about his witnessing the said meeting. However, strangely PW-9

has not stated the said fact in his signatured previous statement recorded in writing, therebys but *ex facie* gross improvements or blatant embelishments, thus became made thereovers by PW-9, whereupon a grave doubt becomes engendered about the credibility of his deposition. Resultantly, the said blatant and rife improvement(s) *inter se* his previous signatured statement, thus with the testification made by PW-9 before the learned trial Court, rather underwhelms the deposition made by PW-9, wherein, he echoes, *qua* accused Nos.2 to 4 proceeding to his house and theirs then threatening the deceased to apologize to accused No.1. Furthermore, PW-35 and PW-38 also did state the said fact, in their respective examinations-in-chief, but when in contradiction to PW-9, who stated that he was also present at the said meeting, rather they spoke otherwise, inasmuch as, PW-9 being not present when accused Nos.2 and 4 visited the house of the deceased to threaten the deceased to apologize, to accused No.1 therebys the said *inter se* contradictions *inter se* the depositions of PW-9, PW-35 and PW-38, as relates to the above imperative incriminatory fact, does make their respective testifications rather to loose their respective evidentiary worth.

135. The *inter se* contradictions *inter se* the testifications of PW-35 and PW-38 with respect to the incident dated 26.06.2002, i.e. the date on which accused Nos.3 and 4 are alleged to visit the house of the deceased, but also naturally creates a shroud of doubt to the prosecution case.

136. In sequel, the inference therefroms are hereunders:

a) The prosecution has not been able to prove through adduction of cogent evidence that on 16.06.2002 the accused concerned, at the relevant site rather meted threatenings to the deceased for his ill act of viralizing Ex.P-1.

b) The prosecution completely failing to adduce cogent evidence that the accused concerned, visited the house of the deceased and that in the presence of PW-35 and PW-38 rather threatenings being meted to the deceased to apologize to accused No.1.

c) The prosecution has been unable to efficaciously prove that there was a meeting held on 16.06.2002, whereins, accused No.1 directed the accused concerned, to eliminate the deceased.

137. Added strength to the above becomes mobilized from the factum that there are blatant *inter se* contradiction, *inter se* the testifications of PW-35 and PW-38, as PW-38, in her statement made under Section 161 Cr.P.C. (Mark PW-38/DA) recorded on 05.12.2002 did not thereins mention, about the presence of PW-35. PW-38 deposed that she welcomed accused Nos.3 and 4 and asked them to sit in the drawing room, whereas, PW-35 in her statement stated that PW-38, did not know that accused Nos.3 and 4 had come and that only on an enquiry from PW-35, PW-38 came to know about the presence of accused Nos.3 and 4. As such, there are material contradictions *inter se* the testifications of PW-35 and PW-38. Resultantly the inevitable conclusion therefroms, is that, the accused concerned, did not visit the house of the deceased on 26.06.2002 and, nor on the said date any threatenings were meted to the deceased by the said accused. Therefore, the said story is a mere invention or concoction, thus for purportedly creating an ill incriminatory evidence against accused No.1, thus *qua* his nursing a motive, against the deceased and, his purportedly rather consequently holding a conspiratorial meeting, thus for committing the crime event. The statement of PW-35, as made before the trial Judge, on 11.08.2012; and the statement of PW-38, as made before the trial Judge, on 13.10.2012, become extracted hereinafter.

Statement of PW-35

"My father namely Ranjit Singh and my grand-father Shri Joginder Singh originally residents of village Khanpur Kolian district Kurukshetra. I am M.A pass. I did my graduation from a college run by Dera Sacha Sauda, Sirsa. I went to Dera Sacha Sauda when I was a student of IXth class and I remained there till completion of my graduation. In the year 2001, I came back after completion of my examination.

My father Ranjit Singh was disciple of Dera Sacha Sauda. My father was doing whatever the duty was awarded by Baba Gurmeet Ram Rahim Singh Chief of the Dera Sacha Sauda, Sirsa. In the year 2000, I felt some changes in the attitude of my father towards Dera Sacha Sauda. Initially I and my sister had gone to the Dera and subsequently my Bua Ji namely Sarjiwan also joined the Dera. In the year 2001, my father brought us back from the Dera. In May, 2002, I came across an anonymous letter regarding sexual exploitation of a Sadhvi by Baba Gurmeet Ram Rahim Singh, the Chief of the Dera Sacha Sauda and I also learnt the same through newspaper. I identify accused Baba Gurmeet Ram Rahim Singh present on the Monitor through video conferencing. In June, 2002, I received a telephonic call at my residence in Khanpur Kolian from Krishan Lal Pardhan of Dera Sacha Sauda, Sirsa. As usual, I wished him and he asked me about my father. I told him that my father was not at home and that whenever he will return, then I will convey his message to my father. On arrival of my father, I apprised him about the telephonic call of Krishan Lal Pardhan. On listening the fact regarding the telephone, my father in perplexing condition instructed me not to attend the phone of any Krishan Lal Pardhan or any other person of Dera Sacha Sauda. I identify accused Krishan Lal Pardhan today present in the court (The witness has correctly pointed out towards accused Krishan Lal Pardhan). ***On 26 June, 2002, my Aunt (Bua Ji) namely Saroj asked me to see who were sitting in the drawing room of our residence and peeped through the door and saw two persons sitting in the drawing room, one of them was with dark complexion namely Jasbir Singh***

and the other was of fair complexion namely Sabdil, who was the gunman of accused Baba Gurmeet Ram Ram Singh. *Out of them, one namely Jasbir Singh was identified by my Bua ji. I can identity both the accused and I identify them. (The witness has correctly identified accused Sabdil and Jasbir present in the court by pointing towards them) My father was also sitting in the drawing room and they were talking with each other. Thereafter, I came outside from the kitchen and saw a blue colour jeep was standing and accused Krishan Lal Pardhan was sitting on the rear seat. Thereafter, I came inside the house and all the three persons left the place in the jeep. Then I saw my father and he was also scared after these persons left our house. My Bua Ji asked my father as to why he was scared and my father told my Bua that these persons threatened him to seek pardon from accused Baba Gurmeet Ram Rahim otherwise they will not spare him. Even after this incident, accused Krishan Lal and Jasbir kept on calling on our landline telephone and they used to ask about the whereabouts of my father and my father was so upset and then he disconnected the telephone by removing the wire and the same was kept in the almirah. Before the murder of my father, the accused namely Sabdil and Jasbir again visited our house 4-5 days earlier."*

Statement of PW-38 before the trial Judge

"My in laws belongs to village Umari, District Kurukshetra. I was married in 1987. I have got two children from my marriage. One of my children is son and other is daughter. The name of my father is Joginder Singh. He is resident of village Khanpur Koliyan. I know accused Gurmeet Ram Rahim Singh present in the Court through Video Conferencing. He is the Head of Dera Sacha Sauda, Sirsa. I had taken Naam of Dera Sacha Sauda. I did not go to Dera regularly. I went to Dera Sacha Sauda occasionally once or twice with Ranjit Singh. My niece namely Ritu and Gitu were studying in the Dera. We used to come Khanpur Koliyan in Summer vacations. Ranjit Singh was my real brother. I had come to village Khanpur Koliyan on 20th June 2002 about 20 days prior to the incident and I stayed there till 1.7.2002 and thereafter Ranjit Singh dropped me at my in-laws house.

On 26.6.2002, at about 5.00 p.m. one blue coloured jeep arrived at our house and two persons entered in our house at Khanpur Koliyan and they inquired about Ranjit Singh and I gave the answer that he is available and I knew one of them earlier namely Jabir Singh. *They wanted to meet my brother Ranjit Singh and thereafter they were asked to sit in the drawing room. Regarding the other person my niece Ritu told me that the other fellow is a gunman of Head of Dera Sacha Sauda. They stayed about 10-15 minutes in the drawing room. After leaving them outside the house my brother was found very upset and scared. Then I asked my brother as to why you are scared and upset. He told me that they had come to threaten me and they were asking him to seek pardon from accused Baba Ram Rahim or they will not spare him. I can identify both the accused persons who had come to our house on 26.6.2002 and had met my brother Ranjit Singh. They are present in the Court today. The same day we went to the residence of my brother in law Parbhu Jayal on the occasion of his son's birthday. There my brother Ranjit Singh told me that one line in the anonymous letter points toward him and that Baba Gurmit Ram Rahim and his ….. disciples would burn down my house or may kill him and for this he told us that we should not speak to anyone. In the night we came back. Next day a telephone call received by me and the caller disclosed his name as Jasbir Singh and he wanted to talk Ranjit Singh. My brother attended the call. After attending the call my brother Ranjit Singh told me that whenever Jasbir Singh calls again the phone may be disconnected and his whereabouts may not be disclosed. On the next day two calls were again received and those were attended by me I identified the voice as that of Jasbir Singh who had called on the previous day. He inquired about my brother Ranjit Singh, but I gave answer in negative. Again the phone call came and my niece Ritu attended the same and she told me that phone call was of one Krishan Lal Pardhan of Dera Sacha Sauda and that he was asking for Ranjit Singh. Thereafter, my brother taken off the phone apparatus and kept in the Almirah. After some days a medium height person wearing a Kurta Pajama came at our house at about 7-8.00 pm and asked about*

Ranjit Singh and asked for petrol for his vehicle which is standing on the road. I met him and told that neither is Ranjit Singh here nor having any petrol. I can identify the said person. He is also present in the Court. The witness has pointed towards accused Krishan Lal present in the court today to be the said person. On 10.7.2002, I received information about the murder of my brother Ranjit Singh on telephone."

SECOND VISIT OF ACCUSED NOS.3 AND 4 TO THE HOUSE OF THE DECEASED TO METE THREATENINGS TO HIM

138. The prosecution has alleged that accused Nos.3 and 4 subsequent to their first visit on 26.06.2002, had again visited the house of the deceased on 06.07.2002 with the same objective to threaten him to apologize to accused No.1 for his purportedly viralizing Ex.P-1. It is alleged by the prosecution that PW-4 was also then present there. But there are rife *intra se* contradiction(s) *intra se* the testification of PW-4 with respect to the alleged meeting whereupon his testification becomes unworthy of any credence being assigned theretos. The reason, is that, in his first statement recorded under Section 161 Cr.P.C., on 05.09.2002, he did not speak about his personally witnessing the accused Nos.3 and 4 to openly threaten the deceased, but the said fact becomes expressly mentioned in his subsequently recorded statement under Section 161 Cr.P.C., and, also in his statement recorded under Section 164 Cr.P.C. Further PW-4 in his examination-in-chief stated, that on the day of happening of crime event i.e. 10.07.2002, he visited the hospital to meet Joginder Singh (PW-9) but yet he failed to inform PW-9, about the visit of accused Nos.3 and 4 on 06.07.2002, to the house of the deceased, to mete threatenings to the latter. In addition, PW-4 identified accused Nos.3 and 4, in Court, on 04.03.2010 and, that too without any prior thereto validly conducted test identification parade, besides but without any mentioning *qua* their physical characteristics/attributes thus in his previously

recorded statement. Therefore, the said first time identification, in Court, by PW-4 vis-a-vis accused Nos.3 and 4, is but a legally infirm identification. Resultantly thereby his deposition in its entirety becomes enveloped in a grave shroud of doubt.

BLEMISHED EYE WITNESS ACCOUNT

139. Similarly there are *inter se* contradictions *inter se* the testifications of PW-6 and PW-9, with respect to the place of firing as well as the persons who had taken the deceased to the hospital. PW-9 in his deposition stated that the firing took place between GT road and the place where he and PW-6 were standing, whereas, PW-6 in his deposition states, that the firing took place between the tube well and the place, where he and PW-9 were standing. As per the site plan, both the places i.e. the GT road and the tube well are at different directions. Therefore, the said gross *inter se* distinctivity vis-a-vis the crime site(s) referred by the said witnesses, but creates a doubt about the truth of the statements made by PW-6 and by PW-9, rather in respect of the specific spot, where the crime event took place. Resultantly, therebys the testifications made by the said witnesses, thus as purported eye witness to the occurrence also loose their respective evidentiary solemnity. Moreover, when PW-9 in his deposition speaks that he along with PW-6 had taken the deceased to the hospital in the car, but when PW-6 in his deposition does not speak about his accompanying PW-9, when the latter took the deceased to the hospital, as such, the testimonies of these witnesses, also loose their respective evidentiary vigor. Depositions of PW-6 and PW-9 are extracted hereinafter.

Deposition of PW-6

"xxxn Sh. Anil Kaushik, counsel for accused Sabdil and Jasbir Singh.

xxx

Ranjit Singh had passed on his motorcycle near me and had stopped his motorcycle at a distance of about 1 killa towards the tubewell. Ranjit Singh had handed over tea to a Bihari labourer who was working with Joginder Singh. *I do not know on how much area of the land saplings of paddy had been planted. CBI officer had read over my statement. I had disclosed this fact to the CBI officer in my statement that the assailants had attacked Ranjit Singh after he had served tea and when he was sitting on the motorcycle. (Confronted with statement Ex.D1 where this fact is not recorded that the assailants had attacked Ranjit Singh after Ranjit Singh had served tea to the labourers).*

xxx

Ranjit Singh had passed on his motorcycle for serving tea to the labourers when myself and Joginder Singh were conversing with each other. Ranjit Singh was not fired while he was on his way on his motorcycle to serve tea to the labourers. I had not disclosed to the CBI about the physical structure and facial features of the assailants. I was called by the CBI and questioned after about 3 years of the occurrence. I do not remember the month and date, however, it was in the year 2005 that I was called by CBI for interrogation. It was summer season. I did not disclose to the CBI that I accompanied by Ch. Joginder Singh was asked by the State police to reach Kurukshetra Jail for the identification of the assailants and there had come a person on a jeep on which the words "Tehsildar" were scribed etc.

xxx

The distance between me and Ranjit Singh was around 35-40 yards at the time of firing. I was standing nearby the same place at the time of incident, where I had a talk with Joginder Singh. I and Joginder Singh were standing nearby to each other when the assailants attacked Ranjit Singh. ***I did not accompany Joginder Singh and my uncle's son in the car to the hospital with injured Ranjit Singh. However, I had reached the hospital after 10-15 minutes of the occurrence.*** *I and Rajbir had lifted injured Ranjit Singh and had put him in the car. The clothes which Ranjit Singh was wearing had got blood stained. Police*

officials did not meet me on that day in the hospital. I had left the hospital after staying there for 5-7 minutes. I had not gone to the hospital on the next day. I had not gone to the police station to lodge the report. The distance between the place of occurrence and police station is 5-6 K.Ms. Pipli Police Station does not fall in the way from the place of occurrence to the hospital, however, the police station Pipli is very close to the road from which one has to pass. The Pipli police station is at a distance of just 1 Killa from the place from where one has to pass. Even on my way back from the hospital to the village, I did not go to the police station. I had no talk with Joginder Singh after 1-2 days of the occurrence regarding lodging of the report with the police about the incident".

Deposition of PW-9

"xxx

On 10.7.20202, at about 5.00/5.15 p.m., I was present in my fields. Sukhdev son of Inder Singh was with me. I was irrigating my fields. I and Sukhdev started conversing about the shortage of electric supply. My son Ranjit Singh came to the fields on a motorcycle. He had brought tea for the labourers. After parking the motorcycle at a distance of about 20 yards before the place where we were standing, Ranjit Singh crossed us and left towards the fields to deliver the tea for the labourers. After delivering the tea to the labourers, he returned to the place where his motorcycle was parked, in the meantime, two persons came out from the sugarcane fields from one side and two other persons from the other side from the sugarcane fields. ***All those persons were armed with pistols and revolvers and fired at Ranjit Singh. On hearing the gun shots, I and Sukhdev Singh started chasing them and raised a Lalkara. However, those persons managed to flee on a white coloured car which was parked near the G.T. Road.*** *Two of those four persons were wearing jeans and shirts and the other two were in the kurta payzama. Those persons left towards Pipli. We (I and Sukhdev) sent a person to my home on a bicycle to bring a car. Rajbir came with a car.* ***After putting Ranjit Singh in that car, I and Sukhdev left for Civil Hospital, Kuruskhetra.***

> ***The car was driven by Rajbir. Ranjit Singh was taken to the emergency of the hospital where the doctor declare him dead.*** *Many villagers including Gurpal reached the hospital. Police officials also visited the hospital and recorded my statement.*"

140. PW-9 is the informant, and, who but obviously made a signatured statement to the police officer, which resulted in the drawing of FIR (Ex.PW-10/A). However, the most closest reading of the said statement, does not reveal *qua* any disclosures becoming borne therein vis-a-vis the names of the accused. Pointedly also there is no attribution of incrimination to accused No.1 nor also *qua* the principals in the first degree nor also he echoes therein about his witnessing the principals in the first degree to commit the crime event at the crime site. Therefore, the attributions of criminality as made by PW-9 in his examination-in-chief, is but naturally a gross embellishment and improvement from his previously made signatured statement, thereby the incriminatory testification as carried in the examination-in-chief, of PW-9 rather is not confidence inspiring, and, is required to be rejected.

141. Though in his previously made signatured statement in writing, he has stated that he can identify the accused if produced before him, but strangely he has not thereins revealed their key characteristic/features, wherebys, in the validly conducted test identification parade, he would become well facilitated to thereins, thus identify the accused, nor the first time identification by him, in Court, of the principals in the first degree and of the other co-accused, is an unblemished identification. Contrarily, the said first time identification, in Court, by PW-9 of the accused concerned, is but a tainted identification.

REASONS FOR DISBELIEVING THE EVIDENTIARY VIGOR OF PW-31

142. The prosecution, for sustaining the verdict of conviction and the consequent thereto sentence(s) of imprisonment, as became imposed upon each of the accused, has relied upon the testification of PW-31.

143. For the reasons to be assigned hereinafter this Court refrains, from assigning any creditworthiness to the testification of PW-31. Initially for the reason that though he is a witness in respect of the controversy hatched on 16.06.2002 at the *gufa* of the Dera, wherebys directions were meted by accused No.1, to eliminate the deceased. Nonetheless, his previously made statement in writing, was so made in the year 2006, thus it was made after an immense gap of almost 4½ years happening since the taking place of the inculpatory incident, at the crime site concerned. *Prima facie* therebys the said belated delay naturally casts a deep dent vis-a-vis the efficacy of his previously made statement in writing to the police officer.

144. Be that as it may, when PW-31 initially stepped into the witness box in the year 2012, thereins the said witness in his examination-in-chief, thus made the hereinafter extracted statement, wherebys, rather he completely resiled from his previously made statement in writing. However, upon, the relevant permission to cross-examine him, thus becoming granted, to the Public Prosecutor concerned, yet the Public Prosecutor in the ordeal of his making a grilling cross-examination upon PW-31, rather completely failed to unearth from him any incriminatory echoings vis-a-vis his incriminatory suggestions, wherefroms it could be gathered, that his resiling from his previous statement in writing, rather was uncreditworthy. Consequently, the resiling by PW-31 from his previously made statement in writing to the police, whereins, he attributed an incriminatory role to the accused, thus is deemed to be a validly made renegings,

and/or, it can be concluded that the previously made statement to the police officer by PW-31, whereins, he attributed an incriminatory role to the accused, thus was initially tainted but on the hereinafter premises:-

a) It was belatedly recorded since the happening of the crime event at the crime site, inasmuch as, the said statement being made almost after 4½ years elapsing since the taking place of the crime event at the crime site.

b) The Public Prosecutor concerned, even after the said witness resiling from his previously made statement in writing, rather failing to, during the course of his making a rigorous cross-examination upon PW-31, thus make any incriminatory elicitations from him, thus to his incriminatory suggestions as became meted by him to the said witness.

c) Nonetheless PW-31 re-stepped into the witness box in the year 2018. PW-31 during the course of his examination-in-chief yet proceeded to assign an incriminatory role to the accused persons, it is but on the said made incriminatory echoings made by PW-31, rather in his examination-in-chief, that the prosecution is attempting to erect a pedestal for therebys its sustaining the charges drawn against the accused persons.

145. However, the said made incriminations by PW-31 against the accused concerned, in his testification, as occurs in his examination-in-chief, which became recorded in the year 2018, is also not liable for any creditworthiness becoming assigned thereto, thus for the following reasons:-

a) Firstly there are rife *inter se* contradictions *inter se* the testification made by the said witness in the year 2012 and in the year 2018, thus *per se* therebys the incriminatory echoings made by PW-31

in his deposition recorded in the year 2018, rather becomes enveloped in a shroud of doubt.

b) The said shroud of doubt enveloping the statement made by the said witness in the year 2018 before the trial Judge concerned, becomes aggravated, from the said witness moving application (Mark PW-31/Def.4) on 29.03.2007, before the Special Judicial Magistrate, CBI Ambala, contents whereof are extracted hereinafter, wherebys, he sought leave to make his statement under Section 164 Cr.P.C., whereins he intended to explicitly express that he has been coerced by the CBI to make a statement against accused No.1.

"1. That the applicant is a staunch devotee of Dera Sacha Sauda, Sirsa.

2. That no illegal or immoral things of criminal acts are committed in the Dera Sacha Sauda Sirsa and this organization is very pious, social and religious institution, fully devoted to the service of mankind.

3. That on some false complaints/complaint, the CBI is investigating the cases registered vide FIR No.RC-5(S) 2003-SCB/CHG, P.S. Chg, RC-8(S)-2003-SCB/CHG, RC-9(S)-2003-SCB/CHG and RC-10(S)-2003-SCB/CHG.

4. That the applicant was called and is being called by the Investigating Officer of the above noted cases and every time the applicant is intimated and pressurized to make an adverse statement in order to falsely implicate the Dera Chief, Sant Gurmit Ram Rahim Singh Ji Maharaj and other devotees of the Dera, for which the applicant was never ready and is not ready to make any such false statement.

5. That the Investigating Officers of these cases, are compelling the applicant to make the statements against the Dera Chief and other devotees of the Dera, in connection with Ranjit Singh Murder case, which the applicant does not want to do so and the CBI has threatened

the applicant that if he does not do so, he would also be implicated in the above noted case/ cases.

6. That neither the Dera Chief, nor any other Members of the Managing committee of the Dera ever threatened to murder Ranjit Singh son of Joginder Singh of village Khanpur Kolian, District Kurukshetra, nor there had been any such motive to do so.

7. That the applicant has not made any statement in connection with the murder of above said Ranjit Singh or in connection with any other above said cases, under investigation of the CBI. The applicant is not aware of any circumstances under which the said Ranjit Singh was allegedly murdered.

8. That now since the CBI is pressurizing the applicant to make a statement against Dera chief and others, in connection with the above noted criminal cases hence, the applicant wants to make a statement before this Honourable Court, so that the CBI does not harass the applicant any more.

It is, therefore, prayed that the statement of the applicant may be recorded to the above noted facts, in the interest of justice."

146. The making of the said application (Mark PW-31/Def.4) has been proven by PW-31. The said application is drawn by Fakir Chand Aggarwal, Advocate (since deceased) but his clerk DW-32 was examined, and, who during the course of his testification, identified the signatures borne thereons, of the said counsel, and which he stated to be existing at point 'B', and also proved the existence of the signatures of PW-31, at point 'A'. The said witness also testified that affidavit (Ex.DW-14/2) was notarized by Roshan Lal Aggarwal, who also stepped into the witness box as DW-14, and, testified the fact of his attesting the said affidavit in the presence of Khatta Singh, and, that too after his verifying the identity of PW-31. Furthermore, since the occurrence of signatures of Khatta Singh, respectively at point 'A', point 'B', and, point 'C' of (Mark PW-31/Def.5), rather remains undisputed by PW-31, thus upon his stepping into

the witness box as PW-31, in the year 2012. Consequently, therebys the allegations made thereins about the CBI coercing him to make a statement against the accused but acquires an *aura* of truth.

147. In sequel, with Khatta Singh, making his previous statement, with almost 4½ years elapsing since the happening of crime event, and, his ultimately effectively resiling therefroms, on his stepping into the witness box in the year 2012, thus begets an able conclusion that the said made testification on oath rather is to be assigned credence. The compelling reason for doing so arises, from the factum that the application (supra), has been cogently proven, thus whereins, echoings occur that the CBI was coercing Khatta Singh. The said fact is also cogently proven by an application (Ex.PW-31/Def.3), which is a letter addressed through registered post, to Shri R.K. Saini, Addl. Sessions Judge, Ambala, District Court, Ambala (Haryana), wherein, he denied the factum of his making any previously made statement in writing, before the police officer concerned, wherefroms for reasons (supra) he rather made credible renegings. The contents of Ex.PW-31/Def.3 become extracted hereinafter.

> *"To,*
>
> *R.K. Saini*
>
> *Addl. Sessions Judge, Ambala*
>
> *District Court, Ambala (Haryana)*
>
> *Sir,*
>
> *I am Khatta Singh son of Sh. Jhanda Singh resident of Shah Satnam Ji Nagar, Sirsa, District Sirsa, Haryana. I and my family are followers of Dera Sucha Sauda, Sirsa since the last 40 years. I through this letter want to bring in your knowledge that there is case No. R.C.8 is pending against Dera Sucha Sauda, Sirsa and C.B.I. is investigating the same since last 4 years. I came to know that in last few days a challan has been submitted before Ms. Ritu Garg, C.B.I. Court, Ambala, Haryana, in which C.B.I. made me witness and produced my*

statement of 161 before the Court. C.B.I. called in this case for investigation but I have not given any statement under 161 against Sant of Dera Sucha Sauda, Gurmeet Ram Rahim Singh or any other disciple. C.B.I. officials wrote this statement. I alongwith my counsel appeared before the Court of Smt. Ritu Garg for closing my statement under 161 and also furnished an affidavit in the court, but Hon'ble Court has not recorded my statement. Hon'ble Court had dismissed my application. It is requested that my statement be recorded before the court so I may tell the truth to the court.

Thanking You"

148. Preeminently the application made by Khatta Singh for his being permitted to record his statement under Section 164 Cr.P.C. rather was dismissed vide order dated 30.03.2007 (Ex.PW-31/Def.5) but on the ground, that the trial has been committed to the learned Special Judge, CBI, on 29.03.2007. The said dismissal, led PW-31 to file a revision petition bearing No.06/2007, on 20.04.2017 (Ex.PW-31/Def.6) before the learned Addl. Sessions Judge-cum-Special Judge, CBI, Ambala. The said revision petition stood dismissed through an order made, on 17.08.2007 (Ex.DW-16/3) by the Revisional Court. The CBI did not then raise any contention with respect to Khatta Singh making a forged application for therebys his making a statement under Section 164 Cr.P.C., nor any communication was then made before the learned Additional Sessions Judge-cum-CBI, Ambala, that the signatures thereons of Khatta Singh rather were obtained on blank papers. Therebys the contents of application (Mark PW-31/Def.4) thus for the above stated reasons but are truthful. Therefore, this Court is fortifyingly led to make a conclusion, that the resilings made by PW-31, thus from his previously made statement in writing, was but a truthful resiling therefroms, rather upon his stepping into the witness box in the year 2012, before the learned trial Court concerned.

149. In addition, PW-31 filed a complaint on 26.04.2007 (Ex.PW-31/Def.1) to the Superintendent of Police, Sirsa, on the ground that CBI is coercing him, to make a statement against accused No.1, contents whereof become extracted hereinafter. Though the DSP on the said complaint submitted his report (Ex.PW-31/Def.2), with speakings therein, that the complainant has requested for protection from CBI and from the Dera enemies, report whereof, also becomes extracted hereinafter. Therefore, if PW-31 has made the said complaint, thus with the above allegations therein, thereby it also appears that there was immensity of truth in the speakings made thereins, by PW-31, *qua* his being constantly forced by the CBI to make an incriminatory statement against the accused. As such, any reason whatsoever assigned by the prosecution or by the CBI, that PW-31, earlier theretos, thus had come under some active threats from accused No.1, rather becomes ridden with a vice of prevarication. Moreover, when PW-31 while stepping into the witness box in the year 2018, rather made incriminatory echoings against the accused. Resultantly, when therebys he contradicted his earlier made statement in the year 2012, before the learned trial Judge concerned, whereins, he resiled from his previously made statement, and, despite his becoming rigorously cross-examined by the Public Prosecutor, yet the Public Prosecutor being completely unsuccessful to unearth from him any incriminatory echoings. Therefore, the apt conclusion as becomes fostered therefroms, is that, the inculpatory echoings made by PW-31 in his examination-in-chief, upon his stepping into the witness box in the year 2018, rather being unworthy of any credence being assigned theretos.

150. Preeminently also a reading of the complaint (Ex.PW-31/Def.1) unearths, that at that stage PW-31, did not nurse any apprehension to his life from accused No.1, rather on a closest reading of the said letter, it contrarily

emerges that he was infact facing a threat from the CBI besides from the members of the Tarksheel society. In nutshell therebys even the statement made in the year 2007 by PW-31, wherefrom he made worthy regenings, thus was a sequel of coercion and threats becoming exerted upon him by the investigation officer of the CBI. Moreover, therebys also the testification made by PW-31 before the learned trial Court, in the year 2018, was but a sequel of his becoming actively coerced to make it before the learned trial Court. In aftermath the said made statement, is the sequel of ill thinkings and ill engineerings thereofs, thus at the instance of the CBI, and, naturally also at the instance of PW-31.

Complaint (Ex.PW-31/Def.1)

"To

The Superintendent of Police,
Sirsa.

Sub:- Regarding providing of Security due to harassment by the officials.

Sir,

It is submitted that I and my family are follower of Dera Sacha Sauda since past 40 years. The applicant has been called by the CBI officials many a times to its office in Chandigarh for inquiring into the cases related to the Dera Sacha Sauda. Applicants has informed about the many work being done in Dera for the welfare of the people and here is no question of any many illegal works being performed there. Here, the welfare of humanity is thought and name of 'Ram' is related. CBI people have recorded my and of other followers statements u/s 161 C.r.P.C. When applicant came to know about these statements, then the applicant submitted an application and affidavit in the court of CBI Magistrate Ritu Garg that applicant and other followers have not given any statements in the courts and my statement u/s 164 Cr.P.C be recorded, Applicant has also written letters to the Hon'ble Chief Justice of the Punjab & Haryana High Court, regarding this issue.

Now, CBI officials are again and again threatening me over the phone that why he I have given an affidavit in the court against my

statement u/s 161 C.r.P.C, if I don't give statement as per our wish against Dera chief and its followers then we will pick you up and will put you in jail in false case and will also file false case against your family. My and my family fear for our life.

Therefore, you are requested that applicant be given security and justice. It will be your kindness.

Thanking you."

Report (Ex.PW-31/Def.2)

"From

Deputy Superintendent of Police
Sirsa.

To

Superintendent of Police.

Ref:- 198-C-D5PHQ SRS Dated 15.05.2007

Sub:- Investigation report in case no. 464-PU. dated 09.05.2007. regarding Khatta Singh S/o Jhanda Singh R/o Shah Satnam Nagar, Sirsa.

Sir,

Investigation in the above-said complaint, complainant Khatta Singh was involved in the investigation and statement was recorded, which is enclosed herewith.

Complainant has got recorded his statement that he is follower of Dera Sacha Sauda. that before also CBI has questioned him in the Dera Sacha Sauda case. That I had given statement in favour of Dera Sacha Sauda Guru Ram Rahim Ji, that nothing wrong is going on at the Dera. That now the CBI team is by calling him again and again, asking him to change his statement. That Today I state that Dera Sacha Sauda is a Social Organization. There nothing wrong is done. I hold Guruji in high esteem. 1 fear for my life from CBI as well as Dera Sacha Sauda enemies. They may inflict life or monetary loss on me. I may be given protection.

After investigation it has been found that the complainant Khatta Singh has been found to be follower of Dera Sacha Sauda. CBI Investigation is going on in case. Complainant has requested for protection from CBI and Dera enemies.

Report is submitted"

151. Be that as it may reiteratedly PW-31 upon his re-stepping into the witness box before the learned trial Court concerned, in the year 2018, thus in his examination-in-chief, rather he made an incriminatory statement against the accused, wherebys he contradicted his previously made testification before the learned trial Court in the year 2012. However, for the reasons to be assigned hereinafter the said made testification on oath by PW-31, before the learned trial Court in the year 2018 rather is bereft of any creditworthiness.

ADDITIONAL REASONS FOR DISBELIEVING THE EVIDENTIARY WORTH OF THE TESTIFICATION MADE BY PW-31 BEFORE THE TRIAL COURT IN THE YEAR 2018

152. Primarily for the reason that when for the reasons (supra) he made credible resilings from his previously made statement in writing to the police officer, during the course of his stepping into the witness box in the year 2012. Resultantly, if to the contradictory therefroms incriminatory testifications as made by PW-31 before the trial Court, in the year 2018, rather any aura of creditworthiness, thus becomes assigned. Consequently, therebys the statutory mandate as occurs in Section 311 of the Cr.P.C., rather would *prima faice* become breached, provisions whereof becomes extracted hereinafter.

> "***311. Power to summon material witness, or examine person present***. *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*"

153. The further striking reason for making the said conclusion is hereinafter:

a) The exculpatory testification rendered on oath earlier by the prosecution witnesses concerned, became ill attempted to become overcome by the prosecution, through its subsequently through employing coercion upon him, rather enroping the prosecution witness (supra), to yet make an incriminatory statement against the accused. Resultantly but therebys naturally the earlier rendered tesification on oath by the prosecution witness concerned, rather would ill become completely effaced or obliterated. The said manner of the prosecution attempting to efface or obliterate the exculpatory effect of the previously made statement on oath by PW-31, whereins, he well resiled from his previously made statement in writing, is unknown to law, and, also is a gross departure therefroms, and, also rather did only tentatively, *prima facie* attract both against the investigating officer concerned, besides against PW-31, the offence of perjury, as arose from his previously rendered testification on oath in the year 2012, thus exculpating the guilt of the accused, whereas, subsequently his inculpating the accused.

b) That therebys the prosecution has but naturally committed a blatant breach to the norms relating to the gathering of evidence for proving the charge, inasmuch as, therebys it has *prima facie* on account of malice and vendetta, which has but evidently surfaced, as such, from the above gross misdemeanors, rather attempted to somehow or the other, through employing coercion vis-a-vis PW-31, rather enrope accused No.1 in the charged offence. The above but naturally is required to be discountenanced and also requires becoming deprecated in the strongest words.

REASONS FOR DISBELIEVING PW-31 THAT HIS EARLIER MADE TESTIFICATION ON OATH IN THE YEAR 2012 WAS A RESULT OF COERCION BECOMING EXERTED UPON HIM BY ACCUSED NO.1

154. Any effort on the part of the prosecution to contend, that the previously made testification, on oath by PW-31 before the learned trial Judge concerned, in the year 2012, was a sequel of compulsion becoming exerted upon him, thus by accused No.1, also cannot be a tenable ground, rather for post 2012, the prosecution choosing to re-draw the statement of PW-31 and subsequently, the prosecution leading PW-31 rather into the witness box, thus for proving the said statement of PW-31, thus with incriminatory echoings thereins against the accused.

155. The reason for making the above conclusion becomes bolstered, from the factum, that if there was any threat or compulsion etching in the mind of PW-31 and as became purportedly engendered at the instance of PW-31, thereupon when the Public Prosecutor, during the ordeal of subjecting PW-31 to cross-examination, thus had all the opportunities to put suggestions to PW-31, rather to the effect, that in his resiling from his previously made statement, in writing, he had faced some effective threats or coercions from accused No.1. However, despite the said lengthy cross-examination becoming conducted upon PW-31 in the year 2012, yet the learned Public Prosecutor did not take to make the said suggestions to PW-31. The omissions to make such suggestions by the Public Prosecutor to PW-31 while his making cross-examination upon him, does lead to a concomitant inference, that then the prosecution had abandoned or given up the said pertinent fact rather devolving upon the worthiness of the renegings made by PW-31, from his previously made statement in writing, inasmuch as, the said renegings, thus being a sequel of some effective compulsions or threats becoming meted to him by accused No.1.

156. In consequence, there was a complete bar working against PW-31, but post his making an exculpatory statement on oath rather in the year 2018, to thus make an inculpatory statement against the accused. The said inculpatory statement made on oath by PW-31 in the year 2018 before the learned trial Judge concerned, but betrays an ill endeavour on the part of the prosecution, thus to overcome the worthy resiling by PW-31 from his previously made statement, in writing, upon his making a rendering exculpatory testification on oath, in the year 2012 before the learned trial Judge concerned. Reiteratedly the said testification on oath, but did bind PW-31, and in case he resiled therefrom, thereupon *prima facie* tentatively he was liable to be prosecuted for perjury.

157. However, yet the prosecution makes blatant departures from the well accepted norm (supra), through arguing that any subsequent inculpatory testification rendered on oath by the prosecution witness, rather is to be assigned evidentiary vigor. The above argument (supra) is rudderless, especially when during the course of the learned Public Prosecutor making a scathing cross-examination, thus upon the prosecution witness concerned, rather upon the latter earlier resiling from his previously made statement in writing, rather then the learned Public Prosecutor, thus but obviously had availed an abundant fullest opportunity to piercingly cross-examine the prosecution witness concerned. However, despite the fullest availment of the said opportunity, yet the Public Prosecutor evidently failing to make any suggestions to PW-31, while subjecting him to a grilling cross-examinations, but devolving upon his resilings from his previously made statement in writing, thus being a sequel of his being actively coerced or threatened by accused No.1. Resultantly, reiteratedly therebys this Court does ably conclude that the said suggestions became abandoned. Therefore, the said abandonment does but undo the effect, if any, of the

prosecution subsequently taking to enrope PW-31, to step into the witness box in the year 2018. In addition, the said stepping into the witness box of PW-31 in the year 2018, whereins, he contradicted his earlier made statement in the yer 2012, before the trial Court, besides thereins his making inculpatory echoings against the accused, but naturally is a portrayal of the earlier made investigations by the CBI rather being sketchy investigations, becoming made into the crime event, and, which rather became ill attempted to become undone, through ill attempts becoming made by the prosecution, to make PW-31 re-step into the witness box in the year 2018.

158. In case this Court condones or countenances the above ill endeavours of the prosecution, thereupon the investigating agency would untenably become assigned a complete latitude to, subsequent to the rendition of exculpatory testifications on oath by the prosecution witnesses concerned, rather merely for undoing the exculpatory effect of the said earlier made testifications on oath, rather take to make ill endeavours to make the said witnesses to subsequently contradict or resile on oath, from his previously made exculpatory echoings on oath.

159. Furthermore, therebys even the accused may in such an event become led to move an application for the recalling of the prosecution witness concerned, who in his respectively rendered examination-in-chief, and, in his cross-examination but consistently makes inculpatory speakings against the accused. Necessarily the above situation is to be avoided and *prima facie* was to be avoided in the instant case also. Moreover, *prima facie* an application under Section 311 of the Cr.P.C., though may be moved even post, the completest renditions of testification on oath by the prosecution witness concerned. In addition, *prima facie* only strictly in terms of the provisions cast in Section 311

of the Cr.P.C. Moreover, the spirit of the said provisions, is to make an empowerment to the Court, to summon any person or to re-summon any witness, who has already testified, but *prima facie* only respect of some facts which remain untestified by him, and, which subsequently emerge, and, which are required to be introduced into evidence through apposite recallings being made. *Prima facie* therebys the completely earlier rendered testification on oath by the prosecution witness, not amenable to be resiled from subsequently, through the re-stepping into the witness box of any prosecution witness, excepting pointedly in respect of facts other than the ones which became earlier spoken by him in his earlier testification. Enigmatically *prima facie* in the instant case, the prosecution endeavoured to lead into the witness box PW-31, despite his earlier thereto making on oath, an exculpatory testification, besides despite no additional fact which earlier remained omitted to be spoken by him rather coming to the fore.

COMPLETE FALSITY IN THE ALLEGATIONS MADE BY PW-31 THAT HIS EARLIER MADE STATEMENT ON OATH IN THE YEAR 2012 WAS A SEQUEL OF SOME COMPULSION OR COERCION

160. Furthermore, momentum to the factum of PW-31, making well resilings from his previously made statement in the year 2012, is reiteratedly garnered, from a letter addressed to the Superintendent of Police, Sirsa, about torture becoming inflicted upon him by the investigating officer of the CBI, and, also becomes bolstered, from his filing application (Mark PW-31/Def.4), before the Special Judicial Magistrate, CBI Ambala, whereins, he asked for his statement under Section 164 Cr.P.C. becoming recorded, so that thereins, he makes speakings about effective coercions and compulsions becoming exerted, upon, him by the investigating officer of the CBI. The said application was dismissed on 29.03.2007, thus merely on the ground that the case stood committed to the learned Special Judge, CBI (Haryana), Ambala, and the

revision petition bearing No.06/2007 as became filed thereagainst, on 20.04.2017 (Ex.PW-31/Def.6), before the learned Addl. Sessions Judge-cum-Special Judge, CBI, Ambala, also became dismissed by the learned Addl. Sessions Judge, through an order passed on 17.08.2007, relevant paragraph whereof becomes extracted hereinafter.

> *"6. In Jogender Nahak and others v. State of Orissa and others, 1999 Cri.L.J. 3976, the Hon'ble Apex Court held as under:-*
>
> > *"Section 164(1) cannot be interpreted as empowering a Magistrate to record the statement of a person unsponsored by the investigating agency. The fact that there may be instances when the investigating officer would be disinclined to record statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to question whether any intending witness can straightway approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law, e.g. the accused can cite them as defence witnesses during trial or the Court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers) there is no special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the Court with a request to record their statement under Section 164 of the Code. On the other hand, if door is opened to such persons to get in and if the Magistrate are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate Courts for the purpose of creating record in advance for the purpose of helping the culprits."*
>
> *7. The ratio of law laid down in the abovesaid authoritative pronouncement, in my opinion, is squarely applicable to the case in hand. Thus, considering from any angle, the application moved by the revisionist Khatta Singh seeking recording of his statement under section 164 CPC, unsponsored by the investigating agency, was not at all maintainable and was therefore, rightly dismissed by the learned Special Judicial Magistrate (CBI), Ambala vide impugned order. In the circumstances, the present revision petition is devoid of merits and the same stands dismissed. The file be consigned to records, after due compliance, if any."*

161. Nonetheless, the effect of this Court, thus concluding that the same was signatured by the counsel for PW-31, and, also the effect of this Court hereinabove concluding that application (supra), became signed by PW-31, and, that the same was not obtained on blank papers and besides the effect of Ex.PW-31/Def.5, whereins, occur speakings of torture becoming inflicted upon PW-31, is that, the prosecution creating purportedly through PW-31, rather the latters invented and concocted previously made statement in writing in the year 2007. Resultantly only on account of the said constraints becoming etched in the mind of PW-31, that PW-31, rather he omitted to adhere to the said previously made statement in writing, upon his making an exculpatory testification on oath in the year 2012. Therefore, therebys the prosecution since the year 2012, upto the year 2018, until it succeeded, through deploying coercion upon PW-31, in the latter being ensured to make a previously made inculpatory statement, in writing, to the CBI, besides even but post his making an exculpatory testification on oath before the learned trial Judge concerned, rather successively did ill indulge in creating through deployments of ill stratagems, thus inculpatory evidence against the accused. The said ill employments by the prosecution, thus are deprecated, and as such therebys PW-31, cannot be construed to be making an umblemished or untainted statement, before the learned trial Judge concerned, in the year 2018, whereins, he made echoings about the incriminatory role of the accused, nor the prosecution can argue, that the said made statement, rather enjoins credence being meted thereto nor the same underwhelms the exculpatory testification rendered on oath in the year 2012 by PW-31, before the learned trial Judge.

162. Be that as it may, it appears that PW-31 moved an application under Section 311 Cr.P.C., before the learned trial Judge concerned, but the said

application became rejected through an order made on 25.09.2017, thus with the reasons which become extracted hereinafter.

> "13…. *At the cost of repetition, it is also a matter of record that Khatta Singh appeared as prosecution witness on 11.02.2012 and was examined as PW-31 and he did not support the prosecution or in other words, he turned hostile and was cross-examined by learned SPPs for CBI with the leave of the court and now that very witness i.e. applicant-Khatta Singh has filed instant application after more than 5 years of recording his testimony in the court on the ground that at the time of recording of his evidence in the year 2012, he was stopped from deposing truthfully due to fearful atmosphere created by accused Baba Gurmeet Ram Rahim Singh. Needless to mention that it is no where mentioned in the application that as to when he was threatened by the accused or at the behest of the accused. Nor there is any averment regarding lodging of any report with any authority with respect to alleged threats extended to the applicant. No doubt there is some reference/mention of fearful environment or threats allegedly extended to him in the statements of applicant-Khatta Singh recorded under section 161 Cr.P.C. as well as under section 164 Cr.P.C. However, applicant-Khatta Singh remained silent for a period of more than 5 years. Even otherwise, aspect of expeditious trial would be natural casualty if the application at hand is allowed, especially when instant case is pending adjudication for the last more than 10 years. Moreover, final arguments have already started in this matter. There can be no doubt about the ratio of law laid down in the authorities cited by learned counsel for applicant, however the same are quite distinguishable on facts obtaining in the instant case and cannot be made applicable to accept the application at hand. In view of aforesaid discussion, this court is of the considered opinion that application at hands is devoid of merits and accordingly, the same is hereby dismissed.*"

163. However, the aggrieved therefrom PW-31 preferred a criminal revision petition bearing No.CRR-3592-2017 before this Court, and, the said petition

became allowed, through a verdict made thereons, on 23.04.2018, relevant paragraph whereof becomes extracted hereinafter.

> *"…. The Court, relying upon the case of Zahira Habibulla H. Sheikh (supra), had observed that the object of justice delivery system is to mete out justice and to convict the guilty and protect the innocent. The trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent and punish the guilty. The Court had further observed that the witnesses are the eyes and ears of justice and if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or under threat or ignorance or some corrupt collusion. The said judgment, on principles, would be applicable to the facts of the present case as in the present case as well, the petitioner had no opportunity to speak the truth because of the circumstances and the position, in which he was put being beyond his control to speak the truth.*
>
> *The assertion of the counsel for the respondent-accused that prejudice would be caused to the accused as they have disclosed the defence, suffice it to say that they would have ample opportunities to cross-examine the recalled witness. It would not be out of way to mention here that the earlier statements made by the petitioner would still be available on the record and it would be open to the trial Court to decide the case on the basis of evidence already on record as well as the additional evidence, which would be recorded on re-examination of the petitioner.*
>
> *The trial Court, while passing the impugned orders, appears to have been over influenced by the facts that the trial is old and by allowing the present application, it would further delay the trial. There can be no doubt that the expeditious trial is the right of each person who is aggrieved or is an accused and who is interested in the case but merely because of the delay, justice should not be made the casualty. The*

primary aim and object of the Court is to do justice which is to punish the guilty and to protect the innocent, which ultimately depends upon the evidence.

On considering the facts and circumstances of the present case, this Court is of the opinion that the evidence of the petitioner is essential for the just decision of the case and, therefore, the application deserves to be allowed for the reasons mentioned therein as the truth alone should prevail.

In view of the above, these revisions petitions are allowed. Orders dated 25.09.2017 and 06.01.2018 passed by the Special Judge (CBI) Haryana at Panchkula, are hereby set aside. Applications filed by the petitioner-Khatta Singh under Section 311 Cr.P.C. are allowed."

However, with the observations therein, that the earlier made statements by PW-31, would still be available on the record, and it would be open to the trial Judge to decide the case on the basis of evidence already on record as well as on the additional evidence which would be recorded on the re-examination of PW-31.

164. The said order caused grievance to accused No.1, and, which led him to institute SLP (Crl.) No.3931-2018, before the Hon'ble Apex Court. On the said SLP the Hon'ble Apex Court, through an order made thereons, on 04.05.2018, passed the hereinafter extracted direction.

"We do not find any reason to entertain these Special Leave Petitions, which are accordingly, dismissed.

However, we clarify that the trial court shall not be influenced by any of the observations made the impugned order."

165. A reading of the said passed directions makes it abundantly clear, that the trial Court, was directed to remain uninfluenced by the observations made in the impugned order, as became passed by this Court in criminal revision bearing CRR-3592-2017, and, which became impugned before the Hon'ble Apex Court.

In consequence, thereby this Court is not precluded from making any deductions relating to the credibility of depositions of the said witnesses. The reason for not assigning creditworthiness to the deposition of PW-31, but *in extenso* are delineated hereinabove and also hereinafter.

COGENT EVIDENCE BETRAYING THAT PW-31 HAD BEEN REPEATEDLY COMPELLED AND COERCED BY THE INVESTIGATING OFFICER OF THE CBI TO MAKE INCULPATORY STATEMENT/ TESTIFICATION AGAINST THE ACCUSED

166. Reiteratedly evidence vis-a-vis the said witness becoming coerced and compelled rather by the CBI to make an incriminatory statement against the accused, does imminently surges forth, from: a) his making application (Mark PW-31/Def.4) whereby he intended to record his statement under Section 164 Cr.P.C., whereins, he intended to make speakings against the CBI, vis-a-vis, the said agency coercing and compelling him to make a statement against the accused, and b) also from his making a complaint to the Superintendent of Police, Sirsa (Ex.PW-31/Def.1) on account of his being threatened by the investigating officer of the CBI, thus to make a statement against accused No.1. Since as stated (supra), there is no denial to the making of such an application by PW-31. However, when the said denial was made on the ground, that the CBI had already recorded PW-31's second statement under Section 161 on 21.06.2007 and, under Section 164 Cr.P.C., on 22.06.2007, besides when the declining of the relief on the said application to PW-31 by the learned Special Judicial Magistrate, Ambala on 30.03.2007, was merely rested on the premise, that the case has been committed to the Sessions Court concerned, therebys when yet PW-31, moved a revision petition against the said order, before the learned Revisional Court, but yet when the said revision petition was *subjudice* and rather without the leave of the learned Revisional Court, yet the CBI

recorded the statement of PW-31 on 21.06.2007, under Section 161 Cr.P.C., and under Section 164 Cr.P.C. on 22.06.2007. However, as stated (supra), relief on the said application became denied to PW-31, and, also the Revisional Court, on a revision petition preferred thereagainst also declined relief to PW-31.

167. Nonetheless, the moot point which emerges, is that, the denial of relief by the learned Magistrate concerned, to PW-31 became rested on the premise, that the case has already been committed to the Court of Sessions. Resultantly, when the said recordings of such statements by the CBI of PW-31 thus were done even when the revision petition was *subjudice,* thereby the said statements are tainted statements, and/or, are obtained by suppression of the said fact from the learned Revisional Court. Resultantly, the said statements are ill made, and/or are deemed to be made on effective coercions and compulsions becoming exercised upon PW-31. Therefore, when resilings therefroms as stated (supra) reiteratedly were worthy resilings therefroms. Moreover, since PW-31, became also aggrieved from the dismissal order of 30.03.2007, passed by the Magistrate concerned, wherethroughs PW-31 intended to make a statement under Section 164 Cr.P.C., before the Magistrate concerned, thereby with PW-31 cultivating a revision petition thereagainst before the Revisional Court, makes this Court to make the hereinafter inferences.

a) Evidently the said revision petition did not come to be withdrawn, on the ground, that during the pendency of the said revision petition, his statements (supra) became recorded by the CBI. Consequently, the sequel of the above, is that, the said statements were a result of compulssions becoming exerted upon him.

b) Moreover, reiteratedly the resilings on oath as made therefroms in the year 2012 were well made resilings, as in the

makings of the apposite previously made statements on 26.12.2006, on 21.06.2007, and on 22.06.2007 wherefroms he resiled, thus inevitably were a sequel of effective coercions and threats becoming extended to him by the investigating officer concerned.

c) Strikingly, more particularly when PW-31 has not been able to otherwise also prove the exact dates and timings when active threats became meted to him by accused No.1, thus leading him to previously resile from his previously made statement under Sections 161 and 164 Cr.P.C., thus when he testified before the learned trial Judge concerned, in the year 2012, besides also when the Hon'ble Apex Court, had in its above extracted order stated, that the trial Court shall remain uninfluenced by the observations made in the order (supra), held by this Court in CRR-3592-2017, whereby this Court had accepted the said revision petition but with the above stated observation therein.

168. Consequently, when therebys this Court, is well led to make all the hereinabove inferences, whereby it has dispelled the evidentiary worth of the deposition made by PW-31 in the year 2018. Therefore, this Court is of the firm view that the testification of PW-31, as made in the year 2018, whereby he makes inculpatory echoings against accused No.1, in respect of meetings being held on 16.06.2002, whereins, a conspiracy became hatched to eliminate the deceased, rather is also ridden with a vice of prevarication, besides the said made testification, on oath made in the year 2018, is but ridden with a vice of gross improvements and embelishments over his previously made exculpatory testification on oath in the year 2012, before the learned trial Court concerned. Resultantly therefroms an inference also becomes marshalled, that the earlier

made exculpatory statement in the year 2012, by PW-31 thus was a well made statement, besides was a well made resiling from his previously made statement in writing. Moreover, a firm conclusion also becomes garnered, that the purported reason for PW-31 in the year 2018, thus resilings from his exculpatory testification made on oath before the trial Court in the year 2012, thus became rested on the specious ground, that the making of the said exculpatory testification on oath in the year 2012, rather was a sequel of compulsion or threats becoming extended to him by accused No.1. Contrarily, the threats or coercions for reasons (supra) became exercised upon PW-31, rather by the CBI.

169. Conspicuously reiteratedly also therebys the effect of any coercion or threats becoming meted to PW-31 by accused No.1, becomes completely undermined. Resultantly, but contrarily in the mind of PW-31, rather became etched those threats which became extended to him by the investigating officer of the CBI. In sequel, the exculpatory statement made by PW-31 before the learned trial Court, in the yer 2012, thus is to be assigned the completest aura of creditworthiness.

170. The resiling by PW-31 in the year 2012, from his earlier made statement in the year 2012, also becomes belied from the fact that, though he states that he had seen accused Nos.2 to 5, celebrating the successful execution of the conspiracy at Kashish Restaurant, yet neither the owner nor any staff member of the said restaurant became cited as prosecution witnesses thus to corroborate the said spoken version by PW-31.

LACK OF CORROBORATION TO THE TESTIFICATION OF PW-31 FROM DARSHAN SINGH WHO WAS PRESENT AT THE CONSPIRACY MEETING

171. Importantly, the prosecution has given up certain crucial witnesses thus, the testimony of PW-31 remains uncorroborated. PW-31 in his testification

stated that Darshan Singh was present in the conspiracy meeting held on 16.06.2002, but the non-examination of said witness, but weakens the deposition of PW-31 vis-a-vis the alleged conspiracy meeting dated 16.06.2002. Additionally, non examinations of Subhash Khatri, and Shiv Kumar Sharma, and, Hema Sharma, who allegedly accompanied the deceased to the Dera on 16.06.2002 also thereby leads to a conclusion, that as such, the prosecution failing to corroborate the testimony of PW-31. The deposition of PW-31 as recorded in the year 2012 and as recorded in the year 2018, become extracted hereinafter.

Deposition of the year 2012

"**Examination dated 11.02.2012**

I know accused Gurmeet Ram Rahim Singh. He is present in the court through video conferencing. I and my whole family are associated with Dera Sacha Sauda since birth. Dera Sacha Sauda is situated on Begu Road in Sirsa. My native village is Chormar, Tehsil Dabwali, Distt. Sirsa. From 1996 to 2004 I was living in Village Chormar and after that in Kalyan Nagar, Sirsa. Prior to 1096 I was living in village Chormar. I had taken Naam of Dera Sacha Sauda. I used to go to Dera Sacha Sauda every day in the morning and evening for Sewa. The name of my son is Gurdas Singh. He resides with me. My son attends to agriculture work. He cultivates the land in Village Begu in Sirsa.

I knew Ranjit Singh S/o Shri Joginder Singh r/o Khanpur Kolian for the last 8-10 years He used to meet me in Dera Sacha Sauda. I do not know well the other members of the family of Ranjit Singh. I know Avtar Singh S/o Gurcharan Singh. He is maternal grand son of Shah Satnam Ji, who was Chief of Dera Sacha Sauda. Avtar Singh is present in the court today. I know Inder Sain, Manager of Dera Sacha Sauda, Sirsa. I know him for 15-20 years. He is present in the court today. I know Krisnan Lal. I know Krishan Lal for 10-12 years. Krisnan Lal is present in the court today. Ranjit Singh S/o Joginder Singh used to

visit Dera Sacha Sauda, Sirsa for 10-12 years and I used to see him since then. I used to see him going to Dera Sacha Sauda for 10-12 years before his death.

A school for the education of children is situated in the campus of Dera Sauda. Sadhvis living in the Dera Sacha Sauda and teachers coming from outside, teach the children of that school. There is hostel for stay of Sadhvis in Dera Sacha Sauda but I do not remember how many hostels are there. I do not remember now whether there was any warder for taking care of the hostel and making boarding-lodging arrangements for the Sadhvis living there but Inder Sain used to Iook after all this. I do not know if family members of Ranjit Singh used to visit Dera Sacha Sauda. Ranjit Singh was member of 10 Member Committee of Dera Sacha Sauda for Haryana State. S was sister of Ranjit Singh. I do not know what S* used to do in Dera Sacha Sauda. I do not remember how many daughters of Ranjit Singh used to study in the school of Dera Sacha Sauda. Ranjit Singh had neither stopped coming to Dera Sacha Sauda nor he had reduced his visits. I do not have any knowledge about anonymous letter written by Sadhvi of Dera Sacha Sauda in May, 2002.*

At this stage the Spl. Public Prosecutors for the CBI have requested that the witness is suppressing the truth and the witness be declared hostile and be allowed to be cross examined and questions permissible in cross examination be allowed to be put to the witness. Heard. In view of the facts and circumstances of the case the request is allowed and the witness is declared hostile and the Spl. Public Prosecutors for the CBI are allowed to cross examine the witness and to put questions permissible in cross examination to the witness.

Cross examination

Cross examination by Spl. Public Prosecutor for CBI dated 11.02.2012.

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I do not know whether aforesaid Ranjit Singh's sister S was Sadhvi in Dera Sacha Sauda and used to work as teacher. I do not know whether two daughters of aforesaid Ranjit Singh were studying in the*

school in the campus of Dera Sacha Sauda. I know Dr. Armaan Deep Singh, Dy SP, CBI. Dr. Armaan Deep Singh had called me to Chandigarh several times and I had met him in CBI office. I had met Dr. Arman Deep Singh on 26.12.2006 again said I had met but I do not remember the date. I had joined the investigation of this case but I do not remember the date. I do not know what Dr. Armaan Deep Singh had written in my statement during investigation. He had made enquiry from me. It is incorrect that on 26.12.2006 Dr. Armaan Deep Singh had written whatever I had said during my statement/enquiry. Volunteered "I had not given any statement I was called several times for enquiry". It is incorrect that Dr. Arman Deep Singh had read over to me my statement recorded during the investigation of this case and I had accepted the contents of the same to be correct. It is incorrect that I had got recorded in my statement that I had worked as driver of Baba Gurmeet Singh Ram Rahim from 1995 to 2004.

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It is incorrect that I had got recorded in my statement that on 16-06-2002 Baba Gurmeet Singh and other persons called Ranjit Singh at Dera Sirsa and I saw that Avtar Singh, Inder Sain, Krishan Lal and Darshan Singh had surrounded Ranjit Singh and were persuading Ranjit Singh to apologize Baba and when Ranjit Singh did not agree they asked him to be ready to die and thereafter, Ranjit Singh went to Baba Gurmeet Singh who asked him to come back to Dera but Ranjit Singh replied that it is not possible row..... Volunteered on that day i.e. on 16-6-2002 Baba Gurmeet Ram Rahim Singh was at Budharwali, Rajasthan and I was in Punjab. Neither any record regarding Baba Gurmeet Ram Rahim being at Budhanvali, Rajasthan on 16.6.2002 was asked from me. Nor I had given the same. It is incorrect that I stated in my statement that on that day late in the evening after Ranjit Singh went away from the Dera Baba Gurmeet Ram Rahim Singh called a meeting in which Avtar Singh, Inder Sain, Krishan Lal, Darshan Singh, Jasbir Singh son of Rotash Randhi, Constable Sabdil Singh, Gunman and I were present. Volunteered I was in Punjab..... Jasbir Singh S/o Rohtash Randhi and Constable Sabdil Singh who was

the gunman of Bada Curmeet Singh are present today in the court and I identify them. It is incorrect that got recorded in my statement that on that day Baba was very angry and he asked the abovesaid persons present in the meeting to go to the village of Ranjit Singh and to kill him before he said any further thing against the Dera….. It is incorrect that I got recorded in my statement that the day on which late night the news of murder of Ranjit Singh spread in the Dera, I saw Avtar Singh, Inder Sain, Krishan Lal, Jasbir Singh, and Constable Gunman of Baba Gurmeet Singh celebrating in Kashish Restaurant, owned by Bhushan Mittal S/o Purshottam Lal Tohana situated in front of New Dera Sirsa….. It is correct that Kashish Restaurant is of Bhushan Mittal son of Purshottam Lal. It is incorrect that Kashish Restaurant is in front of New Dera. Volunteered Kashish Restaurant is situated 1½ to 2 Km. behind New Dera towards Begu village which I have seen because when I go to my land I pass in front of Kashish Restaurant. My land of Begu village is 1½ to 2 Km away from Kashish Restaurant on the same road. It is incorrect that I got recorded in my statement that I heard above-mentioned persons saying that they had murdered a traitor…... It is incorrect that "my son Gurdas and Gurdayal also used to drive the vehicle of Baba in addition to me". It is incorrect that I am resiling from my previous statement made on 26-12-2006 due to the pressure of Baba Gurneet Ram Rahim Singh and due to the apprehension of fear to my life and the life of members of my family. Volunteered that I neither had nor have any fear from Baba Gurmeet Ram Rahim Singh. I had not known Dr. Armandeep Singh before the start of the investigation of this case. I had never met him before the start of its investigation. It is correct that I had gone to meet Dr. Armandeep Singh after I received the notice from CBI office. I had gone to meet Dr. Armandeep Singh. I had met Dr. Armandeep Singh every time in the CBI office. Volunteered I was highly intimidated. I did not file any complaint against Dr. Armandeep Singh regarding intimidation by him in any police station or court. It is correct that some senior officers also sit in the CBI office in addition to Dr. Armandeep Singh. I also did not make any complaint to any senior officer. Volunteered I had made

complaint to police at Sirsa that Dr. Armandeep Singh wanted to extract statement by intimidating me. That complaint was inquired into by Dy. SP, Sirsa. I had also made similar complaint to the court at Ambala. I have brought the copy of the complaint which is Mark A. I do not remember whether the complaint which I had made to SP, Sirsa was made before 25-12-2006 or not. I did not mention in Mark A that Dr. Armandeep Singh wanted to extract my statement by intimidating me. It is correct that I have stated for the first time in the court today that Dr. Armandeep Singh wanted to get statement made by me by intimidating me. Volunteered "I had omitted the name of Dr. Armandeep Singh and I could not get his name written." I did not give any application in any police station or court that I had by mistake omitted the name of Dr. Armandeep Singh in Mark A.

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Cross examination by Spl. Public Prosecutor for CBI dated 03.03.2012

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It is correct that on 26.12.2006, I was provided security. Volunteered the security was that provided that to me from Bhatinda in 2005. It is correct that on 21.06.2007, also I had security. Volunteered it was provided from Punjab. It is wrong to state that I got this fact recorded in my statement Ex.PW31/B that "Baba Gurmeet Singh and his above-stated associates got blank and typed papers signed from me forcibly. Those people could use the said papers for illegal purposes by writing anything thereon. I have not filed any application in the Ambala Court."…... It is incorrect to suggest that on 21.06.2007, I falsely stated that DSP Armandeep Singh and DIG M. Narayanan got my statement recorded by putting me in fear. I do not know that on 21.06.2007, DSP Armandeep Singh was not Investigating Officer of said three cases. Volunteered as and when I visited CBI office, he used to interrogate. It is wrong to state that on 21.6.2007, DIG M. Narayanan recorded my statement Ex. PW31/B according to what I stated and had read over the statement to me and I also read and understood the statement and accepted the statement to DIG M.

Narayanan to be correct. Volunteered I had not made any statement to DIG M. Narayanan. It is also incorrect to suggest that on 26.12.2006, DSP Armandeep Singh had recorded my statement according to what stated and had read over the same to me and I also read and understood the statement and accepted the same to be correct. Volunteered I did not make any such statement. It is incorrect to suggest that statement dated 26.12.2006 Ex. PW31/A and statement dated 21.06.2007 Ex.PW31/B had been given by me voluntarily of my own will and no CBI Officer had threatened me. Volunteered I did not make such statements. It is incorrect to suggest that I was neither threatened nor forced to make such statements by DSP Armandeep Singh and M. Narayanan and for that reason I had not made any complaint against them….. On 22.06.2007, I appeared in the court of Judicial / Magistrate First Class at Chandigarh. Volunteered I was taken there. It is correct that on that day Judicial Magistrate First Class, Chandigarh (Duty) recorded my statement under Section 164 Cr.P.C. in all the three cases. Volunteered "DSP Armandeep Singh and DIG M. Narayanan had called me to CBI office on 21.60.2007 and kept me there the whole night and the second day at about 2.30-3.00 pm. I was taken to court. Perhaps it was holiday on that day. DIG M. Narayanan handed over to me 4-5 papers which I took to the court and I got recorded what is written in my statement after reading the same from the said papers while the Judge continued recording that statement. I was under great fear and I did not know what I was doing."

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Cross examination by Shri S.K. Garg Narwana Counsel for accused Baba Gurmeet Singh Ram Rahim dated 10.03.2012

Baba Gurmeet Singh Ram Rahim, remaining accused or any follower have never threatened me, my family or relatives. I am also not afraid of them. On 23.10.2002, at 4.20 a.m. I had gone to Delhi Maya Puri to purchase some parts of tractor and I came back at about 8.00/9.00 p.m. in the night of 24.10.2002. Sant Gurmeet Singh Ram Rahim had neither conspired in my presence or otherwise to kill Ram

Chander Chattarpati nor asked anyone to kill him. I had neither heard nor seen that Baba Gurmeet Singh Ram Rahim had ever raped girls, women or Sadhvis. There is no restriction in Dera Sachha Sauda regarding going by any Sadhu or Sadhvi to market or their relatives or their home. Nobody has to ask dera head. On 16.6.2002, Baba Gurmeet Singh Ram Rahim was in Budharwali, Rajasthan, which is about 250-300 kms from Dera Sachha Sauda. On 16.6.2002, I had gone to my relatives in Punjab. I had gone on 16.6.2002 at about 10.00/11.00 a.m., in the afternoon and returned back at about 3.00/4.00 p.m in the evening on 17.6.2002. Baba Gumeet Singh Ram Rahim had gone to Budharwali Rajasthan at about 9.00 a.m. in the morning on 15.6.2002. Baba Gurmeet Singh had returned in the evening at about 3.00/4.00 p.m, on 18.06.2002. On 16.6.2002, Baba Gurmeet Singh Ram Rahim along with other accused, who are present in the court, had not conspired in my presence to kill Ranjit Singh….. I have seen application Ex.PW31/Def-1, which was given by me to SP, Sirsa for giving security against harassment by CBI officers and I identify my signatures at point A on the same. Dy SP Sirsa had made enquiry on the said application and my statement was written which statement is Ex.PW31/Def-2 and bears my signature. Statement Ex.PW31/Def-2 bears my signature at point B which I identify. Enquiry report is Mark PW31/Def-2. I had made complaint Ex.PW31/Def-3, which is in the file of the court, to Shri R.K. Saini, Additional Sessions Judge, Ambala through registered post which bears my signature at Point A. The envelope through which the complaint was sent that registered envelope is Ex.PW31/Def-4. I had also sent the copies of the complaint to Chief Justice, Supreme Court and Chief Justice, Punjab & Haryana High Court. Whatever, I had written in complaint Ex. PW31/Def-3 was correctly recorded. I had produced photostat copy of the said complaint Mark PW31/Def-3 during my statement. I had also produced copy of application dated 29.03.2007 Mark PW31/Def-4 and copy of affidavit dated 29.03.2007 Mark PW31/Def-5 during my statement. The said application was got typed by my counsel at my instance and after it was typed the same was read over and explained

to me and after hearing, understanding and admitting the contents to be correct I had put my signature at point A. I had also annexed my affidavit Mark PW31/Def-5 along with my above application. The above stated affidavit was also got typed by my advocate as per my instructions and after it was typed, the same was read over and explained to me. After hearing, understanding and admitting the contents to be correct I had put my signatures at points A, B & C. I myself got the said affidavit attested from notary public by personally visiting him. My counsels were Shri Faquir Chand Aggarwal, Shri Sampuran Singh and Shri Charanjit. I had accompanied my counsel to the court for filing the above application. The Presiding Officer had asked me as to whether I wanted to make any statement to which I had replied that I wanted to give statement that Guruji is innocent and CBI wants to get my statement recorded forcibly by threatening me. My application dated 30.03.2007 was dismissed by the court. The certified copy of the order is Ex. PW31/Def-5. I had filed criminal revision petition against order dated 30.03.2007, copy of the same is Mark PW31/Def-6, which bears my signatures at points A, B and C. The said revision petition was dismissed by the court. The certified copy of order dated 17.08.2007 is Ex.PW31/Def-6. I had informed Dr. Armandeep Singh and DIG M. Narayanan that I had filed an application in Ambala Court for recording of statement under Section 164 Cr.P.C., which i.e., revision was pending. The said CBI officers had told me that you intend to give statement in favour of Guruji whereas we want to implicate Guruji and you should give statement as per our wishes.

On 21.6.2007 I went first at 10.00 a.m. and I was kept for 1½/2 hours. I was again called in the evening at about 2.30/3.00 pm. Then I was kept in the office during whole night. Dr. Armandeep Singh threatened me that either you give statement under Section 164 Cr.P.C. in the court against Dera Chief and other accused, otherwise, you will be made an accused in both the murder cases and got sentenced for 20 years or to death. He also said that just like we have put Avtar Singh, Inder Sain, Subdil etc. in jail. I made totally false and fabricated

statement Ex.PW31/C under Section 164 Cr.P.C. under compulsion and at the instance of CBI officers M. Narayanan. I am not afraid of small matters but I was under fear of being implicated in murder case. I got my statement Ex. PW31/C u/s 164 Cr.P.C. recorded by reading 4-5 paged statement in writing which was given to me by M. Narayanan. I was holding the said papers downwards. On account of the dias between me and the Presiding Officer, the said fact could not be noticed by him. I was told by DIG M. Narayanan to read those papers by holding the same downwards. Those papers were recollected by DIG M. Narayanan after I came out of the court after making the statement. Amarjit Singh, to whom I had sold my land, is not a follower of Dera Sachha Sauda. I did not hold any press conference against Baba Gurmeet Singh Ram Rahim nor had given any statement to print media or electronic media against Baba Gurmeet Singh Ram Rahim. I had not complained that my statement u/s 164 Cr.P.C. was got recorded by threatening me because I thought I will tell the truth on being summoned by the court."

Deposition of the year 2018

Re-examination dated 08.05.2018 in compliance of order dated 23.04.2018 passed in CRR-274-2018

"I and my family previously used to reside at Village Chormar, District Sirsa, Haryana which is our ancestral village. We had about 40 acres of ancestral agriculture land in that village. On account of continuous threats of the terrorists during the year 1993, we sold that land situated in village Chormar and purchased about 27-28 acres of land at Village Begu, District Sirsa. We also own one residential house at Kalyan Nagar, Sirsa since 1982-83.

My parents were the followers of Dera Sacha Sauda, Sirsa since the period Shah Mastana Ji of Dera Sacha Sauda, Sirsa was the Chief and I used to accompany my parents to Dera Sacha Sauda, Sirsa. In the year 1970, I had taken the 'NAAM' of Dera Sacha Sauda, Sirsa. Shah Satnam Ji was the next Chief of Dera Sacha Sauda and then in the year 1990, Gurmeet Singh became the Chief of Dera Sacha Sauda, Sirsa. I identify accused Gurmeet Singh, who is present through video

conferencing. As I was residing in Kalyan Nagar, Sirsa which was near to premises of Dera Sacha Sauda, Sirsa and because of the fact that I used to visit Dera Sacha Sauda, Sirsa every morning and evening as such, I became very close to accused Gurmeet Singh. On account of such close-ness accused Gurmeet Singh appointed me as driver on his personal vehicles in which he used to travel for performing satsang at different places. The said vehicles included a bus and car and I started working as driver with him on the said vehicles in the year 1996-97. One another person namely, Gurdyal Singh was also kept as driver by accused Gurmeet Singh on the said vehicles and accused Gurmeet Singh was being taken by me for performing Satsangs at various places i.e. old and new Dera Sacha Sauda, Sirsa, other places and outstations.

In the month of May, 2002 an anonymous letter was circulated which contained the allegations about sexual exploitation of the sadhvis by accused Gurmeet Singh in Dera Sacha Sauda, Sirsa. The photocopies of the said letter were distributed amongst the people and the news was also published in various newspapers about the said anonymous letter. Accused Gurmeet Singh then directed Krishan Lal, Dera Manager, Darshan Singh, member dera management, Inder Sain, Dera Manager and Avtar Singh, who was one of the members of the management, to search for the person responsible for circulating the photocopies of the said anonymous letter. Thereafter some dera followers gave threats to newspaper owners and some other people were given beating by the dera followers and they also threatened some other persons (objected to as being based upon opinion). Accused Gurmeet Singh and the above stated members of the dera management were suspecting Ranjit Singh to be behind circulation of the photocopies of the said letter publically and about publishing of the same in various newspapers (objected to as being based upon opinion). Ranjit Singh was a resident of Village Khanpur Koliyan, Kurukshetra and he was a member of 10 members Administrative Committee of Dera Sacha Sauda, Sirsa for Haryana State (objected to).

There was another five members committee constituted by accused Gurmeet Singh. The said five members committee used to look after work of administration and welfare of the dera premises at Sirsa. Whereas ten members committee used to contact people of the State and to convey about the activities of the dera. I along with Dharam Singh, Darshan Singh, Mohan Singh and Krishan Lal were the members of five members committee of dera Sacha Sauda, Sirsa (objected to).

I knew Ranjit Singh since the year 1990. His two daughters were studying in dera school and college respectively and both of them were staying in the hostel situated at the premises of old dera Sacha Sauda, Sirsa. His sister S was also working as a teacher in the school of the dera since 1999 and she was also a sadhvi and she also used to stay at the girls hostel situated at old dera Sacha Sauda premises at Sirsa. Ranjit Singh had withdrawn both his daughters from the school and college of the dera and also took back his sister S* from the dera in the month of April, 2001. On my asking, Ranjit Singh told me that he was not happy with the activities at the dera and his sister S* was sexually exploited by accused Gurmeet Singh in the dera and that now he do not want to keep his daughters and sister at dera Sacha Sauda, Sirsa. On 16.06.2002 I saw Ranjit Singh being encircled by Avtar Singh, Inder Sain, Kishan Lal and Darshan Singh and they were asking him to tender apology to accused Gurmeet Singh about the circulation of anonymous letter and the contents mentioned therein. Ranjit Singh refused to apologize and on his refusal the above said persons threatened him to be ready to die. Then accused Gurmeet Singh called Ranjit Singh in the gufa and I was also present at that time. In my presence accused Gurmeet Singh asked Ranjit Singh to return to Dera Sacha Sauda and to start serving in the dera as he was doing previously but Ranjit Singh refused to do so. In the evening of 16.06.2002, accused Gurmeet Singh conveyed a meeting in the gufa of Dera Sacha Sauda, Sirsa. The place where accused Gurmeet Singh was residing is called gufa. In the said meeting Kishan Lal, Avtar Singh, Inder Sain, Darshan Singh, Jasbir Sirgh, Sabdil, myself besides*

accused Gurmeet Singh were present. I identify accused Kishan Lal, Avtar Singh, Inder Sain, Jasbir Singh and Sabdil present today in the court besides accused Gurmeet Singh who is also present through video conferencing. In the said meeting accused Gurmeet Singh, who was very angry on account of the fact that Ranjit Singh had not tendered apology and had refused to return to dera, directed above stated persons to eliminate Ranjit Singh before he utters any fact against him (accused Gurmeet Singh) or against the dera.

On 10.07.2002, I came to know that Ranjit Singh has been shot dead in his field in village Khanpur Koliyan, District Kurukshetra (objected to). On the same evening, I saw accused Avtar Singh, Jasbir Singh, Sabdil and Kishan Lal celebrating at Kashish Hotel which is opposite to Dera Sacha Sauda premises at Sirsa and they were saying that they have killed a traitor i.e. Ranjit Singh. The said hotel is the ownership of one Bhushan Mittal son of Parshotam Lal Tohana.

After the incident of firing at Ram Chander Chhatarpatti and his murder and murder of Ranjit Singh at the instance of accused Gurmeet Singh, I became very nervous as accused Gurmeet Singh and his other persons were very powerful and had relations with high level politicians. I was also worried about the safety of my family members at the hands of the accused. I wanted to make statement by disclosing true facts to the CBI after the case was handed over by the Hon'ble High Court to the CBI but because of such fear at the hands of the accused to myself and my family member, I could not disclose the same to them. I was contacted by the CBI officials and went to the office of the CBI and I met Shri Armandeep Singh Dy. SP, in the CBI office in December, 2006 for making statement in case of murder of Ranjit Singh but I could not make complete statement as I was under threat, fear and pressure at that time because the followers of Dera Sacha Sauda had been keeping a watch on me and my family members and at my residence. I had told Shri Armandeep Singh, Dy. SP at that time that I will make statement after security is provided to me and my family. My statement under Section 161 Cr.P.C already exhibited as Ex.PW31/A was recorded by Shri Armandeep Singh, Dy. SP, CBI on

26.12.2006. Whatever I could state at that time in the circumstances mentioned above, that was recorded in the said statement correctly.

After the Hon'ble High Court of Punjab & Haryana entrusted the investigation of this case to CBI and after accused Kishan Lal was arrested and accused Avtar Singh and Inder Sain had surrendered before the court, I got encouraged and wished to make statement about the above-stated facts and circumstances which were in my knowledge to the CBI.

Thereafter, I met Shri M. Narayanan, DIG of CBI at Chandigarh on 21.06.2007 and I made my statement before him by disclosing all the true facts which were in my knowledge about the accused present today in the court and the activity of the dera and my statement was recorded by him as per my disclosure. After recording of my statement by him it was read over by him to me and I had also gone through the said statement myself and I had admitted my said statement dated 21.06.2007 to have been correctly recorded by Shri M. Narayanan, DIG, CBI as stated by me voluntarily and the same is already exhibited as Ex.PW31/B.

On 22.06.2007, I appeared before the court of Magistrate at Chandigarh along-with DIG M. Narayanan as I wanted to make statement before the learned Magistrate of my own. We reached in the court of Ld. Magistrate at Chandigarh and I appeared before the learned Magistrate who inquired as to if I was making the statement voluntarily or under some sort of pressure, then I replied that I wanted to make statement voluntarily and freely and I am not under pressure of any person or agency. I was then given half an hour's time by the learned Magistrate to rethink and then my statement was recorded by the learned Magistrate in his own hand. Whatever I had stated before the learned Magistrate, about the accused and about the activities of the dera Sacha Sauda, Sirsa, the same was recorded by the learned Magistrate correctly. My said statement was read over to me by learned Magistrate and I had also gone through the same myself and after admitting the said statement to have been correctly recorded by the learned Magistrate, I appended my signatures on the statement in

token of its correctness. I have seen the said statement under Section 164 Cr.P.C today in the court, which is Ex. PW31/C (already exhibited). I identify my signature on all the pages of the said statement and my signatures on the said statement are Ex. PW31/C1 to Ex. PW31/C10 which I had appended after admitting the contents of my statement to have been correctly recorded at my instance.

On 09.01.2009, I moved an application before SP, CBI after I received a letter of threat in an envelop addressed to my son Gurdas Singh at my residence Kothi No.1993, Phase-10, Mohali, I had requested SP CBI to provide security to me. I have seen the said letter which is already exhibited as Ex.PW31/D which bears my signature at point-A and I identify the same. The letter of threat was also produced by me before SP and the same is already marked as Mark-PW31/E, now the same is Ex. PW31/D1 (objected to on the mode of proof).

I never moved any application before the learned Magistrate at Ambala myself for recording my statement under Section 164 Cr.P.C. nor I moved any revision petition before the Court of Ld. Session Judge, Ambala against dismissal of the said application, rather my signatures have already been obtained on various blank papers by dera people and those were misused later on by the dera people. I also never moved any application before SP, Sirsa at any point of time nor I appeared before him for any purposes. Today I have given a true statement about the facts and circumstances. Previously when I appeared before the court to make statement in this case, I was under tremendous fear, threat and pressure from the accused but now I have gained the confidence and courage to make statement freely and without any pressure as accused Gurmeet Singh has been convicted by the court in another case and sent behind the bars."

172. There is no mention of accused Nos.2 and 5 in the FIR, and, in the subsequent statements of PW-9 i.e. first supplementary statement dated 24.08.2002 (Ex.PW-9/1), supplementary statement dated 04.10.2002 (Ex.PW-9/8), and, in his second supplementary statement dated 24.11.2002 (Ex.DW-32/D1), nor their names occur in the affidavit dated 06.05.2003 filed in

CRM-M-26994-2002 before this Court. Therefore, PW-9 but obviously omitted to mention the names of accused Nos.2 and 5, prior to his testification made on 20.01.2004, thereupon the said made testification appears to be stained with a blemish of it being an ill afterthought, rather to falsely incriminate accused Nos.2 and 5 in this case.

VAGUE IDENTIFICATION OF ACCUSED NOS.3 AND 4, IN COURT

173. For the reasons to be assigned hereinafter the identification of accused Nos.3 and 4 as made, in Court by PW-9 but is an extremely weak identification. Firstly for the reason that he did not in the FIR, thus mention about any incident which has taken place prior to the date of murder of the deceased. Secondly, he did not make any description about the physical features/characteristics of the assailants. Thirdly no valid test identification parade became conducted by the investigating agency. The said omission(s) are fatal to the prosecution case, as the signatured previously made statement by the father of the deceased rather encapsulates thereins, the genesis of the prosecution case, and, thereins the above relevant facts but remain un-narrated. The identification, in Court, of accused Nos.3 and 4 by PW-9, and that too without his previously describing their key characteristic features nor his previously describing their physical attributes nor when any valid test identification parade became conducted, thereby makes the identification, in Court, by PW-9 of accused Nos.3 and 4 rather to be extremely feeble.

174. The identification of accused Nos.3 and 4 as made, in Court by PW-6 is also an extremely weak identification, as there is no evidence placed on record by the prosecution, to prove that PW-6 knew or had earlier seen accused Nos.3 and 4. Further, though PW-6 was an eye witness to the crime event and was present at the place of occurrence, yet he failed to mention any physical

characteristics/ features of the assailants, therebys the first time identification, in Court, by PW-6 vis-a-vis accused Nos.3 and 4, thus is but also is an extremely unworthwhile identification.

175. The testimony of PW-5 cannot be relied upon, as in his examination-in-chief, relevant portion whereof becomes extracted hereinafter, he has stated that he saw 4 persons coming from the side where the fields of the deceased were situated, and, those persons were carrying firearms, but he failed to provide the description of the weapon(s). As such, when PW-5 testifies that he saw the assailants running in a car, but yet with the said facts rather remaining omitted to be disclosed by PW-5 to PW-6 and PW-9, who were alleged to be present at the crime site, when PW-5 reached the site of occurrence. Therefore, the lack of narration of the said facts by PW-5 to PW-6 and PW-9, also stains his testification with a vice of prevarication, besides belies the fact of his visiting the place of occurrence. Resultantly, therebys the omission (supra) made by PW-5, about a prompt intimation being made by him to PW-9, vis-a-vis, his witnessing the assailants fleeing in a car to PW-9 when he reached the place of occurrence, but his yet stating the said fact in his examination-in-chief, thus makes the said echoing made by PW-5, in his examination-in-chief, to be a blatant improvement thereovers, therebys it gathers no evidentiary solemnity.

> *"On 10.07.2002, I was on my way from Pipli to Khanpur Koliyan. I was on a tractor which I was driving. At around 5:00 p.m., I reached near Dhillon Farm. I saw a white coloured car parked on the GT Road. Four persons entered the car and they left towards Pipli. Those four persons had come from the side where the fields of Ranjit Singh were situated. Two out of those persons were wearing Kurta Paijama and two of them were wearing pant-shirts. The driver of the car was a Sikh gentleman. The driver was aged around 50-55 years.*

Question by PP: What those four persons were carrying in their hands?

Ans. Those persons were carrying either pistol or revolver. I do not know the description of the weapons but they were carrying fire arms.

I stopped my tractor and went towards the fields of Ranjit Sing. I found Ranjit Singh was lying dead. The father of Ranjit Singh, one Sukhdev and two-thee workers of Ranjit Singh were present there. The motorcycle of Ranjit Singh was also lying fallen there. The witness identified three of those persons. Pointing towards Krishan Lal, the witness stated that he was driving the car. He identified the other two as Jasbir Singh and Sabdil, out of the said four mentioned by him in his testimony. I was associated in the investigation by CBI. I was shown certain magazines by CBI during the investigation. Now my eyesight is weak so I am unable to pinpoint the pages on which I had put my signatures. I had put my signatures on those magazines in token of identifying those persons. I cannot identify the photographs now as my eyesight gone weak. However, when those photographs were shown to me by CBI I had identified…..

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176. Scaled site plan of the place of crime event was prepared by Parveen Kumar Patwari, on 17.07.2003, which mentions that Tikku, who is a labourer, was present at the place of incident, and, had also seen the assailants fleeing from the place of occurrence. Further PW-9 in his statement has also acknowledged the presence of two more labourers i.e. Sumitra Devi and Satya Devi, at the place of occurrence. Moreover, PW-4 has also stated in his statement that one more labourer namely Sita Ram was also present at the place of occurrence, who was the first person to lift the deceased after he was shot. All these persons were initially cited as prosecution witnesses, and despite the persons (supra) being extremely important prosecution witnesses, for therebys their corroborating the other star prosecution witnesses, but when they were

given up by the prosecution as "unnecessary", therebys not only the prosecution has failed to thereby corroborate the prosecution version, besides as such the prosecution has failed to efficaciously prove the imperative incriminatory links in the chain of events, especially when PW-9 for reasons (supra) has only made a first time feeble identification, in Court, of the identities of the accused, and, besides when PW-5 and PW-6 have also a feeble identification for the first time in Court of the accused concerned.

THE RECOVERY OF WEAPONS OF OFFENCE THROUGH RECOVERY MEMO EX.PW-49/1 IS NOT EFFICACIOUSLY RELATED TO THE CRIME EVENT NOR IS RELATED TO ITS USER IN THE CRIME EVENT AS THE RESULT OF EXAMINATIONS AS MADE THEREOVERS, SHOWS THE SAME TO BE NOT IN A WORKING CONDITION

177. The learned counsels appearing for the appellants, CBI, and, the complainant have argued that though the recovery as was made of the weapon of offence bearing No.424703, thus though was not in pursuance to the recovery memo dated 01.04.2003 (Ex.PW-49/1). Tritely it is revealed from the records that the weapon was released to accused No.3 on 29.12.1997 but the said weapon was deposited in the Armoury, as also revealed therein, on 05.07.1999, therebys but from the Armoury that its recovery became effected. Importantly also therebys its recovery did not become effected to the investigating officer, at the instance of the accused concerned.

THE CHARGED WEAPON OF OFFENCE WAS THROUGHOUT IN THE ARMOURY AND WAS NOT AVAILABLE TO BE USED AS THE RELEVANT WEAPON OF OFFENCE, AT THE CRIME SITE FOR COMMITTING THE CRIME

178. Be that as it may, the prosecution as well as the learned counsel for the complainant argue, that the said weapon was yet used by accused No.3 in committing the crime event. The reason which they advance, is premised on the ground, that the weapon No.424703 was issued on 29.12.1999, as deposed by

PW-48, as per entry Ex.PW-48/2 i.e. the entry in the Yaddasht Register, and, the same was never deposited. Resultantly, the said weapon was with accused No.3, at the time of commission of crime, and, after committing the crime, thus accused No.3 rather surreptitiously managed to deposit the said weapon, with the Armoury, but under the immense influence which accused No.1 thus wielded. However, the said made argument becomes eroded of its vigor on the following grounds: a) There is no mention in the charge sheet that the weapon No.424703 was surrendered to the Armoury after 10.07.2002 and before the date of recovery therefroms being made from the Armoury on 01.04.2003. b) Entry Ex.PW-48/1, in distribution register of Arms and Ammunition and entry No.Ex.PW-48/2, in the Yaddasht Register Ex.PW-32/G, are but corresponding entries and relate to the same transaction with respect to weapon No.424703. c) Conspicuously, also for the further reason that PW-48 has made echoings in his deposition dated 13.10.2004 that both entries (supra), pertain to the same weapon but there merely occurring a mistake, in the assigning of numbers theretos. Consequently, reiteratedly that part of the deposition of PW-48 where he states that the date of issuance of weapon No.424703 is 29.12.1999, is a falsely made deposition, as the entry in distribution register of Arms and Ammunition and, the entry in Yadasht Register are corresponding entries. Therefore, the date of issuance of weapon No.424703 is 29.12.1997 and not 29.12.1999, accordingly the date of its deposit is 05.07.1999. Therefore, as such when the crime became committed on 10.07.2002, and, when on the said date the said weapon was already deposited with the Armoury, thereby the prosecution cannot argue that the said weapon was used by accused No.3 in committing the crime.

179. The prosecution yet argues that the said weapon of offence became surreptitiously removed from the Armoury at the instance of accused No.1, and,

that too even after its becoming deposited thereins. Moreover, the prosecution also argues that after its surreptitious retrieval from the Armoury, rather it was also surreptitiously re-deposited thereins by the accused concerned. In consequence, therebys the prosecution argues that the said weapon was used in the crime event by the principal offenders concerned. Since in the above manner, it was respectively retrieved from the Armoury and was surreptitiously introduced therein, therebys but naturally the spoiling of its firming mechanism, was a sequel of manipulations by the principal offenders. Therefore, therebys the prosecution argues, that the non workability of the working mechanism of the charged weapon, as pronounced, in the result of examinations being made thereons by the Ballistic Expert concerned, has but to be inculpably attributed to the accused. Therefore, the learned counsels argue, that as such no finding of acquittal can be recorded vis-a-vis the accused. However, the said argument is extremely frail thus for the following reasons:

a) The said fact not occurring in the report under Section 173 Cr.P.C.

b) There being no charge against any of the accused *qua* vis-a-vis an offence embodied under Section 201 IPC, and also there being no evidence comprised in any inquiry in respect of the above offence, becoming conducted by the police department, thus against the erring official concerned, who abetted the respective surreptitious removal and surreptitious deposit of the charged weapon in the Armoury concerned.

c) There being no consequent thereto charge against all police officials concerned, who committed and abetted the said act. Therefore, the said made argument without its being erected upon

any incriminatory echoings, to the said effect, becoming, carried in the report filed under Section 173 Cr.P.C., before the learned trial Judge concerned, nor when any consequent thereto charge became drawn against the accused concerned, besides when no further investigations were asked to be made in terms of Section 173(8) of the Cr.P.C. by the CBI, thus through an application in the above regard becoming filed before the learned trial Judge concerned. Moreover, when no application for adducing additional evidence became filed before this Court, thus to prove the said fact. Resultantly, for all the omissions (supra), the submission (supra), thus do not carry any efficacious vigor, as in the Court yet accepting the above submission, this Court would be travelling, beyond the scope and domain of the charge sheet filed under Section 173 Cr.P.C., besides also it would be, even without any charge becoming drawn against the accused nor with any tangible evidence in proof thereof becoming adduced by the prosecution, thus untenably accepting the above but surmisingly made submission(s). In addition, this Court would also be impermissibly altering the charge through its adding on to the framed charges, an offence under Section 201 IPC along with an offence under Section 120-B IPC against those police officials, who abetted the principal offenders, and all the accused concerned, in theirs purportedly surreptitiously removing the charged weapon from the Armoury and theirs thereafter surreptitiously ensuring its deposit thereins being made.

EFFECT OF NON RECORDING OF DISCLOSURE STATEMENT OF THE ACCUSED AND THE EFFECT OF NON MAKINGS OF ANY RECOVERIES AT THEIR RESPECTIVE INSTANCES TO THE INVESTIGATING OFFICER CONCERNED

180. Conspicuously also there is no disclosure statement made by accused Nos.3 and 4, whereins, they confessed their guilt in committing the murder of deceased nor there is any effective recovery rather made at their respective instance(s) vis-a-vis the charged weapon of offence, thus to the investigating officer concerned. The absence of the above statements, does beget, a firm conclusion from this Court, that the said absences were not a result of sketchy and infirm investigation being conducted. Conspicuously, the makings of the above statements rather were imperative for clinching evidence, thus emanating for proving the charge, especially when upon efficacious proof being rendered in respect of worthy drawings of the said statements, thereupon they may have constituted cogently proven incriminatory links against the accused concerned.

181. The omissions (supra) also breach the mandates respectively carried in Sections 24, 25 and 27 of the Indian Evidence Act, 1872, provisions whereof becomes extracted hereinafter.

> *"**24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding**.—A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or 2promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.*
>
> ***25. Confession to police-officer not to be proved.**—No confession made to a police-officer3, shall be proved as against a person accused*

of any offence.

26. xxx

27. How much of information received from accused may be proved.*—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

182. The hereinabove extracted provisions rather are not mechanically incorporated in the Indian Evidence Act, 1872. They have a solemn purpose for thus ensuring the marshalling of tangible and cogent evidence rather for proving the charged inculpable fact, through apposite but proven confession of guilt, comprised in the validly recorded and validly proven disclosure statement, rather being made by the accused before the police officer concerned, during the course of the latter putting them to custodial interrogation, especially when subsequent thereto, the weapon of offence or the incriminatory facts spoken, in the disclosure signatured statement, rather become effectively recovered from the place of its/their hiding and keeping by the accused, place whereof, but became as spoken in the incriminatory disclosure statement, thus to be known exclusively to the accused concerned.

183. Since this Court has dispelled the evidentiary vigor vis-a-vis the rendition of eye witness account vis-a-vis the crime event, thereupon in case the statements (supra) become respectively drawn and also became efficaciously proven. Resultantly, thereby they may have to some extent, thus underwhelmed the otherwise unworthwhile depositions rendered by the purported eye witnesses to the occurrence.

184. Be that as it may the prosecution has completely remained unmindful to the necessity of collection of the above evidence, whereas, upon efficacious

valid recording of the said statements, and, also upon efficacious proof in respect thereof becoming adduced by the prosecution, therebys the said adduced proof may have constituted an able evidence against the accused.

185. Therefore, when there is no confession of guilt made by the principals in the first degree, thus in their respectively made signatured disclosure statements to the police officer concerned, during the latter subjecting them to custodial interrogation nor when in pursuance theretos rather the incriminatory weapons of offence, became recovered at their respective instances to the investigating officer concerned. In consequence, there is no evidence existing on record, which may suggest, that the charged weapon of offence, after its becoming confessed in the apposite signatured disclosure statement, *qua* the same becoming used by the accused concerned, in the commission of the crime event, nor but obviously when no further evidence also exists, that in pursuance theretos, thus efficacious recoveries became made at the respective instance of the accused concerned, thus to the investigating officer concerned.

186. Resultantly, the making of recovery of the charged weapon of offence, from the Armoury, whereins for reasons (supra) it was deposited, before the taking place of the crime event, thus is completely incapable of connecting the principals in the first degree to the users thereof, in the commission of the crime event at the crime site. Additionally when this Court has dispelled the vigor of the argument made by the learned counsel for the CBI and by the learned counsel for the complainant, as relates to the purported surreptitious retrieval thereofs from the Armoury by the principal offenders, and, the subsequent thereto surreptitious introduction in the Armoury. In sequel, the effect of the above, is that, the prosecution has miserably failed to introduce tangible evidence, thus relating to the crime weapon becoming used by the principals in

the first degree, in theirs respectively committing the crime event at the crime site, and/or, thereby the said attribution of guilt to the principals in the first degree becomes completely enveloped in a grave shroud of doubt. Therefore, the benefit of the doubt is to be assigned to the accused.

187. Importantly, the effect of this Court dispelling the vigor of the purportedly assigned incriminatory role to the principals in the first degree, in the commission of crime event at the crime site, is but naturally that therebys but concomitantly, the role of conspiracy attributed to other accused but also does naturally stagger.

REPORT OF THE BALLISTIC EXPERT

188. The said weapon No.424703 is recovered from Kot Mansa, on 01.04.2003, and, was sent for FSL examination. The report of the FSL concerned, was received on 22.01.2004, wherein it is stated that the said weapon was not in working order, report whereof becomes extracted hereinafter.

"FORENSIC SCIENCE LABORATORY HARYANA, MADHUBAN (KARNAL)
Report (Opinion) No.F.S.L.(H) 02/F-2771, 03/F-2623, 03/F-2778 & 03F-815
Dated 22-1-04
xxx

Description of parcel(s) and condition of seal(s)

The seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority.

Description of article(s) contained in parcel(s)

Parcel No.	*No. & seal Impression*	*Description of parcel(s)*
1.	*Seals of Balli Div.*	*Contained one deformed & mutilated lead bullet and two deformed mutilated lead pieces, stated to have been recovered from body of deceased Maha Singh. (Already bear markings as BC/1 to BC/3).*
II	*4 of H.L*	***Contained .455" revolver bearing Sr. No.424703 (Marked W/2 by me).***
III	*xxx*	*xxx*

***Note**: Seventy No. of live .455" revolver cartridges were also received on 17-9-03 from the D.G.(P) Koth Madhuban.*

Xxx

RESULT

1. The bullet marked BC/1 was found deformed and mutilated and sufficient comparable individual characteristics marks could not be observed on BC/1. It has, therefore, not been possible to give any opinion on .455" bullet marked DC/1 in respect of .455" revolvers marked W/3 to W/9 & W/11 to W/13.

*2. **The firing mechanism of weapons marked W/2, W/10 and W/14 were not found in working order and test cartridges could not be fired and no test bullet could be obtained. Therefore, no comparison of .455" bullet marked BC/1 could be done with the weapons W/2, W/10 & W/14 and no opinion could be formed.***

***Note**: I) After examined exhibits examined in Ballistics division were resealed alongwith their original wrappers with the seal of D.D. Balli./FSL(H).*

ii) Out of seventy .455" live cartridges received from the D.G(P) Koth Madhuban for test firing purposes, thirty eight have been used in test firings in the laboratory and remaining have been retained in the laboratory."

xxx

FORENSIC SCIENCE LABORATORY HARYANA, MADHUBAN

Report (Opinion) No.F.S.L.(H) 02/F-2771 Dated 7-3-03

xxx

Description of parcel(s) and condition of seal(s)

The seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority.

Description of article(s) contained in parcel(s)

Parcel No.	*No. & seal Impression*	*Description of parcel(s)*
I.	*5 of CPS*	*Stated to contain Blood stained earth lifted from the place of occurrence (Sent to Serology Division in original packing)*
II.	*1 of RHK*	*Contained clothes of deceased Maha Singh (Sent to Serology Division in original packing).*
III	*2 of RHK*	*Contained one mutilated bulleted and two badly deformed and mutilated lead pieces of different sizes. (Bullet marked BC/1 & lead pieces BC/2 & BC/3 by me).*

Xxx

RESULT

1. The bullet marked BC/1 is a fired bullet of .455" calibre.

2. the lead pieces marked BC/2 & BC/3 could be fragmented pieces of .455" bullet.

3. The bullet marked BC/1 has been fired from a regular firearm.

4. Report in original from Serology Division is attached herewith.

***Note**: After examination, the exhibits examined in the Ballistics Division were resealed alongwith their original wrappers with the seal of DD Balli./FSL(H)."*

189. From a perusal of the record coupled with the report of the FSL, constrain this Court safely concludes that the alleged weapon No.424703 was never used in the commission of crime. Importantly when reasons (supra), this Court has dispelled the argument raised by the leaned counsel for the CBI that it was yet used in the commission of crime event by the principals in the first degree, given the said weapon becoming purportedly respectively surreptitiously retrieved therefrom, and, it becoming surreptitiously introduced thereins.

LAPSES IN THE INVESTIGATION

190. There are multiple lapses in the investigation conducted by the investigating agency, as such the investigation is faulty thus for the hereinafter reasons; (a) the car, which was allegedly used in the commission of the crime event was never seized; (b) PW-5, PW-6 and PW-9 in their respective statements stated that all the four assailants were armed with firearm weapons, but none of those weapons became seized by the CBI; (c) there was no site plan prepared by the CBI of the place where the alleged conspiracy was hatched, on 16.06.2002, (d) CBI did not collect any evidence about Kashish restaurant where PW-31 had allegedly seen accused Nos.2 to 5 openly celebrating the murder of the deceased, its failing to examine the owners or the workers, who were serving in the said restaurant. (e) As per the statement of PW-9, his clothes along with the clothes of PW-6, and, of Rajbir Singh became smeared with blood stains, while transporting the deceased in the car to the hospital yet the investigating officer

failing to collect the clothes of the PW-6, PW-9 and of Rajbir Singh besides he failed to examine the said car.

191. No test identification parade of accused Nos.3 and 4 was conducted by the investigating agency, especially when PW-5 and PW-6, did not know accused Nos.2, 3, and, 4 prior the date of incident. PW-32 who was the Inspector, CID Branch deposing that after the arrest of accused Nos.3 and 4 on 02.12.2002, he took steps to get the test identification conducted, but the accused No.4 refused to give his consent. Thereafter, PW-32 did not take any further steps to get conducted the test identification parade of accused No.4. Further the test identification parade of accused No.3 was scheduled on 09.12.2002, for which accused No.3 also refused to give his consent by stating that his identity has already been shown to the witnesses. The said statement (Ex.PW-7/C) was recorded by PW-7 (Tehsildar). Even after the investigation being taken over by the CBI no steps were taken to get conducted the test identification parade of accused Nos.3 and 4. Only a sham photo identification of accused No.2 by PW-5 thus from his photographs was made, which but is naturally not co-equivalent to a validly made test identification parade and that too when there is no echoing occurring in the respectively made previous statement recorded in writing of PW-5, vis-a-vis, the key characteristics/physical attributes of the said accused, therebys also the said made identification was completely frail and no credence is required to be assigned theretos.

POST MORTEM REPORT

192. As per post mortem report dated 11.07.2002 (Ex.PW-8/B), four metallic pieces of different sizes, and, shapes from the brain tissue and skull cavity was noted. Further PW-58 in his cross-examination has admitted that three

bullets had entered into the deceased's body, but the same were never recovered. Moreover, neither any opinion on the distance of firing has been mentioned nor any blackening around any of the injuries was mentioned in the PMR. Therefore, the PMR is inconsistent with the statement of PW-9, who had stated that the deceased was shot from a close range, as there was no mention of blackening near the injuries, as per the PMR. As per the FSL report dated 03.07.2003 (Ex.PY) no comparison has been made between the blood stained earth thus with the surrounding unstained earth. As such, the medical evidence remains unsubstantiated from the ocular version vis-a-vis the crime event as became rendered by the purported eye witnesses. The further sequel thereof, is that, in the instant case the eye witness account is also thereby required to be declared to be thus fonders.

REASONS FOR BELYING THE POLYGRAPH TEST

193. Importantly, accused Nos.2, 5 and 6 were subjected to the polygraph tests from 18.07.2005 to 21.07.2005, and the results of the examinations thereof reveals that there was some deceptive answers meted to the relevant queries.

194. The learned counsels for the appellants, have argued that the results (supra) of the polygraph test, which the accused concerned, thus underwent, are of no evidentiary worth, not only for the reason that no prior thereto consent of the accused concerned, before the Magistrate was obtained but also the results (supra), rather only constitute corroborative evidence, and, are not to be construed to be substantive evidence. Contrarily, the learned counsel for the CBI contends that no consent before the Magistrate was required for conducting the polygraph test upon the accused concerned, as, they were then outside custody. For the reason to assigned hereinafter the argument raised by the learned counsel for the CBI, is an extremely frail argument, and, is rejected. The reason being

that in **Smt. Selvi's case (supra)**, it is nowhere stated, that the consent of the accused be ensured to be taken for therebys a polygraph test becoming made upon the accused concerned, thus only when the accused is in custody. In other words, the consent of the accused concerned, whether in custody or is outside custody, rather is a *sine quo non* for the makings of a valid polygraph test upon the accused concerned. Furthermore, even if certain echoings are made in the polygraph test *qua* deceptive answers being given to the relevant queries, yet when it is stated in the judgment (supra), and also in the testimony of PW-15, that the said polygraph test is not a perfect science, and, the results of the said test do require clinching corroborations theretos rather becoming meted through recoveries in accordance with Section 27 of the Indian Evidence Act, 1872 thus becoming effected. Resultantly, when there is neither any clinching corroboration to the purported deceptively made answers by the accused(s) who underwent the polygraph test, especially from any efficacious recoveries becoming effected nor through other incriminatory material which otherwise has been stated (supra) rather to be of an extremely tenuous nature. Resultantly, the results of the said polygraph test, loose their evidentiary potency.

195. The instant case is a stark portrayal of the necessity of Courts of law making an incisive and objective analyses, of the evidence as exist on record, rather than the said objective analyses becoming attempted to become stultified, through a pro active media trial becoming made of the purported incriminatory role of the accused vis-a-vis the crime event. Moreover, media trials are not at all required to be the guiding regimen for the making of objective evaluations of evidence on record, as the making of objective evaluations vis-a-vis the evidence as exist on record, is required to be rested on applying to the evidence on record, thus the strictest principles of evidentiary logic. However, the intellectual

strength of the investigating officer appears to become staticised by the glare of media publicity, whereunder came the crime event. Resultantly, for reasons (supra), the investigating officer(s) carried out a tainted and sketchy investigations into the crime event, besides also they collected evidence which is unworthy of credence becoming meted theretos.

196. In consequence, there is merit in the instant appeals, and, the same are allowed. The impugned verdict, as, drawn, upon/*qua* the convicts, by the learned trial Judge concerned, is quashed, and, set aside, and, the appellants are acquitted of the charge(s) drawn against them. The personal, and, surety bonds of the convicts are directed to be forthwith cancelled, and, discharged. The convicts if in custody, and, if not required in any other case, are directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to them, but in accordance with law. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

197. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

28.05.2024 **(LALIT BATRA)**
JUDGE

Ithlesh

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No