

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

+

CRL. APPEAL NO. 205 OF 2003

% **Date of Decision: 24th February, 2009**

RANJEET SINGH GILL Appellant
! Through Mr. K.T.S. Tulsi, Sr.
Advocate with Ms. Mrinmayee
Sahu, Advocate

Versus

\$ **STATE** Respondent
^ Through Ms. Mukta Gupta,
Standing Counsel with Mr. Rajat
Katyal, Advocate

CORAM:

* **HON'BLE MR. JUSTICE MUKUL MUDGAL**
HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the judgment?(Yes)
2. To be referred to the Reporter or not?(Yes)
3. Whether the judgment should be reported in the digest? (Yes)

JUDGMENT

P.K.BHASIN, J:

The appellant stands convicted under Sections 302/307 IPC by the Court of Additional Sessions Judge, Delhi vide judgment dated 22-02-2003 in Sessions Case No. 50/2000 for having shot to death a Member of Parliament Shri Lalit Maken, his wife Geetanjali and one Bal Kishan who had come to see Mr. Lalit Maken, and under Section 307 IPC for causing fire-arm injuries to one Suresh Malik in an incident of indiscriminate firing took place at the residence of Makens in Kirti Nagar. For the triple murders the appellant was mercifully awarded sentence of life imprisonment and fine of Rs.5,000/- and rigorous imprisonment for ten years and a fine of Rs. 5,000/- for his conviction under Section 307 IPC vide order dated 24/02/03. In this appeal the appellant has assailed the correctness of the said decision of the trial Court.

2. The relevant facts leading to the trial and conviction of the appellant have been noticed by the learned Additional Sessions

Judge in the impugned judgment and the relevant paras are re-produced hereunder:-

“1. 1984, the eventful year in the history of India laid foundation of this case when some misguided Sikhs vowed to take revenge of alleged genocide of their brethren following assassination of Mrs. Indira Gandhi, the then Prime Minister of India.

2. The story put-forward by prosecution is that on 31.7.85 Sh. Lalit Makan, M.P., had come to H.No.L-106, Kirti Nagar to meet public as he used to do on every Wednesday and 31.7.85 was a Wednesday. After meeting all the visitors, Sh. Lalit Makan moved towards his vehicle which was parked across the road as he had to go to Parliament. At that moment one person of shallow complexion having small moustache and beard, wearing pant, shirt and light green jacket, hair combed upwards, age about 20-25 years, height about 5'9" and another of wheatish complexion, height about 5'7/8" age about 22-23 years having pistol like fire arms in their hand fired at Sh. Lalit Makan indiscriminately. Sh. Makan ran towards inside of his house and was chased by two assailants, who kept on firing. Smt. Geetanjali, wife of Sh. Lalit Makan came out and tried to save her husband, but she was also fired at by both the assailants. Both Mr. and Mrs. Makan fell down on the ground. One Suresh Malik who was friend of Sh. Lalit Makan since school days had come on the fateful day to meet Sh. Makan and in the shoot out he also received bullet injury on his right shoulder. Then both the assailants came out of the house continuing firing and rode on a two wheeler scooter No.DEH-8546. One more person wearing half sleeves white shirt and cream colour pant, height about 5'-2/3" aged about 20-21 years also joined the two assailants on the same scooter and all the three escaped on the said scooter. In the shoot out one Bal Kishan who was standing near stair case also was hit by bullets. Sh.Lalit Makan, his wife Geetanjali and Bal Kishan died in the incident. Apart from Suresh Malik, Mohd. Salam had also

witnessed the occurrence who was working as domestic servant of Sh.Lalit Makan. Suresh Singh, Naresh Chand Gupta, Sh.Roshan Lal and Sh.Sarwan Singh were also present at the time of occurrence.

3. In the same chain of events on 4.9.85 Sh.Arjun Dass, Metropolitan Councillor and his body guard Vijender Singh and four others were also shot at by the terrorists at Laxmi Bai Nagar Market in which Sh.Arjun Dass and his body guard died. The empty cartridges were lifted from the scene of crime and they confirmed that the offence of 4.9.85 was also committed by the same gang of terrorists with the object of assassinating VIPs and to create terror in the minds of general public.

4. Both the cases remained unsolved till Sukhdev Singh @ Sukna was arrested by Pune Police in case FIR No. 411/86 u/s 307/34 IPC read with 25/27/54/59 Arms Act..... Sukhdev Singh @ Sukha was later on arrested in Gen. A.S.Vaidya murder case which was registered at Police Station Bund Garden, Pune vide FIR No. 360/86. On 3.12.86 and 4.12.86 Sukhdev Singh @ Sukha made a confessional statement before Judicial Magistrate 1st Class, Kirki, Pune.....

5. On 21.2.87 accused Sukhdev Singh @ Sukha was interrogated in this case by Sh. J.C. Sharma, Insp. Crime Branch in Yarwada, Central Prison Jai, Pune and Sukhdev Singh @ Sukha made a disclosure statement.....

10. Following the arrest of accused Sukhdev Singh and his interrogation N.B.Ws. were obtained against Harjinder Singh @ Jinda, Daljeet Singh @ Bittu, Sukhvinder Singh @ K.C. Sharma and Ranjeet Singh Gill, but all avoided their arrest. Later on Harjinder @ Jinda, Daljeet Singh @ Bittu, Sukhvinder Singh @ K.C. Sharma were declared P.Os.

11. During investigation it was found that accused Ranjeet Singh Gill, the present accused had left India for U.S.A. on 28.2.86 vide Embarkation Card No. 0313564 under the assumed name of

Yashpal Kashyap on a bogus passport. Accused Ranjeet Singh was arrested by INTERPOL in New Jersey, U.S.A. and the proceedings for his extradition to India were initiated.

12. Accused Ranjeet Singh Gill was finally extradited to India on 7.5.2000 and after completion of investigation challan against him was filed.....”

3. Before proceeding further we also deem it appropriate to notice certain facts which the investigating agency claimed to have found during the investigation in respect of the large scale conspiracies hatched by different persons, including the present appellant Ranjeet Singh Gill, for killing very important personalities who were considered by them to be responsible for the killings of many Sikhs after the assassination of Smt. Indira Gandhi, the then Prime Minister of India on 31/10/84. The relevant paras of the charge-sheet containing those facts are reproduced below:

“ Investigation conducted revealed that in June, 1984 accused Harjinder Singh @ Jinda and Sukhdev Singh @ Sukha went to Pakistan to procure arms and ammunitions and to get other aids for propagating terrorism in India. They returned to India in last of February, 1985 after getting training. Accused Sukhdev Singh @ Sukha, Harjinder Singh @ Jinda, Daljit Singh @ Bittoo (since absconding), Ranjit Singh Gill @ Doctor(arrested in New Jersey,

USA) Sukhvinder Singh @ K.C. Sharma (since dead), Harvinder Singh @ Mathura Singh (since dead), Baljinder Singh @ Raju, Sukhvinder Singh @ Sukhi and other unknown persons were parties to criminal conspiracy to commit illegal acts like dacoity, robbery to indulge in terrorists acts and also to commit murder of Sh. Lalit Maken and others and murder of Sh. Arjun Dass and others, murder of Gen. A.S. Vaidya and to indulge in acts of terrorism with a view to create terrorism in the mind of people..... and pursuant with the said criminal conspiracy murder of Sh. Lalit Maken, his wife Smt. Geetanjali and Sh. Bal Kishan Khanna and attempt on life of Sh. Suresh Malik were committed and thereby committed offences punishable under section 120-B IPC r/w 302/302 IPC, 27/54/59 Arms Act & 3/4 TADA(P) Act,1985.

.....

.....

Pursuant to the said criminal conspiracy and in order to achieve the object of the said criminal conspiracy and in the course of the said transaction and in order to facilitate the commission of the said offences this gang surveyed the office of Late Sh. Lalit Maken which was found to be most vulnerable for their action and decided to assassinate Sh. Lalit Maken. Accused Sukhvinder Singh @ K.C. Sharma armed with sten-gun and Ranjit Singh Gill @ Kukki armed with .30 pistol reached at Kirti Nagar residence of Sh. Lalit Maken robbed two wheeler scooter no. DEH-8546 whereas Sukhdev Singh @ Sukha armed with .38 revolver reached there in an auto rickshaw at about 9.15 A.M. K.C. Sharma parked his scooter in front of Lalit Maken's house. Harijinder Singh @ Jinda also reached Kirti Nagar after getting information about Lalit Maken's assassination plan from Daljit Singh @ Bittoo present in Tagore Garden flat. After finishing the meeting with the public, Lalit Maken went upstairs and after a few minutes at about 10.15 AM alongwith his wife and 2 other persons. At this moment Sukhdev Singh @ Sukha and Ranjit Singh Gill opened fire at Lalit Maken. When Lalit Maken

tried to run away inside the house K.C. Sharma followed him with loaded sten gun. Smt. Geeanjali w/o Sh. Lalit Maken tried to save Sh. Lalit Maken, Sukhvinder Singh @ K.C.Sharma fired indiscriminately with his sten gun. In this incident Sh. Bal Kishan and Sh. Suresh Malik sustained bullet injuries.....

During the period of conspiracy all the accused have been parties to criminal conspiracy to commit murder of not less a person than Sh. Lalit Maken, Cong. (I) Leader and a member of Parliament, his wife and Sh. Bal Kishan Khanna and in fact pursuant to the said criminal conspiracy murder of Sh. Lalit Maken his wife and Sh. Bal Kishan was committed in broad day light in his residence cum office in Kirti Nagar, New Delhi.....”

4. During investigation of this case a test identification parade was got arranged by the Delhi police in respect of accused Sukhdev Singh @ Sukha on 25/09/86 at Pune jail where he was lodged in connection with the murder of General A.S. Vaidya(Retd.) and during that test identification parade he was identified by PW-2 Naresh Chand Gupta and PW-6 Mohd. Salam, eye witnesses of the incident of shooting, as one of the shooters who had participated in the shooting incident on 31/7/85 at the residence of Sh. Lalit Maken. On 25/09/86 the house of Ranjit Singh Gill in Ludhiana was searched and certain documents were seized during that search. Ranjit Singh was,

however, not found at his house at that time. Arrest warrants were then obtained from Court for the arrest of accused Ranjit Singh Gill but the same could not be executed. Then process was got initiated against him for declaring him a proclaimed offender but before he could be got declared a proclaimed offender the investigating agency came to know that Ranjit Singh Gill had fled away to U.S.A. on fake documents under the assumed name of Yashpal Kashyap and had been arrested there on 14/05/87 and then the Government initiated extradition proceedings for bringing him back to India. In the meantime, accused Harjinder Singh @ Jinda, who had also been named as a co-conspirator by accused Sukhvinder Singh @ Sukha in the present case of murder of Makens as also in the murder of Gneral Vaidya and was absconding, was arrested sometime in 1987 in Delhi in some other case and pursuant to his confession made in that case during interrogation he was formally arrested in the present case also. It also appears that he had made a confession about his involvement in the murder of General Vaidya also and in connection with that case he

appears to have been sent to Pune Jail. It is also the prosecution case that for the identification of accused Ranjit Singh Gill, who had been named by Sukhvinder Singh @ Sukha in his confessional statement as his co-conspirator, PW-1 Suresh Singh Malik, PW-2 Naresh Chand Gupta and PW-6 Mohd. Salam were shown certain photographs during investigation by the police on 04/08/87 and photo of Ranjit Singh Gill also was one of those photographs and all these three eye-witnesses had identified Ranjit Singh Gill from his photo as one of the culprits involved in the shooting incident on 31/07/85. With that photo identification of Ranjit Singh Gill investigation in respect of Sukhvinder Singh @ Sukha, Harjinder Singh @ Jinda and Ranjit Singh Gill stood completed and since the investigating agency considered that there was sufficient evidence against these three accused in the form of evidence of eye witnesses who had identified Sukhvinder Singh @ Sukha in test identification parade at Pune, confessional statements of Sukha and Jinda, photo identification of accused Ranjit Singh, a charge-sheet was filed in the Designated Court under TADA Act

against them but since accused Ranjit Singh Gill was detained in U.S.A. and extradition proceedings had been initiated his name was shown in column no.2 of the charge-sheet. The Designated Judge after noticing that extradition proceedings were going on in respect of accused Ranjit Singh Gill issued production warrants for the production of accused Harjinder Singh @ Jinda, and Sukhdev Singh @ Sukha in connection with the present case but the Designated Court at Pune trying them for the murder of General A.S. Vaidya(Retd.) did not accept the request of the Delhi Court for sending them to Delhi so that they could face trial in the present case also. Those two accused were finally convicted by the Pune Court under TADA Act as well as under Section 302 IPC and they were awarded death sentence which was confirmed by the Supreme Court also and thereafter both of them were hanged. Consequently the present case against them in Delhi had to be closed by the Designated Court vide order dated 28.9.1993. Thereafter some evidence was recorded under Section 299 Cr.P.C. It further appears that one of the accused who had been declared a proclaimed offender, namely, Daljeet

Singh was arrested by the police in some other case and was lodged in Nabha jail and pursuant to his confession made during his interrogation of that case regarding his involvement in the present case also he was charge-sheeted and tried by the Designated Court under Section 3(3) of TADA Act only but was acquitted vide judgment dated 7/12/99.

5. Accused Ranjit Singh Gill was finally allowed to be extradited by the USA Court to be tried in India on the charge of 'murder' only. Gill was brought to India on 2nd May, 2000 and thereafter a supplementary charge-sheet was filed against him in Court in July, 2000. After supply of the documents to the accused, as per Section 207 Cr.P.C., and after the counsel for the accused had confirmed that all complete set of the documents had been supplied to the accused the case was committed to the Sessions Court. The Additional Sessions Judge framed the following charges against accused Ranjit Singh Gill:-

“ I M.L. Mehta, ASJ, Delhi do hereby charge you Ranjit Gill @ Kooky @ Doctor Harish Aggarwal @ Hare, @ Manjeet Singh @ Suley Bahadur Thapa @ R.P. Thapa as under:-

That you Ranjit Gill @ Kooky @ Doctor Harish Aggarwal @ Hare, @ Manjeet Singh @ Suley Bahadur Thapa @ R.P. Thapa had on or about May to July, 1985 conspired with your co-accused Sukhdev Singh, Harjinder Singh, Sukhminder Singh (all since deceased) and Daljeet Singh others to commit murder of Hindu VIP's including that of Lalit Makken and others and in pursuance of the said conspiracy you all with your common intention committed murder of Lalit Makken, his wife Gitanjali Makken and one Bal Kishan at/near the residence of Lalit Makken at L/106, Kirti Nagar on 31.7.1985 at about 10.30 a.m. by firing arms and you thereby committed offences u/s 120-B and 302/34 IPC.

It is further against you that on the abovesaid date, time and place in furtherance of their common intention you caused injury on the person of Suresh Malik with intention or said knowledge and under such circumstances that if by that act you had caused the death of Suresh Malik you would have been guilty of offence of murder and thereby committed an offence u/s 307/34 IPC and within the cognizance of this court.”

6. To prove its case, the prosecution examined as many as 55 witnesses. After the completion of prosecution evidence the appellant-accused in his statement recorded under Section 313 of the Code of Criminal Procedure denied the prosecution allegations and pleaded false implication. He also claimed that

he was arrested in USA in connection with the instant case on 14-5-87 and that he himself had conceded the extradition request of the Indian Government.

7. The learned Additional Sessions Judge after analyzing the prosecution evidence came to the conclusion that accused Ranjit Singh Gill was guilty of the commission of offences punishable under Sections 302/307 IPC but acquitted him of the charge under Section 120-B IPC in respect of which the investigating agency had claimed in the charge-sheet that it had been able to unearth a large-scale conspiracy hatched by different terrorists to kill many Hindu VIPs including the deceased Lalit Maken. In respect of the charge of conspiracy the findings of the learned trial Court are to be found in para nos. 109 and 127 and the same are reproduced below:

“109. As mentioned in para 19 above 10 witnesses were examined by prosecution to prove that the present accused was a close associate of Sukhdev Singh. None of those witnesses deposed that in any of the case registered or investigated by them the present accused was also an accused. P.W. 47 Inspector Mohinder Singh admitted that he had arrested one Ranjeet Singh in case FIR 349/86 of Police Station Kalkaji, but he was some other

person and not the present accused. None of the witnesses produced by prosecution was able to prove that the present accused had any connection with other accused persons. So it has become highly doubtful that the present accused had entered into a conspiracy to eliminate some people. At several points above it has been observed that the confessional statement of Sukha which was the only piece of evidence to prove that the present accused had conspired with others, is not admissible against him in the present trial.

127. The accused has been charged with offence punishable u/s 120-B IPC also. But in my opinion as discussed above no legally tenable evidence has come on record to conclude that accused had conspired with other accused persons to commit the offences. There may be a conspiracy hatched, but that cannot be held to be proved because confession made by co-accused is not admissible and the other cases registered against other accused persons could not be connected with the present accused.”

8. Learned trial Judge, however, held accused Ranjit Singh Gill guilty for the commission of offences punishable under Section 302 IPC for the murders of Makens and Bal Kishan and under Section 307 IPC for the attempted murder of PW-1 Suresh Singh Malik. In order to establish the involvement of accused Ranjit Singh Gill in the shooting incident the prosecution had examined five eye-witnesses including the injured witness Suresh Singh Malik(PW-1). However, except for the domestic

servant of the Makens, PW-6 Mohd. Salam, no other eye-witness claimed that accused Ranjit Singh Gill was one of the shooters although all of them, except PW-2 Roshan Lal who totally turned hostile, did depose that shooting incident had taken place on 31/07/85 at the residence of Shri Lalit Maken. After referring to the evidence of the eye witnesses the learned trial Judge observed as under in para no.104 of the impugned judgment:

“104. From the evidence reproduced above it becomes clear that the prosecution case rests solely on the testimony of PW-6 who has identified the accused in Court. PW-1, PW-2, PW-3 and PW-5, according to prosecution version were eye witnesses, but none of them identified the present accused as one of the assailants.”

9. The learned trial Judge then analysed the evidence of PW-6 Mohd. Salam and also considered the criticism made on behalf the accused regarding the veracity of his testimony and after rejecting all the grounds of attack the trial Court convicted and sentenced the accused, as has been noticed already.

10. Accused Ranjit Singh Gill has now questioned the decision of the learned trial Judge holding him guilty by filing this appeal.

His appeal was argued by senior advocate Mr. K.T.S. Tulsi. Learned senior counsel for the appellant did not dispute before us that the incident of firing had taken place, as is the prosecution case, at the residence of the deceased Lalit Maken as also the fact that Lalit Maken, his wife Geetanjali Maken and one Bal Kishan had lost their lives in that incident Suresh Malik(PW-1) had also been shot at by the shooters. Mr. Tulsi also did not dispute that all the three deceased persons had died because of multiple fire-arm injuries sustained by them. All these facts even otherwise stand duly established from the evidence of four of eye-witnesses examined by the prosecution and the medical evidence.

11. PW-1 Suresh Singh Malik is the injured witness as well as the first informant of the incident. It was on his statement that the FIR in respect of the present incident was registered on 31.7.85. This is what he has deposed in respect of the incident :

“I know Lalit Makin from his college time as he was my class fellow during college days. I had friendly relations with him and I used to meet him. Lalit Makin was residing in L block, Kirti Nagar. Lalit Maken was elected as member of Parliament. Lalit

Makan was allotted a official accommodation at Tilak Nagar and he had shifted there few days ago from the date of occurrence. Lalit Makan used to come at his old resident L Block, Kirti Nagar to meet the people from 8am to 10am. On Wednesday Sh. Lalit Makin used to meet people from 8 am to 10am.

On 31/7/85 I reached L Block, Kirti Nagar at about 8.05 am. He met the people that day upto 10 or 10.15 am. He had to go parliament to attend the parliament. At about 10 or 10.05 am he left his office and came out for going to parliament house. He proceeded to his vehicle which was parked on the other side of his house. When he was about to move his vehicle some person started firing. I saw him and went towards him. I saw two person were firing on him. One of the person was having a height of 5'9 or 5'10 and of Sanwla complexion and was having small moustaches. He was wearing pent and shirt. He was of about 20-25 years. He was having a weapon with a thin long nozzle. The other person was having a pistol like weapon. He was about of 5'7 and he was of wheatish colour. He was of about 22-23 years. They were both firing on Lalit Makin. When I reached near those persons and they also fired upon me. I received two bullet on my right shoulder. When those two persons fired upon me Lalit Makan got a time and he started running towards his house.

Those 2 persons left me and chased Lalit when he was running towards his house. Those 2 persons were firing upon Lalit with a weapon in their hands. On hearing the sound of firing w/o of Lalit Makan. Geetanjali Makan reached there from the left side of her house came in the firing range. And she also sustained bullet injuries. The accused persons also fired upon the w/o Lalit Makan amely Geetanjali Makan. Lalit Makan took protection and concealed himself near the stair and those 2 persons also fired upon him near the stairs. After firing upon Lalit Makan and Geetanjali Makan those two persons came running from the house of Lalit Makan.

There one scooter of green colour was standing but I don't remember the no. of said scooter which was parked with the gali on the left side of the

house of Lalit. One person was also standing near the scooter. The third person was of about 20-22 years and was healthier than the other two persons. He was also wearing pant and shirt. And said scooter was started by those two persons who had fired upon Lalit, Geetanjli and myself and fled away from there. They ran towards main road. I also saw another person who also received gun shot injuries while standing by the side of telephone pole which was near the place where the scooter was parked. He was also bleeding on account of bullet injuries and had also fallen down near the wall.....”

12. PW-2 Naresh Chand Gupta is the other eye-witness of the incident. He has deposed about the incident as under:

“I sell fruits in the raihri at Kirti Nagar. I sell my fruits while roaming in the area and on that day i.e. on 31.7.85 while selling my fruits at 10 am I reached at the house of Lalit Makken. One servant came from the house of Lalit Makken and called me I stopped there and gave 5 kg. Mangos to servant who came from the house of Lalit Makken. 3 boys were standing near the wall near the telephone poll. Those 3 boys were of age of 24/25 years and one of the boy was of tall height then the other two persons. One boy who was tallest of all had a paper slip in his hand. He was of fair complexion. Other two boys were not that fair but were of wheatish complexion. Those 3 boys were talking with each other and they had to meet Lalit Makken, MP in connection with some loans. They wanted to meet Lalit Makken in connection with loan. This I could gather from their talks in this regard. It was at about 10.20 am. the servant who had purchased the Mangos from me had returned and gave me the cost of the Mangos and then I moved further took a turn to another gali. I further moved ahead in the

gali when I heard sound of gun shot firing. I shouted in that gali that some firing was going on. After sometime I saw 3 persons passing by side of my raihri on two wheeler scooter.....I came back to the house of Sh. Lalit Makken and found Sh. Lalit Makken and his wife lying in injured condition under the staircase of their house. Another person was lying injured outside their house at some distance from telephone poll near the wall. I did not see anybody firing in my presence. As I had left and turned to another gali I did not see who had fired at them.”

13. PW-5 Sarwan Singh is another eye-witness. Relevant part of his examination-in-chief is reproduced below:

“ I was appointed in the DESU as a Sr. Mistri and I was posted in 1985 at Vasant Vihar, New Delhi. On 31.7.85 I had come to visit the house of Sh. Lalit Makken at Kirti Nagar to meet him alongwith Sh. Bhopal Singh. Sh. Bhopal Singh had lodged some report in PS Janakpuri but no action was taken by the police of PS Janakpuri on the basis of the complaint. Bhopal Singh requested me to make a request to Sh. Lalit Makken, MP so that he can put his influence to police to do his work. We had met Sh. Lalit Makken in his office and requested him to put his influence on the police officer to do the work of Bhopal Singh after meeting him I alongwith Bhopal Singh came out from his house. When we came out at 10.15 am Sh. Suresh Malik who was the driver of Lalit Makken was present outside his house and he started talking with him. We saw Mango seller who was selling mango on the raihri was also present outside the house of Lalit Makken. I think sister of Sh. Lalit Makken was purchasing mango from Mango seller. In the meanwhile Sh. Lalit Makken came out from his office. He was alone at that time. In the mean I heard fire shots but I do not know as to who are the assailants who had fired shots on Sh. Lalit Makken and Suresh

Malik who was the driver of Sh. Lalit Makken was also fired. Lalit Makken went towards inside the house. His wife Geetanjali who had come to save him was also fired by the assailants.”

14. PW-6 Mohd. Salam was working as domestic servant of the Makens at their residence in Kirti Nagar where the incident took place. The relevant portions from his examination-in-chief are re-produced below:

“I was working as domestic servant with Sh. Lalit Makan and also used to stay in that house. My job was to cook the meal and to serve the guests and to do household jobs. Sh. Lalit Makan after winning the election as MP had shifted his residence to Tilak Marg. But he still used to come to Kirti Nagar to meet the visitors and his goods were also lying in the said house. On 31/7/85 Sh. Lalit Makken had arrived at his house at about 8 am alongwith his wife. I was doing the cleaning work in the said house when he alongwith his wife reached there. The visitors who had come to meet Mr. Lalit Makan some had taken seat in the office and some were standing outside the office. When I came out after doing the cleaning work in Kothi, I saw three persons were standing near the telephone pole and they were sitting over two wheeler scooter. One of them had demanded water from me. I brought one bottle of water and gave one glass to bring the same. After drinking the water he thanked me for that. One of those was of wheatish complexion and other two were fair. They were aged about 24/25 years. They were well built of normal height. I took them as security personal as daily security officials used to come in civil uniform. All the three had weapons. One had stain gun and the other two had pistols. They had pistol tied in the waste. The one who had stain gun was having in his under arms

covered with cloth. At about 10 am a Mango vender came. I accompanied Geetanjali went to that vender. One of those three persons who had stated above with weapons also tried to help in sorting out good Mangos. That boy asked Mrs. Geetanjali about the time of leaving of Mr. Makken from there as he was trying to get some loan. She advised him to go inside the office but he said that he meet him outside when he will come. He came out of the office for going. I was ahead of him and in the mean somebody started firing shots at him. He shouted that Geetanjali Bhago as there were fire shots. He tried to save himself and hid himself under the stairs and I hid myself under the banana tree near the main gate. The shots were fired by those three boys who were standing near the two wheeler scooter outside the house and who were having weapons and one of whom had helped in sorting the Mangoes and one of whom was given water by me. I was watching from under the Banana tree where I had hid myself that the one who was having staingun was still firing shots on Lalit Makan when he was under the stairs. Geetanjali w/o Lalit Makken came out to save him but she was also fired shots by those persons. Dhiraj who was the nephew of Lalit Makken was also inside the house at that time. I do not recollect now besides Lalit Makken and his wife, Suresh Malik was also fired shots. One other person whose name I don't recollect was also fired shots and he died just outside the gate.

All the three assailants fled away on the same three wheeler scooter. I don't remember the registration no. of the scooter. Police came at the spot and I gave my statement..... “

15. The fifth eye witness examined as PW-3 had not supported prosecution and so his evidence is not being noticed. The occurrence , as narrated by the four eye witnesses, was not

challenged in cross-examination on behalf of the accused. Therefore, the prosecution case regarding the occurrence stood duly established.

16. In order to establish that all the three deceased had died because of multiple fire-arm injuries two autopsy surgeons were examined. PW-17 Dr. T.D. Dogra from the All India Institute of Medical Sciences had conducted post-mortem examination on the dead bodies of Shri Lalit Maken and his wife Mrs. Geetanjali Maken. The relevant portions from his evidence are being re-produced below:

“On 31/7/1985 at 7.15 pm I conducted the post-mortem examination on the dead body of Sh. Lalit Maken s/o Shri Om Parkash aged about 24 years male r/o AB-15, Tilak Marg, New Delhi. The cause of death was shock and haemorrhage a a result of multiple fire arm bullet injuries. The injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The post-mortem examination was conducted by me along with Dr. R.K. Sharma, Dr. D.B. Saharan and Dr. P.C. Dixit. The post-mortem report was written in two sheets in my handwriting which is Ex. PW-17/A which is signed by me at point ‘A’.....

On the same day at 9.15 p.m. myself, Dr. P.C. Dixit, Dr. D.B. Saharan conducted the post mortem examination on the dead body of Mrs. Geetanjali Maken aged about 30 years w/o Lalit

Maken r/o AB-15, Tilak Marg, New Delhi identified by Sh. Chander Parkash and Sikander Lal brought by SI Manohar Lal Sharma, of PS Moti Nagar. After examination the cause of death was opined to be due to shock and haemorrhage as a result of multiple fire arm bullet injuries. Injuries were ante-mortem and sufficient to cause death in ordinary course of nature.....”

The post mortem report of Sh. Lalit Maken is Ex. PW-17/A and it shows that he had received as many as 10 fire arm bullet injuries on different parts of his body. The post mortem report of Mrs. Geetanjali Maken is Ex. PW-17/B and it shows that she received six fire arm bullet injuries on different parts of her body.

17. PW-18 Dr. R.K. Sharma of AIIMS had conducted post-mortem examination in respect of the third deceased Bal Kishan.

The relevant portions from his evidence are reproduced below:

“On 31/7/85 at 10.30 pm I had conducted the post-mortem of Bal Kishan Khanna s/o Basant Lal. The body was identified by Tulsi Dass s/o Kanhiya Lal and by Dr. Hari Chand. The body was brought by SI Randhir Singh of PS Moti Nagar. The post-mortem was conducted and detail of injury has been mentioned in post-mortem report and in my opinion the cause of death was shock and haemorrhage from ante mortem injuries caused by fire arm and sufficient to cause death in ordinary course of nature.....”

The post mortem report, Ex.PW-18/A, of Bal Kishan Khanna shows that he had received six fire-arm bullet injuries on his person.

18. As far as the injuries sustained by PW-1 Suresh Singh Malik are concerned his MLC Ex. PW-24/H shows that he had sustained bullet injuries on his right shoulder. PW-1 himself had also deposed to that effect and the same had remained unchallenged in his cross-examination.

19. Thus, from the evidence of PWs 1, 2, 5 and 6 it stands established beyond any doubt that on 31.7.85 there was a shooting incident at the residence of Makkens' in Kirti Nagar in which some persons had fired indiscriminately and as a result of that three persons had sustained multiple bullet injuries. They were rushed to hospital immediately but it appears that Lalit Maken and Bal Kishan breathed their last on the way to hospital as there they were declared as 'brought dead' while Geetanjali Maken had succumbed to her injuries in the hospital same day.

In the firing incident PW-1 Suresh Singh Malik had also received bullet injury but he was fortunate enough not to have received the bullet injury on any vital part of his body and so he survived. However, the manner in which the shooters had resorted to indiscriminate firing the offence under Section 307 IPC stood committed in respect of the injury sustained by PW-1 Suresh Singh Malik and this proposition was also not disputed by the learned senior counsel for the appellant.

20. Now, the crucial question which arises for our decision is whether accused-appellant Ranjit Singh Gill was one of the three assailants, as is the prosecution case or whether he has been wrongly convicted by the trial Court, as was strongly urged by Sh. K.T.S. Tulsi, learned senior counsel for the appellant.

21. Undisputedly the primary evidence against the appellant is that of his identification in Court by only one out of five eye-witnesses examined by the prosecution since others had not supported the prosecution case regarding the identity of

accused-appellant. PW-6 Mohd. Salam said that Ranjit Singh Gill was one of the shooters in the incident of firing on 31/07/85. PW-6 Mohd. Salam, the domestic servant of the deceased Makens. What he deposed in his examination-in-chief regarding the incident has already been re-produced by us. Regarding the identity of the participants in the crime PW-6 deposed as under:

“ I was taken by the police to Pune for identification of accused persons. In the presence of Magistrate, I identified one of those assailants who was known as Sukha. He was also one of those who had fired shots on Lalit Makken and his wife and the third person, he was having sten gun.

The police had shown me the photographs of many persons but I identified two persons as those one of whom was identified by me at Pune as Suykha and the other as one of the assailants..... The name of those assailants were told by the police as Sukha and as one person known as Dr. Gill when I was shown the photographs on the TV Screen and when I had identified those assailant in those photographs..... The accused present in the court who has turban and small beard appears to be as the same who was one of those assailants. Now the witness again confirms that accused present in the court is one of said three assailants who had fired shots together in the incident. I had seen photographs of this accused on TV screen as was shown to me by police and is the same person whose name told by police as Dr. Gill. He is one of those who had run away on two wheeler scooter. He is one who was having pistol in his hand and which was used in firing.....”

22. Learned senior counsel for the appellant had contended that PW-6, no doubt, had claimed in his chief-examination that Ranjit Singh Gill was one of the assailants who had fired shots during the shooting incident but this witness is wholly unreliable and untrustworthy witness for various reasons and so based on his testimony alone the accused could not have been convicted. Learned counsel contended that PW-6 has not been consistent in his version regarding the incident and the number of assailants involved in the incident and has come out with different versions at different stages inasmuch as in his statement under Section 161 Cr.P.C he had claimed that there were only two persons who had fired shots while in Court he improved that statement while giving evidence against Ranjit Singh Gill and claimed that there were three persons who had fired shots. This material contradiction, according to the counsel, was brought on record by confronting PW-6 with his statement under Section 161 Cr.P.C. as well as the statement on oath which he gave when accused Daljit Singh after his arrest was being tried wherein also this witness had claimed that there were only two shooters in the

incident. It was also highlighted by Mr. Tulsi that on the point of photo identification also this witness had made contradictory statements while deposing during the trial of accused Daljit Singh and then during the trial of Ranjit Singh Gill inasmuch as in his evidence during the trial of accused Daljit Singh PW-6 Mohd. Salam had claimed that he was shown certain photographs by the police after 2/4 days of the incident while in the present case he had deposed that he had been shown the photographs more than two years after the incident. Mr. Tulsi also submitted that during the trial of Daljit Singh PW-6 Mohd. Salam had claimed that when he was shown the photographs after 2/4 days of the incident he had identified two persons and names of those two persons were Jinda and Sukha(who were the accused in the case of murder of General Vaidya as well as in the present case and on being found guilty for the murder of General Vaidya had been hanged to death) while during the trial of Ranjit Singh Gill this witness had claimed that from the photographs shown to him he had identified accused Sukha and accused Ranjit Singh Gill whose name at that time was told to him by the police to be "Dr.

Gill". Mr. Tulsi submitted that since accused Sukhvinder Singh @ Sukha and Harjinder Singh @ Jinda had both been hanged to death after confirmation of their death sentence in General Vaidya's murder case by the Supreme Court and accused Daljit Singh who was put to trial after his arrest had been acquitted by the designated Court since he had not been identified as the shooter by any of the eye witnesses including PW-6 Mohd. Salam, and all other four eye witnesses who had been examined in the present trial before the examination of PW-6 had not implicated Ranjit Singh Gill the police tutored Mohd. Salam to claim in the present case that three persons had participated in the shooting and accused Ranjit Singh Gill, who himself had conceded to the extradition request of the Indian government, was one of the three shooters and since he could not have resisted the police pressure falsely roped in accused Ranjit Singh Gill otherwise the police would have suffered a great set-back because of it not having not been able to secure even a single conviction in this case. Mr. Tulsi also argued that the identification evidence of PW-6 Mohd. Salam should not be relied upon also for the reason

that he was nine years old when the incident took place and as per the prosecution case accused Ranjit Singh Gill was clean shaven at that time while when he was brought to India and produced in Court he was wearing turban and was having beard also and, therefore, it was highly improbable that PW-6 could have been in a position to identify the accused after more than 15 years of the incident while giving evidence in Court and that degree of improbability becomes higher considering the fact that PW-1 Suresh Singh Malik, who was a friend of the deceased Lalit Maken, and who himself had also sustained bullet injuries in the same shooting incident had expressed his inability to identify the assailants because of lapse of time. It was also submitted that normally evidence of an injured witness is attached great importance when he supports prosecution and so similar importance should be attached to the evidence in the present of the injured witness Suresh Singh Malik(PW-1) and his evidence to the effect that Ranjit Singh Gill was not one of the shooters should be preferred to that of PW-6's version that this accused was one of the shooters. It was also the submission of Mr. Tulsi

that evidence of PW-6 should not be believed regarding the identification of the accused and PW-1 should be believed since PW-11 Inspector Anil Kumar had stated in his evidence that two eye-witnesses Suresh Malik(PW-1) and Naresh Chand Gupta(PW-2) had claimed when contacted for participating in identification parade that they would not be able to recognize the assailants after 15 years of the incident. Mr. Tulsi contended that if these grown up and matured persons had expressed their inability to identify the accused because of lapse of time PW-6 Mohd. Salam who was just a child at the time of the incident could not have identified the accused after 15 years of the incident. In support, Mr. Tulsi also cited one judgment of Andhra Pradesh High Court reported as **2004 CrI.L.J. 2162, “Bommidi Malli Kharjuna Vs. State of AP”** wherein it was held by the High Court that it was impossible for an eye witness to identify a stranger accused after nine years of the incident.

23. It was also contended by Mr. Tulsi that, in any case, in view of the afore-said various drawbacks in the testimony of PW-6 the

conviction of Ranjit Singh Gill could not have been made on his testimony without any corroboration and that corroboration could be in the form of prior test identification parade before a Magistrate after the accused had been brought to India from USA to get him identified from the eye witnesses, as the prosecution claimed to have done in respect of his co-accused Sukhvinder Singh @ Sukha in Pune Jail, but that was not done. It was pointed out that when accused Ranjit Singh Gill was brought to India and produced before a Magistrate for remand he was produced in muffled face which shows that he was to be put up for identification parade but later on the idea of arranging the identification parade was given up by PW-11 Inspector Anil Kumar since when he contacted two eye witnesses PWs 1 and 2 they both had told him that they would not be in a position to identify the accused after 15 years but no attempt was made to have the accused identified from other eye witnesses and although PW-11 had claimed that he had at that time tried to contact them but they were not traceable but that reason hardly inspires confidence since if that was correct position then how

could those witnesses surface during the trial. It was also argued that even the trial Court itself in the impugned judgment has observed that test identification parade should have been got conducted and there was a lapse on the part of the investigating agency in not getting that done. So, evidence of identification of the accused given by PW-6, according to Mr. Tulsi, is of no value since the accused was not known to him. Mr. Tulsi also cited some judgments of the Supreme Court on the point of effect of absence of test identification parade in cases where the identity of the accused is sought to be established by prosecution by a witness who did not know the accused prior to the incident and identifies the accused for the first time in Court during trial. Those judgments are reported as **AIR 2000 SC 160, “Rajesh Govind Jagesha vs. State of Maharashtra”, AIR 1992 SC 2100, “State of Maharashtra vs. Sukhdeo Singh and another” and 1970(2) Supreme Court Case 128, “Budhsen and another vs. State of U.P.”**

24. Mr. Tulsi further argued that even though the prosecution is pressing into service evidence of photo identification of the accused but that identification evidence is also of no value and cannot corroborate the identification evidence of PW-6 given in Court. Mr. Tulsi contended that prosecution case is that PW-6 was shown certain photographs during investigation and he had identified accused Ranjit Singh Gill from one of those photographs as one of the shooters but that photo identification also cannot corroborate the testimony of PW-6 since it is the prosecution case itself that PW-6 had signed that particular photo of Ranjit Singh Gill but that photo has not been produced by the prosecution, and instead his photo Mark 'C' was placed on record, and so this Court should draw an adverse inference against the prosecution that if that photo had been produced it would have been found that the same was not of accused-appellant Ranjit Singh Gill. In support of this submission regarding non-production of the photo of the accused which PW-6 claimed to have signed Mr. Tulsi placed reliance on one judgment of Hon'ble Supreme Court in **"Ashish Batham Vs. State of M.P."**,

(2002) 7 Supreme Court Cases 317". Mr. Tulsi also contended that when in examination-in-chief itself the PW-6 was shown the photographs on record which included the photo Mark 'C' of Ranjit Singh Gill also, he stated that he could not say, as it was very old matter, if any one of those photos were of the assailants and that statement of PW-6 also renders the dock identification of the accused worthless because if actually he had identified this accused from his photo earlier he would have identified the same even during his evidence also. Another submission in respect of the photographs available on record was that alongwith the charge-sheet only eight photographs had been placed on record but subsequently two more were added in record surreptitiously by the police and that was done to bring on record one photo of Ranjit Singh Gill, which is Mark 'C' and in that way there was tampering of the judicial record and instead of punishing the persons responsible for that the learned trial Judge had very conveniently ignored this aspect and convicted the accused. The submission was that accused Ranjit Singh Gill was, in fact, not fairly prosecuted by police but was persecuted.

25. Mr. Tulsi also criticized that the learned trial Judge was really not impressed with the evidence of PW-6 Mohd. Salam but he appears to have got influenced by the confessions which other co-accused persons had allegedly made implicating Ranjit Singh Gill also as being their co-conspirator and the fact that learned trial Judge got swayed by those confessional statements is evident from the fact that despite their having already been held to be inadmissible against accused Ranjit Singh at the stage of framing of charges against him contents thereof have been extensively quoted in the impugned judgment which has caused serious prejudice to the accused and that fact also renders the judgment wholly unsustainable. Concluding his submissions Mr. Tulsi also made a fervent plea on behalf of the appellant that now that there is total peace between the two communities which were agitated against each other after the assassination of Smt. Indira Gandhi this Court should set aside conviction of the appellant since the murders were not committed because of any personal vengeance against the deceased persons but the same were committed when the atmosphere in the country was

surcharged with emotions and the people belonging to two communities were bent upon killing each other holding each other responsible for the killings of innocent people of the their respective communities.

26. Ms. Mukta Gupta, learned counsel for the respondent-State, on the other hand supported the judgment of the trial Court and submitted that guilt of the accused-appellant has been rightly found to have been established in the well reasoned judgment of the trial Court and no interference is called for. It was contended that the trial Court had rightly placed implicit reliance on the testimony of PW-6 Mohd. Salam which was of unimpeachable character requiring no corroboration at all and the fact that other eye witnesses had not supported the prosecution regarding the involvement of accused Ranjit Singh Gill in the shooting incident evidence of PW-6 cannot be viewed with suspicion for that reason. It was further contended that other eye witnesses might have felt unsafe to depose against terrorists but PW-6 had shown the courage by deposing against

accused Ranjit Singh Gill and because of that courage shown by him his testimony deserves to be accepted without any hesitation instead of it being condemned on the ground that he had deposed in favour of the prosecution under the pressure of the police. Ms. Gupta also submitted that, in any event, his evidence had been corroborated by a very strong circumstance and that circumstance was the fleeing of the accused from this country and going to U.S.A. on fake documents and under an assumed name which allegation of the prosecution he had not even attempted to rebut. It was further submitted that since during the investigation period accused Ranjit Singh Gill had remained in U.S.A. the investigating agency was well justified in getting the identity of the suspects fixed by showing photographs of different persons to the eye witnesses including PW-6 Mohd. Salam and since PW-6 had picked up the photograph of Ranjit Singh Gill out of the many photographs shown to him and had claimed that he was one of the shooters who had fired at the deceased and PW-1 there was then no necessity of getting a test identification parade arranged before a Magistrate after the

extradition of Ranjit Singh Gill. Learned counsel placed reliance on two judgments of the Hon'ble Supreme Court reported as **AIR 1999 SC 2562, "Umar Abdul Sakoor Sorathia vs. Intelligence Officer, Narcotic Control Bureau"** and **(2006) 1 SCC (Cri.) 600, "D. Gopalakrishnan Vs. Sadanand Naik"** wherein it was held that there is no legal impediment during the investigation of a crime in getting the identity of the suspects confirmed from the eye-witnesses by showing them photographs of different persons including the persons suspected of being involved in the crime under investigation. Regarding the inconsistencies pointed out by Mr. Tulsi in the evidence of PW-6 Ms. Gupta's reply was that those inconsistencies were not at all significant and had no impact on the prosecution case. It was also submitted that this accused had conceded to the extradition request of the Indian Government only after his two co-conspirators had been hanged to death after their conviction in General Vaidya murder case and third co-conspirator Daljeet Singh had been acquitted and so he must have felt assured that now there were no chances of his getting convicted and,so, contended Ms. Gupta, the plea taken by

this accused in this regard under Section 313 Cr.P.C. should not be given any weightage. Regarding the submission of Mr. Tulsi that the trial Judge had quoted from inadmissible confessional statements of the co-accused persons in the impugned judgment Ms. Mukta Gupta submitted that the trial Judge had quoted from those confessional statement to give the narration of the prosecution case and, in any case, had not used anything said in those confessional statements against the present accused and, in fact, had categorically rejected the prosecution's request to utilize the same in support of its case and, therefore, it cannot be said that the trial Judge has convicted the accused swayed by the confessional statements of the deceased accused Sukha and Jinda. As far as the availability of ten photographs, of different persons including that of accused Ranjit Singh Gill(Mark 'C'), is concerned, Ms. Gupta's clarification in her written submissions was that initially eight photos were filed with the challan but later on two photos of absconding accused Sukhvinder Singh @ K.C.Sharma were placed on record after he had died and one of those two photos was of his dead body and the same were filed

only to bring on record the factum of his death and with his death proceedings against him stood abated. She submitted that these two photos were brought on record by moving an appropriate application in Court which was available at page 867 of the trial Court's file. In view of this clarification given on behalf of the State nothing further was submitted on behalf of the appellant on this point.

27. We have given our thoughtful consideration to the rival submissions and we shall now proceed to examine if there is any force in the grounds of challenge to the evidence of PW-6 urged by Mr. Tulsi. PW-6 is the only eye witness who had gathered the courage to depose against the accused. Other four eye witnesses did not show that courage to depose to the effect to identify the appellant but that fact cannot be a ground to doubt the veracity of the testimony of PW-6, as was urged by the learned counsel for the appellant. It has to be kept in mind that the police has been proclaiming that terrorists were responsible for the killings and so the reason for some witnesses not gathering the courage

to depose against the accused is not beyond comprehension. Here we are reminded of the observations made by the Hon'ble Supreme Court in "*Krishna Mochi and others vs. State of Bihar*" (2002) 6 Supreme Court cases 81 regarding the tendency of the witnesses these days not to depose against dreaded criminals involved in heinous crimes and this is what was observed:

"31. It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power.....These days it is not difficult to gain over a witness by money power or giving him any other allurance or giving out threats to his life and/or property at the instance of persons, in/or close to powers and musclemen or their associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent....."

In light of the above observation of the Hon'ble Supreme Court we now examine the effect of non-identification of the

accused by other eye witnesses. PW-1 Suresh Singh had survived despite having received bullet injuries. He might have thought that he had survived once and so why should he again stake his life. His family members could also have dissuaded him from deposing against the persons who were according to the police terrorists bent upon killing innocent people also in pursuit of their object of finishing all those whom they considered to responsible for the killings of innocent Sikhs. There could be other such like reasons also for this witness not gathering the courage to identify accused Ranjit Singh Gill in the dock. PW-2 Naresh Chand was a poor rehri-wallah who used to sell fruit to earn for daily meals. He could have also thought it wise not to take any confrontation with the terrorists. Similarly other two witnesses not supporting the prosecution regarding the identity of the accused-appellant could also be because of such fears. What to say of these poor persons not gathering courage to depose against the accused we find from the records of this case that when evidence was being recorded in the trial of acquitted accused Daljeet Singh the Magistrate who had conducted Test Identification Parade for

accused Sukhvinder Singh @ Sukha at Pune was summoned as prosecution witnesses but he had written to the Designated Court in Delhi that he had apprehensions about his safety and he requested for adequate security in view of the nature of the crime but despite that the Designated Judge declined his request observing that there was no provision for providing security to a witness and then proceeded to issue bailable arrest warrants against the Magistrate. We do not approve of such a view and course of action adopted by the Designated Judge. Coming back to the point under consideration, in the present case despite all these adverse circumstances PW-6 showed the courage to depose in Court against an accused whom the police proclaims to be a terrorist but because of his courage it cannot be said that he was deposing under police pressure, as the learned counsel for the accused wanted us to infer because of other witnesses turning hostile regarding the involvement of accused Ranjit Singh Gill. Similar argument was repelled by Hon'ble Supreme Court in “ **Surendra Singh Rautela vs State of Bihar**”, (2002)¹ **SCC 266** wherein it was held that evidence of an eye witness

who supports the prosecution cannot be discarded because other eye-witness had not supported the prosecution. Evidence of such a supporting witness has still to be scanned and analysed independently taking into consideration many factors, like, how he had fared in cross-examination and whether his version was consistent throughout on the material aspects etc. and then the Court has to assess his credibility.

28. Evidence of PW-6 cannot be viewed with suspicion because he is the only witness claiming the accused to be one of the shooters involved in the incident. It is the quality of evidence and not the number of witnesses examined by the prosecution to establish the involvement of some accused which matters. However, since the case must stand or fall by the evidence of a single witness it is necessary to examine that evidence critically and in order to be the basis of conviction he should be wholly reliable and his presence at the place of occurrence has to be natural. Mr. Tulsi himself had also cited one judgment of the Hon'ble Supreme Court in **"Lallu Manjhi and another vs. State of**

Jharkhand”, (2003) 2 Supreme Court Cases 401, wherein it was held that conviction of an accused can be based even on the testimony of a solitary witness when his evidence is found to be wholly reliable. PW-6 Mohd. Salam had claimed that he was the domestic servant of the deceased Makens and he used to work and stay at their personal residence in Kirti Nagar and where the deceased Shri Lalit Maken, M.P., used to come from his official residence at Tilak Nagar to meet his visitors coming to his house in Kirti Nagar. This part of his statement was not challenged in his cross-examination on behalf of the accused. The incident had taken place around 10 a.m. and, therefore, presence of PW-6 Mohd. Salam at the time of the incident was quite natural and cannot be doubted. Although in his cross-examination it was suggested to him that he was not present at the time of the incident but he denied that suggestion and we have also no reason to entertain any doubt regarding his presence in the house of the Makens at the time of the incident. His evidence has a ring of truth. His evidence, thus, cannot be knocked out just

because other witnesses have not supported the prosecution regarding the involvement of accused Ranjit Singh Gill.

29. After having found the presence of PW-6 Mohd. Salam at the scene of crime to be beyond any doubt we shall not proceed further to analyse his further statement implicating accused Ranjit Singh Gill to find out if the same is wholly reliable or not. As has been noticed already, evidence of this witness was attacked on behalf of the appellant by the learned senior counsel Mr. Tulsi on the ground that he was not consistent in respect of material aspects of the prosecution. Before we examine the inconsistencies highlighted by Mr. Tulsi in the evidence of PW-6 we would once again refer to the judgment of Hon'ble Supreme Court in Krishna Mochi's case(supra) wherein it was observed that these days witnesses do not support the prosecution when some hardened criminal is being tried. In that case also certain inconsistencies in the evidence of material witnesses were sought to be highlighted on behalf the convicted accused for securing acquittal and these are the observations of the Court :

“32. Thus, in a criminal trial a Prosecutor is faced with so many odds. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more..... So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-free.....”

(emphasis supplied)

30. Mr. Tulsi, learned senior counsel for the appellant, had also submitted that PW-6 had claimed during his evidence in the present case that there were three persons who had indulged in firing from their respective fire-arms in the incident but in his statement under Section 161 Cr.P.C., Ex.PW-6/DA, made before

the police on the day of the incident itself, with which the witness was confronted, as well as in his statement on oath, Ex.PW-6/DB, made during the trial of accused Daljit Singh(who, as noticed already was acquitted), which statement was also confronted to the witness, he had claimed that only two persons had fired shots during the incident while about the third person it was simply claimed that he was standing there and had fled with the two shooters on a scooter. Even in the FIR also the prosecution case was that only two persons had fired shots during the firing incident. We, however, do not find any merit in this submission also of Mr. Tulsi. There is no inconsistency whatsoever in the version of PW-6. The prosecution case all along was that on 31/07/85 some persons had come to the residence of the deceased Makens and had indiscriminately fired upon the victims. PW-6 in his cross-examination had claimed that he had told the police that three persons had fired during the incident and that is evident from his supplementary statement Ex.PW-6/DC with which also he was confronted by the defence counsel himself. That statement was recorded when he was shown

certain photographs of the suspects out of which he claims to have identified the photo of Ranjit Singh Gill and had claimed that he had also fired during the incident. He has categorically claimed in Court also that accused Ranjit Singh Gill was one of the shooters in that incident of firing. So, it is not that PW-6 had for the first time in the witness-box claimed that there were three persons who had fired shots during the incident. The defence counsel could not bring on record during his cross-examination any inconsistency in his stand as far as involvement of this accused is concerned. And that consistency in his version during investigation and during the trial is the clinching factor so far as his credibility is concerned. We are also of the view that even if it had been found that PW-6 had not claimed during investigation that two persons only had indulged in firing and their third companion was simply watching the action that would have still not affected his credibility of PW-6 and his evidence would not have been jettisoned since regarding the involvement of Ranjit Singh Gill he was categorical at that time and also while deposing in Court and that is the core of his evidence and the

prosecution case. And during cross-examination PW-6 it was not even put to him that Ranjit Singh Gill had not fired at the victims as was being claimed by him. Before proceeding further to the other inconsistency highlighted by the senior counsel we may make a reference to a judgment of Hon'ble Supreme Court in **"Appabhai vs State of Gujarat", AIR 1988 SC 696**, which was cited by the learned State counsel, wherein the evidence of the eye-witness of the occurrence was accepted by the Apex Court even though he had not attributed overt acts to individual accused in his police statement but in Court he had attributed overt acts to individual accused persons. Hon'ble Supreme Court observed that that witness was fortunate to survive the assault and so his evidence could not be rejected because of the absence of roles of individual accused during the incident in his police statement and the same being given during evidence before the Court. In the present case even though PW-6 was himself not injured during the firing but he has deposed that when the firing had started he was ahead of Lalit Maken while he was proceeding towards his car after he had met his visitors and

to save himself he(PW-6) had hidden himself under a banana tree. So, despite the fact that PW-6 was not injured the manner in which indiscriminate firing was resorted to by the shooters due to which not only Lalit Maken, his wife as well as one person standing outside the house of Lalit Make waiting to meet him received shots it can be said that PW-6 was also, like PW-2, fortunate to be able to save himself from the attack and so his evidence also like that of the eye witness in the case before the Apex Court cannot be viewed with suspicion.

31. Another inconsistency pointed out was that in his statement, Ex.PW-6/DB, given in Court during the trial of accused Daljit Singh, who had earlier been declared proclaimed offender when charge-sheet in respect of the present incident was filed in Court against two accused persons Sukhvinder Singh @ Sukha and Harjinder Singh @ Jinda, he had claimed that he had been shown some photographs after 2/4 days of the incident while in the present case he had claimed during his cross-examination that he was shown the photographs out of

which he had picked up the photo of Ranjit Singh Gill in the month of August after about two years of the incident. In our view, this is hardly an inconsistency in the evidence of PW-6. The witness appears to have said in his cross-examination during Daljit Singh's trial, when asked as to when he was shown the photos, that he was shown photos 2/4 days after the incident under some confusion or the same is a typing error and that is evident from the fact that when during that cross-examination itself it was then put to him by the defence counsel himself that he was shown photos in August, 1987. We have thus no hesitation in rejecting this ground of challenge also to the veracity of the testimony of PW-6.

32. It was also contended by the learned senior counsel for the appellant that the evidence of identification of the accused given PW-6 has the touch of artificiality and is highly improbable since he was a child of nine years of age on the day of the incident and so by no stretch of imagination he could be expected to remember the faces of the shooters after fifteen years of the

incident. Same argument was raised in the trial Court also and this is how the same was dealt with and answered by the learned trial Judge in para no. 122 of the impugned judgment:

“122. Ld. Defence counsel has contended that PW 6 could not have identified the accused after lapse of more than 14 years. More particularly when according to prosecution the appearance of accused was changed. In my opinion no one can explain as to how one remembers ones face after a lapse of such a long period, but sometimes the impression of the assailant is so deep rooted in the memory of a person that he can identify form or in any situation. In the present case PW 6 had come in close contact of the accused. The offence was committed in broad day light on 31.7.85 and accused has rightly been identified by the PW 6 in the court. The truthfulness of PW 6 about identification of accused is reflected from the fact that PW-6 once deposed that the accused resembled one of the assailants, but confirmed immediately that accused was one of the three assailants who had fired shots.”

33. We are in full agreement with the said reasoning of the trial Judge. As far as age of PW-6 is concerned the appellant claims that he was nine years old on the day of the incident. He was examined in Court on 04/04/01 and on that day he gave his age as 25 years. However, it cannot be said that on the day of the incident he was such a small child that there could be no

possibility of his remembering the faces of the culprits who had shot down his master in broad-day light in front of his eyes. Before the shooting he had some interaction also with the culprits one of whom had even asked him to get water to drink and then he had brought water and a glass from inside the house and given to that person who then had thanked him. He has further claimed in his examination-in-chief that when Mrs. Maken was purchasing mangoes from the fruit vendor(PW-2) he was present with her and then one of the two companions of that person who had earlier demanded water from came forward to help Mrs. Makken in sorting out good quality of mangoes and that person also in that process asked Mrs. Maken when Mr. Maken would be leaving as he needed his help. Then Mr. Maken had told that person to go inside and meet Mr. Maken there. That person, however, told her that he would meet him outside only. So, this is not a case where the witness had only a fleeting glimpse of the culprits. He had seen them from a very closely. PW-6 saw those very person shooting indiscriminately on his master and master's wife. So, the faces of the shooters must

have got imprinted in his mind with indelible ink. For a domestic servant of young age his master is like a parent to him. So, Makens were really like parents for PW-6 and thus he can be said to have, in fact, seen his parents being mercilessly killed. So he could not have forgotten the faces of the killers. It should also not be ignored that this witness himself had also claimed that after two years of the incident he was shown some photographs out of which one was of Ranjit Singh Gill and on seeing his photo he had identified him as one of the shooters. The imprint of the face of this accused, thus, must have become bolder in his memory rather than getting diminished and dimmer. We have, therefore, no doubt in our mind that PW-6 Mohd. Salam is a natural witness and there is a ring of truth in his version. Though he was subjected to an incisive cross-examination by the defence counsel nothing was brought out to impeach his credibility as a truthful witness. There was no reason for him to falsely implicate the accused. This witness belongs to that category of witnesses on whom implicit reliance can be placed.

34. Mr. Tulsi had, however, argued that in this case the evidence of PW-6 required corroboration in the form of a test identification parade. The question of corroboration of the evidence of PW-6 would have arisen if we had found his evidence to be not wholly truthful but we find him to be a wholly reliable witness. In any case, the prosecution case is that PW-6 had identified accused Ranjit Singh Gill during investigation when he was shown some photographs which included the photo of this accused also and PW-6 had on seeing the photo of Gill claimed him to be one of the shooters involved in the shooting incident. And as far as photo identification is concerned this is what the Supreme Court had observed in **“Laxmi Raj Shetty vs State of Tamil Nadu” (1988) 3 SCC 319** regarding photo identification of some accused by the witnesses during investigation :-

“It is contended that the evidence of PWs 19 and 31 with regard to the identification of the accused Laxmi Raj Shetty before the Court of Sessions for the first time without any prior test identification parade was not of any value but we are not impressed. Later both these witnesses saw the photograph of the accused carried by PW 50 Deviasigamani and identified him to be the person involved. In the world as a whole today, the identification by photographs is the only method generally used by the Interpol and other crime

detecting agencies for identification of criminals engaged in drug trafficking, narcotics and other economic offences as also in other international crimes. Such identification must take the place of a test identification.”(emphasis laid)

As far as test identification parade before a Magistrate is concerned the same was in case not possible in this case since admittedly accused Ranjit Singh Gill was not traceable in the country during the initial period of investigation and then he went to USA where admittedly he was arrested on 14/05/87 and then remained there in jail for more than thirteen years. He could be brought to India only in the year 2000 by which time, as noticed already, the investigation in respect of three accused persons, namely, Sukhvinder Singh @ Sukha, Harjinder Singh @ Jinda and the present accused Ranjit Singh Gill had already been concluded by the investigating agency and charge-sheet filed in Court on the allegations that there was sufficient evidence against these three accused persons. So, when Ranjit Singh Gill was brought to India he had simply to be produced in Court for being tried for the offences of murder and attempted murder and that was done. The submission of learned counsel that after this accused had

been brought to India a test identification parade should have been got conducted is, thus, misconceived. The observation of the trial Judge in his judgment that that there was a lapse on the part of the investigating officer in not arranging TIP is also erroneous. The police is not to be blamed at all and lapse on its part has rather been unjustifiably attributed to it. Courts should not make such like observations casually against the investigating agencies, who have to perform the tedious job of solving heinous crimes and facing all kinds of challenges while investigating crimes committed by dreaded criminals and terrorists.

35. Regarding the identification of accused Ranjit Singh Gill during investigation by PW-6 from his photo, the criticism of Mr.Tulsi was that this fact actually goes against the prosecution since the prosecution had not placed on record that photograph which PW-6 claimed to have signed on 4-8-87. Our attention was specifically drawn to the statement of PW-6 recorded on 4-8-87 by investigating officer under Section 161 Cr.P.C.,Ex.PW-6/DC,

when he was shown some photos. In that statement PW-6 Mohd. Salam had claimed that he had signed on the backside of two photographs which he had claimed to be of the two of the three shooters and whose names were Ranjit Singh Gill and Sukhvinder Singh @ K.C.Sharma(who as noticed already was at one time declared as proclaimed offender and later on was reported to have died and whose photos, one of which was of his dead body, were brought on record). There is no doubt that the prosecution has not placed on record the photograph of accused Ranjit Singh Gill which PW-6 claims to have signed on 4-8-87 after identifying him as one of the culprits. However, non-production of that photo has no adverse effect on the prosecution case. The photograph which the witness had signed on 4-8-87 and in respect of which his statement under Section 161 Cr.P.C. was recorded on that day became a part of that statement. When the accused was produced in Court after his extradition from USA before the committal Court he was supplied with all the documents which the prosecution had relied upon. After supply of the documents the counsel for the accused had informed the

Court that complete set of documents had been furnished to the accused and thereafter only the Magistrate had committed the case to the Court of Sessions and it was not claimed at that stage that copy of the photo bearing the signature of Mohd. Salam had not been supplied to the accused nor any demand was made on behalf of the accused before the committing Court for the copy of the photo showing the signature of the witness Mohd. Salam. So, the copy of the photo which PW-6 claimed to have signed is presumed to have been supplied to him along with other relied upon documents and the same could have been used during cross-examination of PW-6 to contradict him. That was not done which shows that this witness had correctly identified the photo of accused Ranjit Singh Gill. Therefore, the non-availability of the photograph of accused Ranjit Singh Gill, on the back of which PW-6 had signed, in the judicial record is no flaw in the prosecution case.

36. No doubt that when PW-6 was shown photos on record during his chief-examination he had claimed that he could not

say if any of those photos were of the assailants or not but from that fact also the accused cannot derive any benefit since the witness was supposed to identify the accused who was standing in the dock and not his photograph. Here also the trial Judge committed an error by allowing the prosecutor to put such a question to the witness. There was no occasion for the prosecutor showing photos to the witness for eliciting from him that one of those photos was of the accused facing trial. The witness was supposed to identify the accused being tried and that he did.

37. Mr. Tulsi had also submitted that when PW-6 was examined during the trial of acquitted accused Daljit Singh he had claimed there in his examination-in-chief that he had seen 100/150 photographs and he had identified the photos two persons only, namely, Jinda and Sukha and not that he had identified the photo of Ranjit Singh Gill also. Thus, Mr. Tulsi argued, this witness had made contradictory statements when he gave his evidence in the case of Daljit Singh and in the present case where he has claimed that he had identified the photo of

Ranjit Singh Gill in August, 1987. Mr. Tulsi also submitted that PW-6 was duly confronted with his statement, Ex. PW-6/DB, which he had made in Daljit Singh's case as PW-1 during his cross-examination in the present case. Therefore, according to Mr. Tulsi the testimony of PW-6 deserved to be rejected on this ground also. There is no doubt that PW-6 had stated in his statement on oath made during the trial of acquitted accused Daljeet Singh, Ex.PW-6/DB, that two photos identified by him were of Sukha and Jinda. However, in our view, nothing turns around on this point urged by Mr. Tulsi because he had not claimed at any stage that he had never identified any photograph of accused Ranjit Singh Gill. Thus, it cannot be said that in respect of the involvement of accused Ranjit Singh Gill he had made contradictory statements.

38. We now come to the last submission made by Mr. Tulsi while concluding his arguments. It had been submitted that considering the fact that now there was peace all over and feelings of revenge and vengeance amongst the members two

communities had vanished and considering the fact that the appellant had without any trial remained in jail for over 13 years in USA and thereafter also for some years he has been in jail in India after his extradition this Court should be merciful enough to acquit him. However, we do not feel that we can take any decision in a criminal case based on sympathies. The Courts are expected to deal with and decide criminal cases on the bases of evidence adduced by the prosecution and no other consideration can enter into the minds of the Judges while arriving at the conclusion regarding the guilt or innocence of some accused under trial for some crime. The appellant-accused in the present case had been involved in the incident of brutal killings of three innocent persons. The way indiscriminate firing had been resorted to by this accused and his companions could have resulted in more deaths also of innocent people who might have been present around the scene of occurrence as passers-by or bystanders. PW-6 had claimed that there were other people also present at the scene of crime. They were fortunate enough that no bullet coming out from the fire-arms of the shooters landed on

them. So, there is no question of any mercy being shown to such a killer of innocent people.

39. We are also in agreement with the submission made by Ms. Mukta Gupta, learned counsel for the State, to the effect that even if the prosecution case required any further assurance and photo identification of accused Ranjit Singh Gill was also not to be given any weightage there was a very strong circumstance to lend assurance to the prosecution case regarding the involvement of accused Ranjit Singh Gill and that circumstance was of fleeing away of this accused to USA on the basis of fake documents and under an assumed name. It is not in dispute that accused Ranjit Singh Gill was arrested in USA on 14-5-87. The prosecution witness PW-47 Inspector Mahinder Singh Malik had deposed that while investigating one case under TADA Act pertaining to FIR No. 349/86 registered at Kalkaji police station he had come to know that accused Ranjit Singh Gill had gone to USA on forged passport. Although the prosecution has not recovered any passport with the help of which accused Ranjit

Singh Gill had flown to USA nor do we think that the prosecution could establish by satisfactory evidence that the embarkation card Ex. PW-19/A, which according to the prosecution accused Ranjit Singh Gill had filled up at the airport before going into the aircraft for flying to USA, had actually been filled up by him giving his name as Yashpal Kashyap since the comparison of handwriting in this document cannot be said to have been got compared with the admitted handwriting of this accused. According to the prosecution, when the house of this accused was raided on 25-09-86 the police had seized from his house certain papers which according to it were having the handwritings of Ranjit Singh Gill. However, no witness was examined who could say that those documents were, in fact, having the handwritings of Ranjit Singh Gill. Therefore, comparison of handwritings on those documents with the handwriting in the embarkation card Ex. PW-19/A and the opinion of the handwriting expert(PW-19) that the handwritings in Ex. PW-19/A and in the documents seized from the house of Ranjit Singh Gill appeared to be similar is of no assistance for advancing the

prosecution case on this aspect. However, in our view, since this accused himself has admitted that he had gone to USA and further that he himself had conceded to the Indian Government's request for his extradition to India he himself could have come out with the true facts which was within his special knowledge as to on which passport/visa and under what name he had gone to USA if actually he considered the prosecution allegation against him that he had gone to USA on fake documents were false. If he had held any genuine passport in his own name issued by the passport authorities in India he could have given the necessary particulars. Having failed to disclose necessary facts in this regard which were specially within his knowledge we have no reason to accept the prosecution case that he had actually absconded to evade his being apprehended and tried for the shooting incident on 31st July, 1985 at the residence of Maken. This circumstance of his absconding and leaving the country does lend assurance to the prosecution case. In this regard we may refer to a judgment of a Division Bench of Bombay High Court in **"Vithal Chimaraya Gawade Vs. The State of Maharashtra"**,

MANU/MH/0224/2007 wherein also the circumstance of abscondence of the accused was taken into consideration as a corroboration to the ocular version of the crime given by the eye witness. This is what the High Court observed in para no. 22 of its judgment:

“22. The direct evidence of witness Laxman is also corroborated by the other circumstantial evidence. It has also come on record that since the time of incident the accused was absconding. The police, after coming to know the name of the accused tried to search for him for about four days in the village, however, he was not traced and on 27.1.1987 police received the copy of the application filed by the accused for anticipatory bail. The said application was rejected and then accused was arrested on 5.2.1987. Thus, we find that absconding of accused after the incident is a circumstance which also lends support to the prosecution case. It is true that absconding by itself cannot be said to be sufficient or relevant to convict the accused if there is no other evidence, however, when the direct evidence is cogent, reliable and sufficient to prove his guilt and there is also evidence with regard to absconding of the accused then certainly it assumed importance. So, this is another factor which supports the prosecution case.” (emphasis laid)

40. With this we have dealt with all the grounds of challenge against the impugned judgment and to the evidence of PW-6, in particular, put forth in the Memorandum of Appeal and during

the course of oral submissions made by Mr. Tulsi and which were summarized in the brief written synopsis also submitted on behalf of the appellant. No other point was urged. In our view, the evidence of PW-6 had made the prosecution case so strong that despite the appellant's counsel pressing into service various grounds of attack none of them proved to be strong enough to demolish the prosecution's case.

41. The inevitable result is that conviction of the appellant for the offences of murder as well as attempted murder is to be maintained by confirming the judgment of the learned trial Court. However, in the facts and circumstances of the case and the nature of evidence of the eye witnesses it is clear that the appellant was not alone involved in the incident. He had other associates also with him at the time of the incident and the firing had been resorted to by the shooters in furtherance of their common intention. So, the conviction of the appellant-accused under Sections 302 and 307 IPC simpliciter has to be altered to

one under Sections 302 and 307 IPC read with Section 34 IPC, as were the charges framed against him.

42. After having found that the appellant-accused was actually involved in the shooting incident in which three innocent persons lost their lives and fourth one despite being injured because of bullet injuries was fortunate enough to survive and that this is a case of ruthless killings and the acts of the shooters can be said to be diabolic in nature it became a matter of anxiety for us as to how appellant-accused had been let off with punishment of life imprisonment only. Accordingly, we drew our attention to the order on sentence passed by the learned Additional Sessions Judge and its reading shows that having failed to secure acquittal, a plea was then raised on behalf of the convicted accused at the stage of hearing on the point of sentence that he should not be awarded death sentence since the murders were committed when the atmosphere was surcharged with feelings of hatred amongst members of two communities aroused, firstly, as a result of assassination of the then Prime Minister of

the country which was followed by the mass killing of Sikhs and then by killings of VIPs by misguided Sikh youths whom they considered to be responsible for the killings of innocent Sikhs. This plea(which has now been pressed into service before us also for securing acquittal of the appellant-accused) appears to have melted the heart of the learned trial Judge and that melt-down is evident from the following observations made by him in his order on sentence after taking into consideration the aforesaid submissions made on behalf of the convict for showing leniency :

“9. I have given a careful thought to the circumstances before me and I have come to conclusion that it is not a case where capital punishment was necessity of the time. The circumstances have changed. Peace has returned and normalcy has been restored. The convict is not a criminal and his behaviour in detention as well as during trial has been commendable and he has never shown any disrespect to anybody including the Court. He has never raised any voice against the laws of land also. In my opinion, there are not only chances of his being reformed and settled in life peacefully, but he already appears to be a reformed person and therefore, I do not intend to award capital punishment.”

43. We have, however, serious reservations in respect of the reasons given by the learned Additional Sessions Judge for showering accolades upon the accused who had been found to have been involved in brutal killings of innocent persons and the undue sympathy shown to him in not awarding the extreme penalty to him. We would, however, say nothing more than this now except to observe that the present was a fit case where at least notice of enhancement of sentence ought to have been given to the appellant-accused requiring him to show cause as to why his sentence of life imprisonment be not enhanced in view of the killings of not only two men but a hapless woman too. However, we restrain ourselves from doing so in view of the time which has elapsed after the incident and after his extradition to India and conviction in 2003 and also the fact that the State has chosen not to ask for enhancement of sentence of accused Ranjit Singh Gill nor it had challenged his acquittal for the offence under Section 120-B IPC and nor did it even challenge the acquittal of co-accused Daljit Singh. We are, however, giving no credence to the period from 1986 to 2000 when the

appellant-accused was abroad absconding from law. With these observations, while altering the conviction of the appellant from Sections 302 and 307 IPC simpliciter to one under Sections 302 and 307 read with Section 34 IPC we dismiss this appeal.

The appellant shall be taken into custody forthwith to serve out the sentences of imprisonment awarded to him by the trial Court which had been suspended for some time during the pendency of the appeal.

P.K.BHASIN,J

MUKUL MUDGAL,J

FEBRUARY 24, 2009
sh