

Reserved
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Case :- CRIMINAL APPEAL No. - 1575 of 2012

Appellant :- Rajendra Giri And Others

Respondent :- Central Bureau Of Investigation C.B.I.

Counsel for Appellant :- J.S.P. Singh, Abhilasha Singh, Ashutosh Yadav, Braham Singh, Dharmendra Singhal, Parvez Ahmed, Rajesh Yadav, Ravi Prakash Singh, Shyam Lal, V.M. Zaidi, Vinod Singh, Yogesh Srivastava

Counsel for Respondent :- Pranay Krishna, AGA, Amit Mishra, Gyan Prakash (Senior Adv.), N.I. Jafri

Connected with

(1) **Case :-** CRIMINAL APPEAL No. - 1594 of 2012

Appellant :- Dharendra Singh Yadav And Others

Respondent :- Central Bureau Of Investigation C.B.I.

Counsel for Appellant :- J.S.P. Singh, Avadhoo Ram, Bhagwan Das Sharma, Brijesh Sahai, Dileep Kumar, M.J. Akhtar, Raj Narayan Gupta, Ram Bilas Yadav, Ramesh Kumar Shukla, Sheshadri Trivedi, Sunil Kumar, V.M. Zaidi, Vinay Saran, Vinod Singh

Counsel for Respondent :- Pranay Krishna, AGA, Amit Mishra

(2) **Case :-** CRIMINAL APPEAL No. - 1345 of 2012

Appellant :- Jaipal Singh

Respondent :- C.B.I.

Counsel for Appellant :- J.S.P. Singh, Ajay Kumar Pathak, P C Srivastava, Vinod Singh

Counsel for Respondent :- Pranay Krishna, AGA

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Dinesh Pathak, J.

1. Three connected Criminal Appeals have been preferred by seventeen appellants who have been convicted and sentenced for life imprisonment. All the appellants except the appellant Jaipal Singh (who is on bail) in Criminal Appeal No. 1345 of 2012, are represented by a battery of lawyers. Sri Dileep Kumar, learned Senior Advocate assisted by Sri Vinod Singh learned counsel has put in appearance on behalf of three appellants namely Dharendra Singh Yadav, Shamim Khan and Shambhu Datt Sharma. Sri Satish Trivedi, learned Senior Advocate assisted by Sri Sheshadri Trivedi learned counsel has appeared on behalf of the same appellants in the connected criminal appeal.

Sri Sudhir Dixit, Sri Chandra Bhushan Yadav, Sri Ravi Prakash

Singh, Sri Braham Singh and Sri Shyam Lal appear for the remaining appellants.

After conclusion of the arguments of the counsels for the appellants, which continued for about a period of one week, a request was made on behalf of Sri Gyan Prakash, learned Senior Advocate for the Central Bureau of Investigation (C.B.I.) for adjournment of the hearing. We made it clear that we were not inclined to adjourn the hearing for absence of the counsel for the C.B.I. at that stage, but no one appeared to assist the Court on behalf of C.B.I.

We are constrained to record our displeasure for absence of the counsel for the C.B.I., without any prior information to the Court or the counsels for the other side.

Sri Dileep Kumar learned Senior Advocate ably assisted by Sri Vinod Singh learned counsel has addressed the Court at length on all issues in the appeals. All other advocates appearing for the remaining appellants have adopted the arguments extended by Sri Dileep Kumar learned Senior Advocate and added only on one or two points which would be dealt with at the appropriate stage in this judgment. It is informed by the learned Advocates that the appellant Doji Singh had died during pendency of these appeals and all other appellants except Jaipal Singh are in jail. Since only one appellant Jaipal Singh (who had been released on bail) is unrepresented, we have appointed Sri Vinod Singh learned Advocate as an Amicus Curiae to assist the Court on his behalf. During hearing, Sri Vinod Singh has adopted the arguments extended by Sri Dileep Kumar learned Senior Advocate, for appellant Jaipal Singh.

2. These appeals are directed against the judgment and order dated 29.3.2012 passed by the Special Judge, C.B.I. Court No. 1, Ghaziabad in Sessions Trial No. 01 of 2002 (C.B.I. vs. Dhirendra Singh Yadav and others) under Sections 120-B, 302, 364 and 218 IPC, Police Station C.B.I., Delhi in R.C. No. 18(S)/93.

Accused Dhirendra Singh Yadav, Raj Kumar, Brij Bhusan Sharma, Rajendra Giri, Shambhu Datt Sharma, Kalwa Singh, Lajwant Singh, Shamim Khan, Dinesh Chandra, Balbir Singh, Ram Niwas, Amarjeet Singh, Kiranpal Singh, Jagat Singh, Rashi Pal Singh and Jaipal Singh have been convicted for the offences under Section 120-B readwith Section 364 and Section 302 IPC and sentenced for rigorous life imprisonment with fine to the tune of Rs. 5000/- each, with the condition that in case of non-deposit of fine, they would have to undergo additional simple imprisonment for one month. The above named appellants except Jaipal Singh have also been convicted under Section 302/34 IPC, additionally, for rigorous life imprisonment and fine of Rs. 5,000/-, with the condition that in case of non-payment of fine, they would have to undergo additional simple imprisonment for one month. In addition to the above, accused Dhirendra Singh Yadav, Shambhu Datt Sharma, Kalwa Singh, Shamim Khan, Dinesh Chandra, Doji Singh, Jagat Singh, Amarjeet Singh, Rashi Pal Singh and Jaipal Singh have also been convicted under Section 120-B readwith Section 364 IPC for rigorous imprisonment of ten years with fine of Rs. 5,000/- and in case of non-deposit of fine, they would have to undergo additional simple imprisonment for one month. Accused Dhirendra Singh Yadav has also been convicted under Section 218 IPC for three years rigorous imprisonment. All the above punishments are to run concurrently.

3. Before coming to the prosecution story, it would be appropriate to note certain relevant facts of the case. The first information report dated 15.11.1993 namely RC-18(S)/93-SIU.V was registered at about 11:30 AM in Delhi Special Police Establishment SIC-II Branch pursuant to an order dated 15.11.1993 of SP/CBI/SIC.II/New Delhi, which was passed in pursuance of the order dated 8.10.1993 passed by the Supreme Court in Criminal Writ Petition No. 632/92 filed by one S. Sharanjit Singh son of S. Mohinder Singh of Majithia, District Amritsar (Punjab) against Delhi Administration and others. The Apex Court therein had entrusted the

matter relating to abduction of deceased Jaswinder Singh @ Jassa son of Bachan Singh resident of Majitha, District Amritsar (Punjab) to the Central Bureau of Investigation (In short as “the C.B.I.”) for investigation. In the aforesaid petition, a copy of which was sent to the C.B.I. on the directions of the Apex Court alongwith its order, it was alleged that Jaswinder Singh @ Jassa aged about 30 years, a Sewadar of Gurudwara Rakabganj, New Delhi (in short hereinafter referred to as “the Gurudwara”) was forcibly taken away by some unknown police personnel of the U.P. Police, on 30.10.1992 at about 8:30 AM from near a temple outside the Gurudwara. The matter was immediately reported at the Police Outpost North Avenue, New Delhi. In pursuance to the said information, lookout notices were issued to all SHO(s) and DCP(s) Delhi as also to all SP(s) in India including all SSP(s) of the State of U.P. It was alleged that Ajit Singh, the Manager, Delhi Sikh Gurudwara Management Committee had also lodged a written complaint with the Police Station, Parliament Street, New Delhi at 8:50 AM on 30.10.1992 stating therein that deceased Jaswinder Singh @ Jassa was forcibly taken away at about 8:30 AM on 30.10.1992 by unknown persons who came in two vehicles, from the place near Talkatora Road-Gurudwara Rakabganj Road outside the Gurudwara. Some of the persons were said to be in plain clothes while others were in uniform. The Delhi Police registered a case namely FIR No. 400/92 on 17.11.1992 at 8:45 PM under Section 365 IPC. It was alleged that the U.P. Police had also registered a case namely FIR No. 187/92 dated 31.10.1992 under Section 392 IPC readwith Section 3/4 of Terrorist and Disruptive Activities (Prevention) Act, 1987 (In short as “the TADA Act”), at Police Station Baradhpur, District Bijnor (U.P.), reporting therein that the Police party led by Sri Dhirender Singh Yadav, Station House Officer of the Police Station Baradhpur had an encounter with two unknown Sikh militants near Village Kanshiwala and in exchange of fire one unidentified militant had been killed, whereas another managed to escape. After the encounter, the police recovered one

AK-56 Rifle bearing No. 17036926, a DBBL Gun and one Magazine with 25 live cartridges of AK-56 Rifle etc. from the spot of encounter. The Apex Court in its order dated 15.12.1992 in the aforesaid petition had observed that as per the affidavit filed by the Deputy Commissioner of Police, New Delhi District, deceased Jaswinder Singh @ Jassa was taken away by the U.P. Police. A direction was issued to the Director General of Police, U.P. to look into the matter and submit a report. An affidavit was then filed by D.I.G. (Admin) on behalf of the Director General of Police, U.P. on 5th March, 1993 before the Apex Court stating therein that the allegations in the aforesaid writ petition could not be substantiated and that the matter had been entrusted to the Criminal Branch of CID for enquiry.

In view of the aforesaid, following order dated 8.10.1993 was passed by the Apex Court:-

“We have examined the Report produced before us by the Delhi Police during the investigation of the Case. There are material circumstances on the record which give a prima facie indication that Jaswinder Singh was taken away by UP Police from Delhi on 30.10.92. The UP Police has categorically denied the same. In the facts and circumstances of this case, we direct the Central Bureau of Investigation to hold an enquiry into this matter and send a report to this Court within six months from the receipt of the Order. The Registry is directed to send a complete copy of the paper book to the Director, Central Bureau of Investigation, New Delhi within one week from today. To be listed after a report from the CBI is received in this respect.”

4. A regular case under Sections 365, 302/34 IPC was then registered by the C.B.I. and the investigation was entrusted to the then DSP/CBI/SIC-II. The order dated 15.11.1993 of the registration of FIR passed by SP/CBI/SIC-II, New Delhi has been exhibited as “Exhibit Ka-63”. In the column for registration of said FIR for mentioning the name and address of the accused, “some unknown persons” had been written.

5. As far as the First Information Report No. 400 of 1992 dated

17.11.1992 is concerned, it is relevant to note at this juncture that the said report had been lodged on the written information given by Sub-Inspector, Sukhi Ram, the In-charge Picket Post, North Avenue, New Delhi stating therein that a missing report (written) was given by Ajit Singh, the Manager, Delhi Sikh Gurudwara Management Committee. Lookout messages/notices on wireless sets were sent but no information could be gathered about the missing person namely Jaswinder Singh @ Jassa. A Case under Section 365 IPC was, therefore, to be lodged. On the said report, the Delhi Police registered a Criminal Case under Section 365 IPC on 17.11.1992 at the Police Station Parliament Street, New Delhi and the information about the said FIR was sent to the Senior Officers. The letter of information given by the SHO, Police Station Parliament Street (written in English) alongwith the report of S.I. Sukhi Ram, the In-charge, Picket Post North Avenue (written in Hindi) has been exhibited as "Exhibit Ka-9". An entry of registration of FIR was also made in the Daily Diary No. 20A dated 17.11.1992 at the Police Station Parliament Street. The written report dated 30.10.1992 (typed in English) given by Ajit Singh, the Manager, Delhi Sikh Gurudwara Management Committee had been entered with the receiving DD No. 20A dated 17.11.92 at 08:50 PM in FIR No. 400/92 under Section 365 IPC. The said document dated 30.10.1992 has been exhibited as "Exhibit Ka-5". Another copy of the said report with Reference No. 5142/2-1 on which S.I., Sukhi Ram, the In-charge, Picket Post North Avenue had submitted his report dated 17.11.1992, has been exhibited as "Exhibit Ka-5/1". The report of Sukhi Ram, S.I., In-charge Picket Post, North Avenue dated 17.11.1992 submitted at 08:45 PM is exhibited as Exhibit 'Ka-5/2'.

There is an endorsement on Exhibit Ka-5 of the SHO, Police Station Parliament Street, New Delhi dated 30.10.1992, wherein In-charge, Picket Post North Avenue had been directed to enquire. The said endorsement has been exhibited separately as Exhibit 'Ka-5/1'. Exhibit 'Ka-3' is the document dated 30.10.1992 written in Gurmukhi (Punjabi)

by Satnam Singh, addressed to the Manager, Delhi Sikh Gurudwara Management Committee giving intimation of the incident of abduction of Jaswinder Singh @ Jassa at about 8:30 AM from the road outside Gurudwara Rakabganj. There is an endorsement of Ajit Singh dated 30.10.1992 over the said report to lodge a complaint with the Police Station Parliament Street, which has been exhibited as Exhibit 'Ka-3/1'. Exhibit 'Ka-1' is the document in Gurmukhi (Punjabi) which is the 'Leave Form' of Delhi Sikh Gurudwara Management Committee, stated to have been filled by Jaswinder Singh @ Jassa for seeking sick leave from 4.10.1992 till 18.10.1992.

Exhibit 'Ka-6' is the proforma in Punjabi issued by the Headmistress of the School at Amritsar which records the date of birth of Jaswinder Singh as '12.10.1967'.

Exhibit 'Ka-4' is the Seizure Memo dated 16.12.1993 with regard to seizure of the Personal File of Sewadar Jaswinder Singh @ Jassa containing application for service, papers relating to his transfer, his abduction and correspondence made by the Manager, Delhi Sikh Gurudwara Management Committee and a photograph of Jaswinder Singh as also attendance register of Gurudwara Rakabganj staff for the period from October, 1992 to January, 1993. The said documents were handed over by Satnam Singh, the Supervisor, Delhi Sikh Gurudwara Management Committee to the Investigating Officer, C.B.I. namely DSP/CBI/SIC.II, New Delhi. A note on the seizure memo mentions that each page of the File as well as of the attendance Register had been signed by Sri Satnam Singh, the Supervisor, Delhi Sikh Gurudwara Management Committee, Gurudwara Mata Sundri.

6. As per the prosecution, this is a case of Extra-judicial killing. The deceased Jaswinder Singh @ Jassa son of Bachan Singh resident of Village Majitha, District Amritsar, Punjab was appointed as Sewadar by Delhi Sikh Gurudwara Management Committee on 21.3.1990 and since then he was serving in Gurudwara Rakabganj, New Delhi and was

residing in quarter no. 9 located inside the Gurudwara premises. On 30.10.1992 at about 8:30 AM, when Jaswinder Singh @ Jassa came out of Gurudwara Rakabganj, two vehicles, one loaded with persons, some in civil dress and others in police uniform took him away from Talkatora Road-Gurudwara Rakabganj road and he was killed in an encounter on 31st October, 1992 at about 5:30 AM in Kanshiwala Forest within the circle of Police Station Baradhpur, in a conspiracy hatched by the police personnel of the Police Station Baradhpur. The first information of abduction of Jaswinder Singh @ Jassa was given by Ajit Singh, the Manager, Delhi Sikh Gurudwara Management Committee on 30.10.1992.

After killing of Jaswinder Singh @ Jassa on 31.10.1992, false cases were registered as Case Crime No. 192/92 and 193/92 at Police Station Baradhpur, Bijnor by Dhirendra Singh Yadav, the Station House Officer of the said police station. The accused Dhirendra Singh Yadav had, thus, been charge sheeted under Section 218 IPC, for preparation of false papers being a public servant with the intent to cause loss to the public and thereby to save himself from legal punishment knowing that the offence committed by him would result in punishment. The accused persons/police personnel of the Police Station Baradhpur had been charged of the offences punishable under Section 302 IPC readwith Section 120B IPC and Section 364 IPC readwith Section 34 IPC. The charges were framed by the Additional Sessions Judge/Special Judge, Anti Corruption, U.P. (East), Dehradun which was the then Court of ordinary jurisdiction for trial of such offence. The trial had begun on the charge sheet submitted by the DSP/CBI/SIC-II countersigned by SP/CBI/SIC-II, New Delhi on 29.3.1996 after completion of the investigation conducted on directions issued by the Apex Court vide order dated 8.10.1993 in Criminal Writ Petition No. 632/92.

7. In brief, the prosecution case is that the first report of abduction of Jaswinder Singh @ Jassa by some unknown persons, from outside the gates of Gurudwara Rakabganj, New Delhi, was given on 100 Dial

Number on 30.10.1992 by Satnam Singh, the Supervisor, Gurudwara Rakabganj at the Picket Police Post, at North Avenue, New Delhi. On the information given by Satnam Singh (the Supervisor) to Ajit Singh, the Manager, Delhi Sikh Gurudwara Management Committee, a typed report was given by Ajit Singh at the Police Station Parliament Street, New Delhi. The first information report namely Case Crime No. 400 of 1992 was, however, registered on 17.11.1992 at about 8:45 PM at Police Station Parliament Street, New Delhi.

8. After the matter went to the Supreme Court on Criminal Writ Petition No. 632 of 1992 filed by a relative of Jaswinder Singh @ Jassa, the investigation was entrusted to the Deputy Superintendent of Police, C.B.I., SIC-II. The place of encounter as noted above is Kanshiwala Jungle within the jurisdiction of Police Station Bahrapur. The charge sheet was submitted by C.B.I. against 19 persons out of whom trial was concluded against 17 persons who have been convicted for the aforesaid offences, as two accused had died during the course of trial.

9. The investigation revealed that out of 18 firearms which were used for firing in the alleged encounter, 17 firearms had been collected, two (2) empties out of 23 empties, fired by police personnel, were linked to AK-56 Rifle No. 17036926, which was allegedly recovered from the spot besides the dead body of deceased Jaswinder Singh @ Jassa (alleged to have been used by him in the encounter). Total 161 rounds were fired by the police personnel, 67 empties of which could only be recovered, and were deposited by S.O. Dharendra Singh Yadav, whereas 94 empties were allegedly lost. The recovery of one AK-56 Rifle No. 17036926 alongwith 24 live cartridges and 4 empty cartridges and 2 magazines was shown from besides the dead body of the alleged deceased militant alongwith recovery of one DBBL Gun No. 3122/1360 alongwith 2 empty cartridges which were allegedly left by another alleged militant who managed to escape.

10. In respect of Case Crime No. 192/92 under Section 307 IPC and

Section 3/4 TADA (P) Act and Case Crime No. 193/92 under Section 25 Arms Act, the inquest proceedings were conducted by Nishith Kumar, the then Sub-Divisional Officer, Nagina. Sub-Inspectors Satwant Singh; Amrik Singh a retired Sub-Inspector; Sub-Inspector Tulsa Singh, all residents of Village Kanshiwala, and two other persons namely Gurdev son of Mela Singh and Naseeb Singh son of Harnam Singh, both residents of Village Harbanswala were shown as Panch witnesses of the inquest. The inquest was allegedly conducted on the spot, in the Jungle of Village Kanshiwala, Bijnor, on 31.10.1992 between 14 hours (2:00 PM) to 16:30 hours (4:30 PM).

11. The postmortem of the dead body was conducted by Dr. Ram Kumar Gupta, the Senior Medical Officer, District Hospital Bijnor on 1.11.1992. As per the postmortem report, deceased Jaswinder Singh @ Jassa had sustained seven gunshot injuries on both forearms, chest, stomach and right thigh. The injury on right hand palm of deceased had burning of skin and scorching. The cause of death was determined as shock and hemorrhage as a result of multiple firearm injuries. After the postmortem, the body was cremated at Ganga Barrage, Bijnor on 1.11.1992 itself.

12. During the investigation by C.B.I., the contention of accused police personnel of Baradhpur Police Station was that a police party headed by Station House Officer, Dharendra Singh Yadav comprising of Sub-Inspector Nahar Singh, Constables Sambhu Datt Sharma, Kalwa Singh, Shamim Khan, Shishpal Singh, Dinesh Chander, Doji Singh, Amarjit Singh, Jagat Singh, Rishi Pal Singh and Jaipal Singh had left the police station at about 17:10 hours on 29.10.1992 for combing and search of militants. They went by Police Station Jeep No. UP20/0371 driven by Constable Driver (as recorded in G.D. No. 29) and a Vehicle No. UP20/4473 driven by Constable Driver Kailash Chandra which arrived at Police Station Baradhpur at 18:30 hours from the Police Line, Bijnor and joined the police party (as recorded in G.D. Entry No. 35). The said

statement of police personnel was found to be false. The investigation report records that in fact police party headed by S.H.O. Dhirendra Singh Yadav accompanied with Nahar Singh (Sub-Inspector), Avtar Singh and Satwinder Singh, both residents of Village Kot Juwan and Harbhajan Singh resident of Village Choharwala first came to the Police Line Bijnor in police station Jeep and red colour Maruti van No. UP20/9651 owned by Sri Mohesh Chander resident of Baradhpur, which was driven by Chander Prakash resident of Baradhpur. From the Police Line, Vehicle No. UP20/4473 (Tata Truck) was taken and the police party with the above named persons had left for Delhi in Vehicle No. UP20/4473 (Tata Truck) and red Maruti van. Jaswinder Singh @ Jassa was abducted by the said police personnel from Delhi on 30.10.1992. He was taken to P.S. Baradhpur and, thereafter, killed in Kanshiwala forest at about 5:30 AM in a fake encounter (Extra-judicial killing).

13. The prosecution had examined 46 witnesses in the Court to prove its case of abduction with the intention to kill Jaswinder Singh @ Jassa (deceased) under Section 364/34 IPC and Section 302/120B IPC and also for the offence punishable under Section 218 IPC. Amongst the witnesses of charge of abduction, PW-1 to PW-7 were examined by the prosecution.

PW-1 Shyam Singh, posted as Jaththedar in Gurudwara Rakabganj, New Delhi had submitted in his examination-in-chief that he was an employee in Delhi Sikh Gurudwara Management Committee, New Delhi since the year 1981. In the year 1990, he was posted as Jaththedar in Gurudwara Rakabganj, New Delhi and was given the charge of assigning duties to Sewadars and to look into their well being. Jaswinder Singh @ Jassa (deceased) was a Sewadar in Gurudwara Rakabganj, New Delhi in the year 1992 and he was residing in quarter no. 9 inside the premises in Gurudwara Rakabganj, New Delhi. The attendance register of the said Gurudwara (material "Exhibit D-38") which pertains to the attendance of Sewadars for the month of October, 1992) was maintained in his handwriting. In the said register, at page '5' at

serial no. '31', the entries of presence of Jaswinder Singh @ Jassa, Sewadar were in his handwriting. Deceased Jaswinder Singh @ Jassa was present in Gurudwara Rakabganj, New Delhi on 1st, 2nd and 3rd October, 1992 when his attendance was recorded in the register. On 4th October, 1992, he took leave uptill 18.10.1992 and left Gurudwara premises. His leave application which was part of the record was accepted under the signature of this witness (PW-1, Shyam Singh). The reason for applying leave was illness as mentioned in the leave application. The said leave application of Jaswinder Singh @ Jassa was proved by PW-1 Shyam Singh and has been exhibited as Exhibit 'Ka-1'. It was then stated that a telegram sent by Jaswinder Singh @ Jassa was received seeking extension for eight days of leave which was proved and exhibited as Exhibit 'Ka-VI'. PW-1 states that the presence of employees was recorded in the register with the letter 'I' and leave was mentioned with the letter 'L', whereas for the absence of employees letter 'A' was used. The letter 'R' in the Register denotes the entries on the day of 'rest' given to the employee concerned. As regards leave of Sewadar Jaswinder Singh @ Jassa, it was stated that he gave a medical certificate which was proved as Exhibit 'Ka-7'. He states that as per the entries in the attendance register, Sewadar Jaswinder Singh @ Jassa was present in the Gurudwara from 4.10.1992, 27.10.1992 and also on 28.10.1992 and 29.10.1992. The entries of leave of Jaswinder Singh @ Jassa on the relevant pages of the attendance register were proved and exhibited as Exhibit 'Ka-2' in the handwriting of PW-1 Shyam Singh. PW-1 further stated that he was residing in the Gurudwara premises while on duty. On 30.10.1992 at about 08:30 AM, when he was going on duty, Ajayab Singh, another Sewadar of Gurudwara gave him information that the U.P. Police had taken away Jaswinder Singh @ Jassa from outside the Gurudwara near the temple. In cross-examination, PW-1 had reiterated his statement in the examination-in-chief regarding maintenance of attendance register, the leave application and medical certificate submitted by the Jaswinder

Singh @ Jassa. On a suggestion that the medical certificate did not bear the signature or thumb impression of the applicant (deceased), PW-1 stated that Jaswinder Singh @ Jassa remained in Gurudwara for few days while he was ill and then he was asked by PW-1 to bring a medical certificate to apply for leave. PW-1 denied the suggestion that attendance was not being recorded on daily basis. As far as receipt of telegram (Exhibit Ka-VI) for extension of leave is concerned, PW-1 stated that the said telegram was not received by him rather it was received in the office of the Gurudwara and he had received intimation of the same. PW-1 has denied suggestion of the attendance register being a forged or fabricated document and stated that he did not record attendance of Jaswinder Singh @ Jassa on 30.10.1992 and 31.10.1992 in the Gurudwara as he got information that he was taken away by the U.P. Police. The suggestion that the entries of attendance of Jassa on 28.10.1992 and 29.10.1992 were forged and Jaswinder Singh @ Jassa was not present on duty was emphatically denied. He further denied the suggestion that Sikh militants were being given shelter in the Gurudwara and deceased Jaswinder Singh @ Jassa was a militant. He reiterated that he received information of abduction of Jaswinder Singh @ Jassa; he also got information that the U.P. Police came in a Maruti van and a truck and took away Jaswinder Singh @ Jassa from outside the Gurudwara. The said information was given by Ajayab Singh who was residing in the quarter no. 9 with Jaswinder Singh @ Jassa.

PW-2, Satnam Singh, the Supervisor, Gurudwara Rakabganj, New Delhi stated that Sewadars and Jaththedars of Gurudwara Management Committee, New Delhi were working under his supervision. Jaswinder Singh @ Jassa was employed as Sewadar in the Gurudwara Rakabganj and was residing in the flat located inside the premises of Gurudwara. On 30.10.1992 at about 8:30-9:00 AM, Jaththedar Shyam Singh gave him information that some persons had taken away Jaswinder Singh @ Jassa from outside the Gurudwara. Those persons came in two vehicles, while

some amongst them were of the U.P. Police, others were in plain clothes. PW-2 identified Jaswinder Singh @ Jassa from the photographs who was abducted by the U.P. Police on 30.10.1992. He stated that he gave information of abduction of Jaswinder Singh @ Jassa to North Avenue Police Post and Parliament Street Police Station and on 100 Dial Number. He also gave information to the Manager, Gurudwara Management Committee who was sitting in the head office. The said information was initially given orally and later in writing. The written information given by PW-2 Satnam Singh has been proved and exhibited as Exhibit 'Ka-3'. PW-2 reiterated that he gave information of abduction of Jaswinder Singh @ Jassa personally to the Manager, Gurudwara Management Committee. The documents namely personal file of Jassa, photographs and attendance register maintained for October, 1992 to January, 1993 were handed over by him to C.B.I. during the course of investigation and the Seizure Memo (Exhibit 'Ka-4') bears his signature. In cross-examination, he stated that his office and residential quarters were in the same premises. His statement was recorded by the Delhi Police sometime after the incident and by the C.B.I. after about 1 and ¼ year of the incident. The Delhi Police also enquired on the date of the incident. PW-2 was confronted with his statement under Section 161 Cr.P.C. recorded by the Delhi Police, wherein it was averred that he got information of the incident at about 10:00 AM when he reached his office in the Gurudwara. A clarification was given by PW-2 Satnam Singh that he might not have given the correct time of getting the information of the incident of abduction as he was puzzled by the incident. PW-2 was also confronted on his statement in the examination-in-chief that Jaswinder Singh @ Jassa was abducted by the U.P. Police while this fact was not revealed by him in the written report given to the Manager, Gurudwara Management Committee nor that he mentioned the same in the report which he gave as an information to the Control Room at 100 Dial Number. PW-2 admitted in the cross-examination that he did not give description of the vehicles

used in the alleged abduction either in the written report (“Exhibit 'Ka-3””) or in his statement given to the Investigating Officer. He further proved that cutting and overwriting in date as 1.10.1992 in the attendance register was made and signed by him. He further stated that the said overwriting/cutting occurred on account of the fact that Jaththedars who maintained the attendance register were mostly illiterate. The suggestion that Jaswinder Singh @ Jassa was not present in the Gurudwara on 29.10.1992 and 30.10.1992 has been emphatically denied by PW-2. He proved that in the relevant column of the attendance register as against the name of Jaswinder Singh @ Jassa on 30.10.1992 and 31.10.1992, “(.) (bindi) (dot)” was put by him as he knew that Sewadar Jassa could not perform his duty in the Gurudwara as he was taken away by someone. He categorically denied the suggestion that he did not get information about abduction of Jaswinder Singh @ Jassa on 30.10.1992.

PW-3 is Ajit Singh, the Manager of Delhi Sikh Gurudwara Management Committee who stated that Jaswinder Singh @ Jassa was appointed as Sewadar in the year 1990 and was working in the Gurudwara in the year 1992. On 30.10.1992 at about 9:00 AM, Satnam Singh, the Supervisor gave him information on telephone that some people (six in number) had taken away Jaswinder Singh @ Jassa from outside the Gurudwara, amongst whom three were in police uniform and other three in plain clothes and that they came in two vehicles. This witness had identified deceased Jaswinder Singh @ Jassa from the material exhibits “1 to 5”, which are photographs of Jaswinder Singh @ Jassa. He further stated that a written report (Exhibit Ka-3) of the incident was also given to him by Satnam Singh, the Supervisor (PW-2) at about 11:00 AM on 30.10.1992. On the said complaint, an endorsement was made by him to lodge a report in the police station concerned which was proved being in his handwriting and signature by PW-3 and has been exhibited as “Exhibit Ka-3/1”. The typed report given to the Police Station Parliament Street, New Delhi was proved bearing his signature as

“Exhibit Ka-5”. The receipt of the said report in the police station concerned (carbon copy) bearing signature of PW-3 has been exhibited as “Exhibit Ka-5/11”. PW-3 then stated that he got intimation of encounter of Jaswinder Singh @ Jassa through a news item published in the Hindi Daily “Shram Meri”, a local newspaper circulated in Bijnor District, which was received in his office after 1 and ½ weeks of the incident. In the cross-examination, PW-3 stated that C.I.D. recorded his statement after about 1 and ¼ year of the incident, whereas C.B.I. recorded his statement after two years. No other investigating Agency had recorded his statement. When confronted with the statement of C.B.I., PW-3 stated that he did not disclose the names of Satnam Singh and Shyam Singh who gave first information of the incident of abduction of Jaswinder Singh @ Jassa. In his statement under Section 161 Cr.P.C. recorded by C.B.I., it was written that “he was informed about the fact of taking away of Jaswinder Singh, Sewadar on 31.10.1992 while he was in office”. On the discrepancy about the date of incident, PW-3 stated that the said date has wrongly been mentioned by C.B.I. He reiterated that the typed report “Exhibit Ka-5” given by him was received in the Police Station Parliament Street on 30.10.1992 at about 11:00-11:30 AM, receiving of which was also exhibited as “Exhibit Ka-5/1”. He further clarified that he had no information about abduction of Jassa made by the U.P. Police till the written report was lodged. However, when he went to the Gurudwara in the evening after his duties were over in the head office, he came to know that Jassa was taken away by the U.P. Police. PW-3 was confronted for non-disclosing the said fact, either in the first information report lodged by him or in his statement to C.B.I. or C.I.D. In reply, he denied that the said report was lodged on incorrect facts due to “Peshbandi”. From the personal record of Jaswinder Singh @ Jassa, his birth certificate was shown to “PW-3” who identified the writing and signature of Satnam Singh and Sardar Ram Singh over the endorsement on the said document.

PW-4 Sardar Manendrajeet Singh, a Sewadar in Gurudwara

Rakabganj stated that he was residing in quarter no. 9 in Gurudwara, Rakabganj premises alongwith Ajayab Singh, Jaswinder Singh @ Jassa and 2-3 other Sewadars. On 30.10.1992, he was on duty from 8:00 AM till 12:00 PM in a hall of the Gurudwara. On 29.10.1992, his shift duty was from 8:00 PM till 12:00 midnight. On 29.10.1992, when he came back from duty at around 12:00 midnight, he found two unknown (new) persons in the quarter apart from Ajayab Singh and Jaswinder Singh @ Jassa (two of his roommates); one of them was a Sardar whereas another was 'Mauna' [A Sikh who removed his beard and cut his hair (kesh)]. He came to know that those two new persons came to meet Jaswinder Singh @ Jassa only after Jassa was taken away. On 30.10.1992, when he went to duty in the morning, he came to know that Jaswinder Singh @ Jassa was taken away by the U.P. Police. PW-4 was cross-examined on the identity of those two new (unidentified) persons who allegedly stayed in quarter no. 9. In reply, he averred that when he came back from duty on 29.10.1992 at around 12:00 o'clock (midnight), he saw those two persons sleeping in the quarter. On 30.10.1992, while he was going to duty, he saw them talking to Jaswinder Singh @ Jassa. PW-4 was also confronted with his Section 161 Cr.P.C. statements recorded both by the C.I.D. and C.B.I. on the issue that he did not mention that the U.P. Police had taken away Jaswinder Singh @ Jassa and further with regard to identity of two unknown persons who allegedly stayed in quarter no. 9. On the first issue, PW-4 stated that he mentioned to C.B.I. during investigation that Jaswinder Singh @ Jassa was taken away by the U.P. Police but the reason for non-recording of the said fact in his statement was not known to him. For the second question, he stated that he did not mention to C.B.I. that both the unknown persons were Sardar (having 'kesh' and 'beard') and that if it was so mentioned in his statement, the reason was not known to him. PW-4 emphatically denied that Jaswinder Singh @ Jassa was not present in the quarter No. 9 (in the Gurudwara) on 20.10.1992 and 30.10.1992 and that he was involved in terrorist activities.

PW-6 namely Uday Rai, a shop keeper of Beetal-Beedi shop located on the road across Gurudwara Rakabganj, Delhi near Hanumal Ji Temple recorded his statement on 12.10.1999. He stated that around 7:00 AM before opening his shop, he went to Hanuman Ji Temple located outside the Gurudwara. At around 8:00-8:45 AM, when he was coming out of the temple he saw one Sardar aged about 20-25 years coming out from the Gurudwara on a cycle. At that time, a red Maruti van came and three persons in plain clothes caught hold of that Sardar. They brought him to a Circle near Dogra Taxi stand and made him sit in a truck. In that truck, 2-3 persons were sitting in 'Khaki' uniform. The said truck went away on the Rakabganj Road. PW-6 stated that he could not notice the movement of red Maruti van and that the truck was of blue colour. When he reached his shop, he saw crowd collected in front of the Gurudwara and people present there were talking that a Sardar was taken away by the police and that he was a Sewadar in Gurudwara Rakabganj, New Delhi. After the said incident, Police of Parliament Street Police Station came on the spot and directed him to close the shop. His statement was also recorded by the police of the said Police Station and his narration of the incident was noted. From the statement of PW-6, it appears that though opportunity to cross-examine PW-6 was given to the defence but they did not avail the same.

PW-5 was posted as Sub-Postmaster in Majitha Post Office in the year 1994. Exhibit 'Ka-6', the telegram dated 20.10.1992 was shown to this witness and he stated that the said telegram was sent from Majitha Post Office on 20.10.1992 at about 2:00 PM by Jaswinder Singh to Jaththedar Shyam Singh (PW-1), Gurudwara Rakabganj. The said telegram was noted at serial number 'A-7' in the register of the Post Office concerned. PW-5 gave statement to C.B.I. after looking to the said register that the telegram was sent on 20.10.1992 and that the record of telegram Form was weeded out after two months. In cross-examination, PW-5 clarified that he was not present in the Majitha Post Office on the

date when telegram was sent.

PW-9 is Vijay Kumar, a resident of Shalimar Bagh, New Delhi. He stated that he was working as a Cleaner in Dogra Taxi stand situated in front of Hanuman Ji Temple and stayed there in the end of October, 1992. On a date (which he did not remember), when he woke up in the morning he saw a mini truck of blue colour parked in front of the Temple. On the bumper of the said truck "Police" was written. In the said truck, 5-6 police personnel were present in uniform carrying badge of the U.P. Police. Thereafter, a red Maruti van came. At around 8:00-8:30 AM, a young boy (aged about 22-23 years) who was a Sardar wearing a yellow turban came out of Gurudwara Rakabganj, New Delhi on the cycle. Immediately, 3-4 persons in plain clothes came out from the said Maruti van and caught hold of Sardar, they put him in the said mini truck. The said Sardar shouted to inform in the Gurudwara that he was being taken away by the police. The truck and Maruti van left in the opposite directions. He stated that he could not note the registration number of the vehicles. A lot of crowd was collected on the spot and some people who came out of the Gurudwara took away the cycle of the young boy and then he came to know that the said boy was a Sewadar in the Gurudwara. This witness was cross-examined on his statement recorded by Delhi Police with regard to identity of the mini truck. He stated that his statement was recorded by Delhi Police after about 17-18 days of the incident and he did not mention the colour of the truck being 'yellow' and that if it was so written, it was wrong. The statement of PW-7 recorded by C.B.I. was also put to him to confront that he mentioned that truck was of 'yellow' colour in his statement under Section 161 Cr.P.C. This witness categorically replied that the truck was of blue colour and he had seen the same from his own eyes. The colour of the truck 'yellow' was wrongly mentioned in his statement recorded by C.B.I. He denied that he went to the Gurudwara to give information of the incident and stated that Gurudwara people themselves came out and asked him, it was then

informed that the persons who took away Sardar boy were from the U.P. Police as they were wearing badge of U.P. Police. P.W.-7 denied that he was giving wrong statement under the pressure of Gurudwara people.

PW-10, Ajayab Singh is a Sewadar in Gurudwara Rakabganj who was residing in quarter 9 in Gurudwara premises. He stated that Balveer Singh, Jogendra Singh, Manjeet Singh (PW-4) and Jaswinder Singh @ Jassa (deceased) were residing alongwith him in quarter no. 9. His duty shift in the Gurudwara in October, 1992 was from 4:00 AM till 8:00 AM and from 4:00 PM till 8:00 PM. On a day prior to the incident of abduction, he came back to the quarter at around 8:00 PM and when he woke up at around 3:30 AM to go on duty, he saw two new people sleeping on the cot of Jaswinder Singh @ Jassa. Jaswinder Singh @ Jassa was also sleeping in a separate cot near him. He further states that when he came back in the night to the quarter after having dinner, though Jassa was sleeping but those two new persons were not there. In the morning at around 8:00 AM after finishing his duty when he was standing near the 'piyao' (drinking water kiosk) on the gates of Gurudwara, he heard a "shore" that someone was abducted from outside the Gurudwara. When he came out of the gate alongwith other Gurudwara people, they were informed by the Dogra Taxi stand persons that a boy was taken away by the U.P. Police and his cycle was standing there. When they looked on the blue mark on the cycle, they came to know that it belonged to a Sewadar of the Gurudwara. They took the cycle inside the Gurudwara and then on identification of the same, it was found that it belonged to Jaswinder Singh @ Jassa. PW-10 stated that when he came inside the Gurudwara after the incident, he did not find those two unknown persons in the Gurudwara who were sleeping on the cot of Jaswinder Singh @ Jassa in his quarter. On enquiry, it was transpired that Jassa went out of the Gurudwara to get milk on the cycle when he was taken away by the U.P. Police and this fact was told to him by Jaththedar Shyam Singh.

PW-10 further stated that Jaswinder Singh @ Jassa was ill prior to

the incident. He was confronted with his statement under Section 161 Cr.P.C. recorded by C.I.D. on the identity of those two unknown persons and the time when Jaswinder Singh @ Jassa had left the quarter no. 9 to get milk. He denied giving contradictory statements to the investigating agency. PW-10 was also confronted with his statement given to C.B.I. about the identity of those two unknown persons. He categorically denied that he did not see anything and that Jaswinder Singh @ Jassa was not taken away from outside the Gurudwara and that he was giving false statement on the asking of Gurudwara people.

14. As noted above, PW-1 to PW-4, PW-6, PW-9 and PW-10 are the first set of witnesses who were examined on the charges of abduction of Jaswinder Singh @ Jassa.

Placing their statements as noted above and the documentary evidences, i.e. material exhibits namely photographs, personal records (leave application, medical, leave application form telegram) of deceased and duty/attendance register i.e. 'Ka-2', it was vehemently argued by Sri Dileep Kumar learned Senior Counsel for the appellants that the duty/attendance register is a forged document which had been prepared for the purpose of the case. In fact, no register was being maintained in the Gurudwara and for this reason, the register "Exhibit Ka-2" starts with the attendance for the month of October, 1992 itself. No other attendance register being maintained in the Gurudwara prior to October, 1992 was seized by C.B.I. The entries in the attendance register seized by C.B.I., therefore, cannot be taken as true to prove the presence of deceased Jaswinder Singh @ Jassa in Gurudwara Rakabganj on 29.10.1992 and 30.10.1992. Moreover, there are cutting and overwriting in the said register and the prosecution witnesses could not prove the genuineness/authenticity of the said document.

15. As far as personal records of deceased are concerned, it is contended on behalf of the appellants that the leave application does not bear a date. The date of giving medical certificate in the office of the

Gurudwara is not known. Medical certificate does not contain the thumb impression or signature of the applicant. It could not be ascertained as to when telegram for extension of leave was received in the office of the Gurudwara. The date of sending the said telegram as per the prosecution witnesses was 20.10.1992, whereas leave was allegedly applied by deceased only upto 18.10.1992. As per the entries in the attendance register, Jaswinder Singh @ Jassa was continuously shown on leave from 4.10.1992 till 27.10.1992, whereas in the leave application he mentioned the period of leave from 4.10.1992 to 18.10.1992. The telegram for extension of leave as per the oral and documentary evidences dated 20.10.1992 was received in the office of Gurudwara on 23.10.1992. It is, thus, not known as to how leave of Jaswinder Singh @ Jassa was recorded, thus, from 19.10.1992 and 22.10.1992, before the date when telegram was received in the office of the Gurudwara.

16. It is, thus, vehemently contended that the entries in the duty/attendance register were made on a back date as leave of Jaswinder Singh @ Jassa could not have been recorded without the receipt of telegram seeking extension of leave. It is, thus, contended that the entries of attendance of Jaswinder Singh @ Jassa in the Gurudwara on 28.10.1992 and 29.10.1992 were fabricated entries having been made on a back date in order to establish the presence of Jaswinder Singh @ Jassa in the Gurudwara. It is, thus, vehemently argued that the documentary evidences (seized by C.B.I. on 16.10.1993) could not be relied upon to hold that Jaswinder Singh @ Jassa was present in the Gurudwara and was abducted from outside its gates.

It is then argued that PW-1 has not been able to prove the movement of deceased in the manner in which it was averred by him. The presence of deceased in the Gurudwara on the date of incident is highly doubtful.

17. As per the statement of PW-2, he was the first person to give information of the incident of abduction of Jaswinder Singh @ Jassa to

Delhi Police on 100 Dial Number. There are serious contradictions about the time when PW-2 came to know about the fact of abduction of Jaswinder Singh @ Jassa from the Gurudwara and intimation was given by him on 100 Dial Number. He admits that before he gave intimation on 100 Dial Number (Control Room) he was told that the police had already been intimated but he insisted to have given information on 100 Dial Number again but he did not mention the said fact to Delhi Police. Learned Senior Counsel further urged that the entries in the attendance register were supposed to be checked by PW-2 who was a Supervisor posted in the Gurudwara. PW-2 also could not explain as to how leave from 19.10.1992 till 22.10.1992 was granted to deceased Jaswinder Singh @ Jassa when there was no information in the Gurudwara office about extension of leave upto 22.10.1992 as the telegram was received only on 23.10.1992.

18. With the above, it is vehemently urged that all documentary evidences, the material exhibits including the duty/attendance register Exhibit 'Ka-2' could not be proved by the prosecution. Once the presence of Jaswinder @ Jassa in the Gurudwara on 30.10.1992 is not proved, the entire case of abduction set up by the prosecution becomes false resulting in frustration of its case about illegal/extra-judicial killing of Jaswinder Singh @ Jassa by the police personnel of the U.P. Police (P.S. Baradhpur, Bijnor). The alternative theory set up by the defence about terrorist activities of deceased and his killing in a police encounter being Sikh militant stands itself proved from the said facts and circumstances of the case.

19. Further it is argued that there are improvements on vital points in the statement of PW-4 with regard to identity of two unknown persons allegedly present in the quarter of Jaswinder Singh @ Jassa in the intervening night of 29-30.10.1992. The written report allegedly given by the Manager, Ajit Singh came into picture only on 17.11.1992 when a report in writing was submitted by Sukhi Ram, the In-charge Police

Outpost, North Avenue. None of the documentary evidences or oral testimony of prosecution witnesses could prove the charge of abduction beyond all reasonable doubts.

20. Dealing with the above arguments, it is pertinent to note that to prove the charge of abduction, the prosecution had produced two witnesses of fact namely PW-6 and PW-9 who stated to have seen the police personnel parking their vehicles at the Dogra Taxi stand (near Gurudwara Rakabganj) and taking away Jaswinder Singh @ Jassa (deceased) in those vehicles from the road outside the Gurudwara. To prove the report of abduction lodged by the Manager, Gurudwara Management Committee, three witnesses namely PW-11, the Assistant Sub-Inspector, Police Station Parliament Street; PW-12, the Officer in the Police Post North Avenue on duty on the date of incident; and PW-13, Sukhi Ram, Chauki In-charge, Picket Police Post, North Avenue, Parliament Street had entered in the witness-box. Their testimonies would be appraised at the appropriate place in the judgment.

21. We may further note that PW-29 Dalveer Singh, a retired police officer, then posted in the Police Lines, Bijnor had entered in the witness box to prove that two vehicles were hired by the Station House Officer, Police Station Baradhpur, Bijnor on 29.10.1992 from the Police Lines, Bijnor. He proved that running register regarding movement of the vehicle, “material Exhibit 58(D-40)” bears signature of the officer concerned. It was further proved that demand of vehicles (a hooter vehicle and a light vehicle) was made through a wireless message endorsed and exhibited as Exhibits “Ka-31”, “Ka-31/1” and “Ka-31/2”. On the said demand, a Tata Truck No. UP20/4473 (Tata 407 Detain) was released from the Police Lines, Bijnor, endorsement of which was made by the officer concerned. The said vehicle was driven by Driver Kailash.

22. Much emphasis has been laid on the statement of PW-29 by the learned Senior Advocate for the appellants to assert that Tata Truck (blue colour) had covered only 208 kms. that too on 29.10.1992 which shows

that the said vehicle though hired by accused Dhirendra Singh Yadav, S.H.O. Baradhpur, Bijnor but it did not ply to Delhi.

PW-30, a resident of Baradhpur, Bijnor had also been examined who stated that he went with Avtar Singh (PW-36) and some police personnel from Bijnor to New Delhi on 29.10.1992 in a red Maruti van and Tata Truck (blue colour). They reached Gurudwara Rakabganj, New Delhi at around 12:00-1:00 AM; 2-3 police personnel and his uncle went inside the Gurudwara and the remaining persons stayed in the vehicles. PW-30 also stated that he later went inside the Gurudwara. His uncle Avtar Singh talked to Jaswinder Singh @ Jassa and he alongwith his uncle slept in the quarter of Jassa. In the morning, his uncle woke him up and told that Jassa had gone somewhere and they started searching for him in the Gurudwara and later he was told by his uncle that U.P. Police had taken away Jassa. When they came outside the Gurudwara, those vehicles were not there and they came to their cousin's place in a bus.

23. We may note at this juncture that the examination-in-chief of this witness (PW-30) was recorded on 12.6.2003. On the said date, all accused persons were not present in the Court and this witness being an eye-witness, the Court was of the view that he could identify the accused persons so his statement-in-chief was withheld on that day. On the next date fixed for continuation of his examination-in-chief, i.e. on 15.12.2003, this witness was brought to the Court on being arrested which fact is evident from his statement in the cross-examination recorded on 12.4.2004. On 15.12.2003 when PW-30 entered in the witness-box, he refused to identify the accused persons saying that the accused persons present in the court were not the same persons who went with him to Delhi to bring Jaswinder Singh @ Jassa. This witness, however, reiterated that the police personnel who went to Delhi alongwith him were from the U.P. Police. At this stage, PW-30 was cross-examined by the Public Prosecutor for the C.B.I.; in the cross-examination, he stated that he was investigated by C.B.I. and that he went to Delhi on 29.10.1992 alongwith

his uncle and some police personnel from Bijnor in a private vehicle. With regard to identity of the accused, relevant part of statement of PW-30 reads as under:-

“हाजिर अदालत अभियुक्तगण को देखकर कहा कि इनमें से कोई भी व्यक्ति वह लोग नहीं है जो मुझे लेकर दिल्ली गुरुद्वारा आये थे जो पुलिस वाले मुझे लेकर आये थे वो यू.पी. पुलिस के थे किस एरिया के थे मुझे नहीं पता। यह मैं जानता हूँ जो हमारी मारुती वैन चला रहा था वो कुम्हारो का लड़का पप्पू? था।

सुना गया पी.पी. सी.बी.आई. को इस स्टेज पर उनके गवाह से जिरह करने की अनुमति दी गयी

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जिरह वास्ते पी.पी. सी.बी.आई.

यह सही है कि सी.बी.आई. ने मेरा बयान लिया था और पूछताछ की थी यह बात भी सही है कि मैं 29-10-92 को पुलिस वालो के साथ तथा चाचा जी के साथ विजनौर से प्राइवेट वैन में चला था और चाचा जी भी साथ थे। यह भी सही है कि मेरे साथ तीन पुलिस वाले भी बैठकर आये थे गाड़ी में पांच आदमी तथा ड्राइवर था। मैंने किसी पुलिस वालो का नाम नहीं बताया था मैंने केवल नाम अपने चाचा से सुना था मैं उसे जानता नहीं था। यह सही है कि मैंने सी.बी.आई. वालो को बताया था कि दो पुलिस वाले और थे जिनमें एक काले रंग का मोटा सा वर्दी पहने था यह कहना गलत है कि मैं पुलिस वालो से डर के मारे आज न्यायालय में पहचानने में कतरा रहा हूँ। यह कहना भी गलत है कि मेरे साथ जो वैन में सवार थे उनमें धीरेन्द्र सिंह, दौजी? व कलवा सिपाही नहीं थे। यह कहना गलत है कि ये तीनों व्यक्ति आज न्यायालय में उपस्थित हैं और मैं जानबूझ कर ना पहचान रहा हूँ। मेरी वैन में जो मेरे साथ आये थे उनमें से मैं अपने चाचा अवतार व ड्राइवर पप्पू? को जानता हूँ और कौन थे मुझे पता नहीं। यह कहना गलत है कि मैं जानबूझ कर मुल्जिमान से मिल गया हूँ और सही बात ना बता रहा हूँ। यह कहना भी गलत है कि मुल्जिमान के पुलिस में कार्यरत होने के कारण उनके आतंक के कारण मैं उनको पहचानने से इंकार कर रहा हूँ।”

Further, in the cross-examination for the accused recorded on 29.1.2004, PW-30 took a U-turn and resiled from his previous versions in the examination-in-chief. He denied having gone to Delhi on 29th October; stayed with Jassa in the Gurudwara and further stated that he met Jassa in Bijnor who came to his shop at Nagina alongwith one Kamaljeet to threaten him that their identity should not be disclosed to the police.

24. A reading of the cross-examination of PW-30 recorded on 29.1.2004 shows that in narration of the entire story, he reiterated the

versions of the accused about the incident. PW-30 was further recalled on 12.4.2004 for re-examination on an application moved by the prosecution after completion of his cross-examination on 29.1.2004 for the accused. His previous statements dated 12.6.2003, 15.12.2003 and 29.1.2004 were put to him by the prosecution to bring to his notice that he made contradictory statements in the Court. On being confronted, PW-30 deposed that his all three previous statements were true. He reiterated that he went to Delhi with the police personnel but did not meet Jassa on 29.10.1992. He emphatically denied that he was making statement about going to Delhi alongwith the police personnel under the pressure of the Investigating Agency namely C.B.I.

25. As noted above, the record indicates that PW-30 was arrested to appear in the Court after 12.6.2003, i.e. before his examination-in-chief could be concluded. It appears that U-turn taken by PW-30 in the cross-examination recorded on 15.12.2003 was not his independent decision. It appears to have been made to support the defence theory under some kind of pressure. His statement of refusal to identify the accused is also found shaky. The statement of this witness (PW-30) made in the Court when read as a whole, proves that he went to Delhi with the police personnel of U.P. Police from Baradhpur Bijnor on 29.10.1992 and that he had also gone to the Gurudwara Rakabganj, New Delhi. The question as to the purpose or reason of going to Delhi alongwith police personnel has not been correctly answered by this witness (PW-30).

26. Taking into consideration the whole testimony of PW-30, we are of the considered view that at least his deposition does not shake the basic version of the prosecution story, as this witness had supported the prosecution case in his first statement-in-chief recorded on 12.6.2003 and for this reason he was not declared hostile, though cross-examined by the prosecution on contradictory versions made in the Court.

27. All other private persons produced by the prosecution namely Chandra Prakash (PW-32)(Driver); Avtar Singh (PW-36)(uncle of PW-30)

and Jasveer Singh (PW-37), to prove the movement of accused (police personnel of P.S. Baradhpur, Bijnor) to Delhi had been declared hostile as they did not support the prosecution story.

28. PW-34 Saran Jeet Singh, a resident of Delhi is related to deceased Jaswinder Singh @ Jassa being his cousin. He was produced to prove the presence of Jassa in Delhi on 28.10.1992. This witness stated that Jaswinder Singh @ Jassa came to his house on 28.10.1992 and had dinner with him. On 30.10.1992, he got information of abduction of Jassa at about 10:30 AM through a telephonic message from the Gurudwara. When he went to the Gurudwara, he was told by Vijay Kumar (PW-9) at the Dogra Taxi stand that Jassa was taken away by the U.P. Police and he also enquired about the said fact from the Gurudwara people.

We may note that the statement of PW-34 is a hearsay evidence and as such cannot be given much credence so as to prove the presence of Jassa (deceased) in the Gurudwara on 29.10.1992 or the fact of his abduction from the road outside the Gurudwara in the morning on 30.10.1992.

29. Now we proceed to analyse the testimonies of PW-11 and PW-12.

PW-11, an Assistant Sub-Inspector posted on duty in Parliament Street Police Station, New Delhi in October, 1992 proved the signature and handwriting of S.H.O. Ashok Hari in the noting on Exhibit 'Ka-5' (the typed report given by the Manager, Gurudwara Management Committee about the abduction of Jaswinder Singh @ Jassa). This witness has also proved the writing and signature of Sukhi Ram on Exhibit 'Ka-5/2'. He further stated that Chik FIR of Case Crime No. 400 of 1992 under Section 365 IPC was registered by him on 17.11.1992 at 8:50 PM on the basis of the written reports exhibited as Exhibits 'Ka-5' and 'Ka-5/2'. The S.H.O. Ashok Hari had died in an accident and as such he entered in the witness-box to prove the writing and signature of the said officer.

Much emphasis has been laid by the learned Senior Advocate for the appellants on the statement of PW-11 in the cross-examination that the

U.P. Police was not named as suspected accused in the FIR registered on 17.11.1992. It is further vehemently contended that the written report “Exhibit Ka-5”, the endorsement of S.H.O. Ashok Hari (Exhibit 'Ka-5/1') and the report of Sukhi Ram dated 17.11.1992 (Exhibit 'Ka-5/2') are all fabricated documents. It is contended that the Case Crime No. 400 of 1992, i.e. Chik FIR was not registered in the Police Station Parliament Street, New Delhi rather it was an interpolation made by Sukhi Ram (PW-13) at D.D. No. 20A. There is no record of receipt of the typed report (Exhibit 'Ka-5') given by Ajit Singh (PW-3) (the Manager, Gurudwara Management Committee) in the Police Station Parliament Street, New Delhi. The case of the prosecution that typed report was received on 30.10.1992 in the Police Station Parliament Street and was endorsed to Sukhi Ram, Chauki In-charge of Picket Police Post, North Avenue is nothing but a result of fabrication. It is argued that all the documents proved by PW-11, PW-12 and PW-14, were fabricated later on. None of these witnesses mentioned the names of PW-1 and PW-2 as the persons who gave first information to the police about the factum of abduction. The written report dated 30.10.1992 (Exhibit 'Ka-5') and the report of Sukhi Ram (PW-13) Exhibit 'Ka-5/2' were prepared as a result of “Peshbandi”. The C.B.I. or Delhi Police did not investigate into the said aspect of the matter.

30. At this stage, we may further appreciate the testimony of PW-13, the Sub-Inspector Sukhi Ram who was posted as Chauki In-charge in Police Outpost, North Avenue, Police Station Parliament Street. He deposed that Gurudwara Rakabganj, New Delhi lies within the territorial limits of the Police Outpost, North Avenue wherein that he was posted in October, 1992 as Chauki In-charge. He states that on 30.10.1992 at about 10:40 AM, he got a wireless message that a Sewadar of Gurudwara Rakabganj namely Jassa Singh was taken away by the U.P. Police. The said information was entered in the Daily Diary No. '9' of the Police Outpost. After getting the said information, he went to the place of

incident and made enquiry from the persons present namely Uday Rai, Raja Ram and other taxi drivers. It was then transpired that Jaswinder Singh @ Jassa (aged about 22-23 years), a resident of Majitha, Amritsar, who was working as Sewadar in Gurudwara Rakabganj, New Delhi was taken away in two vehicles (a red Maruti van and blue colour truck) from outside the Gurudwara at about 8:30 AM on 30.10.1992. The entry of wireless message received on 30.10.1992 at about 10:40 AM in Police Post North Avenue at D.D. No. '9' has been proved by 'PW-12' by bringing the original Daily Diary of the said police post, which was exhibited as "Exhibit 'Ka-12'". At this stage, we may note that PW-12, Constable Shyam Lal posted in Police Force, North Avenue, New Delhi proved that the true copy of D.D. No. '9' was handed over by him, in his own handwriting and signature, to the C.B.I. during investigation.

PW-13, S.I. Sukhi Ram further stated that he sent wireless messages to SHO(s) and DCP(s) of Delhi and S.S.P. of the entire country to transmit the lookout notices about Jassa Singh. These wireless messages having been sent by him in his handwriting and signatures have been proved as Exhibit 'Ka-14'. As noted above, D.D. No. '30' dated 30.12.1992 of Police Outpost, North Avenue, New Delhi was proved in original by PW-12, the Constable Shyam Lal and exhibited as "Exhibit Ka-13". It was proved by him that entry in D.D. No. '30' was in the handwriting of Sukhi Ram which he could recognize as he was posted alongwith Sukhi Ram at Police Outpost North Avenue. On the other hand, Sukhi Ram (PW-13) stated that the report with regard to the investigation made by him on 30.10.1992 was entered in D.D. No. 30 in his own handwriting. The original D.D. No. '30' was produced in the Court to prove and exhibit the said entry as "Exhibit 'Ka-13'". PW-13 further states that during the course of investigation, it came to his notice that Jassa was taken away by the U.P. Police. As a result of it, a wireless message dated 4.11.1992 was sent to S.S.P.(s) of Uttar Pradesh which was also in his handwriting and signature. The said wireless message was proved from

true photocopy as “Exhibit Ka-15”. It was stated by PW-13 that he did not get any feedback of the wireless messages sent by him as “Exhibit 'Ka-15’”. Typed report given by the Manager, Gurudwara Management Committee about the incident dated 30.10.1992 was received by him after it was forwarded for enquiry by SHO, Parliament Street Sri Ashok Hari (Exhibit Ka-5/1). When he did not get any feedback of the whereabouts of Jassa till 17.11.1992, he submitted his report (Exhibit 'Ka-5/2') along with the written report (Exhibit 'Ka-5') about missing of Jassa under Section 365 IPC on 17.11.1992. The Case Crime No. 400 of 1992 was registered on the basis of the said report and investigation was handed over to him. During the course of investigation, he prepared a site plan, “Exhibit Ka-16” and recorded statements of the witnesses. On 18.11.1992, he again sent wireless messages to SSP(s) of the U.P. Police which were proved being in his handwriting and signature as “Exhibit Ka-17”. PW-13 stated that investigation could not be completed by him on account of the order of the Apex Court in a writ petition filed in relation to the incident in question. On 14.12.1992, he again sent wireless messages to SSP(s) of the U.P. Police, the copy whereof has been proved being in his handwriting and signature as “Exhibit Ka-18”.

Placing the statement of PW-13, it was vehemently argued by the learned Senior Advocate for the appellants that PW-13 had been made a judge of his own cause by handing over the investigation to him on the alleged report given by Ajit Singh (the Manager of Gurudwara Management Committee). As per the statement of PW-13, the Chik report of Case Crime No. 400 of 1992 was registered at Police Station Parliament Street, New Delhi, on the report (Exhibit 'Ka-5/2') given by him only. According to the learned Senior Advocate, the said report, thus, becomes a complaint and PW-13 would fall in the category of the complainant. It is, thus, argued that it is well settled principle of law that a complainant cannot be made Investigator of his own complaint. The act of the SHO, Police Lines in handing over the investigation on the report

of abduction of Case Crime No. 400 of 1992 to PW-13 Sukhi Ram was, therefore, in contravention of the principles of natural justice. We are afraid to accept the said submission as there is no substance in the same. The Investigation in Case Crime No. 400 of 1992 admittedly had not been completed by Delhi Police or the Investigating Officer Sukhi Ram who entered in the witness-box as PW-13. The investigation with regard to the charge of abduction and killing of Jassa by the accused persons (policemen of Police Station Baradhpur, Bijnor) has been completed by C.B.I. on the direction issued by the Apex Court in a writ petition filed by a relative of Jaswinder Singh @ Jassa.

31. It is further urged that PW-6 and PW9 are star witnesses of the prosecution. PW-6, however, was not cross-examined so his evidence-in-chief cannot be given credence. PW-6 was projected as eye-witness by the prosecution to establish the charge of abduction of Jassa. This witness was allegedly running a Beetal Shop outside the Gurudwara but in the site plan prepared by the Investigating Officer (PW-46), there is no mention of the Beetal Shop outside the Gurudwara. PW-6 and PW-9, two independent witnesses produced by the prosecution did not identify the victim/deceased from the photographs exhibited as material "Exhibits 4 and 5". There is no substance in their evidence about Jassa being abducted by the U.P. Police from the road outside the Gurudwara on 30.10.1992. It is, thus, vehemently urged that they cannot be placed in the category of eye-witnesses rather their evidence at best can be said to be hearsay evidence.

32. With regard to PW-13, it is further argued that another star witness of the prosecution to prove the charge of abduction is Sukhi Ram (PW-13) who made preliminary enquiry in the Case Crime No. 400/1992. Any enquiry/investigation on the information of commission of a crime by someone starts with the report registered under Section 134 Cr.P.C. which is termed as the first information report. The enquiry conducted by PW-13 before registration of FIR on 17.11.1992 as Case Crime No. 400/1992,

therefore, cannot be treated as a proof of charge of abduction by the accused persons. The result is that none of the prosecution witnesses examined by the prosecution could prove the charge of abduction or identify the appellant or the accused persons being preparators of crime. Their statements regarding abduction of Jaswinder Singh @ Jassa by U.P. Police is not direct but only hearsay evidence. Even otherwise, the entire investigation/enquiry conducted by the PW-13 was tainted, illegal and uncreditworthy. The report prepared by PW-13 being outcome of manipulation, manufacturing of documents, the conviction of accused cannot be recorded on the basis of his report.

It is further urged that the Investigating Officer of C.B.I. namely P.W. 46 admitted in his deposition before the Court that he did not make any enquiry about the authenticity of the attendance register allegedly maintained in the Gurudwara; neither he made any enquiry with regard to the genuineness of the medical certificate nor about the entries of leave granted to Jassa from 19.10.1992 till 22.10.1992. The Maruti van allegedly used in abduction of Jassa was not seized to make it a case property.

33. Dealing with the above submissions, we may note that the record indicates that after completion of the examination-in-chief of PW-6, twice opportunity of cross-examination was granted to the accused. They did not avail the said opportunity and during the intervening period, PW-6 Uday Rai died in an accident. His cross-examination was, therefore, not possible in the circumstances of non-availing of opportunity granted to the accused by the Court. The submission of learned Senior Advocate that his evidence in chief cannot be read to prove the case of the prosecution is, thus, found misconceived.

34. As far as the investigation made by Sukhi Ram PW-13, we may note that he was cross-examined on behalf of the accused only on the wireless messages sent by him and the date and time of first information report [typed report given by Ajit Singh (PW-3)] recorded at D.D. No. '9'

of Police Outpost, North Avenue, New Delhi and his knowledge about involvement of the U.P. Police. PW-13 was contradicted on the statement of witnesses recorded by him during the course of initial investigation and identity of Tata truck disclosed by the witnesses Uday Rai (PW-6) and Vijay Kumar (PW-9). He was not confronted on the investigation made by him on the first information report forwarded by SHO, Police Station Parliament Street namely Ashok Hari. No question was put up to him to dispute the authenticity of the documents proved by him (Exhibit Ka-5) namely typed report received with the endorsement of SHO Ashok Hari (Exhibit 'Ka-5/1') and the endorsement to PW-13 to make an enquiry (Exhibit 'Ka-5/2') as also the entries in D.D. No.'9' and D.D. No. 30 proved by PW(s)-11, 12, 13.

35. On the issue of authenticity of the attendance register seized by PW-46, Investigating Officer, C.B.I., suffice it to note that the Investigating Officer had admitted that he did not make any enquiry about the attendance register being maintained ordinarily in the office of Gurudwara Rakabganj and apart from the register seized by him with the Seizure Memo dated 16.12.1993 (Exhibit 'Ka-4'), no other attendance register was asked by him from the office of Gurudwara. This omission on the part of the Investigating Officer, in our opinion, may be considered as a lapse in the investigation but that by itself would not be sufficient to throw away the entire prosecution case being based on manufactured documentary evidences. The oral depositions of prosecution witnesses cannot be brushed aside on the said ground urged vehemently on behalf of the appellants. The entries in the attendance register maintained in Gurudwara Rakabganj were proved by PW-1 being in his handwriting. Apart from few minor contradictions, no major discrepancy could be pointed out from his deposition.

The Investigating Officer, C.B.I. (PW-46) further proved that after registration of the FIR by C.B.I. dated 15.11.1993, he recorded statements of witnesses, seized all documents related to articles of the case. He

proved FIR dated 15.11.1993 as “Exhibit Ka-63”, seizure memos as “Exhibits Ka-51, Ka-53 and Ka-56, Ka-64”; two site plans of both the places of incident prepared by him as “Exhibit Ka-65 and Ka-66”; the seizure memo dated 16.12.1993 for seizure of documents from the Gurudwara Office as “Exhibit Ka-4”. He proved that he recorded statements of Satvendra Singh (PW-30), Avtar Singh (PW-36) and Jasveer Singh (PW-37) during the investigation made by him. He proved that he recorded statement of Satnam Singh (PW-2) in his office at Delhi. He was confronted on the correctness of the site plan of the incident of abduction outside the Gurudwara. PW-46 replied that he might not have indicated the Beetal Shop in the site plan but there is description of the same in the Case diary. PW-46 was mainly confronted with 161 Cr.P.C. statement of witnesses recorded by him. He reiterated what has been transcribed in the Case Diary. Apart from the lapses pointed out in the investigation done by him, nothing could be brought before us which would substantiate the submissions of the learned Senior Counsel for the appellants regarding the investigation being based on the manufactured documents or a result of illegal exercise of power conferred on the Investigating Officer. The evidence collected by the Investigating Officer C.B.I. (PW-46) seized from different sources are part of record of the trial.

36. The relevant questions on the issue of abduction arisen before us are (i) as to whether Jaswinder Singh @ Jassa (deceased) was present in Gurudwara Rakabganj in the intervening night on 29-30.10.1992 and further (ii) whether he was abducted/taken away by the U.P. Police (accused persons) in the morning on 30.10.1992 from the road outside the Gurudwara.

37. On the said questions, on appreciation of oral and documentary evidences produced by the prosecution, the following circumstances can be culled out from the record and have been proved by the prosecution:-

(i) It was proved by the prosecution that Jaswinder Singh @ Jassa aged about 22-23 years was a Sewadar in Gurudwara Rakabganj at the

time of the incident, i.e. in the year 1992. He was residing in Quarter No. 9 of Gurudwara Rakabganj alongwith Manendra Jeet Singh (PW-4), Ajayab Singh (PW-10), Jogindar Singh and Balveer Singh (all Sewadars of Gurudwara Rakabganj).

(ii) Deceased Jassa went on leave by moving a leave application on 4th October, 1992 and was on leave upto 18.10.1992. He further gave application for extension of leave till 27.10.1992 which was duly approved by the Gurudwara authority. The prayer for extension of leave for the aforesaid period was made through a telegram sent from Majitha Post Office, proved by PW-5 (an employee of the Postal Department).

(iii) In the intervening night on 29-30.10.1992, two unknown persons came to quarter no. 9 and stayed with Jassa. As those persons were not known to his roommates PW-4 Manendra Jeet Singh and PW-10 Ajayab Singh, they had mentioned them as “unknown” in their statements. There is some dispute about their identity being “Sardar” and “Mauna”, but the presence of two unknown persons in quarter no. 9 in the intervening night of 29-30.10.1992 was proved by the flatmates of Jaswinder Singh @ Jassa namely PW-4 and PW-10 and could not be disputed successfully by the defence/appellants.

(iv) PW-1 Shyam Singh, a Jathethedar in Gurudwara Rakabganj, In-charge of Sewadars, deposed that the entries about attendance of Jassa in the attendance register were made by him.

(v) PW-2 Satnam Singh is the witness who gave first information of abduction of Jassa to North Avenue Police Outpost and Parliament Street Police Station on 100 Dial Number. He deposed that he also gave information in the Gurudwara Head office initially oral and later in writing to the Manager, Gurudwara Management Committee. He also proved the written report given by him to the Manager Gurudwara Management Committee as “Exhibit Ka-3”. PW-2 was confronted on the time of the intimation/information given by him at 100 Dial Number to the Manager, Gurudwara Management Committee. PW.3, Ajit Singh, the

Manager Gurudwara Management Committee, however, proved that typed report dated 30.10.1992 was given by him in Police Station Parliament Street on the information given by Satnam Singh, the Supervisor in writing as “Exhibit Ka-3”. The receipt of typed report (Exhibit 'Ka-5') sent by PW-3, the Manager of Gurudwara Management Committee has been proved as “Exhibit Ka-5/1” being the handwriting and signature of Ashok Hari, the then SHO, Parliament Street Police Station by PW-11, the Assistant Sub-Inspector on duty in Parliament Street Police Station, New Delhi in October, 1992. There are two endorsements on the typed report (Exhibit 'Ka-5') which are about the receipt of copy of the same in the Police Station Parliament Street on 30.10.1992 by S.H.O. Ashok Hari; as noted above, his signatures have been identified and proved by PW-11. Another endorsement is on the copy forwarded to In-charge Picket Police Post, North Avenue to enquire. It is also of the same date i.e. 30.10.1992, and has also been proved and exhibited as “Exhibit Ka-5/1”. The enquiry report dated 17.11.1992 given by Sukhi Ram (PW-13) received on 17.11.1992 at 8:50 PM in the Police Station Parliament Street, New Delhi has been proved by PW-11 (Exhibit 'Ka-5/2') in the handwriting and signature of S.I. Sukhi Ram. The first information report namely Case Crime No. 400 of 1992 under Section 365 IPC had been registered on the basis of the said report.

(vi) A perusal of the report dated 17.11.1992 submitted by Sukhi Ram (PW-13) further indicates that on receipt of written complaint of Ajit Singh, the Manager Gurudwara Management Committee, wireless messages were sent by Sukhi Ram as “lookout notices”. When no feedback was received by him, the report regarding his abduction under Section 365 IPC on the information given by PW-3 Ajit Singh was submitted. PW-13 had entered in the witness box and proved the entries made by him in D.D. No. '9' with regard to the message received in Picket Police Post, North Avenue on 30.10.1992 at about 10:40 AM. The said entry records that a Sewadar (Jaswinder Singh @ Jassa) of Gurudwara

Rakabganj was taken away by U.P. Police. The wireless message sent by 'PW-13' as In-charge Police Outpost, North Avenue to the DCP New Delhi and SSP(s) of the country have been proved as "Exhibit Ka-14". PW-13 also proved the report of the enquiry made and entered by him in D.D. No. '30' dated 30.10.1992 maintained in Chauki North Avenue being in his handwriting. It stands proved from the record that PW-13 went to the place of abduction under the directions issued by SHO, Police Station Parliament Street, under whose jurisdiction he was working as Chauki In-charge Police Outpost, North Avenue. The enquiry made by PW-13 on 30.10.1992 under the direction of his Superior cannot be accepted to be result of fabrication or a manufactured document being presented as a result of "Peshbandi". The said report being submitted by Sukhi Ram (PW-13) in discharge of his official duties cannot be discarded as being tainted on the contention of the learned counsel for the appellants that PW-13 had no jurisdiction to make a preliminary enquiry. The delay in lodging the first information report about missing of Jaswinder Singh @ Jassa cannot be attributed to the first informant namely Ajit Singh, the Manager, Gurudwara Management Committee (PW-3). The argument of learned Senior Advocate that all documents relating to enquiry made by Delhi Police into the charge of abduction of Jassa against the appellants were manufactured for the purpose of the case, cannot be accepted being without any substance. We may reiterate that all the above noted documents have been seized by the Investigating Officer, C.B.I. (PW-46) when the investigation was handed over to C.B.I. under the directions of the Supreme Court.

(vii) It is, thus, proved by the prosecution that a young man aged about 22-23 years named as Jaswinder Singh @ Jassa was taken away by the police personnel of the U.P. Police from the road outside Gurudwara Rakabganj, New Delhi on 30.10.1992 at about 8:00 AM when he came out of the Gurudwara on cycle. PW-6 Uday Rai, a shop keeper of Beetal Shop near the place of incident had proved the fact of abduction. Though

he did not identify the abducted person being Jaswinder Singh @ Jassa from the photograph but he categorically stated that the young Sardar aged about 20-25 years was taken away by police personnel in uniform and some persons in plain clothes in two vehicles, which were a red Maruti van and a truck of blue colour and that the said young man was a Sewadar of Gurudwara Rakabganj, New Delhi. He further proved that the police of Parliament Street Police Station came on the spot to make an enquiry and he was interrogated by them.

(viii) PW-9 namely Vijay Kumar, a cleaner working in Dogra Taxi stand near Gurudwara Rakabganj is an independent witness who also substantiated the aforesaid fact in his deposition. The statement of PW-9 is intact apart from minor inconsistency/contradiction from his statement recorded under Section 161 Cr.P.C. by Delhi Police and the C.B.I. which is with regard to the colour of the police truck which was parked at the Dogra Taxi stand and used in the abduction of Jassa. The cross-examination of PW-9 further gives credence to his statement in examination-in-chief that one young Sardar was lifted by the U.P. Police on the road outside the Gurudwara at about 8:00-8:30 AM on 30.10.1992.

(ix) On the charge of abduction, the prosecution had produced some witnesses namely Satvendra Singh (PW-30), Chandra Prakash (PW-32), Avtar Singh (PW-36) and Jasveer Singh (PW-37) to prove the movement of accused from P.S. Baradhpur, Bijnor to Gurudwara Rakabganj, New Delhi. PW-30 though took U-turn in his cross-examination at a later point of time but from reading of his whole testimony, it is evident that he has proved the movement of police personnel of P.S. Baradhpur, Bijnor to Delhi on 29.10.1992 in two vehicles namely a red Maruti van and a Tata truck. He also deposed that he alongwith PW-36 Avtar Singh went to Gurudwara Rakabganj, New Delhi and met Jaswinder Singh @ Jassa in quarter no. 9. The statement of PW-30 if read alongwith the statements of Manendra Jeet Singh (PW-4) and Ajayab Singh (PW-10) (two flatmates of Jaswinder Singh @ Jassa), it

becomes clear that those two “unknown persons” who stayed with Jassa in quarter no. 9 in the intervening night of 29-30.10.1992 were PW-30 Satvendra Singh and PW-36 Avtar Singh and they were those persons who had identified Jassa to the U.P. Police, as PW-30 further stated that two more persons alongwith them went inside the Gurudwara on the said date. PW-30, PW-32, PW-36 and PW-37 though had turned hostile on the identification of accused persons and about their involvement in the incident of abduction but a careful reading of their whole testimony is indicative of the fact that the accused persons, who were posted in P.S. Baradhpur, Bijnor went to Gurudwara Rakabganj, New Delhi and abducted Jassa in the morning on 30.10.1992. PW-30 and PW-36 witnesses when confronted with their statement under Section 161 Cr.P.C. made to the C.B.I., could not dispute their statement that they went to Gurudwara Rakabganj, New Delhi with the accused persons on 29.10.1992.

38. From the above appreciation of the documentary and oral evidences, the offence of abduction of Jaswinder Singh @ Jassa, a Sewadar in Gurudwara Rakabganj, New Delhi from outside the said Gurudwara in furtherance of the common intention of the accused that he would be murdered, punishable under Section 364 IPC readwith Section 34 IPC, stood proved.

39. Both the above questions posed to us are, thus, answered in affirmative. It is proved by the prosecution beyond all reasonable doubts that deceased Jaswinder Singh @ Jassa was a Sewadar in Gurudwara Rakabganj, New Delhi and that he was abducted on 30.10.1992 at about 8:00-8:30 AM. from Talkatora Road-Gurudwara Rakabganj Road in two vehicles namely one red Maruti van and another Tata Truck No. UP20/4473 (Tata 407 Detain) (a blue colour vehicle which was hired on 29.10.1992 from the Police Lines, Bijnor) by a Police party led by S.H.O., P.S. Baradhpur, Bijnor.

40. Moving further, undoubtedly, the accused persons charged with the

offences under Section 365 readwith Section 34 IPC including Dhirendra Singh Yadav, S.H.O., Police Station Baradhpur, Bijnor were posted in the Police Station Baradhpur, wherein the second incident of encounter of Jaswinder Singh @ Jassa had occurred. As far as the argument that it was a police encounter made by the accused persons in a combing operation in view of terrorist activities of Jaswinder Singh @ Jassa, we may note at the outset that the defence theory of encounter is not acceptable as they have not been able to prove the presence of deceased Jaswinder Singh @ Jassa in Kanshiwala Jungle with the territorial limits of Police Station Baradhpur, Bijnor on the fateful day nor there is any record of his criminal antecedents.

41. However, in support of the case of defence that it was a police encounter the statement of PW-39, the Investigating Officer C.B.C.I.D. Inspector S.S. Rathi has been placed before the Court to assert that this prosecution witness had proved the investigation report submitted by him in two criminal cases registered on 31.10.1992 in police station Baradhpur, District Bijnor namely Case Crime No. 192 of 1992 and 193 of 1992. A perusal of the deposition of PW- 39 indicates that investigation of the above noted criminal cases registered by the accused persons was handed over to him on 16.03.1993. He prepared a site plan of the site of the encounter and proved it as 'Exhibit 'Ka-61'. From his cross examination, it transpires that he recorded the statement of Ajit Singh, Manendra Jeet Singh and Ajayab Singh (PW-3, 4 and PW-10) and also recorded statement of inquest witnesses namely Satnam Singh, Amreek Singh, Tulsa Singh and Naseeb Singh. PW-29 admitted in the cross examination that Ajit Singh gave statement that he was informed about the abduction from Gurudwara Rakabgunj, New Delhi. However a dispute with regard to time and abduction has been raised by the defence with the aid of statement of PW-39 wherein he narrated the statement of Ajayab Singh (PW10) recorded under Section 161 Cr.P.C.

42. In our consideration of deposition of PW-39, we may note that the

investigation made by CBCID was not brought to its logical end, in as much as, on intervention of the Apex Court, investigation was transferred to CBI and a criminal case under Section 365/35, 302/120-B was registered by CBI. Much credence, therefore, cannot be attached to the testimony of PW-39 the Investigating Officer C.B.C.I.D to hold that deceased Jaswinder @ Jassa was a terrorist and it was a case of his encounter by the U.P. police in due discharge of their official duties.

43. Now we may consider the evidence of defence witnesses. Satnam Singh (DW-1) was Pradhan of village Kanshiwala, Police Station Baraharpur, District Bijnor. He states that on 31.10.1992 he heard the sounds of fire at about 5.00-6.00 AM. After sometime, a police Constable came to him to state that police had an encounter in which a terrorist was killed. DW-1 was called by the police to go on the spot to identify the deceased, who was stated to be a terrorist. DW-1 states that he reached the spot alongwith three persons namely Sardar Talsa Singh, Sardar Amreek Singh and Sardar Gurudev Singh. He saw a young terrorist (Sikh) died, lying on the ground. On one side of his body a magazine rifle on which saffron color flag was tagged was lying. When asked, police personnel informed him that it was AK-56 rifle. At a distance of approximately 10 paces from the dead body, one double barrel gun was also there. The said gun was identified by one Gurudev Singh as belonging to him. DW-1 further goes on to say that deceased (terrorist) alongwith another terrorist and one Sardar Naseev Singh came to his house around 15-16 days prior to the incident. They had dinner with him and both the terrorists stayed in his house in the night. Later, both the terrorists were also seen by him in the Jungle on 24/25.10.1992. One of the young terrorists who came to his house was carrying the same rifle which was spotted by him at the site of the encounter. DW-1 is a Panch witness. In cross examination, he admitted that he never made any complaint to the police about any terrorist activities in the village Kanshiwala Jungle or presence of deceased Jaswinder Singh @ Jassa or

any other terrorist in the Jungle of the said village. DW-1 also admitted that he did not know the name of deceased terrorist till the date of recording of his statement. He also admitted that being Pradhan of the village he met Dhirendra Singh Yadav S.H.O Barhapur, District Bijnor prior to the incident and one police officer came to him to ask him to give his statement in the Court about the incident.

44. DW-2 Tulsa Singh stated that accused Constable Kalawa Singh came to his house to call him to identify deceased terrorist who was killed in Kanshiwala Jungle on 31.10.1992. DW-2 in his examination-in-chief and also in cross-examination deposed that he had seen deceased terrorist alive in Kanshiwala Jungle on 18.10.1992 and 19.10.1992 as also on 29 & 30.10.1992. The said terrorist was carrying AK-56 rifle when he met him on 18.10.1992 & 19.10.1992. DW-2 also admitted in cross that he did not report to the police about the presence of terrorist (deceased or any other) in the Jungle of village Kanshiwala. He only says that he told Satnam Singh (DW-1) and Naseeb Singh (Gurudwara Head) about the presence of terrorist in the area.

45. On the basis of statement of DW-1 and DW-2, the counsel for the appellants sought to submit that deceased was a terrorist; his presence in Kanshiwala Jungle on 29.10.1992 & 30.10.1992 was proved by defence witnesses who also identified deceased being the same person who was roaming around the jungle in village Kanshiwala, Police Station Barhapur, Bijnor carrying AK-56 rifle. The submission is that the defence brought sufficient evidence on record to prove the identity of deceased and his involvement in terrorist activities and also established that deceased Jaswinder Singh @ Jassa was not present in Gurudwara Rakabgunj, New Delhi as asserted by the prosecution.

46. We do not find any substance in the above submission, in as much as, admittedly the defence witnesses had never given any information or report to the police about the presence of deceased Jaswinder @ Jassa in village Kanshiwala prior to the incident. The defence theory of deceased

being a terrorist is unfounded. Even otherwise, if it is accepted for a moment that deceased was a terrorist, the said fact, even if established, does not give license to the accused police personnel to kill him. The case set up by the police officers (accused) of Police Station Barhapur, District Bijnor about deceased being terrorist or that he was killed in an encounter in Kanshiwala Jungle is further belied by the fact, which is established, that deceased was abducted from Gurudwara Rakabgunj, New Delhi in the morning of 30.10.1992.

47. Now we may deal with the next submission of learned Senior Advocate Sri Dilip Kumar appearing for the appellants on the charge framed under Section 120-B. His argument is that conviction under Section 120-B of the conspiracy cannot be sustained, in as much as, there is no evidence of prior meeting of mind of the accused. Further, no such inference can be drawn from the circumstance of abduction of deceased even if the offence of abduction is found to be proved. To add to his submission, Sri Satish Trivedi another Senior Advocate appearing for the appellants argued that there is nothing on record which would even indicate the place where Jaswinder @ Jassa was kept in Bijnor before his encounter in the wee-hour on 31.10.1992. He submits that SHO, P.S. Baradhpur, District Bijnor namely (Dhirendra Singh Yadav) was investigating a case of theft in a Bank and during the course of said investigation, combing operation was conducted by the police of P.S. Baradhpur District Bijnor. He further urged that there is nothing on record to show as to how Jaswinder Singh @ Jassa was identified by the police when he came out of Gurudwara Rakabganj, New Delhi. There is variance in the statement of PW-10 Ajayab Singh about the time when Jaswinder @ Jassa had left quarter No.9 in Gurudwara Rakabgunj and went on the street to get milk. As per the prosecution story, deceased came out of the Gurudwara at about 08.30 AM on 30.10.1992, whereas PW-10 Ajayab Singh says that deceased went to get milk in the early morning on 30.10.1992 at about 03.30 AM when he was asked to make

tea for two unknown guests in their quarter. Submission is that the time when Jaswinder Singh @ Jassa had left quarter No.9 and went out of the Gurudwara is the most crucial circumstance and since the same was not proved by the prosecution by bringing cogent evidence, the entire prosecution story falls. Admittedly, none of the accused knew Jaswinder Singh @ Jassa prior to the incident. It is, thus, not known as to how police personnel of Police Station Barharpur, Bijnor reached the quarter No.9 in the Gurudwara premises. The prosecution story that police officers had abducted Jaswinder Singh @ Jassa who was admittedly not known to them, thus, seems to be a concocted story. There is a great doubt about the identification of two persons who allegedly went to the quarter No.9 to stay with Jaswinder Singh @ Jassa around midnight on 29-30.10.1992.

48. It is vehemently urged that adverse inference has to be drawn against the prosecution for keeping the matter of abduction in loop and not bringing sufficient evidence to prove the said charge. There is no evidence in the trial as to how the police party identified Jaswinder Singh @ Jassa. The prosecution is completely silent about this issue. Two previous investigating agencies namely the Delhi Police and CBCID did not find any documentary proof of presence of Jaswinder Singh @ Jassa in Gurudwara Rakabgunj, New Delhi. The story drawn by CBI for the first time after the alleged seizure of the attendance register from the office of Gurudwara Rakabgunj, New Delhi is concocted one with a view to falsely implicate the accused. The date and place of seizure of the documents as shown in the seizure memo (exhibit Ka-4) dated 16.12.1993 is CBI complex and not the Gurudwara. The attendance register cannot be said to be a cogent evidence or a reliable document being maintained in Gurudwara Rakabgunj, New Delhi in normal course of events.

49. The medical evidence shows that there were 7 or 8 firearm injuries on the body of deceased. No abrasion or contusion was found which could prove the circumstance of alleged planned (conspired) killing of Jaswinder Singh @ Jassa. The prosecution is silent about the use of

vehicle Tata Truck belonging to U.P. Police on 30.10.1992 and 31.10.1992. The prosecution witness (PW-29) who was brought in the witness box to prove the movement of the said vehicle has not substantiated its case that the said vehicle was plied to New Delhi from Bijnor. The driver of U.P. Tata Truck who drove it to Delhi has not been produced.

50. It is, thus, urged that from the circumstance brought on record, it is evident that deceased was killed in a police encounter and official weapons issued from armory to the police authority of Police Station Baradhpur, District Bijnor had been used during the course of combing operation. Onus was on the prosecution to prove that the police personnel had a prior meeting to conspire about the abduction and planned murder of Jaswinder Singh @ Jassa. The charge under Section 302 read with Section 120-B is, thus, not proved. The common intention of the members of the police party who were implicated for the offence of abduction under Section 365 IPC is also not proved by bringing any direct or circumstantial evidence on record.

It is further argued by the counsels appearing for the other appellants (as noted above), that accused Dhirendra Singh Yadav was a SHO of Police Station Baradhpur, District Bijnor. Other police personnel accompanying him in the combing operation were only following his order. It was not proved by the prosecution that the command given by the SHO of Police Station Baradhpur, District Bijnor was illegal. General questions have been put to the accused persons under Sections 313 Cr.P.C. which have caused material prejudice to other. It is lastly argued that there is no eye witness of the charge of abduction and the entire prosecution story is based on hearsay evidence. The first information report of abduction was delayed by 17 days and CBI had substantially changed the whole story in the charge sheet submitted by it to the trial court. There are material improvements in the case of CBI presented during the course of trial. False evidences were introduced, material

evidences were withheld. There is no evidence of conspiracy. There is no evidence of any action or participation of other police personnel accompanying S.H.O. Dhirendra Singh Yadav, Police Station- Baradhpur, Bijnor in the crime. There are G.D. entries of the operation conducted by SHO Dhirendra Singh Yadav.

51. In the crux, it was vehemently argued by all the counsels for the appellants that none of the prosecution witnesses could relate the abduction of Jaswinder Singh @ Jassa (deceased) with the U.P. Police.

On a threadbare discussion of evidences lead by the prosecution and elaborate arguments of learned counsels for the appellants, we find that the following circumstances emerge from the record about the theory of police encounter taken by the defence:-

The defence theory of police encounter (extra-judicial killing) began with the lodging of the first information report namely Case Crime No.192 of 1992 and 193 of 1992. The first information reports of the said criminal cases though have not been brought on record and exhibited, but 'PW-39', the Inspector, CBCID, Sector Bareilly who was assigned investigation of the said criminal cases entered in the witness box to state that the investigation was handed over to him on 16.03.1993. G.D. No.21 dated 17.10.1992 at 14.30 hours of Police station Baradhpur, Bijnor seized by CBI with the seizure memo "Exhibit Ka-55" records registration of a first information report dated 15-16.10.1992 with regard to the loot of licensee DBBL gun on the oral information given by one Gurudev Singh, the alleged licensee of DBBL gun at Police Station Baradhpur, District Bijnor. Gurudev Singh, the complainant of the report of loot of licensee of DBBL gun has not been produced by the defence to substantiate its theory of police encounter/extra-judicial killing of Jaswinder Singh @ Jassa on the tip-off to the accused SHO, Police Station Baradhpur, District Bijnor. Gurudev Singh appears to have been interrogated by CBCID and CBI but nothing in this regard can be transpired from the record. The first information report of loot of licensee

DBBL gun namely Case Crime No.187 of 1992 under Section 392 IPC was placed before us by the counsels for the appellants to assert that police party lead by S.H.O. Police Station-Baradhpur proceeded to Harwanshwala, Kanshiwala Jungle for combing operation and their movement was recorded in G.D. No.20 dated 28.10.1992 at 10.45 hours of Police Station Baradhpur, Bijnor. The police party returned to the police station P.S. Baradhpur, Bijnor on 28.10.1992 at about 19.05 hours and entry to this effect had been made at G.D. No.28. It was asserted by the defence/appellants that on 29.10.1992, on getting information of terrorist movement in village Kanshiwala, Bijnor, the police party led by SHO Baradhpur proceeded at G.D. No.12 time 08.30 AM and returned at G.D. No.22 time 13.30 PM of the same date. It is sought to be submitted that the loot of licensee DBBL gun was made by terrorist Jaswinder Singh @ Jassa. The offence under Section 34 Terrorist and Disrupted Activities Act (TADA) was added to Section 392 IPC after return of the police party at G.D. No.22 dated 29.10.1992. At G.D. No.29 dated 29.10.1992 at about 17.10 hours, police party led by SHO Baradhpur, Bijnor (comprising of 13 police personnel) proceeded to terrorist area for combing. At G.D. No.30 at about 17.15 hours dated 29.10.1992, request for requisition of vehicle from the police line Bijnor was made by SHO Baradhpur, Bijnor. The request of Tata truck U.P. 20-4473 and UP T No.9078 at G.D. No.35 dated 29.10.1992 made at about 18.30 hours was recorded in the relevant register. The return of police party after combing operation had been recorded at G.D No.19 (17.05 hours) dated 30.10.1992. The entries at G.D. No.4 dated 31.10.1992 time 3.15 AM with regard to movement of police party; request for extra force entered at G.D. No.11 dated 31.10.1992 time 07.15 A.M. and also return of police party at G.D. No.19 time 12.15 hours have been proved and exhibited as "Exhibit Ka-25". All recovered articles and the Arms used in the encounter by the police party had been deposited in the Police Armory in the same column of the G.D. The entry of registration of the first

information report No.192/1992 under Section 307 read with Section 3/4 TADA and the first information report 193/1992 under Section 25 Arms Act of recovery of AK-56 rifle and DBBL gun No.3122/1360 (with two live cartridges and four empties) had also been made in the same column.

52. The defence case is that AK-56 rifle found besides the dead body of the Jaswinder Singh @ Jassa was fully loaded and a magazine was tied to the waist of deceased having 24 live cartridges. However, ballistic expert (P.W.-19) deposed that four packets "F", 'F(2)', 'F(3)' & 'F(4)'" were received for ballistic examination which contained "AK-56 rifle No.17036926", "two empty magazines of AK-56 assault rifle", and "one 12 bore DBBL gun". The statement of 'PW-19' indicates that packet 'F' containing one 7.62 MM AK-56 assault rifle No.17036926 without magazine was received in sealed condition which was marked by him as 'W-1' and when sealed bundles was opened in the Court they were marked as Exhibit 'Ka-29'.

53. Packet 'F(2)' contained two empty magazines of AK-56 assault rifle which were marked by the ballistic expert as 'M-1 and M-2'. They were proved and exhibited as "Exhibit '30' and Exhibit '30/1'". Packet 'F(3)' contained one 12 bore DBBL gun No.3122 and 1360/72. On the same, a tag containing signature of PW-19 was found which was proved and exhibited as Exhibit-'31'. In packet 'F(4)', four empties of 7.62 MM assault rifle were found which were marked as "C-69 to C-72". The packets and entries were identified and proved by PW-19 as "Exhibit '32', '32/1', '32/4'".

54. The above deposition of PW-19 clearly proves that AK-56 assault rifle which alleged to have been used by deceased in the encounter was found with empty magazine as against the police record maintained by the accused at Police Station Baradhpur, District Bijnor and, thus, runs contrary to the case of the defence that deceased used AK-56 rifle in the encounter and the same was recovered besides the dead body. The recovery of AK-56 assault rifle assigned to deceased is, thus, found to be

planted and farce.

Further, the G.D. of police station Baradhpur, District Bijnor at G.D. No.26 dated 31.10.1992 records return of police party from the site of encounter with the recovered blood stained and plain earth. The dead body was sent for postmortem on 01.11.1992 entered at G.D. No.7 (06.30 A.M.) dated 01.11.1992 and returned to the police station on the same day at about 23.35 hours entered at G.D. No.29. The dead body was immediately sent for cremation and the same G.D. records disposal of the dead body by cremating it. At G.D. No.19 time 12.16 hours dated 31.10.1992, it was recorded that intimation was sent to all police stations and Incharge DSRB about the deceased terrorist being unknown. The special report of registration of Case Crime No.192/1992 under Section 307 IPC and $\frac{3}{4}$ TADA as also case Crime No.193 of 1992 under Section 25 Arms Act was sent at G.D. No.20 14.00 hours through Constable 207 Suraj Pal Singh.

55. The above noted entries of G.D. have been exhibited by the prosecution witnesses and on the basis thereof, it was argued on behalf of the appellants that the action of police party led by SHO of Police Station Baradhpur, District Bijnor was legal and justified. The encounter was made during the combing operation conducted by SHO Dhirendra Singh Yadav and special report of the incident was immediately sent.

56. Dealing with the above, we find it relevant to note that apart from the G.D. entry which were made by the accused themselves and the report of SHO Dhirendra Singh Yadav (one of the main accused), there is nothing on record which could connect deceased Jaswinder Singh @ Jassa with Case Crime No.187 of 1992 under Section 372 IPC registered on the oral information given by one Gurudev Singh, who said to have identified the licensee DBBL gun found beside the dead body of Jaswinder Singh @ Jassa being his licensee gun. The said first information report had been registered on the oral information given by Gurudev Singh who was resident of village Harwanshwala within the

jurisdiction of P.S. Baradhpur, District Bijnor. The prosecution has brought sufficient evidence on record to prove the charge of abduction of Jaswinder Singh @ Jassa by the police party led by SHO Dhirendra Singh Yadav, Police Station Baradhpur, District Bijnor. Once the offence of abduction is proved, the prosecution case that it was a fake encounter and that the recovery of AK-56 rifle and DBBL gun 3122/1360 (looted by deceased) was planted by the accused has to be accepted.

It does not stand to reason as to why cremation of dead body was done on 01.11.1992 without making any effort to determine the identity of deceased and information to his family or relative about his death. Two defence witnesses (DW-1 and DW-2) stated that they saw the dead body at the site of encounter when they reached there on calling of the police officers. Both the defence witnesses also stated that they saw deceased earlier in village Kanshiwala and DW-1 even said that deceased had stayed in his house for one night. DW-2, on the other hand, stated that he saw deceased in Gurudwara of Village Kanshiwala and Gurudwara Head Naseeb Singh also reached the site of encounter.

57. From the above deposition of defence witnesses, it cannot be accepted that it was not possible for SHO Baradhpur, Bijnor namely accused Dhirendra Singh Yadav to determine the identity of deceased Jaswinder @ Jassa after his encounter.

58. We may further note that the wireless messages sent by DW-13, Sukhram, Piket police post, North Avenue, New Delhi had been proved and exhibited as "Exhibit 'Ka-14' to 'Ka-18'". G.D. No.9 dated 30.10.1992 of police outpost North Avenue, New Delhi proved as "Exhibit 'Ka-12/1'" records that a wireless message was received at the said police station that Sewadar Jaswinder Singh @ Jassa was taken away by the U.P. Police. The wireless messages dated 30.10.1992 sent to all SHO's, DSP in New Delhi and all SSP's in India by PW-13 have been proved. The said wireless messages (Exhibit Ka-14) indicated that it was intimated to every concerned officer in the country that one Sewadar boy of Gurudwara

Rakabgunj, New Delhi named as Jaswinder Singh @ Jassa aged about 20-22 years resident of Majitha of Amritsar, Punjab had been reported to have been taken away in police vehicle by some unknown police personnel on 30.10.1992 at about 8.30 AM from near the Mandir located outside Gurudwara Rakabgunj, and if he was “wanted” in any criminal case registered in any district or State of the country, DCP, New Delhi District was to be informed. This message also records that the incident was reported at G.D. No.9 dated 30.10.1992 police Outpost North Avenue of Police station Parliament Street, New Delhi. The content of the wireless message sent by PW-13 about the incident occurred on 30.10.1992 was clear and categorical about the report being lodged with regard to the incident of abduction.

59. In continuance of the said message, again it was reported in wireless message on 04.11.1992 addressed to all SSP's in the State of U.P. that it came to be reported that Jaswinder Singh @ Jassa was taken away in a police vehicle by the U.P. Police. Same messages was circulated to all SSPs in U.P. again on 18.11.1992 and 14.12.1992. PW-13 had proved that in the initial investigation made by him it was clearly transpired that the police vehicle in which Jaswinder @ Jassa was taken away from Talkatora road outside the Gurudwara Rakabgunj, New Delhi belonged to U.P. Police and one Maruti Van was also used in the incident having registration number of the State of U.P. For this reason only, the report/wireless messages were sent by PW-13, circulating lookout notice to all SSPs in the State of U.P. When no feed back was received, report of lodging of the first information was sent at Police station Parliament Street, New Delhi dated 17.11.1992. All actions taken by the officer (PW-13) (in due discharge of his official duties) have been found to be justified in the nature of complaint received by him. By no stretch of imagination, it can be accepted that the records of police Out post North Avenue, New Delhi of Police station Parliament Street, New Delhi were manufactured by the prosecution. We reiterate our conclusion not to accept the said

submission of learned Senior Counsel with regard to the authenticity of the documents relating to lodging of the report of abduction at the police station, Parliament Street, New Delhi of Jaswinder Singh @ Jassa from the road outside the Gurudwara.

Further, it is also substantiated from the report sought by S.P. Bijnor dated 19.12.1992 from Police Station- Baradhpur, Bijnor the document which has been proved and exhibited as “Exhibit 'Ka-37”, that information of abduction of Jassa was received by the SHO Dhirendra Singh Yadav, P.S. Baradhpur, Bijnor. In reply to the said message the accused SHO only intimated that the name of deceased killed in encounter was Jaswinder Singh @ Jassa and another person who accompanied him was Kamaljeet Singh but their addresses were not known to him. It is, thus, evident even from the record of Police station Baradhpur, Bijnor seized by CBI that accused Dhirendra Singh Yadav, SHO Baradhpur came to know about the identity of deceased at-least on 19.12.1992. We may further note that no investigation or enquiry was done by the U.P. police (SP, Bijnor) or any other senior officer to ascertain the genuineness of killing of a young Sikh in alleged police encounter. The investigation made by CBCID had commenced only on 16.03.1993 that too for investigation of the cases registered by the accused against deceased in Police Station Baradhpur, District Bijnor (Case No.192/1992 and 193/1992).

60. We may also record that the present is the case of circumstantial evidence as there cannot be any independent witness of the factum of abduction and obviously of fake encounter. In the above circumstance of the case, the chain which started with the prosecution story of abduction is found to complete with the killing of Jaswinder Singh @ Jassa. The police party led by SHO Dhirendra Singh Yadav, Police Station Baradhpur, District Bijnor had been proved to be directly involved in the abduction of Jaswinder Singh @ Jassa from the road outside the Gurudwara where he was normally residing being working as Sewadar.

There is no missing link in the chain of a circumstances on the issue of abduction. The claim of the defence that deceased was a terrorist and was rightly booked by accused Dharendra Singh Yadav under TADA on account of loot of DBBL gun in view of his terrorist activities is not proved from any of the circumstances brought on record. The defence witnesses are proved to be liars. The claim of self defence in making encounter during the alleged combing operation by the police party (accused) has not been established by bringing any cogent evidence on record by the defence.

61. The Apex Court has taken a serious view about the incident in the writ petition filed by relative of Jaswinder Singh @ Jassa namely S. Saranjeet Singh (PW-34). An affidavit of the Deputy Commissioner of police, New Delhi was filed therein to depose that on 30.10.1992 at 10.40 AM an information was received in PCR picket police North Avenue dated 30.10.1992 that one Sewadar Jaswinder Singh @ Jassa had been taken away by U.P. Police in a Jypsy. On receipt of the said information under the directions of S.H.O Police Station Parliament Street, S.I. Sukhram In-charge Picket police North Avenue rushed to the spot and inquired the matter. In the enquiry, it was ascertained that one Sewadar of Gurudwara Rakabgunj, New Delhi named as Jaswinder Singh @ Jassa aged about 22-23, resident of Majhita, District Amritsar was reported to have been taken away in a police vehicle by the U.P. State Police at about 08.30 AM from the road near Hanuman Mandir outside Gurudwara Rakabgunj, New Delhi. The witness examined by the Sub Inspector Tulsi Ram confirmed that Jaswinder Singh @ Jassa was taken away by the U.P. Police in a government vehicle. Wireless messages to all SSPs of the State of U.P. were sent making a request that in case Jaswinder Singh @ Jassa was 'wanted' in any criminal case, information be sent to DCP, New Delhi but no information had been given till the date of filing of the aforesaid affidavit in the Apex Court. The investigation of the case was stated to be in progress and search of Jaswinder Singh @ Jassa was on. In

light of the said affidavit, it cannot be believed that the Delhi Police had manufactured the records with regard to the first information report lodged by Ajit Singh (PW-3) Manager, Gurudwara Prabandh Samiti reporting the incident occurred on 30.10.1992.

62. The cumulative effect of the above evidence reveals that the offences of abduction with common intention to cause murder of Jaswinder Singh @ Jassa (deceased) and his killing in a conspiracy hatched by the police party led by SHO Dhirendra Singh Yadav of Police Station Baradhpur, District Bijnor are proved beyond doubt from the evidence led by the prosecution. The defence theory as projected of killing of Jasiwnder Singh @ Jassa in a police encounter in self defence by the accused is palpably false and completely belied from the facts and circumstances of the present case.

63. Encounter was staged to ingeniously justify the police action against alleged criminal (Jassa) in this matter. Encounter killing of Jaswinder @ Jassa was nothing but a pre-planned murder. International Human Rights Law prohibits the arbitrary deprivation of life of any person under any circumstances. India being member of the United Nations Human Rights Council (UNHRC) has pledged to continue to uphold the highest standards in the promotion and protection of Human rights. Everyone has the right to life and it shall be protected by law. Deprivation of life in any form is a violation of human rights. Article 21 of the Constitution of India guarantees “right to live with human dignity”. Any violation of human rights is viewed seriously by the Courts as right to life is the most precious right guaranteed by Article 21 of the Constitution. The guarantee by Article 21 is available to every person and even the State has no authority to violate that right.

64. In **People’s Union for Civil Liberties & Anr Vs. State of Maharashtra**¹, right to life guaranteed in Article 21 of the Constitution of India was considered by the Apex Court to say that guarantee that no

1. 2014 (10) SCC 635

person shall be deprived of his life or personal liberty except according to the procedure established by law is applicable to everyone and even the government does not have power to violate this. In **R.S. Sodhi Advocate Vs. State of U.P.**², it was said that whether the loss of life was on account of genuine or a fake encounter is a matter which has to be inquired into or investigated closely. It would be desirable to entrust investigation to an independent agency like Central Bureau of Investigation so that all concerned including the relatives of deceased may feel assured that an independent agency looked into the matter. In **Satyavir Singh Rathi, Assistant Commissioner of Police and Ors. v. State through Central Bureau of Investigation**³ it was observed that the police men would not be excused for committing the murder in the name that they were carrying out the order of their superior officers and that the 'encounter' philosophy is a criminal philosophy.

In **Rohtash Kumar vs State Of Haryana**⁴ it was observed that the killings in police encounters affect the credibility of the rule of law and the administration of the criminal justice system. Merely because a person is a dreaded criminal or a proclaimed offender he cannot be killed in a cold blooded manner. The police shall make an effort to arrest such accused. However, in a given case, if a dreaded criminal launches a murderous attack on the police personnel to prevent them from continuing their duties, the police may have to retaliate and in that retaliation, such a criminal may get killed. That could be a case of genuine encounter.

In **Om Prakash Vs. State of Jharkhand & others**⁵, it is said that:- “It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial.

The Supreme Court has repeatedly admonished trigger-happy

2.1994 (SUP) (1) SCC 143

3. 2011 (6) SCC 1

4.2013 (14) SCC 290

5.2012 (12) SCC 72

police personnel who liquidate criminals and project the incident as an encounter. Such kills must be deprecated. They are not recognized as legal by our criminal justice administration system. They amount to State-sponsored terrorism.”

65. Having considered the observations made by the Apex Court in challenging the action of police personnel in killing of criminals in an encounter, guidelines issued by National Human Right Commission (NHRC) and the affidavit filed by the Union of India; State Government and the Union Territory, the Apex Court in **People’s Union for Civil Liberties** (*supra*) has issued directions laying down the procedure to be followed in the matter of investigation of police encounter in the cases of death as a standard procedure for thorough, effective and independent investigation. The said directions are relevant to be noted herein:-

“(1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form.

Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under [Section 157](#) of the Code without any delay. While forwarding the report under [Section 157](#) of the Code, the procedure prescribed under [Section 158](#) of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical

evidence) and Page 27 time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-

charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved.

Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under [Section 176](#) of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under [Section 190](#) of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.

However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under [Section 173](#) of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:

- (i) Date and place of occurrence.
- (ii) Police Station, District.
- (iii) Circumstances leading to deaths:

- (a) Self defence in encounter.*
- (b) In the course of dispersal of unlawful assembly.*
- (c) In the course of affecting arrest.*
- (iv) Brief facts of the incident.*
- (v) Criminal Case No.*
- (vi) Investigating Agency.*
- (vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:*
 - (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and*
 - (b) whether use of force was justified and action taken was lawful.*
- (11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the [IPC](#), disciplinary action against such officer must be promptly initiated and he be placed under suspension.*
- (12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under [Section 357-A](#) of the Code must be applied.*
- (13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under [Article 20](#) of the Constitution.*
- (14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer / counselling, same must be offered.*
- (15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.*
- (16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein."*

It was held by the Apex Court therein that the above requirements/norms must be strictly observed in all cases of death and grievous injuries in police encounter by treating them as law declared under Article 141 of the Constitution of India.

66. In the instant case, having carefully analyzed the evidence on record we find that:- (i) there is nothing on record which would reveal

that police was in receipt of intelligence or tip-off with regard to the terrorist activities of deceased Jaswinder Singh @ Jassa. It may be noted further that:-

(ii) On his death, no first information report had been lodged with regard to the incident of encounter and as such there was no occasion of forwarding the report to the Court under Section 157 Cr.P.C. The intimation sent to the senior officials about encounter entered in the G.D. and special report of the incident allegedly sent by the accused Dhirendra Singh Yadav (SHO, Police Station Baradhpur, District Bijnor) were merely an eye-wash.

(iii) No independent investigation into the incident was directed to be conducted by the competent officer till the direction was issued by the Apex Court vide judgement and order dated 08.10.1993 after almost for a period of 1 year from the date of the incident that too on the issue raised by a relative of deceased.

(iv) No magisterial enquiry under Section 176 Cr.P.C. was held and as such there was no occasion of sending a judicial report to the concerned Magistrate having jurisdiction under Section 190 of the Code of Criminal Procedure to make further inquiry. No information was given to the National Human Right Commission or State Human Right Commission.

(v) Most importantly even identity of deceased was not determined before cremation of his dead body.

(vi) Relatives of the alleged criminal/victim/deceased had not been informed by the police.

67. Having noted the above and in light of threadbare discussion on all issues arising in the instant case, no infirmity could be found in the decision of the trial court for conviction of accused-appellants for the offences under Section 364 IPC read with Section 34 IPC, Section 218 IPC, Section 302 read with Section 120-B IPC. The charges framed

against them have been proved beyond all reasonable doubts. As the sentence awarded to the appellants is minimum, the same requires no interference.

The appeals are, accordingly, **dismissed**.

The appellant namely Jaipal Singh in the connected Appeal No.1345 of 2012 is on bail. His bail bonds are cancelled and sureties are discharged. The Court concerned is directed to take him in custody and send him to jail forthwith for serving out the remaining part of his sentence.

The other surviving accused appellants in all the connected appeals are in jail. They shall serve the remaining sentence.

Certify this judgment to the court below immediately for compliance.

The compliance report be submitted through the Registrar General, High Court, Allahabad.

Order Date :- 22.10.2020

Brijesh/Himanshu

(Dinesh Pathak, J.) (Sunita Agarwal, J.)