

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

Reserved on: 2<sup>nd</sup> January, 2018

Decided on: 6<sup>th</sup> February, 2018

**+ CRL.A. 1003/2014**

JASPAL SINGH GOSAIN

...Appellant

Through: Mr.V.K.Garg, Sr. Advocate with Ms.Noopur  
Dubey, Advocate.

versus

CBI

...Respondent

Through: Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek  
Kumar, Advocate.

**+ CRL.A. 1062/2014**

CHANDER PAL & ANR

...Appellants

Through: Mr.R.S.Malik, Mr.Vikas Dabas and Mr.Sparsh  
Chaudhary, Advocates.

versus

STATE (CBI)

...Respondent

Through: Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek  
Kumar, Advocate.

**+ CRL.A. 1104/2014**

SUNIL SAINI

...Appellant

Through:Mr.R.M.Tufail,Mr.KhalilA.Ansari,Mr.Farooqui  
Chaudhary, Mohammad Akhtar, Mr. Arif Shakeel,  
Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

STATE THRU CBI

...Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek  
Kumar, Advocate.

**+ CRL.A. 1105/2014**

SATBIR SINGH

... Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif  
Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

STATE THRU CBI

... Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek  
Kumar, Advocate.

+  
MANOJ KUMAR

**CRL.A. 1107/2014**

... Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif  
Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

STATE THRU CBI

...Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek  
Kumar, Advocate.

+  
NEERAJ KUMAR

**CRL.A. 1108/2014**

... Appellant

Through:Mr.Harshvir Sharma, Mr.Khalil A. Ansari and  
Mr.Mohammad Akhtar, Advocates.

versus

STATE THRU CBI

...Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek  
Kumar, Advocate.

+  
RAJESH BISHT

**CRL.A. 1109/2014**

...Appellant

Through: Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif

Shakeel, Ms. Astha and Mr.Sunil Sagar, Advocates.

versus

CBI, SCB, LUCKNOW

... Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek Kumar, Advocate.

+  
INDER BHAN SINGH

**CRL.A. 1110/2014**

... Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

CBI, SCB, LUCKNOW

...Respondent

Through: Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek Kumar, Advocate.

+  
NAGENDER RATHI

**CRL.A. 1111/2014**

...Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates

versus

CBI, SCB, LUCKNOW

... Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek Kumar, Advocate.

+  
AJEET SINGH

**CRL.A. 1112/2014**

... Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr. Arif Shakeel, Ms. Astha and Mr.Sunil Sagar, Advocates.

versus

CBI, SCB, LUCKNOW

...Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek Kumar, Advocate.

+  
NITIN CHAUHAN

**CRL.A. 1113/2014**

... Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

CBI, SCB, LUCKNOW

...Respondent

Through:Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek Kumar, Advocate.

+  
CHANDER MOHAN SINGH RAWAT

**CRL.A. 1114/2014**

...Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

CBI, SCB, LUCKNOW

... Respondent

Through: Mr. Sanjeev Bhandari, Spl. PP. and Mr.  
Prateek Kumar, Advocate.

+  
SK JAISWAL

**CRL.A. 1115/2014**

... Appellant

Through:Mr.R.M.Tufail, Mr.Khalil A.Ansari,  
Mr.Farooqui Chaudhary, Mohammad Akhtar, Mr.Arif Shakeel, Ms.Astha and Mr.Sunil Sagar, Advocates.

versus

STATE THRU CBI . ...Respondent  
Through: Mr. Sanjeev Bhandari, Spl. PP. And  
Mr. Prateek Kumar, Advocate.

+ **CRL.A. 1116/2014 & CRL.M.(Bail) 1390/2017**  
G D BHATT ... Appellant  
Through: Mr. R. M. Tufail, Mr. Khalil A. Ansari,  
Mr. Farooqui Chaudhary, Mohammad Akhtar, Mr. Arif  
Shakeel, Ms. Astha and Mr. Sunil Sagar, Advocates.

versus

STATE THRU CBI ...Respondent  
Through: Mr. Sanjeev Bhandari, Spl. PP. And Mr. Prateek  
Kumar, Advocate.

+ **CRL.A. 1181/2014**  
MOHAN SINGH RANA ....Appellant  
Through: Mr. Neeraj Chaudhari, Mr. Akshay Chandra,  
Ms. Saakshi Agrawal and Mr. Arindam Dey, Advocates  
with the appellant in person.

versus

CBI ...Respondent  
Through: Mr. Sanjeev Bhandari, Spl. PP. And Mr. Prateek  
Kumar, Advocate.

+ **CRL.A. 1194/2014**  
VIKAS BALUNI & ANR ...Appellants  
Through: Mr. R. S. Malik, Mr. Vikas Dabas and Mr. Sparsh  
Chaudhary, Advocates.

versus

CBI ...Respondent

Through; Mr.Sanjeev Bhandari, Spl. PP. And Mr.Prateek Kumar, Advocate.

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE I.S. MEHTA**

%

**JUDGMENT**

**Dr. S. Muralidhar, J.:**

*"Killings in police encounters affect the credibility of the rule of law and the administration of the criminal justice system."*

**[PUCL v. State of Maharashtra (2014) 10 SCC 635]**

***Introduction***

1.1 Eighteen policemen of the Uttarakhand police were sent up for trial consequent upon the killing of 20 year old Ranbir Singh in Dehradun on 3<sup>rd</sup> July 2009 in an encounter. The case of the Central Bureau of Investigation (CBI), to which the case was entrusted, was that the encounter was fake and that the eighteen policemen conspired to murder him.

1.2 The learned Additional Sessions Judge, CBI-03 ('the trial Court') by a judgment dated 6<sup>th</sup> June 2014 in Sessions Case No.1/2011 (arising from RC No.6(S)/2009 CBI/SCB/Lucknow) convicted the accused policemen thus:

(i) Accused No.1 (A1) to A16 and A18 were convicted for the offences under Sections 120B of the Indian Penal Code ('IPC') read with Sections 364 and 302 IPC.

(ii) A1 to A7 were convicted for the offences punishable under Sections 302 read with Section 120B IPC and Section 364 read with Section 120B IPC.

(iii) A17 and A18 were convicted for the offence under Section 218 IPC.

1.3 By the same judgment, A1 to A14 were acquitted for the offence under Section 201 read with Section 302 and Section 364 IPC and Section 218 IPC. Further, A1 to A16 were acquitted of the offence under Section 218 IPC.

1.4 By an order on sentence dated 9<sup>th</sup> June 2014 the trial Court sentenced the accused as under:

(i) A1 to A16 and A18 were sentenced to imprisonment for life and fine of Rs.20,000/- and in default of payment of fine, to undergo simple imprisonment for 3 months, for the offence under Section 120B read with Sections 302/364 IPC.

(ii) A1 to A7 were sentenced to imprisonment for life with fine of Rs.20,000/- and in default of payment of fine to undergo simple imprisonment for 3 months for the offence under Section 302 IPC read with Section 120B IPC.

(iii) A1 to A7 were sentenced to rigorous imprisonment for 4 years with fine of Rs.10,000/- and in default to undergo simple imprisonment for one month for the offence under Section 364 IPC read with Section 120B IPC.

(iv) Both A17 and A18 were sentenced to simple imprisonment for 2 years for the offence under Section 218 IPC

1.5. The present appeals question the above judgment and order on sentence of the trial Court.

1.6 In the judgment that follows this Court has confirmed the conviction and consequent sentence awarded to seven of the appellants (who were arrayed as Accused Nos. A-1 to A-7) for the offences under Sections 120 B IPC and Sections 302 and 364 read with Section 120 B IPC. The Court has acquitted the other Appellants of all offences.

***The case of the prosecution***

2. The President of India was due to visit Dehradun on 3<sup>rd</sup> July 2009 at around 4 pm. The entire city was, therefore, on high security alert on that day. The Uttarakhand police in Dehradun were patrolling the city since the morning.

3. Gopal Dutt Bhatt (A2), who was a Sub-Inspector ('SI') at Police Station ('PS') Dalanwala in Dehradun and who, at the relevant time, was attached to the Araghar Outpost, was on his motorcycle doing the rounds of his designated area. From the Araghar Outpost, A2 was proceeding on his motorcycle. Near the Gurudwara on Mohini Road, A2 noticed a boy sitting on a motorcycle which was having a Haryana number plate. Two other boys were standing nearby. A2 purportedly asked the boy sitting on the motorcycle for the papers of the vehicle. There appears to have been an exchange of words. There are several versions as to what happened thereafter. (It may be mentioned here that although Gopal Dutt Bhatt was in the order framing charges referred to as A4 and Neeraj Kumar as A2, in the impugned judgment their numbers have been interchanged. Gopal Dutt



Bhatt is mentioned as A2 and Neeraj Kumar as A4. Accordingly, in this judgment they are referred to likewise.)

4. There were several prosecution witnesses (PWs) examined by the CBI as regards the incident near the Gurudwara on Mohini Road. However, despite their statements being recorded under Section 164 of the Code of Criminal Procedure ('Cr PC'), some of them failed to support the prosecution when they were examined in Court. One of them, Anjum Pervez Khan (PW15), supported the prosecution.

5. PW15 was a Junior Engineer with the Meerut Development Authority (MDA). His residence was at Circular Road, Dalanwala, Dehradun near the said Gurudwara. On 3rd July 2009, between 12.45 and 1 pm, PW15 returned home to change his clothes to offer *Namaz* of *Jumma*. He parked the vehicle in front of the gate of his house. PW15 noticed a crowd near the Gurudwara and that three persons were quarrelling. Out of curiosity, he went near the crowd. He noticed two boys beating a person in police uniform. The two boys had pushed the policeman to the ground and were beating him with fists and kicks. In the course of the scuffle, one of the boys snatched the service pistol of the policeman and began pointing it towards the policeman. PW15 then decided that he should use his own licensed pistol. He went back to his residence, took out his licensed pistol and, after reaching the spot and finding that the scuffle was still ongoing, fired two shots into the air with the licensed pistol. On hearing those shots, there was a *bhagdad* (commotion) and both boys ran away merging with the crowd. In his statement to the police PW15 stated that one of the boys had been apprehended by certain

other policemen who had reached the spot by then.

6. PW15 also admitted that his statement under Section 164 Cr PC had been subsequently recorded before the Special Judicial Magistrate (Spl JM), CBI at Lucknow. In that statement, he again stated that he had noticed two boys scuffling with A2 whose pistol/revolver had been snatched by one of them. He maintained his version that he had gone into his house, taken out his licensed revolver and fired in the air as a result of which, there was a commotion and the crowd started disbursing. While the boys also tried running away with the crowd, he noticed that as a result of someone calling the police, some more policemen reached the spot and those policemen managed to catch hold of one of the boys.

#### ***Version of the Appellants***

7. The version of the Appellants, however, is different. It is to be found in the statement of A1 on the basis of which FIR Nos.98/09 and 99/09 were registered at PS Raipur. According to A1, near the Mohini Road Gurudwara A2 noticed three boys, the first of whom was the deceased, Ranbir Singh, the second being Ram Kumar (PW-10) and the third being Ashok Panwar, who is till date absconding. The three “unknown goons” did ‘*maar pit*’ with SI G.D. Bhatt (A-2) during his checking and ran away towards Teg Bahadur Road on motorcycle No.HR-6G-9093 after snatching his official pistol along with cartridge and magazine.

8. The further version of the Appellants is that they subsequently received information at around 3 pm that the three boys had been spotted filling petrol at the Kashmira Filling Station near Ladpur Forest on the Ring Road.

Thereupon three police jeeps proceeded in that direction. The SHO of PS Dalanwala, S.K. Jaiswal (A1), was travelling along with Constable Ajeet Singh (A7) and Constable Nagender Rathi (A12) in the first jeep. The second jeep had SI Nitin Chauhan (A5), who belonged to the Special Operations Group ('SOG'), accompanied by Chander Pal (A10) and Saurabh Nautiyal (A11). The third jeep from PS Nehru Colony had SI Rajesh Bisht (A3) who was accompanied by Vikas Baluni (A13) and Sanjay Rawat (A14). Neeraj Kumar (A4) was accompanied by Sunil Saini (A9). Mohan Singh Rana (A15) and Inder Bhan Singh (A16) were the drivers of the jeeps of A1 and A3 respectively. A2 also reached the same spot accompanied by Chander Mohan Singh Rawat (A6) and Satbir Singh (A8).

9. The further case of the Appellants is that in the above manner, A1 to A16 managed to encircle the three boys on the motorcycle. While the two jeeps from PS Dalanwala and the SOG pursued them from one side, the jeep having SI Rajesh Bisht (A3) from PS Nehru Colony confronted them from the other side. Seeing the policemen close in on them from either side, the three boys on the motorcycle turned onto a *kachha* road from the main road. At one point on the *kachha* road, they abandoned the motorcycle and began running into the forest.

10. According to the Appellants, A1 to A6 were armed. A7 took the AK-47 weapon from A12. They all warned the three boys to stop. However, one of them, Ranbir Singh, turned around and started firing upon the policemen. In exercise of the right of self-defence, A1 to A7 then fired upon the deceased Ranbir Singh who then succumbed to the firearm injuries that he received in

the Ladpur Forest. In the meanwhile, the other two boys ran into the forest.

11. It must be noticed at this stage that there were two other accused who were roped in, i.e. Jaspal Singh Gosain (A17) who was at the Police Control Room ('PCR') noting down messages and Manoj Kumar (A18) who was maintaining the General Diary (GD) entries at PS Dalanwala. Both A17 and A18 were charged with manipulating the entries and falsifying the records in order to help the other co-accused.

### ***FIRs and investigation***

12. As far as the incident at the Mohini Road Gurudwara is concerned, FIR No.143/09 was registered at PS Dalanwala under Section 394 IPC. In the said FIR two of the accused persons were Ram Kumar (PW10), who was examined as a prosecution witness but turned hostile, and Ashok, who was declared a proclaimed offender ('PO'). Ashok continues to remain absconding. The trial arising from FIR No.143/09 is stated to be still pending in the concerned criminal court.

13. As far as the encounter at Ladpur Forest is concerned, two FIRs were registered, i.e. FIR Nos.98/09 and 99/09 under Section 307 IPC and Section 25 Arms Act respectively at PS Raipur. Ranbir Singh was the accused in both FIRs. He was alleged to have fired upon A2 attempting to murder him thereby committing the offence punishable under Section 307 IPC.

14. There was a public outcry as a result of the encounter killing. The media described it as a 'fake encounter'. Consequently, the investigation in FIR Nos.98/09 and 99/09, both of PS Raipur, were entrusted to Inspector D.C.

Botiyal, SHO PS Cantonment, District Dehradun as per the directions of SSP Dehradun on 5<sup>th</sup> July 2009. Separately, an FIR No.101/09 was registered under Sections 147, 148, 149, 302 and 506 IPC at PS Raipur, Dehradun on 6<sup>th</sup> July 2009 on the complaint of Ravinder Pal Singh, the father of the deceased, Ranbir Singh.

15. Not being satisfied with the investigations in the case, the relatives of the deceased Ranbir Singh approached the Chief Minister of Uttarakhand. The Government of Uttarakhand, by an order dated 5<sup>th</sup> July 2009, transferred the investigation of FIR Nos.98/09 and 99/09 registered at PS Raipur, Dehradun to the CB-CID. However, with continued agitations, the Government of Uttarakhand consented to handing over the investigation of FIR Nos.98/09, 99/09 and 101/09 along with Crime No.143/09 registered at PS Dalanwala (where A2, G.D. Bhatt, was the complainant) to the Central Bureau of Investigation ('CBI') by a notification dated 8<sup>th</sup> July 2009. On the basis of the said notification, the Government of India also issued a notification dated 9<sup>th</sup> July 2009 for investigation of the case by the CBI.

16. FIR No.101/09 registered at PS Raipur, on the complaint of Ravinder Pal Singh, father of the deceased, Ranbir Singh, was taken over by the CBI and a Regular Case RC No.6(S)/2009 was registered at CBI/SCB at Lucknow, U.P. on 30<sup>th</sup> July 2009. Pursuant to the CBI taking over the investigations, as noticed earlier, the statements of PWs 14 and 15 were recorded under Section 164 Cr.PC before the Special JM CBI at Lucknow on 19<sup>th</sup> August 2009 and 5<sup>th</sup> November 2009.

### ***The CBI charge-sheet***

17. At the conclusion of the investigation, the CBI filed a charge-sheet in the Court of Special JM, CBI, Dehradun on 22<sup>nd</sup> December 2009 against the aforementioned accused. While A15 to A18 were charged with offences under Sections 218 IPC, the charge against all of them was for the offences under Section 120B IPC. In particular, the charge against A1 to A7 was for offences under Section 120B read with Sections 364/302/201 IPC as well as the substantive offences under Sections 364/302/201 IPC. A8 was charge-sheeted for the offence under Section 201 IPC read with Section 364 IPC and Section 201 IPC read with Section 302 IPC. A9 to A14 were charged with offences under Sections 201 read with Sections 364/302 IPC as well as 218 IPC. A8 and A18 were not arrested in the case. A1 to A7 were in judicial custody when the charge-sheet was filed.

18. By an order dated 20<sup>th</sup> January 2010 of the High Court of Uttarakhand, A1 to A7 were granted bail. That order was challenged by Ravinder Pal Singh, the father of the deceased Ranbir Singh, before the Supreme Court. By the order dated 17<sup>th</sup> March 2010, his appeals were allowed and the bail granted to A1 to A7 was cancelled by the Supreme Court. By a separate order of the same date in Transfer Petition (Crl.) No.222/2010 filed by Ravinder Pal Singh, the Supreme Court transferred Crime No.3/10 titled as 'State (through CBI) v. S.K. Jaiswal' from the Court of Special JM, CBI, Dehradun to the Court of Special Judge, CBI, Delhi.

19. The case in the charge-sheet was that Ranbir Singh had gone to Dehradun on 2<sup>nd</sup> July 2009 along with his accomplices, Shekhar Tyagi, Ram

Kumar (PW10) and Ashok Panwar. They had entered into a conspiracy to commit theft at the house of one Kavita Saxena who was the cousin of one Amit Bhatnagar who was also a party to the conspiracy. The further case is that Ranbir Singh and his two associates Ram Kumar (PW10) and Ashok Panwar stayed at Flat No.9 of Jain Dharamshala, Gandhi Road, Dehradun. The other accomplice, Shekhar Tyagi, after pointing out the house of Kavita Saxena, returned to Meerut.

20. The house of Kavita Saxena was situated at Madhuban Enclave, Mohini Road, Dehradun. On 3<sup>rd</sup> July 2009, at around 12.30 pm, Ranbir Singh and Ashok Panwar left the Jain Dharamshala with one black bag containing *katta*, ropes, cello-tape, etc. on a motorcycle HR-06G-9093, which was itself a stolen motorcycle used by Ranbir Singh and Ram Kumar (PW10) to reach Dehradun from Meerut. PW10 then followed Ranbir Singh and Ashok Panwar. Ashok Panwar was sent to the lane where the house of Kavita Saxena was located. Ranbir Singh and PW10 were waiting for Ashok Panwar at a place near the Gurudwara at Mohini Road at around 12.45 pm.

21. A2, who was in-charge of the Araghar Post under PS Dalanwala, reached there while patrolling on a routine check. He questioned Ranbir Singh and Ram Kumar (PW10). There was a scuffle. Ranbir Singh snatched the service pistol of A2. PW15, who happened to be present there, came there and fired two rounds in the air from his licensed pistol. While Ranbir Singh was caught on the spot, PW10 was able to run away with the snatched service pistol of A2 which he took from Ranbir Singh.

22. It is stated that FIR No.143/09 was registered at PS Dalanwala with regards to the scuffle and snatching of A2's pistol. Since Ranbir Singh was caught on the spot, a conspiracy was hatched among A1 to A7 to eliminate him. He was, therefore, not shown to have been arrested in FIR No.143/09. Instead he was abducted and killed. It was claimed that he had been killed in cross-firing with the police in an encounter. The police had fired upon the deceased by way of self-defence when he fired at the police party which was chasing him while he was running away with his accomplices on.

23. It was further stated in the charge-sheet that in order to cover-up the story that Ranbir Singh had in fact been apprehended at the Mohini Road Gurudwara itself, information was given by A1 to the City Control Room ('CCR') at 1.12 pm that one person with a *tamancha* had been brought to the PS Dalanwala and therefore, the search for the miscreants be stopped. However, the story of one Karunesh having been brought to the PS Dalanwala was inserted by A18 by way of a GD entry at 1.10 pm. It was shown that a *Cheetah-6* comprising Constable Satbir and Constable Jitender had brought Karunesh, an armed guard of Kunwar Pranav Singh, MLA who was carrying the service revolver issued to him.

24. It was further stated in the charge-sheet that Jaspal Singh Gosain (A17), who was in the CCR, also inserted another entry at 1.22 pm to the effect that the earlier message given at 1.12 pm should be ignored and that the three boys were still on the run on a motorcycle having a Haryana number plate and should be located.



***Charges framed by the CBI Court***

25. The Court of the Special Judge (CBI) framed the charges in the present case. The charges refer to Gopal Dutt Bhat as A4 and Neeraj Kumar as A2 whereas in the impugned judgment of the trial Court, and in this judgment they are referred to as A2 and A4 respectively. The first charge read as under:

“Firstly, That on 03.07.2009 at Dehradun you all accused no. 1 to 18 entered into criminal conspiracy with object to abduct in order to murder and to murder deceased Sh. Ranbir Singh s/o Shri Ravinder Pal Singh R/o Village Norojpur Emana PS and Tehsil Khekra, Baghpat (UP) and in pursuance of said criminal conspiracy you Gopal Dutt Bhatt A-4, caught deceased Sh. Ranbir Singh on 03.07.2009 near Gurudwara on Mohini Road, Dehradum at about 12.45 hrs.

You S.K. Jaiswal, A-1 also reached at Mohini Road at 13.06 hrs and brought Sh. Ranbir Singh to PS Dalanwala, Dehradum in your vehicle and on the way of PS Dalanwala you S.K. Jaiswal A-1 informed city control room at 13.12 hrs that one person with tamancha has been brought to PS Dalanwala and reached at PS Dalanwala at 13.22 hrs and remained up to 14.17 hrs at PS Dalanwala you Santosh Kumar Jaiswal A-1, interrogated said Sh. Ranbir Singh and got searched flat no.9 Jain Dharamshala through Neeraj Kumar A-2, Rajesh Bisht A-6, Nitin Chauhan A-5, and Ajeet Singh Const. A-7, and they took one red and black colour bag from there.

Thereafter, you, Santosh Kumar Jaiswal A-1, along with Neeraj Kumar A-2, Chander Mohan Singh Rawat A-3, Gopal Dutt Bhatt A-4, Ajeet Singh Const. A-7, Nagender Rathi A-9, Sunil Saini A-10, and Mohan Singh A-17, took away the said Shri Ranbir Singh in your official vehicle from PS Dalanwala to Ladpur forest on Ring Road Dehradun near Kashmira Singh Petrol Pump.

You Nitin Chauhan A-5, along with Chander Pal A-11, and Saurab Nautiyal A-12, and you Rajesh Bisht A-6, along with Vikas Baluni A-13, Sanjay Rawat A-14, and Inder Bhan Singh A-18, also joined with

Santosh Kumar Jaiswal A-1 on the way and reached near Kashmiri Singh Petrol Pump at about 3.30 pm on 03.07.2009 where you murdered said Shri Ranbir Singh by firing bullets upon him from very close range. Two bullets were fired by you S.K. Jaiswal A-1, from your service revolver, two bullets were fired by you Neeraj Kumar A-2, six bullets were fired by you Chander Mohan Singh Rawat A-3, seven bullets were fired by you Gopal Dutt Bisht A-4, six bullets were fired by you Nitin Chauhan A-5. Seven bullets were fired by you Rajesh Bisht A-6, upon Shri Ranbir Singh from their respective service revolvers / pistols. You Ajeet Singh A-7 also fired two bullets upon Sh. Ranbir Singh from AK-47 rifle.

You, Sanjay Rawat A-14 prepared a false fard dt. 03.07.2009 in case FIR No.98/09 u/s 307 and case FIR No.99/09 u/s 25 Arms Act PS Raipur on the spot and in which it was falsely mentioned that said Shri Ranbir Singh had been killed in encounter and you all A-1 to A-14 signed the said false fard to screen themselves from legal punishment of murder and abduction and also got registered false case FIR No.98/09 u/s 307 IPC and No.99/09 u/s 25 Arms Act both of PS Raipur against said Sh. Ranbir Singh on concocted facts. You Satbir Singh A-8, and you Manoj Kumar A-16, to screen you co-accused from legal punishment falsely shown that you Satbir Singh A-8 had brought one Karunesh Const with revolver to PS Dalanwala and you Manoj Kumar A-16 made a false entry in GD of PS Dalanwala to conceal the fact that Sh. Ranbir was not in custody of police at PS Dalanwala, you Jaspal Singh Gosain A-15 has also inserted false entry in CCR log book to save your co-accused from legal punishment at 13.15 hrs dt. 03.07.2009 to the effect that SP (City), has informed that three miscreants are running towards Nehru Colony on Motor Cycles No.HR-06-G-9093 and checking was to continue.”

26. The second charge was against A1 to A7 for causing the death of Ranbir Singh in a fake encounter, thus committing an offence under Section 302 IPC. The third charge was again against A1 to A7 for the substantive offence of abducting Ranbir Singh in order to murder him, thus committing an offence punishable under Section 364 IPC.

27. The fourth charge was preparation of false records to show that Ranbir Singh had been killed in an encounter, thereby committing an offence under Section 201 IPC read with Sections 364 and 302 IPC and this was against A-1 to A-16.

28. The fifth charge was against A1 to A14 for committing an offence under Section 218 IPC for framing a false '*fard*' in FIR No.98/09 under Section 307 IPC. The sixth charge was again against Satbir Singh (A8) for giving false information about having brought Karunesh to PS Dalanwala and against Manoj Kumar (A18) for making a false GD entry to that effect at PS Dalanwala, thus committing an offence under Section 201 IPC read with Sections 364 and Section 201 IPC read with Section 302 IPC. The seventh charge was against A18 for making a false entry in the GD in PS Dalanwala by showing Ranbir Singh to be Karunesh and thereby committing an offence under Section 218 IPC.

29. The eighth charge was against A17 for preparing an incorrect record by inserting a fake entry in the CCR log at 1.15 pm on 3<sup>rd</sup> July 2009 to the effect that three miscreants were seen fleeing towards Nehru Colony on a motorcycle having registration HR-06G-9093 and that search for the deceased and his accomplices was to continue and thereby committing an offence under Section 218 IPC.

30. The ninth charge was against Mohan Singh Rana (A15), who was the driver constable at PS Dalanwala, who committed an offence by making a false entry in the car diary of the Government vehicle UA-08B-9981 driven

by him by not showing the actual places visited by him along with A1 and thereby committing an offence under Section 218 IPC. The tenth charge was against Inder Bhan Singh (A16), who was the driver constable of PS Nehru Colony and was charged for preparing false records/writings in relation to the movement of the gypsy of PS Nehru Colony by not showing the actual places that he has visited along with A6 on 3<sup>rd</sup> July 2009, thereby committing an offence under Section 218 IPC.

***Forensic and medical evidence***

31. The CBI examined as many as 123 witnesses. After the statements were recorded of the accused persons under Section 313 Cr PC, the defence examined as many as 30 defence witnesses.

32. A total of 30 bullets were fired on the deceased by the seven armed accused, i.e. A1 to A7. In the FIR registered at the instance of A1 under Section 307 IPC, it is stated that A1 fired five rounds from his service revolver; A3 fired six rounds; A6 fired six rounds; A5 fired six rounds; A2 fired six rounds; A4 fired two rounds; A7 fired two rounds. The issuance of the service revolvers/pistols to A1, A2, A4 and A6 and the AK-47 to A12 has been proved by Gopal Singh Negi (PW64). The fact of firing of the above rounds by the accused persons with their respective arms has been admitted by them in their respective statements under Section 313 Cr PC.

33. There were photographs taken at the scene of crime of the dead body of the deceased as well as of the motorcycle purportedly used by him and his associates to flee. The photographs show the deceased lying on the floor facing the sky having his pants pulled down and the underwear being clearly

visible.

34. The post-mortem of the deceased began on 4<sup>th</sup> July 2009 at 1 pm and was performed by Dr. Ajeet Gairola (PW86) who was accompanied at that time by Dr. Anil Arya (PW92). There were 16 entry wounds with inverted margins and blackening present and five exit wounds. Five metallic bullets marked X-1, X-7, X-8, X-9 and X-11 were recovered by the CBI from the scene of crime and found having human blood. Two such bullets, X1 and X7, had 'O' group human blood which matched the blood group of the deceased. A total of 11 bullets were in fact recovered by the Central Forensic Science Laboratory ('CFSL') team from the area after digging out the upper layer of the surface of soil to a depth of 7 to 8 inches. The report of the Serology Division (Ex.PW80/A) confirms the blood group of the deceased as 'O'.

35. Apart from the above bullet wounds, the body had the following wounds:

- “(i) One lacerated wound on left side of chin mentioned at Sr. No. 1
- (j) Two Abrasions mentioned at Sr.No.2 & 3.
- (k) Two lacerated wounds mentioned at Sr.No.18 & 19.
- (l) Two Abrasions mentioned at Sr.No.22 & 23.”

36. Two metallic bullets were recovered from the body, one from the abdomen and one from the left thigh; nine bullets remained inside the body. Thus, the prosecution has sought to account for all the thirty rounds fired, i.e. recovery of eleven bullets from the area plus two bullets from the body of the deceased plus nine bullets remaining inside the body plus five exit wounds.

37. The prosecution also matched the bullets with the weapons used through ballistic evidence as a result of the examination by the CFSL. The CFSL report dated 20<sup>th</sup> October 2009 (Ex.PW79/C) was able to establish that the bullets recovered were fired from the fire arms used by A1 to A7.

***Raid at Jain Dharamshala***

38. The investigation has revealed that a number of policemen led by A4 to A7 raided the Jain Dharamshala where the deceased and his two associates, i.e. PW10 and Ashok Panwar had rented a room. The CBI was able to unearth the fact that on 3<sup>rd</sup> July 2009, at about 1.30 pm, 8-10 uniformed police personnel came to Jain Dharamshala and broke the lock of Room No.9, i.e. the room in which the deceased and his associates were supposed to be staying. In fact, A7 has admitted to this fact in his statement under Section 313 Cr PC.

39. Arun Kumar Jain (PW1), an Assistant Manager at Jain Dharamshala, confirmed the above fact. Further, Ram Kumar Garg (PW2), who was serving in Jain Dharamshala, apart from confirming the above fact, stated that Bhagwan Singh (PW5) had told him that the police had taken away one bag from Room No.9. The guard at Jain Dharamshala, Jagdish Prasad Gairola (PW3), accompanied the police personnel to Room No.9 and the lock was broken in his presence.

40. The statements of both PW2 and PW3 were recorded by the Special Judge, CBI under Section 164 Cr PC (Ex.PW2/A & Ex.PW3/A). Satendra Jain, Manager of the Jain Dharamshala, was examined as PW4 and he proved that the diary of the Jain Dharamshala (Ex.PW4/F) had the name and

signature of A7 with two phone numbers, one of which was 9412950462 which A7 admitted in his statement under Section 313 Cr PC to be his mobile number. The other mobile number 9411112814 was of A1 which he admitted in his statement under Section 313 Cr PC. This number was written by A7 and his handwriting was proved by the report dated 23<sup>rd</sup> October 2009 (PW110/B) of the handwriting expert, R.S. Rana (PW110).

41. The fact of the police team visiting Jain Dharmshala and breaking open the lock and leaving with the bag that they had seized from Room No.9 has been spoken to by Bhagwan Singh (PW5) and Than Bahadur Kshetria (PW6), both of whom were guards, as well as Praveen Jain (PW8), Secretary of the Jain Dharamshala.

42. The actual occupant of Room No.9 was Dr. Raje Singh Bisht (PW7) who stated that when he returned at 2.30 pm on 3<sup>rd</sup> July 2009 to Room No.9 of the Jain Dharamshala in which he was staying, he found that the room had been broken into and luggage scattered all over the room.

43. The case of the prosecution is that the fact that 8-10 police personnel went to Jain Dharamshala at 1.30 pm on 3<sup>rd</sup> July 2009 is a clear indicator that the deceased Ranbir Singh was already in their custody by that time as they could not have known that the deceased and his associates were staying at Jain Dharamshala unless he was in their custody and had been interrogated by them. There was otherwise no occasion for the accused policemen to go to the Jain Dharamshala on 3<sup>rd</sup> July 2009 at 1.30 pm.

44. The prosecution also managed to collect the details of the movements of

the police vehicles through the servers of GPS locators connected to the City Control Room ('CCR'). Mahender Singh Rana (A15), the driver of the vehicle of SHO Dalanwala, in his statement under Section 313 Cr PC, admitted to there being a GPS locator in the vehicle which he was driving.

***The defence witnesses***

45. Some of the accused examined defence witnesses and also examined themselves. Sanjay Rawat (A14) examined Kuldeep Rawat (DW2) to show that he was not present at the place of encounter. Chander Pal (A10) examined Ram Krishan (DW3), who was his own brother-in-law, to say that he was present in the clinic of Dr. Satender Saxena (DW20) at the relevant time and therefore, was not available at the place of occurrence. A10 examined his own brother, Mangat Ram (DW4), who spoke about the treatment at the clinic of DW20 on that date in the presence of A10. A14 examined his own wife, Preeti Rawat (DW5), to say that he was present at home and had fetched cold water from their neighbour, Urmila Devi, on 3<sup>rd</sup> July 2009 and that he remained at home till about 2.15-2.30 pm. Saurabh Nautiyal (A11) examined his wife, Neha Nautiyal (DW6), to say that he and A10, both of whom were posted at the SHO office, were present there at around 2.00-2.30 pm and that his seniors pressurized him to sign certain documents relating to the police encounter in which he was not involved.

46. Accused A1 to A9, A12, A16, A17 and A18 examined Head Constable Puran Lal (DW7) for producing the record relating to RTI application dated 15<sup>th</sup> July 2013 received in the office of the Public Information Officer ('PIO'), Commissioner of Police, Delhi (Ex.DW7/C). These accused also



examined J.G. Moses, Senior Scientific Officer (CFSL) (DW8) in regard to the application received in the office of CPIO (Ex.DW8/A) which was then forwarded to the Ballistic and Biologic Division of CFSL. A13 and A14 examined SI Satyanand Badoni (DW9) who could not produce the original record of the detailed directions issued at the time of visit of the President of India to Dehradun. The photocopy was marked as Ex.DW9/A.

47. A10 examined Prashant Sharma (DW10), an acquaintance who was working in the clinic of DW20, regarding A10 calling him after fixing up the appointment for treatment of one Deepa Kashyap.

48. A1 to A9, A12, A16, 17 & 18 examined DWs 11, 12 and 16 regarding the GD maintained at the PS Nehru Colony. Furthermore, they examined Ravinder Pandey, Chief Management Officer of the Government Estate Department, Uttarakhand (DW19), ASI Bhola Ram of PS Harsh Vihar, Delhi (DW21), Vijay Pal Singh, Administrative Officer of RTO, Dehradun (DW22) and Dr. Navjeet Bedi, EMO, Doon Hospital, Dehradun (DW23) who examined A2 and prepared his report on the basis of the x-ray report of injury No.3 which was a grievous one.

49. Vikas Baluni examined himself as DW29. On his behalf Anil Bisht (DW1) was examined to prove the *alibi* that A13 was not present when the encounter took place. Sumitra Baluni (DW13), his mother, was examined to prove that A13 was present at home at the relevant time prior to 2.30 pm. He examined Rajeev Aggarwal (DW30), a senior executive with Indian Express Newspaper Ltd., to prove certain news items pertaining to the case as well as Vishal Bhatia, Sub-Divisional Engineer of BSNL, Dehradun (DW28)

regarding cell-site location charts. He also examined M.L. Sharma, Divisional Engineer of BSNL, Dehradun (DW24) for the same purpose.

50. Saurabh Nautiyal (A11) examined himself as DW27. On behalf of A13 and A14, Navneet Singh, SP City, Dehradun (DW26) was examined regarding assignment of VVIP duties to policemen during the President's visit. A14 examined Sukhpal Singh (DW25) regarding the mobile phone issued to him and the CDRs in relation thereto.

***Impugned judgment of the trial Court***

51. The trial Court in the impugned judgment analyzed the evidence as under:

(i) As regards the apprehension of Ranbir Singh (the deceased) at the place of the incident, i.e. outside the Gurudwara on Mohini Road on 3<sup>rd</sup> July 2009, the prosecution had examined several witnesses. Anil Vohra (PW9), who was passing by on a motorcycle, noticed a policeman with his hands up and two boys standing in front of him, one of whom had a revolver. PW9 confirmed making a call to number 100 and asking the lady who picked up the call on the other end to immediately send someone to the spot.

(ii) Surender Singh Rawat (PW11), who worked at the godown of Himani Gas Service, also noticed the scuffle between two boys and a *daroga*. He mentioned that the *Daroga* had caught hold of a boy and the other having a pistol was pointing it on the *Daroga* and was about to fire it. PW11 did not support the prosecution beyond this.

(iii) Rakshpal (PW12) was in a three-wheeler loaded with gas cylinders and

was also working with Himani Gas Agency. He also noticed two boys beating a *daroga* and one of them pointing a revolver at him. Ravinder Kumar (PW13) was the proprietor of a tailoring shop under the name and style of Patiala Shahi Boutique. He did not support the prosecution. Farhat Naz (PW14) supported it up to the point of hearing two gunshots, coming outside and seeing people running away and noticing one person running away with a pistol in his hand.

(iv) As regards Anjum Pervez Khan (PW15), apart from discussing his evidence, the trial Court also noted that Ram Anuj (PW26), who was working as a crime reporter for Time TV at Dehradun, confirmed recording a sound-bite of PW15 with regard to the incident of fighting which occurred near the house of PW15. The trial Court noted that apart from admitting the correctness of his statement under Section 164 Cr PC (Ex. PW15/A), PW15 also admitted the correctness of the compact disc (Ex.P1) which contained the video recording of the sound-bite given by him to PW26. In the said video recording he was seen stating that “the *badmash* who was having pistol in his hand had run away on foot from the place and the other boy was caught by the police of PS Dalanwala”. In his cross-examination by the counsel for the accused, PW-15 again stated that the person who was apprehended was taken away by the police personnel who had come on the motorcycle.

(v) The trial Court also noticed that Ram Kumar (PW10), the accomplice of the deceased who took away the service pistol of A2, chose not to support the prosecution. Although his statement was recorded under Section 164 Cr

PC, PW-10 was evasive when he was confronted with it by the learned Senior PP. PW10 now made it appear that he made that statement as told to him by the CBI.

(vi) Sushma Bansal (PW24) and Mala Singh (PW25) did not support the case of the prosecution as they had not themselves seen the incident at close quarters.

(vii) After analysing the evidence of PWs 9, 12 and 15, the trial Court concluded that there were only two boys involved in the scuffle with A2. None of the aforementioned witnesses had stated that there were three boys involved in the incident of scuffle or that three boys had run away from the place on a motorcycle. Surender Singh Rawat (PW11) had deposed that the two boys in the scuffle had fled on a motorcycle – one driving it and the other holding a pistol in his hand. PW15 also did not suggest that the two boys had run away on a motorcycle. He maintained in his examination-in-chief that during the stampede, one boy was apprehended by the police personnel who had reached the spot. This was consistent with what he had stated in the TV sound-bite recording available on the CD (Ex.P1).

(viii) The trial Court then considered the circumstance of Karunesh, the shadow of the MLA Kunwar Pranav Singh (PW58), being mistakenly apprehended and brought to PS Dalanwala. Ashwani Raturi (PW17) had established that Karunesh had called No.100. The transcript of the said call was exhibited as Ex.PW17/H. Even Gopal Singh Negi (PW64) had deposed that Karunesh had been brought to PS Dalanwala at about 1.00-1.15 pm by A8 and Constable Jitender Joshi (who was not examined).

(ix) The trial Court also discussed the entries in the GD Register of PS Dalanwala, as recorded by Manoj Kumar (A18), i.e. Entries 28 (Ex.PW64/E3) and 29 (Ex. PW64/E4). The case of the prosecution was that entries 64, E3 and E4 made by Manoj Kumar (A18) were fake entries made only to facilitate the non-reporting of the apprehension of the deceased Ranbir Singh and that this was done in pursuance to the conspiracy to abduct and kill him. As per the prosecution's version, the intimation which was already given by A1 at 1.12 pm to the CCR to the effect that the boy with the *tamancha* had been brought to PS Dalanwala and the search for him may be discontinued was in fact referring to the deceased, Ranbir Singh. This had to be neutralized so as to facilitate his abduction and murder and therefore, the aforementioned fake entries were made in the GD.

(x) The trial Court observed that if Karunesh was in possession of a service revolver, it was not expected that he would not intervene when he noticed the scuffle going on with A2. A statement was recorded of Karunesh in FIR No.143/09 (Ex.PW71/G2), proved by SI Bhaskar Lal Sah (PW71), that when he was walking on foot and proceeding towards Araghar Post for a night pass, he saw three boys in a scuffle with a *daroga*. A boy was also pointing a pistol at the *daroga*. When one person fired with the revolver, the three boys ran away on a CBZ Motorcycle towards Sanjay Colony. Karunesh claimed to have chased those boys and while returning was apprehended by the Cheetah-6 police who did not believe him when he told them that he was a member of the police force. He also claimed that after being brought to the PS, inquiries were made and he was subsequently

allowed to go.

(xi) The trial Court noticed that Karunesh had not been examined on behalf of either the prosecution or the defence and that even otherwise, it was difficult to believe the story put up by him that he was unable to convince the staff of Cheetah-6, i.e. Satbir Singh (A8) and Constable Jitender Joshi, that he was a member of the police force. It was also unusual that A8 and Constable Jitender Joshi would not search Karunesh after having detained him despite knowing that the boys had run away on a motorcycle with the service revolver of A2.

(xii) The trial Court also noted that there were some overwriting and interpolations in Ex.PW64/E4 and therefore, it was reasonable to assume that the same has been done intentionally. In the GD entry (Ex.PW64/E3) recorded at 1.10 pm, there was no mention that the person brought was a member of the police force or that the revolver in his possession was a service revolver. It was also noticed that according to Rajinder Singh Negi (PW68), Karunesh was issued a rifle whereas he claimed that he was having a service revolver and that no efforts were made to ascertain the nature of the weapon being carried by Karunesh despite claiming that he had been apprehended and taken to PS Dalanwala on the Cheetah -6 motorcycle.

(xiii) The trial Court then examined, in detail, the evidence regarding the police personnel having visited Jain Dharamshala and concluded that it had been proved conclusively that it was only on 3<sup>rd</sup> July 2009 that the police personnel had gone there and not on any other day. This was with regard to the stand taken by Ajeet Singh (A7) that he had in fact visited the Jain

Dharamshala 2-3 days prior to 3<sup>rd</sup> July 2009.

(xiv) After discussing the entries in the log book of the CCR written by Jaspal Singh Gosain (A17), the trial Court concluded that the entry being Q.4 in Ex.PW16/B was a manipulated entry. As regards the GD Entry (Ex.DW16/B) spoken to by Constable Paras Mani (DW16), it was noted that this was as per the information given to him by Rajesh Bisht (A3), the SHO of PS Nehru Colony, and no inference with regards to its correctness could be drawn since it was recorded on the information given by A3 himself.

(xv) After analyzing the evidence as above, the trial Court came to the following conclusions:

“63. From the above circumstances, as discussed in detail earlier, the only conclusion which can be reached is that there were only two persons, being deceased Ranbir Singh and his accomplice and cousin Ram Kumar, who were involved in the scuffle with A-2 G.D. Bhatt on 03.07.09 at about 12.55 PM, and it was deceased Ranbir Singh, who had been brought to P.S. Dalanwala and not Ct. Karunesh, which is a story inserted to cover up the situation and resultant conspiracy to kill him, instead of arresting him in case Crime no. 143/09, P.S. Dalanwala, relating to the robbery of the service pistol of A-2, G.D. Bhatt. The circumstances also point to only situation that it was on 03.07.09, when some officials including A-7 Ajit Singh had gone to Jain Dharamshala around 1.30 PM, and they had taken away a bag, being of black colour or black/red colour, after breaking open the lock of Flat no.9 of Jain Dharamshala where deceased Ranbir Singh was staying along with his associates.”

(xvi) The trial Court then discussed the injuries on the deceased. It discussed the contention of the accused as regards injuries 9 and 13 as being possible only in a situation where the subject was moving or the arm was stretched for firing at the police team. It was concluded that once it was proved that

Ranbir Singh was apprehended by the police at Mohini Road, no inference can be drawn from injuries 9 and 13 in the manner suggested by the defence. The defence had also relied on the evidence of Bimla Gunjial (PW81), the Additional SP of CB-CID, Dehradun who initially conducted the investigations and in whose deposition it was stated that point-1 in the site plan (Ex.PW81/L) indicated bullet marks on the teak tree. It was argued that such marks on the trees could be possible only in a case of cross-firing. The trial Court concluded that no such inference could be drawn in the circumstances of the case.

(xvii) It was argued before the trial Court that the post-mortem was done only by a Class IV employee and not by the doctor (PW86). The trial Court noted that PW92, who was another doctor present along with PW86, confirmed that the post-mortem was done as per the directions of both the doctors.

(xviii) The trial Court then dealt with the defence argument that the sketch (Ex.PW38/A) prepared on the spot after the arrival of the Tehsildar and Magistrate, D.M. Unial (PW38), only mentioned 8 injuries on the body of the deceased whereas the post-mortem report (Ex.PW92/A) showed 28 injuries. The defence also suggested that the number of holes in the clothes did not match with the injuries on the body of the deceased. Further, the residue surrounding the injuries was not preserved for chemical examination and the blackening could not have been seen by the naked eye. It was argued by the defence that a medical expert could only speak about the impact of a foreign substance. He could not say whether the bullet fired was from a rifle



or a smooth bore. Further, video-recording of the post-mortem was not done. PW38 had only sought permission from the doctors in that regard but no arrangements were made. Reference was made by the defence to the evidence of Gopal Gyansu (PW77) who stated that he had commenced video-recording but was forced to leave by the persons who had gathered there and managed to enter the post-mortem room.

(xix) The trial Court discussed the *panchnama* (Ex.PW33/A) written by SI Kushal Pal Singh (PW73) on the dictation of D.M. Unial (PW38), the correctness of which was spoken to by PWs 33 to 38. It was held by the trial court that there was no reason to doubt the correctness of the post-mortem report as this was prepared at a time when the investigation had not been entrusted to the CBI or even, for that matter, to the CB-CID. At this stage, it was still with PS Raipur. Even otherwise, the post-mortem was only a corroborative piece of evidence and was not conclusive as to whether the encounter was a genuine or a fake one.

(xx) It was further held that non-holding of the Test Identification Parade ('TIP') to identify the police officials who had gone to Mohini Road to apprehend and bring the deceased from there and to identify the police personnel who had gone to Jain Dharamshala was not fatal to the case of the prosecution since the identity of the accused was established from the other facts and evidence on record.

(xxi) The trial Court then considered the admissibility of the CDR and GPS location data as evidence in the context of the Section 65B of the Indian Evidence Act (IEA). The trial Court referred to the decision of this Court in

***Rakesh Kumar v. State 183 (2009) DLT 658*** and held that in the absence of the certificate under Section 65B of the IEA, the prosecution had failed to prove both the CDR and the GPS location data.

(xxii) The trial Court then discussed in detail the evidence produced regarding weapons issued to A-1 to A-7 and the testing of those weapons. It observed that there was no serious doubt as regards the exhibits having been received in sealed or in unsealed condition. There was also no dispute as regards the report of Dr. B.K. Mahapatra (PW-82) on the testing of the blood, sky blue colour cap (S-1), loose lumps of earth described as soil sample with blood (S-9), three strands of human hair (S-3) and the DNA profile generated therefrom which confirms the identity of the deceased. However, the report given by M. Bhaskar (PW-111), Senior Scientific Officer (CFSL), as regards the footage showing passing of the two police officers through Sahastradhara Crossing Chowk was not taken into consideration since it had not been proved in accordance with Section 65B of the IEA.

(xxiii) The sanction for prosecuting the accused persons was proved by Anoop Wadhawan (PW-104) who was working as Principal Secretary to the Government of Uttarakhand on 31<sup>st</sup> March 2010.

(xxiv) The trial Court concluded that manipulation of the entries in the GD at PS Dalanwala showed that Karunesh was brought to PS Dalanwala without showing that the deceased had been arrested in FIR No.143/09. This revealed that there was a conspiracy to abduct the deceased knowing that he was likely to be killed.

(xxv) The trial Court noticed that the recovery memo (Ex.PW-36/A) prepared by PW-73 on the dictation of PW-38 as regards recovery of one pistol, one country-made *tamancha*, one bag containing clothes, and one motorcycle from Ladpur Forest on 3<sup>rd</sup> July 2009 bore the signatures of A-1 to A-14 as witnesses. Likewise, the recovery memo of empty cartridges (Ex.PW-38/G) also bore the signatures of A-1 to A-14 as witnesses, and so also the seizure memo (Ex.PW-38/H) regarding seizure of control earth as well as blood stained earth. Except for A-10, A-11, A-13, and A-14, the other accused had not disputed their signatures on the aforementioned memos.

(xxvi) The trial Court disbelieved the versions put forth by A-13 and A-14 who examined witnesses and produced documents to demonstrate that they were not present at the place of encounter and that they reached there much later. Their defence that on 3<sup>rd</sup> July 2009 they had not accompanied A-5 who was in-charge of the SOG, Dehradun and that they were forced to sign Ex.PW36/A, Ex.PW-38/G and Ex.PW-38/H at PS Raipur by senior officers was also disbelieved.

(xxvii) As regards A-15 and A-16, the defence that they had entered the Ladpur Forest with the rest of the accused persons but were only sitting in the vehicles after reaching there was held by the trial Court to be too good to be believed. It was held that there was enough evidence to show that A-15 and A-16 were also part of the conspiracy to abduct and kill the deceased.

(xxviii) As regards failure to arrange for videography of the post-mortem in

terms of the guidelines of the NHRC, it was held that since the death of the deceased was never shown to be a custodial death and it was not shown that the deceased was ever in the custody of the police in FIR No.143/09 of PS Dalanwala, the failure to follow the guidelines was not fatal to the genuineness and correctness of the post-mortem report.

(xxix) The trial Court then dwelt upon the submissions on behalf of A-1 to A-9, A-12 and A-16 to A-18 regarding certain crucial witnesses not being examined by the prosecution. This included SP, City (Panther) who, according to the accused, would have been the right person to clarify whether the information recorded at Pt. Q-4 of Ex.PW-16/A, which was alleged to have been fabricated by PW-17, was actually given by him to the CCR. Likewise, the non-examination of Ct. Karunesh and Ct. Jitender Joshi was also pointed out by the accused. The trial Court held that this might not have made much difference to the outcome of the trial. It was open to the accused persons to examine someone as a witness if they were of the view that they had valid evidence which in any way was beneficial to the accused.

(xxx) The trial Court also rejected the plea that the policemen acted in self-defence or that there was a case of sudden provocation as mentioned in the log book of the CCR at 2.50 pm by memo marked as Ex.DW-16/B. The trial Court concluded that this was not a case of a genuine encounter since the deceased was already in the custody of the police officials and the custody was illegal since he was not shown to have been arrested in FIR No.143/09 at PS Dalanwala.

(xxxi) As regards A-17, it was held that he could not be held liable for an

offence punishable under Section 120B IPC read with Sections 364/302/201/218 IPC as it was only proved that the questionable entry made by him was made only to protect the other accused persons and that he was not a part of the conspiracy to abduct and kill the deceased.

(xxxii) As regards A-1 to A-7, the trial Court noted that though the charge of conspiracy was proved against all the accused except A-17, the charge under Sections 302 and 364 IPC were made only against A1 to A7 and not against any of the others. The trial Court held that the offences under Sections 302 and 364 IPC had been proved against A1 to A7 as the evidence showed that they had apprehended the deceased at Mohini Road but had not recorded his arrest and had later caused his death due to indiscriminate firing.

(xxxiii) The trial Court then noted that A-1 to A-14 had been charged for offences under Section 201 IPC read with Sections 364 and 302 IPC. It held that no efforts had been made to conceal evidence relating to the commission of the offence. The killing of the deceased had been reported and no effort was made to dispose of the body or remove any evidence. Therefore, it was held by the trial Court that the ingredients of the offence under Section 201 IPC read with Sections 364 and 302 IPC had not been made out against A-1 to A-14.

(xxxiv) Likewise, the offence under Section 218 IPC was also held to be not made out against A1 to A14 as they were not charged for the preparation of any record or entry. It was also held that the offence punishable under Section 201 IPC read with Sections 364 and 302 IPC was not made out against Satbir Singh (A-8) as his was only a case of preparation of false

defence and could not be termed as causing any disappearance of evidence.

(xxxv) However, the ingredients of the offence punishable under Section 218 IPC were found to be proved against A-17 and A-18. It was held that the said offence under Section 218 IPC had not been made out against A-15 and A-16.

(xxxvi) By a separate order on sentence dated 9<sup>th</sup> June 2015, they were sentenced in the manner hereinbefore indicated.

***Submissions on behalf the accused***

52. Mr. R.M. Tufail, learned counsel appearing on behalf of A-1, A-2, A-6, A-7, A-9, A-12 and A-16 submitted as under:

- (i) The statement of Ram Kumar (PW-10) clearly showed that he was present with the deceased during the encounter. His deposition was in consonance with the averments made in FIR Nos. 98/09 and 99/09 registered at PS Raipur under Section 307 IPC. According to him, PW-10 clearly proved that Ranbir Singh has died in a genuine encounter. PW-10 does not seem to be won over by the present accused. In any event, his statement under Section 164 CrPC was recorded in RC No. 004 and not in the present case.
- (ii) PW-11 did not support the prosecution. Likewise, PW-12 too stated that his statement under Section 164 CrPC was recorded under threat and torture. Likewise, PW-13 too resiled from the previous statement.
- (iii) As regards PW-14, it is submitted that she had not stated that the

deceased Ranbir Singh was apprehended at the spot. As regards PW-15, it is submitted that even in his statement under Section 164 CrPC he had stated that one person was caught from the *bhagdad* and this was actually Ct. Karunesh. Further, according to Gopal Singh Negi (PW-64), Karunesh was brought to PS Dalanwala at 1.00-1.15 pm by Ct. Satbir (A-8) and Ct. Jitender Joshi. The presence of Ct. Karunesh was established because he had called No.100 regarding the scuffle involving the two *badmash*. An application was made for recording his statement under Section 161 CrPC (Ex.PW-71/M) but the CBI did not make Karunesh a part of the investigation. According to Mr. Tufail, even PW-16 did not depose about lifting or taking away Ranbir Singh from the spot by the police. He accordingly submitted that there was no evidence to show that, in fact, it was Ranbir Singh who was taken away from the spot at Mohini Road. He pointed out that PW-24 and PW-25 also did not support the prosecution in this regard.

- (iv) The last seen theory is mere conjecture. The defence version however is supported by the entry in different general diaries, i.e. GD register and the CCR log book/register. As regards the CD (Ex.P1), Mr. Tufail pointed out that it was produced in an unsealed condition. The question as to how it was converted into a CD and as to the whereabouts of the original cassette remained unanswered. In the absence of the certificate under Section 65B IEA, such evidence is doubtful. The person taken from the spot on a motorcycle, as spoken to by witnesses, referred to Ct. Karunesh. Ex.PW-17/C, which was

GPS location sheet of T-5, does not show the vehicle code and therefore, cannot be said to be pertaining to T-5. Likewise, Ex.PW-17/G and PW-17/E also did not show the vehicle code in the print out.

- (v) There was no evidence, either oral or documentary or otherwise, to show that A-9 had reached the Mohini Road spot at 1.06 pm and had brought back Ranbir Singh to PS Dalanwala in his vehicle. This version of events is demolished by PW-10's testimony.
- (vi) As regards, the evidence concerning the police personnel visiting Jain Dharamshala, it is stated that the identities of the police personnel who visited were not established. In Ex.PW-4/F, two telephone numbers are mentioned and PW-2 stated only one number was entered in the diary. The employees of Jain Dharamshala have not given any description of the police personnel who visited there. Satender Jain (PW-4) stated that the telephone number in the diary was not relevant and it was written in his presence and nobody told him about such entry as has been written by the police who visited on 3<sup>rd</sup> July 2009. Although none of the witnesses stated anything regarding writing of the above numbers in the diary (Ex.PW-4/E), the CBI somehow became aware of it. This showed that the CBI had manipulated or planted the said diary. The trial Court wrongly noted that PW-8 had mentioned that the police officers went there "on 3.7.2009" when it should have been read as "for 3.7.2009".
- (vii) It was clearly proved that Ct. Karunesh was brought by Ct. Satbir (A-8) and Jitender Joshi to PS Dalanwala on 3<sup>rd</sup> July 2009 at 1.10 pm and



the entries were correctly recorded as 1.10 hours and 1.20 hours in Ex.PW-64/33 by A-18.

- (viii) As regards forensic evidence, it is submitted that there was discrepancy in the number of injuries noted on the body of the deceased by PW-38 (Dinesh Mohan Uniyal) and those shown in the post-mortem report. Five exit wounds and two bullets were embedded in the body of the deceased which made the total injuries to seven, that corroborated the *panchnama* since no further bullets were recovered from the body.
- (ix) It is submitted that the post-mortem report suggested that the encounter was genuine. No chemical and forensic examination of injuries was undertaken to find the cause of blackening.
- (x) The police were acting in self-defence. It was the deceased who had first fired on them while fleeing towards the Ladpur Forest.
- (xi) Since the President of India visited Dehradun on 3<sup>rd</sup> July 2009, the security agencies were on high-alert. A great responsibility rested on the shoulders of the police department to maintain security and law and order in the city.
- (xii) The fact that the deceased snatched the service pistol of A-2, who was in uniform, after beating him and trying to fire upon him, was clearly established by the evidence of PWs 9, 11, 12 and 15. According to Mr. Tufail, the deceased “could be a militant or a danger to the

President” as the assailants were many in number and their identification was not known. According to him, when the police team was chasing the deceased and warned him to stop, his motorcycle slipped and suddenly he started firing on the police team. This sudden firing provoked the police team to fire in self-defence. He had also fired on the police team sometime earlier as this was mentioned in the log book of the CCR at 2.50 pm (Ex.PW-16/B). The sudden firing on the police teams was stated by the accused in their statements under Section 313 Cr PC and corroborated by the evidence of PW-10.

- (xiii) It is further pointed out that the spot where the deceased started firing on the police team was in the forest and a deep gorge of about 18-20 feet was in front of the deceased when he was fleeing and the police was trying to arrest him. Therefore, the deceased turned back and continued his firing with the intent to kill the police personnel who were closing in on him.
- (xiv) The firing by the deceased was established by PW-10 and corroborated by the site plan and recovery of 9 mm pistol and cartridges cases. Reference is made to the deposition of PW-79 in his report (Ex.PW-79/C) wherein it is mentioned that five 9 mm fired cartridges case mark C-13, C-25, C-26, C-31 and C-33 had been fired from the country made pistol contained in parcel in S-14.
- (xv) Mr. Tufail also pointed to the recovery, from the spot where the deceased lay, of one 9 mm country made pistol, two live cartridges of

9 mm, one .315 CMP, one stolen motorcycle, fired empty cases, bag with articles to commit dacoity. According to Mr. Tufail, the evidence of K.P. Singh (PW-73), D.M. Uniyal (PW-38) and *panchnama* witnesses proved all of the above. On the spot, A-2 identified the assailants as the person who, along with his two friends, snatched his service pistol and had assaulted him and tried to fire upon him.

53. When questioned about the stolen motorcycle not having any key, Mr. Tufail explained that the stolen motorcycle could be started without a key and therefore, it is not unusual that the motorcycle was found without a key.

54. On behalf of A-3, A-5, A-8 and A-18 in addition to the above submissions, it was submitted by Mr. Khalil A. Ansari, Advocate, as under:

- (i) The prosecution had tried to prove CDRs of the mobile phones of the Appellants as well as the Global Positioning System (GPS) of the vehicles of PS Dalanwala, PS Nehru Colony and PS SOG. However, the trial Court returned the finding that the prosecution had not been able to prove the CDRs and GPS and therefore, there was no corroborating evidence as regards the movement of the Appellants on 3<sup>rd</sup> July 2009.
- (ii) Even the CFSL report of the Ballistic Division was not able to be proved. In other words, the opinion of PW-79 that the firing took place from a close range or the bullet 'having been fired from a particular weapon' was held to be unreliable. It is submitted that the CBI CFSL team reached Ladpur Forest in Dehradun nearly a month

later. The seizure memo which was prepared on 2<sup>nd</sup> August 2009 where 11 bullets were supposed to have been recovered by the CFSL team (Ex.PW-79/A) was itself in doubt since there was no evidence to show that the computer or printer used for preparing Ex.PW-79/A was with the CBI team at the spot in Ladpur Forest. The signing of the memo by S.K. Pandey, Sub Inspector, CBI was also doubtful as the name of other witnesses were computer typed but his name was added later on.

- (iii) It is further submitted that exhibits were sent to the separate division of CFSL, CBI New Delhi which were received between 12<sup>th</sup> August 2009 and 6<sup>th</sup> October 2009, the reports for which were made from 15<sup>th</sup> September 2009 and 21<sup>st</sup> October 2009. There was a period of time when the case properties remained with the Ballistic, Physics, Biology and Finger Print Divisions at the same time. This showed that the reports of the various divisions were false and fabricated and were rightly not accepted by the trial Court. It also reflected the manipulations by the prosecution.
- (iv) The finding of the trial Court that the prosecution was not able to prove the offence under Section 201 IPC read with Sections 364 and 302 IPC against A-1 to A-14 and the offence under Section 218 IPC against A-14, A-15 and A-16 have attained finality and have not been challenged by the CBI.
- (v) As regards Jain Dharamshala, the trial Court wrongly read the evidence of PW-8 who stated that the police personnel had come for

booking of room 'for 3<sup>rd</sup> July 2009' as 'on 3<sup>rd</sup> July 2009'. He, in fact, stated that Ct. Ajeet (A-7) had visited Jain Dharamshala 2-3 days prior to 3<sup>rd</sup> July 2009 for getting 3 or 4 rooms booked for stay of the police force which would be reaching Dehradun city for VVIP visit on 3<sup>rd</sup> July 2009. Failure to conduct TIP of A-7 by the witnesses of Jain Dharamshala was fatal to the prosecution and wrongly rejected by the trial Court.

- (vi) It is submitted that there were three persons present at the place near the Gurudwara on Mohini Road at around 12.45 pm as is evidenced from the chargesheet of the CBI and the answer given by A-2 in response to Question Nos. 17 and 18 under Section 313 Cr PC. The chargesheet of RC No. 5 also mentions the three unknown persons. In Ex.PW-122/DY7 wireless register the entry at 1.00 pm at Point B states that three Badmash have run away on motorcycle. Even the entry in the GD register at PS Dalanwala (Ex.PW-64/E3) showed that there were three persons who had snatched the pistol.
- (vii) Consequently, the observation by the trial Court that there were only two unknown persons near the Mohini Road Gurudwara was erroneous. Even the charge framed by the trial Court in RC No. 05/2009 in respect of snatching of pistol also proved that the third person, Ashok Panwar, was at Mohini Road at the time of alleged offence and there were all charges framed under Section 120B read with 392 IPC and Section 411 IPC. Further, it is argued that the

depositions of PW-9 to PW-15 do not establish that there were only two persons and not three.

- (viii) The prosecution failed to establish that the deceased was taken in the vehicle of SHO Dalanwala which had reached Mohini Road at 1.06 pm since it was in between Circular Road and Balbir Road at 1.10 pm. This log book entry was maintained by A-15 had not been found to be fake and as a result of this, the trial Court had held that no offence under Section 218 IPC has been made out against A-15. A reference is made to the deposition of PW-10 as well as the entry at 2.50 pm at the CCR (EX.PW-16/B) to contend that the deceased had met PW-10 at 2.30 pm at the tea stall near Mohini Chowk, Dehradun where PW-10 noticed the injuries on the face of the deceased. From the deposition of PW-15 it is seen that person from the *bhagdad* was taken by the police on the motorcycle and not in the Tata Sumo.
- (ix) It is submitted that the statement of Mohan Singh Rana (A-15) under Section 313 Cr PC that he visited PS Dalanwala could not be read against the co-accused because the logbook of the vehicle of SHO, PS Dalanwala showed to the contrary. Reliance is placed on the decision in *Siddhartha Vashisht @ Manu Sharma v. State of NCT of Delhi 2010 (6) SCC 1*. It is submitted that from the evidence of PW-64 it is clear that the entries at 1.10 pm in the GD register (Ex.PW-64/E3) and at 1.20 pm in Ex.PW-64/E4 were not fake and in fact the presence of Ct. Karunesh was duly established.

- (x) The transcript of the call between A-18 and PW-23 (Ct. Ganga Yadav) of CCR (Ex.PW23/B) showed that “*Inspector Sahab Pahunch Rahe Hai, Aragarh Chowki Incharge Aur Cheeta pahunch rahe hai.*” It was further shown that A-8 (Satbir) along with Ct. Jitender Joshi did arrive at Mohini Road spot on the Cheetah-6. The entry at 12.55 pm in Ex.PW-16/B2 also showed that they were already made aware that the incident at Mohini Road Gurudwara had taken place. This was also flashed and recorded in the wireless register at Point A in Ex.PW-122/DY7. However, it is stated that the shirt was green and the boy was wearing jeans. It is submitted that after its arrival at Mohini Road spot they apprehended one Ct. Karunesh presuming him to be the culprit because he matched with the description given in Ex.PW122/DY7. It is further submitted that therefore, both the entries at 1.10 pm and 1.20 pm at PS Dalanwala GD register have been duly proved to be correct by PW-64.
- (xi) As regards the charge of conspiracy under Section 120B IPC, it is submitted that A-1 to A-7 were at the various places between 1.00 – 1.10 pm and were not together at any point of time either at the time of Mohini Road incident or even prior to the encounter. Therefore, there was no occasion for them (A-1 to A-7) to hatch any conspiracy.
- (xii) It is submitted that the post-mortem was not conclusive proof but merely a piece of corroborative evidence. The number of injuries shown in the post-mortem was contrary to the versions of PW-33, PWs-34 to 38 and PW-73 as well as the sketch signed by PW-38.

There were 5 exit wounds and 2 bullets were found embedded in the body of the deceased which make the total injuries 7 which corroborates the *panchnama*. Neither was any further bullet noticed in the body as no x-ray was done nor any bullet was found in the ashes after cremation by Ravinder Pal Singh (PW-101). The scratch marks were shown on the chin and right elbow and gunshot injuries were shown as under:

- \* 2 on left chest
- \* 1 on left thigh
- \* 4 on left leg

The body was already de-sealed which had been duly admitted by Dr. Anil Arya (PW-92). There was some serious doubt mentioned by the doctors in the post-mortem report (EX.PW-92/A).

- (xiii) The numbering of the injuries by the doctors who conducted the post-mortem was not done in a systematic manner; no marking or flagging of the injuries was done; the repetitions of injuries by the doctors could not be ruled out. Further, PW-86 specifically deposed that the clothes of the deceased did not match with the corresponding injuries on the body. The post-mortem was actually done by the attendant and not by the doctors.
- (xiv) The encounter was a genuine one. The black jeans (Ex.PX/15) were found having 3 holes marks on it and were found contained in the bag (Ex.PX-1) which was attached to the motorcycle. The black jeans had



suffered such holes as a result of firing and this also established that the encounter was genuine.

- (xv) Reliance was placed on the Clause (g) of Section 114 of IEA and the decision dated 21<sup>st</sup> July 2016 in Criminal Appeal No. 74 of 2016 (*Arun @ Vicky v. State of NCT Delhi*). It was submitted that non-examination of SP City, Ct. Karunesh as well as Ct. Jitender Joshi leads to the inference that if they had been produced, their evidence would be unfavourable to the prosecution.
- (xvi) The non-mention of motorcycle key in the seizure memo by PW-73 (SI Kushal Pal Singh) was inadvertent.
- (xvii) No CDR in respect of mobile of the deceased has been placed on record and therefore, the adverse inference ought to be drawn against the CBI. Reference was made to the decision in *Tomaso Bruno v. State of U.P. (2015) 7 SCC 178* and *Amit v. State (NCT of Delhi)* [decision dated 2<sup>nd</sup> July 2015 in CRL.A.1146 of 2014 by High Court of Delhi].
- (xviii) No incriminating evidence was found from the sample of seat cover on the vehicles of PS Dalanwala, PS Nehru Colony or PS SOG or from the blankets seized from the lock up. It was further submitted that second FIR No.101/09 could not have been registered after the registration of FIR Nos.98/09 and 99/09. Reliance was placed on the decision in *Surender Kaushik v. State of Uttar Pradesh (2013) 5*

***SCC 148 and Anju Chaudhary v. State of Uttar Pradesh (2013) 6 SCC 384.***

(xix) Non-recovery of the pistol of A-2 showed that no sincere efforts were made to recover it. The prosecution had not excluded the possibility of misuse of the snatched pistol and 10 cartridges by PW-10 and Ashok Kumar at the time of occurrence.

***Additional submissions on behalf of A-4***

55. Another 38 pages of written submissions were filed on behalf of A-4 by Dr. H.P. Sharma and Mr. Khalil A. Ansari, learned counsel. Many of the above submissions were repeated in these written submissions. It is submitted that the wireless register (Ex.PW-122/DY-6) recorded that the offender during the Mohini Road incident was wearing a green coloured shirt. The entry mentioned the description and the registration number of the motorcycle. The said entry was further corroborated by the entry in the general diary (GD) of PS Dalanwala at 1 pm which was to the effect that Ct. Karunesh was wearing a green coloured shirt. This was further confirmed by PW-64.

56. Reference was made to Section 58 IEA which states that an admitted fact need not be proved. The above entries were made in discharge of official duty by a public servant and therefore, it was conclusively proved in terms of Section 35 of the IEA. It did not require further corroboration. It was submitted that the deceased was never abducted and therefore, ingredients of Section 364 IPC read with Section 120B IPC were not made out. Ct. Karunesh was brought to PS Dalanwala and after enquiry he was

allowed to leave. Reliance was placed on the decision in *State v. Nalini (1999) 5 SCC 253*. It was submitted that even according to the trial Court, the chain of events does not suggest or prove commission of the crime. Referring to Section 6 IEA, it was submitted that the story of conspiracy to justify the fake encounter fails and therefore, the only reasonable conclusion is that the encounter was a genuine one.

57. It was submitted that from the evidence of PW-10 and the finding in the post-mortem that there was food in the stomach, it was clear that on 3<sup>rd</sup> July 2009, at about 11 am, they had lunch in a hotel outside Jain Dharamshala. It is submitted that according to medical science, the gastric emptying takes place within two hours but in certain cases it may take up to four hours. Therefore, at 11 am, the deceased ate food with PW-10 and therefore, “the statement of PWS and itself becomes relevant” (*sic*). The recorded time of the encounter was about 3.30 pm and therefore, the deceased had food at around 1.30 pm. It is unbelievable that a person in custody will have such a large amount of food to the extent of 500 ml, particularly when such a person has been beaten up by the police and was in possession of a pistol.

58. The forest was the safest place for the criminals to hide themselves and therefore, they must have taken the food before entering the forest. Referring to Section 3 IEA, which defines the word ‘proved’, it was submitted that “every criminal would run and similarly deceased also ran and finally reached the forest which was the safest place to hide.”

59. It was submitted that the investigation was not fair and the purported recovery of the 11 bullets in terms of Ex.PW-79/A was extremely doubtful and that too more than a month after the incident. Reliance was placed on the decisions in ***Babubhai v. State of Gujarat (2010) 12 SCC 254*** and ***Som Prakash v. State of Punjab 1992 Supp (1) SCC 428***. As regards the circumstantial evidence, not being proved in accordance with law, reliance was placed on the decision in ***Brajesh Mavi v. The State (2012) 7 SCC 45*** and ***Mahavir Singh v. State of MP (2016) 10 SCC 220***.

60. The failure by the CBI to examine SP, City (Panther), Ct. Karunesh and Ct. Jitender Joshi, was not properly explained and the benefit thereof should enure to the accused. Reliance was placed on the decision in ***Dhal Singh Dewangan v. State of Chhattisgarh (2016) 16 SCC 701***. Reference was also made to the statement of A-4 under Section 313 Cr PC. In particular, question No. 40 was referred to show that the examination under Section 313 Cr PC was not done in a manner known to the law. In any event, it was argued, the statement under Section 313 Cr PC cannot be substituted by Section 165 IEA. Reliance was placed on the decision in ***Ashok Debbarma v. State of Tripura (2014) 4 SCC 747***.

***Submissions on behalf of the prosecution***

61. On behalf of the CBI, Mr. Sanjeev Bhandari, learned Special Public Prosecutor (Spl PP), submitted as under in reply to the above submissions:

(i) The sequence of events should be understood in the context of the registration of FIR Nos. 98/09 and 99/09 at 4.15 pm at PS Raipur at the instance of A1 himself. Those FIRs actually name the accused and give each

of them a specific role in the encounter. He pointed out that there was no denial whatsoever by A1 to A7 themselves that they were issued weapons by PW64 and that in fact they fired several rounds using those weapons.

(ii) From the photographs of the deceased (Ex.PW79/D2 to D7) and the evidence of the photographer (PW73), it is plain that there were bullet marks on the body of the deceased. Whether there were only the 8 visible bullet marks or the 26 bullet wounds that were noticed upon post-mortem after removal of the clothes, the fact remains that the death of the deceased was homicidal and due to gunshot injuries.

(iii) The narrow area of controversy was whether the accused were firing collectively on the deceased by way of self-defence, as claimed by them, or by them individually as stated by them in their statements under Section 313 Cr PC.

(iv) As regards the presence of the accused at the encounter spot, Mr. Bhandari made extensive reference to Ex.PW33/A, the *panchnama* which had been witnessed by as many as 9 witnesses. This exhibit which was the *panchnama* drawn up was under the instructions of PW38 mentioned the presence of each of the accused. The accused themselves do not doubt the genuineness of that *panchnama* fixing their presence at the spot.

(v) Ex.PW36/A was proved by Kapil Vohra (PW36), the *gram pradhan* of Village Tarapur, Dehradun. It showed the recovery of one pistol, a country-made pistol, one bag and one motorcycle. This document also recorded the presence of A1 to A14 at the spot and it has been signed by all. In FIR

Nos.98/09 and 99/09, the cases were registered against an unknown individual (deceased) and two *badmashes* (name and address not known). This was done so as to make it appear as though the deceased was not in the custody of the accused policemen.

(vi) Referring to the witnesses who were either the manager or staff at the Jain Dharamshala, Mr. Bhandari has submitted that it was comprehensively proved by the prosecution that a team of police officials which included A7 went to the Jain Dharamshala, broke the door of Room No.9, ransacked that room, and carried away a bag found therein. This happened around 1.30 pm. From a careful consideration of the sequence of events it can be seen that it is only after apprehending the deceased at Mohini Road that the police could have come to know about the deceased and his associates having resided at Jain Dharamshala. There was no way that they could have known this fact had they not apprehended the deceased. He submitted that the defence put up by Ajeet Singh (A7) that he had actually visited Jain Dharamshala two days prior to 3<sup>rd</sup> July 2009 was too weak, unbelievable and not substantiated by any of the witnesses.

(vii) PW10 turned hostile and was an untrustworthy witness. He could not have been even relied upon by the defence in support of their case. His narration of facts contradicted what was unearthed by the CBI during investigation and in particular the evidence pertaining to the raid of the police at Jain Dharamshala.

(viii) As regards the non-examination of Ct. Karunesh, Mr. Bhandari submitted that it was not expected that he would speak the truth and in any

event, if the defence was so confident that he would, nothing prevented the defence from examining him as a defence witness.

(ix) PW15 was consistent in his statement under Section 164 Cr PC as well as in the statement made before the Court that one of the boys was caught at the spot by the police. He clearly mentioned that one of the boys involved in the scuffle was apprehended. This cannot be interpreted to mean that Karunesh was caught. Importantly, not only PW15 but none of the other witnesses, except PW8, state that the boys ran away on a motorcycle. The overwhelming evidence is that the boys tried to run away in the crowd and that one of the boys was apprehended. What happened to the motorcycle on which A2 went to the spot was not known. If indeed they had run away from the spot, the absence of any key of the motorcycle at the spot at the Ladpur Forest has not been explained satisfactorily by the defence.

(x) There was no confusion as to how many boys were present at the spot. The witnesses had consistently spoken of only two boys having a scuffle with A2. Many calls were made to the PS mentioning two boys. He referred to Ex.PW17/H and Ex.PW17/J being the transcripts of the calls made by Ashwani Raturi (PW17). Even the call made by Ct. Karunesh (Ex.PW17/H) and the evidence of Ct. Ganga Yadav (PW23) and Ex.PW23/A and Ex.PW23/B, Ct. Sonia Chaudhary (PW114) who had confirmed the calls received on the CCR, show that all these calls mentioned two boys beating one police personnel. However, none of the callers gave the description of age or physique of the boys or the clothes worn by them. Unless the police caught hold of the deceased from Mohini Road, they would not have come

to know that there were three boys. That the deceased was also given beatings was evident from the post-mortem report (Ex.PW92/A).

(xi) A1 first informed the CCR that, “the boy with *tamancha* has reached the police station” and search in this respect may be stopped and routine checking may continue. This was recorded by A17. This was when the deceased had in fact been brought to PS Dalanwala with a *katta*. If the person who had been brought at this stage was indeed Ct. Karunesh, who was supposed to have been carrying a service revolver, the firearm would not have been referred to as a ‘*tamancha*’. After knowing that one boy has escaped from the place with the service revolver, even the boy who had been brought to the PS should have been brought after checking whether he had A2’s service pistol.

(xii) A17 had in fact ‘inserted an entry’ in the log of CCR at 1.15 pm that the SP City has given a message that the motorcycle of Haryana number plate with 3 *badmashes* sitting on it was going towards Nehru Colony and that they should be nabbed. He submitted that on a bare perusal of this entry when compared to other entries, it is seen that it is squeezed in the last page in a manner that makes it apparent that this has been added later on.

(xiii) The entry corresponding to the entry at the CCR at 1.12 pm was the GD entry at 13.10 at PS Dalanwala in the handwriting of A18. This recorded that A8 and Jitender Joshi brought one *badmash* in green t-shirt and jeans along with revolver. This was different from the *tamancha* which the boy has supposed to have brought as mentioned by A1 and recorded in the CCR. Ct. Karunesh was even given a 303 rifle No.1 along with 60 cartridges as



confirmed by PW68. There is no way therefore, that A18 could have written that the person brought had a revolver.

(xiv) Even A18 in his statement under Section 313 Cr PC stated that Ct. Karunesh was the shadow for an MLA and had a revolver in his possession and so he recorded it as his service revolver. This is contradicted by Kunwar Pranav Singh, MLA (PW58) who stated that Karunesh was a static guard at his residence having one rifle and one double-barrel gun and one pistol only and he was not having any revolver. All of this showed that the story put up by the accused was belied by the records and the witnesses and it is apparent that despite having taken the deceased into custody, they refused to show the same in their records and had made it appear as though he had escaped on a motorcycle.

(xv) As far as A1 to A7 are concerned, the fact that they were armed with weapons and fired on the deceased is clear from the FIR registered on the statement of A1. This is also apparent from the Ex.PW-36/A being recovery memo of the pistol, country made pistol, a bag and one motorcycle from the place of occurrence at Ladpur Forest that A1 to A14 were present there and participated in the encounter. All of them reached there with the common intention of eliminating the deceased or staging a fake encounter.

(xvi) As far as A15 and A16 were concerned, it is submitted that although they were drivers of the vehicles of PS Dalanwala and PS Nehru Colony respectively, they participated with the common intention. Likewise, even as regards A17, the writer of the fake entry in the CCR Register, and A18, the writer of the fake entry of GD Register of P.S. Dalanwala, they understood

what the significance of these interpolations were in the context of the larger conspiracy entered into by the accused to abduct and eliminate the deceased and, thereafter, project it as genuine encounter.

62. It is accordingly submitted on behalf of the CBI by the Spl PP that there was no occasion for the Court to interfere with the well-reasoned judgment of the trial Court.

***Scuffle at Mohini Road: version of A2***

63. The Court has considered the above submissions. First, it is necessary to set out the events, which led to the killing of the deceased, chronologically.

64. As regards the aforementioned incident outside Mohini Road Gurudwara, FIR No.143/09 was registered at PS Dalanwala on the statement of A2. In his statement under Section 313 Cr PC in the present case, A2 admitted that he was posted as SI at PS Dalanwala and was in-charge of the outpost at Araghar on 3<sup>rd</sup> July 2009. He, however, claimed ignorance of the deceased having checked in at the Jain Dharamshala and, in particular, using Room No.9 on 2<sup>nd</sup> July 2009.

65. As regards what happened between 12.30-1.00 pm on 3<sup>rd</sup> July 2009, A2 stated that when he reached Mohini Road Gurudwara, he noticed a motorcycle where one boy was sitting and two boys were standing near the motorcycle. He noticed the number of that motorcycle being HR-06G-9093 and therefore, was suspicious. He stopped his own motorcycle and went to the boy who was sitting on the said motorcycle and asked for the documents.

66. A2 was asked about the quarrel between him and the deceased and PW10. According to him, when he asked for the papers of the vehicle from the boy seated on the vehicle, that boy along with his two accomplices jumped at A2. Due to the sudden attack, A2 was unable to understand what was happening. One of them, the deceased, immediately snatched A2's service pistol and the other two boys "also took out *tamancha* and pistol". One of the accomplices left the place and went towards Mohini Road *chowk* on his motorcycle. The deceased and his second accomplice started kicking him and wanted to kill him with the pistol. They even tried to fire with the pistol but could not do so since the service weapon had a safety catch which they were not aware of. They were pulling back the hammer repeatedly and the deceased was repeatedly asking his accomplices to fire it. According to him, the deceased had forcibly snatched his service pistol and A2's finger was fractured as a result thereof. He also admitted that on listening to the screams of A2, one person from the public, who he later learnt was PW15, fired two rounds from his licensed weapon. The deceased and his two accomplices then ran away on the motorcycle. A-2 then informed the PS through his wireless set. He denied that the vehicle carrying the police personnel had already reached the spot when PW15 had already fired shots. After the three accomplices ran away on the motorcycle, one person in the public having a motorcycle picked A2 up and took him to PS Dalanwala. On the way to PS Dalanwala, A2 met Nilesh Bharne, SP City and narrated the incident and also gave the description of the person and the motorcycle.

***Scuffle at Mohini Road: Version of PWs 9 to 14***

67. The above version has now to be compared with the version of events as

stated by various persons who were present at the very same spot between 12.30-1 pm on 3<sup>rd</sup> July 2009, some of whom called the PCR to pass on information. PW15 is the most crucial witness in this regard. However, the Court proposes to discuss his evidence last as it requires a detailed analysis in view of the submissions made before the Court.

68. Anil Vohra (PW9) was a resident of Mohini Road. He had left his house during that time for the BSNL Office. While proceeding on the Circular Road, towards the left hand side, he noticed a crowd. He was compelled to wait there on his motorcycle. He states that he saw a policeman with his hands up in the air and two boys standing in front of him. One of the boys was having a revolver in his hand and was seen pointing it pointed towards the policeman. He also described the boy having revolver in his hand as wearing a blue-coloured shirt and the other one as wearing a shirt, the colour of which he could not remember. He noticed that both boys were slim. It appeared that the policeman was helpless and the boys were dominating him.

69. PW9 then turned his motorcycle and retreated to a safe distance and dialled No.100 from his mobile phone. One lady picked up the phone and he told her that near the Mohini Road Gurudwara near Circular Road, two boys were pointing the gun at the policeman. The record of the said conversation has been marked as Ex.PW-9/A. Therefore, in terms of the evidence of PW9, two boys were present at the spot.

70. The next witness who spoke with regard to the incident at Mohini Road is Rakshpal (PW12). He too deposed that he saw two boys fighting with A2,

with one of them pointing a pistol towards him. Importantly, his statement was recorded under Section 164 Cr PC. He confirmed that A-2 had caught hold of one boy at the spot itself. However, while deposing in Court, PW12 turned hostile on the question of one of the boys being caught at the spot. He confirmed his signatures on the statement under Section 164 Cr PC. However, PW12 also stated that he had made a complaint to the National Human Rights Commission (NHRC) that he was tortured by a CBI officer. He stated that he had signed the said statement admitting it to be correct as recorded by the Magistrate. However, he stated that some persons had beaten and tortured him. They did not show him any identification card but simply told him that they were CBI personnel. He admitted stating before the Magistrate that the motorcycle of the boys and that of the *daroga* remained at that place itself and that after the big vehicle of the police had reached there, the deceased was made to sit there and was taken away by the police.

71. The version of Farhat Naz (PW14), whose statement was also recorded before the Spl JM, was that she was running a tailoring shop at Mohini Road, Dalanwala. Between 12 noon and 12.30 pm on 3<sup>rd</sup> July 2009, she heard a lot of noise from near the Gurudwara. She heard two gunfire shots. When she came out of her boutique, she noticed a crowd outside the Gurudwara. She noticed that people were running. She saw one person running from there having a pistol in his hand.

72. Ravinder Kumar (PW13) ran a tailoring shop in which PW14 was working. He also resiled from his earlier statement stating that he had not

seen anything in the vicinity of the shop. His statement had been recorded under Section 164 Cr PC and he identified his signature thereon. He confirmed that he had deposed before the Magistrate that he saw two boys and a policeman quarrelling and using abusive language against each other and later one of those boys, who quarrelled with the police officer, was running away with a pistol. He confirmed having deposed before the Magistrate that thereafter, one police vehicle had come and taken away a boy who was wearing a blue shirt. However, he too stated that he had given the above statement before the Magistrate on 22<sup>nd</sup> August 2009 under the pressure of CBI and was subjected to mental torture. He stated that the CBI officers were standing outside the Court when his statement was being recorded in the Court. However, he did not inform the Magistrate of this since he was under immense pressure from the CBI. He claimed he did not know what happened to the motorcycles since he was not there.

73. Surender Singh Rawat (PW11) was running a gas business on Laxmi Road, Dehradun very close to the godown of Himani Gas Service. He was travelling on the Circular Road near the Gurudwara with twenty cylinders. Three other boys, namely Nakchatarpal, Rakshpal and Dyal Singh who were also serving in the gas agency, came there near the Gurudwara. There was some sort of scuffle going on there. He stated that he had seen 2 boys having “jharap” (quarrel) with a *daroga*. He noticed one boy having a pistol pointed at the Daroga. He then heard two gunshots because of which there was a stampede (*bhagdad*). Thereafter, both the boys ran away on the motorcycle. One was driving the motorcycle while the other was on the pillion seat with a pistol in his hand.

74. PW11 too resiled from his earlier statement and was declared hostile. He was confronted with his previous statement made under Section 161 Cr PC. He admitted to stating that the boy who had been apprehended by the *daroga* was asking his accomplice to fire upon the *daroga*. He, however, denied telling the CBI that the boy who was caught hold by the *daroga* was wearing a blue-coloured shirt and denied that he said that a fat man who had fired two shots, along with the *daroga*, who was holding the boy, were taking that boy towards Balbir Road from Circular Road. He also denied having said that the police of PS Dalanwala had come in a TATA Sumo. He now stated that “I do not know which of the *daroga* had taken those boys”. PW11, however, also stated that “the motorcycle of black colour was fallen lying on the spot and the boys had run away on other motorcycle”.

***Scuffle at Mohini Road: Evidence of PW10***

75. The other witness who turned hostile was Ram Kumar (PW10). He began by stating that the deceased was the son of his uncle and that he was closely related to the deceased. He did not claim to have any knowledge as to who Amit Bhatnagar and Shekhar Tyagi were. He confirmed that on 3<sup>rd</sup> July 2009, he was with the deceased at the Jain Dharamshala and that they took food at some hotel nearby at 11 am. He stated that the deceased was residing in the house of Shekhar Tyagi in 2009. On 2<sup>nd</sup> July 2009, he had gone to Meerut Bus Stand and was called there by the deceased. They reached there at 8 am and met a friend whose name he did not recall.

76. PW10 stated that he and the deceased left on a motorcycle and reached Dehradun at around 3 pm on 2<sup>nd</sup> July 2009 and thereafter the deceased

booked a room. In the register maintained in Jain Dharamshala, the deceased got his name as well as names of two of his friends, recorded. However, the name of PW10 was not recorded. Meanwhile, another friend who had met them at Meerut also reached there. They stayed at Jain Dharamshala that night. PW10 however, did not recall the room number where they stayed.

77. According to PW10, on 3<sup>rd</sup> July 2009, after having lunch at around 11am, they returned to the Jain Dharamshala. After 10-15 minutes, the deceased told him that he and two of his friends had to go for some work and asked PW10 and the third friend who had come by bus from Meerut to stay back. They were asked to reach a tea stall near Mohini Chowk at around 1.30 pm. The said location was 45 minutes away. PW10 stated that at around 2.30 pm, the deceased with two of his friends reached the tea stall. PW10 noticed some injuries on the face of the deceased and when he enquired about the injuries, the deceased told him that he would disclose the reasons later.

78. At this point in the deposition of PW10, the learned Senior PP had him declared as hostile and with the permission of the Court, commenced cross-examining him. PW10 denied that his statement had been recorded by the CBI. He stated that he had disclosed his mobile number and that of the deceased to the CBI but he did not know if it had been noted down by the officer of the CBI. He denied the suggestion that he had told the CBI officer that he had been taken to Dehradun by the deceased for the purpose of committing theft there. PW10 claimed that he was visiting Dehradun only as a tourist. He denied that he had told the CBI officer that while he and the



deceased left for Dehradun by motorcycle, Shekhar Tyagi along with Ashu Kumar left by bus. He also denied that on the way to Dehradun, the deceased had purchased rope and tape. He denied the suggestion that he and the deceased had reached the Jain Dharamshala in Dehradun at 2 pm where the deceased got a room and asked Shekhar Tyagi to reach. He claimed not to remember if he told the CBI officer that the deceased had questioned the old man at the counter of Jain Dharamshala as to why he was charging for the stay of five people when only three persons would be staying. He further admitted as correct that a lock had been purchased by the deceased. He denied all the statements made by him regarding the planning of the theft by the deceased in the company of PW10 and Ashok Kumar. He denied having conducted a reconnaissance of the area where the theft was to take place, i.e. at a house near Mohini Road. PW10 denied the incident of scuffle and importantly of the policeman having caught hold of the deceased and also taking charge of his motorcycle and his running away from the place with the service pistol and later throwing it somewhere near the railway station at Dehradun.

79. What PW10, however, stated was that three of them, i.e. he, the deceased and the third boy, were on the motorcycle and were nearing the forest when a police jeep came from the front side. PW-10 is supposed to have asked the deceased to stop the motorcycle to allow PW10 to get down. However, the deceased did not stop the motorcycle. When he reversed it, he found another police jeep in the opposite side. Thereafter, the deceased turned the motorcycle and took it on a “*kachha rasta*”. Meanwhile, the deceased lost balance and fell. PW10 then ran away from the place and

when he looked back, he saw firing taking place.

80. In effect, therefore, PW10 denied the entire incident of A2 confronting them, a scuffle taking place, snatching of the service pistol and the deceased continuing to beat A2 and PW10 himself pouncing on him. He claimed not to know the difference between a revolver and a pistol. He denied that the deceased was apprehended at the spot or that on hearing the shots fired he became frightened and ran on foot with the weapon of the *daroga*. He denied as incorrect the suggestion that “Ranvir had been caught hold of by *daroga*”.

81. It is, therefore, seen that PW10, who is supposed to be one of the accomplices of the deceased, disassociated himself completely from the Mohini Road incident. PW10 failed to support the prosecution despite his statement also being recorded before the Magistrate on 26<sup>th</sup> August 2009 under Section 164 Cr PC. While he admitted that the Magistrate told him before recording the statement that it could be used against him, he claimed not to remember if he told the Magistrate about the deceased pressing him to commit theft and importantly about the incident near the Mohini Road Gurudwara.

***Scuffle at Mohini Road: other PWs***

82. With the witnesses discussed thus far, we have many whose statements were recorded under Section 164 Cr PC but resiled therefrom alleging either torture or undue pressure by the CBI to give such statements. These include PW-11, PW-12, and PW-10. PW-14 stands on a different footing inasmuch as she only noticed a noise outside the Gurudwara and noticed one person

ran away with a pistol in hand. She admitted her statement under Section 164 Cr PC.

83. However, on the issue of whether there were three or two boys at the spot, it has been consistently spoken to, even by some of those witnesses who turned hostile (PW11 and PW12), that there were only two boys. In fact, PW11 went to the extent of saying that only two boys went away on the motorcycle, one driving the motorcycle while the other sitting behind holding a pistol in his hand.

84. There were certain others who called the CCR during this time. One was Sushma Bansal (PW24), who made a call to the PCR. She had stated to the CBI that the boy who was empty-handed was apprehended by the police and the other was having a pistol with him and had run away. She also denied stating that the police took away one boy who was empty-handed from the spot. She, however, admitted that the memorandum of the recording of the information given by her at No. 100 (Ex.PW17/J) was correct. She is a resident of 22, Circular Road, and she stated that two boys were beating police persons. Ex.PW17/J also bears this out. Therefore, although this witness did not support the prosecution case completely, it is clear that she also mentioned to the police about two boys. Even Ex.PW17/H is to the same effect.

85. Mala Singh (PW25) was the other person who was a resident of Circular Road who had, from the terrace, witnessed the fight going on, came down from the terrace and telephoned her son and daughter. She denied having told the CBI that she had seen one policeman apprehending a slim, fair-

complexioned boy or that the person who caught him was A2. She denied telling the CBI that the police had taken that boy in its vehicle.

86. The other person who called the police during this time was Ct. Karunesh who was a guard with PW58, a local MLA. His call was confirmed by Ct. Ganga Yadav (PW23) and Ct. Sonia Chaudhary (PW114). None of these calls gave the description of the age or physique of the boys or the clothes worn by them. Significantly, they all uniformly talked of two boys and not three.

87. If the third boy was not there at all, the question of A1 stating in the FIR that there were three boys was incorrect unless one of the boys, i.e. the deceased, had been caught at the spot.

***Scuffle at Mohini Road: Evidence of PW15 Anjum Pervez***

88. It is in the above context that one has to carefully peruse the evidence of Anjum Pervez (PW15), who turned out to be the key witness as regards what happened near the Mohini Road Gurudwara. Apart from the fact that his statement was recorded before the Magistrate at Lucknow under Section 164 Cr PC, which he did not dispute, he also gave an interview to a local television channel journalist, Ram Anuj (PW26). That interview was placed before the trial Court in the form of a CD. This Court has also viewed the said CD.

89. Although in paras 5 and 6 of this judgment reference is made to some portion of the evidence of PW15, it bears reiteration at this stage. PW15 was working as a Junior Engineer in the MDA. He was present at his residence at

Circular Road, Dalanwala, Dehradun having come back between 12.45-1.00 pm on 3<sup>rd</sup> July 2009 to change his clothes to offer *namaz* of *Jumma*. He parked his vehicle at the gate of his house. He noticed the crowd near the Gurudwara and that “three persons were quarrelling among themselves”. When he went nearer, he saw two boys beating a person in police uniform. The two boys had pushed the policeman to the ground and were punching and kicking him. During this scuffle, one boy snatched the service pistol of the policeman and pointed it towards the policeman as well as at the persons in the crowd.

90. On witnessing these events, PW15 decided that since he had a licensed pistol with him, he should use it to save the policeman. He went back to his house, retrieved the pistol and came back to the spot where he noticed that the scuffle was still going on. He fired two shots in the air from the licensed pistol. After hearing those shots, there was *bhagdad* in the crowd. In his examination-in-chief he stated, “both the boys also ran away along with the crowd”. It is clear, therefore, that PW15 did not state in his examination-in-chief in the Court that the boys ran away on the motorcycle.

91. In his examination-in-chief, PW15 further confirmed that during the stampede, other police personnel also reached the spot. One of the boys was caught hold of by the police personnel who reached the spot, but he states that he was “not certain whether that boy who was apprehended by the police was out of those two boys who were fighting with the *policewala* or someone else”. He also could not tell the colour of the clothes of the boy apprehended by the police. He was, however, clear that the boy who had

snatched the pistol ran away with it in the *bhagdad*. Here again, he did not state that the boy ran away on a motorcycle.

92. Even this witness was beginning to resile from his previous statement and, therefore, the learned Senior PP had him declared hostile and began cross-examining him with the leave of the trial Court. In his cross-examination by the Senior PP, PW15 began stating as under:

“It is correct that I had stated in my statement to the CBI that out of the two boys one who was having pistol in his hand had run away towards Mohini Road along with the pistol. Vol. He had run away with the crowd. I had also told in my statement to the CBI that someone had telephoned to the police during the incident and police from PS Dalanwala had come to the spot. I had not stated in my statement to CBI that the other boy, out of the two boys quarrelling with the police, who was wearing blue shirt was caught hold by the police of PS Dalanwala. I had simply told the police that one boy was caught hold by the police of PS Dalanwala from the crowd. None of those two boys had fired any shot.”

93. What is important is that he maintained, even in the cross-examination by the Senior PP, that one ‘boy’ was caught hold of by the police of PS Dalanwala from the crowd. This is perhaps the most important statement in the entire case. Much would turn on this statement of PW15.

94. The entire story of the defence would fall apart if indeed one of the boys who were in a scuffle with A2 was apprehended at the spot. It would demolish the defence’s attempt to show that the three boys who reached there escaped on a motorcycle and were later killed in a genuine encounter at Ladpur Forest. It is for this reason that PW15 becomes the most critical witness – both for the prosecution as well as for the defence.

95. It should be noted that all other witnesses who had earlier told the CBI about one boy being apprehended at the spot were, despite their statements being recorded under Section 164 Cr PC, either won over by the accused or for some reason, did not support the prosecution. PW15, however, was different. In his cross-examination by the Senior PP for the CBI, he denied stating that one of the two boys who were quarrelling with the police who was wearing a blue shirt was caught. However, he admitted that, "I had simply told the police that one boy was caught hold by the police of PS Dalanwala from the crowd". Therefore, on the aspect of one of the boys being caught hold of by the police at the spot, PW15 remained consistent and firm.

96. After making the above statement during his cross-examination, PW15 was shown his statement recorded under Section 164 Cr PC. This is a statement running into two sheets. It was recorded on an application moved by the Investigating Officer ('IO') Inspector V. Dixit (PW122) in the Court of the Special Judicial Magistrate, CBI, Lucknow. PW15 admitted that his statement had been recorded by the Magistrate. He also confirmed the statement which was shown to him (Ex.PW15/A). He admitted having signed it. He was also shown his consent letter and confirmed his signatures thereon (Ex.PW15/B).

97. Therefore, unlike the other witnesses who stated that even their statement under Section 164 Cr PC was recorded under duress and coercion, PW15 did not resile from it. His cross-examination by the accused on this aspect did not yield anything for them. The rough translation of the

statement of PW15 under Section 164 Cr PC, as handed over to this Court by Mr. Bhandari, learned Special PP for the CBI, reads thus:

“On July 03, 2009, during 12.45 to 1.00 o’clock, I came to my home to change clothes for professing Friday Namaz. When I parked the vehicle at the gate of house then I saw that a crowd was gathered near Gurudwara, towards Mohini Road. On going 2-4 steps towards it I saw that three persons were fighting with each other. One of them was in police uniform and remaining two boys/men were beating him getting him lying on the earth. During this activity one boy snatched the revolver / pistol of that policeman and pointed on that policeman. The second boy continued to beat that policeman. All the persons were watching the event during this period. Seeing pistol in the hands of the boy I too remained at some distance and carried on seeing the whole event. Then the policeman stood up and clashed with the boy who was carrying pistol/revolver. On seeing the policeman clashing with him I thought that this boy would kill that unarmed policeman. Simultaneously another thought came in my mind that too have a licensed pistol and I am near to my home so I may save the life of policeman by bringing the pistol from my home. Having this thought I rushed to my home and carrying my licensed pistol I came back to the occurrence spot. I shot two fires by my pistol in the air. Hearing the gun shot those boys got frightened and fled towards Mohini Road. The public crowd was also scattered hearing the gunshot.

When this fighting was going on then perhaps any public person had given the information to police over telephone and some policemen had also reached there. **In the stampede that occurred due to firing by me, the policemen caught one of the boys.** Since police had reached the spot and I was being late for Friday Namaz therefore I returned to my home and after changing the cloths I proceeded for professing Namaz.” (emphasis supplied)

98. With PW15 not resiling from the above statement, it confirms his earlier statement about the policemen catching hold of “one of the boys”.

99. The other piece of evidence, which is equally important, is the interview



given by PW15 to Ram Anuj (PW26). That PW15 gave such an interview was confirmed by PW26. The interview was given on 3<sup>rd</sup> July 2009 itself. PW26 was a journalist for 'Time TV'. This interview was given about 3 hours after the incident near the Mohini Road Gurudwara and "prior to encounter" in the Ladpur forest. His cross-examination by the accused did not yield anything at all. The CD of the interview was produced in the trial Court. The trial Court left open the objection raised by the accused that the said CD ought not to be played since it was not accompanied by a certificate under Section 65B of the IEA. After viewing the CD played in the trial Court, PW15 confirmed that "It is his interview given to the media" and that "It has been correctly recorded as the interview given by him". In that interview, PW15 clearly stated that one *badmash* holding a pistol, "*paidal paidal bhag gaya tha*" and that the other boy was caught by the police of PS Dalanwala.

100. In his cross-examination PW15 denied being pressurized by the CBI. He stated: "It is incorrect to suggest that the CBI had exploited my emotional and sentimental setback". The setback he was referring to was his being defamed by the print and electronic media. He confirmed having been taken once to the Dehradun Court by the CBI and thereafter to the Court at Lucknow.

101. Much is made by the counsel for the accused, of the CBI getting the statement of PW15 under Section 164 Cr PC recorded before the Magistrate at Lucknow and not the Magistrate at Dehradun. In the considered view of the Court, nothing really turns on this because PW15 was clear that he was

under no pressure to give any false statement by the CBI. He appears to have made his statement voluntarily and he stood by that statement even in the Court.

102. The television interview given by PW15 to PW26 just three hours after the Mohini Road incident is natural and probable. PW15 had no reason at that stage to falsely implicate anyone and more importantly, speak in favour of the deceased or anyone else. He was, after all, a well-meaning citizen who felt strongly about a policeman being attacked in public by two young boys in a manner that would bring the police force to disrepute and adversely affect their morale. He strongly felt it was his duty as a citizen to protect the police. Such a person had no need whatsoever to speak falsehood. It is admirable that he stood his ground and spoke the truth till the end. In fact, this entire case would have come apart had PW15 not been firm and unwavering in spite of so many other witnesses having turned hostile. One such reliable witness is sufficient since he inspires confidence as a truthful witness. The witnesses who turned hostile require to be discarded as unreliable witnesses.

103. What emerges clearly from the deposition of PW15 is that one of the boys was apprehended at the spot by the police personnel of PS Dalanwala. It is also clear from the statement of PW15 that even the one boy who ran away, actually left on foot and not on a motorcycle. In his TV interview PW15 states that the boys tried to flee on the motorcycle but it would not start. A careful analysis of the evidence of PW15 persuades the Court to come to the same conclusion as reached by the trial Court that the deceased

was, in fact, apprehended at the spot by the police personnel of PS Dalanwala.

***Karunesh not being examined***

104. The reason why Ct. Karunesh, the armed guard of PW58 was not examined by the prosecution, as explained in the impugned judgment of the trial Court appears plausible. The trial Court noted that Karunesh had given a statement in FIR No.143/09 in PS Dalanwala (the incident concerning the Mohini Road scuffle). That statement was proved by SI Bhaskar Lal Sah (PW71) and exhibited as Ex.PW71/G2. There, Ct. Karunesh stated that he was walking on foot and proceeding towards the Araghar Post for getting a night pass. He saw “three boys in a scuffle with a *daroga*” and that the boys were pointing a *tamancha* and a pistol at the *daroga*. He stated that one person came there and fired with his revolver and the three boys who were in the scuffle ran away on a CBZ Motorcycle towards Sanjay Colony. Ct. Karunesh claimed to have chased those boys and while returning he was apprehended by Cheetah Police who did not listen to him when he told them that he was a member of the police force itself. In that statement, Ct. Karunesh claimed to have been brought to the PS Dalanwala and after confirming that he was a constable, he was allowed to go. He claimed not to be carrying his purse and therefore, was unable to show his ID-card.

105. The above version of Ct. Karunesh is precisely what the case of the accused in the present case is. His not being examined by the prosecution is, therefore, not surprising. However, what is surprising is that Ct. Karunesh was not examined by the defence either despite the defence producing as

many as 30 defence witnesses. For that matter, even the City SP and Jitender Joshi could well have been examined by the defence but were not. The Court does not, in the circumstances, appreciate how Illustration (g) under Section 114 of the IEA can come to the aid of the accused in this case.

106. The statement given by Ct. Karunesh in FIR No.143/09 is not supported by other material on record. Karunesh was issued a rifle and not a revolver. This is clear from the evidence of PW68. Secondly, if indeed Ct. Karunesh had been mistakenly picked up by the Cheetah policemen, i.e. Satbir (A8) and Jitender Joshi, mistaking him to be the boy who had snatched the service revolver of A2, they would have upon apprehending Karunesh first asked him and then searched him to find out if he was having such a service pistol. However, no such search was undertaken of Karunesh. If the accused are to be believed, he was simply taken to PS Dalanwala. Secondly, as rightly pointed out by the trial Court, Ct. Karunesh being part of the police force, would not have remained quiet if he saw another policeman being attacked. If he was armed with a licensed revolver, he would have certainly used it either to scare away the boys or even come to the rescue of A2 himself. That he did not do so makes it highly improbable that Karunesh was the person wrongly apprehended from the spot by A8 and Jitender Joshi.

***Evidence regarding the raid at Jain Dharamshala***

107. The Court now proposes to discuss another important piece of evidence which clearly shows that the deceased was apprehended from the spot by the police of PS Dalanwala who came there, i.e. the evidence relating to the raid

of the police at Jain Dharamshala on 3<sup>rd</sup> July 2009 at 1.30 pm.

108. In his statement under Section 313 Cr PC, Ajeet Singh (A7) does not dispute that he went to the Jain Dharamshala. A7 left with the manager there the mobile numbers of himself and A1. Where, however, his defence falters is his attempt to show that he went there three days prior to 3<sup>rd</sup> July 2009 and not on 3<sup>rd</sup> July 2009. There is overwhelming evidence of the manager and other persons employed at Jain Dharamshala to show that a whole team of eight police personnel reached there at 1.30 pm, ransacked Room No.9, which was in fact occupied by Dr. Raje Singh Bisht (PW7), which they mistakenly thought was occupied by the deceased. PWs 1, 2 and 8, have supported the prosecution case in that regard. There can be no manner of doubt that for the policemen to go to Room No.9 of Jain Dharamshala within half an hour of the scuffle at Mohini Road, they must have taken into custody the deceased who must have informed them that he had booked a room there. The policemen who apprehended the deceased must have wanted to know where he and his associates were staying. There is no other reason whatsoever for eight policemen, in the midst of all that had happened at Mohini Road, to raid the Jain Dharamshala and ransack Room No.9.

109. None of the counsel for the accused is able to afford any rational explanation for this. In fact, this evidence is a total give-away of the entire case of the defence. They set up a false defence about the deceased not being apprehended at the spot and not being taken away by the police. They are not able to explain as to how so many policemen reached Jain Dharamshala within half an hour of the scuffle. What were they doing at Jain

Dharamshala if they were not looking for evidence regarding the deceased and his associates?

110. The explanation offered by A7 that he had actually gone there three days earlier to 3<sup>rd</sup> July 2009 is too weak and not supported by even a single witness. The submission of the accused that according to PW8, the police personnel had come for booking of room ‘for 3<sup>rd</sup> July 2009’ and not ‘on 3<sup>rd</sup> July 2009’ does not impress the Court. There is overwhelming direct evidence in the form of Bhagwan Singh (PW5) and Than Bahadur Kshetria (PW6) to speak to the presence of A7 and his taking away the black bag from Room No.9. A person going to make a booking of rooms is not going to ransack a room and take away a bag. That Room No. 9 was ransacked was confirmed by Dr. Raje Singh Bisht (PW7). When he returned at 2.30 pm on 3<sup>rd</sup> July 2009 to Room No.9 of the Jain Dharamshala, he found that the room had been broken into and luggage scattered all over the room.

111. PW10 failed to support the prosecution despite being a close relative of the deceased. It may be because he is facing trial in FIR No. 143/09. However, his deposition cannot come to the aid of the defence as it is both unreliable and untruthful. A desperate attempt was made to somehow rescue the evidence of PW10 by the defence by suggesting that his statement that they had some food at the Mohini Road Tea Stall at 2.30 pm is borne out by the fact that in the post-mortem, 500 ml of food was found in the stomach of the deceased. Even medical literature has been relied upon for this purpose.

112. In the first place, such a plea was not raised before the trial Court. More importantly, no question was put to the doctor who conducted the post-

mortem about the 500 ml of contents in the stomach of the deceased and whether it indicated that food had been consumed only an hour or two prior to the death. These cannot be matters of conjecture and surmise. Without expert evidence in that regard, a High Court hearing an appeal against a trial Court judgment cannot, on its own, take judicial notice of medical scientific facts. How long it will take the food to get digested should be a matter for a medical expert to speak about and not for Judges to take judicial notice of, much less the lawyers to get the Judges to presume those facts on the basis of medical literature downloaded from the internet.

113. Be that as it may, what PW10 has spun out as a story is not supported by the other evidence which clearly shows that the deceased was apprehended at the spot leading the police within half an hour thereafter to the Jain Dharamshala to carry out the raid. This completely negates the alternative theory put forth by the accused persons that they had mistakenly taken Ct. Karunesh to the PS and, realizing that they had made a mistake, had let him go. The evidence of PW 64 which suggests that the person brought to the PS Dalanwala is Karunesh is not supported by the other evidence discussed above.

114. As already noticed, the presence of A7 at the Jain Dharamshala has been proved through the evidence of PWs 1 to 8. PW4 has proved the diary of Jain Dharamshala (Ex.PW4/F) which contained the name and signature of A7 and two phone numbers entered in his own handwriting. In his statement under Section 313 Cr PC, A7 has disclosed that his mobile number 9412950642 was the same as written by him on Ex.PW-4/F. Likewise, A2 in

his statement under Section 313 Cr PC admitted that his mobile number was 9411112814, which was the second number written by A7 in the diary of Jain Dharamshala. The handwriting matched the subsequent writing of A7 in terms of the report dated 23<sup>rd</sup> October 2009 by Handwriting Expert, R.S. Rana (PW-110).

115. There was no reason for the policemen, including A-7, to reach Jain Dharamshala within half an hour of the incident near the Mohini Road Gurudwara involving A-2 and two boys, one of whom was the deceased. As already pointed out, none of the accused had any valid explanation for the overwhelming evidence in the form of PWs 1 to 8 as regards the visit of the policemen to the Jain Dharamshala.

116. The Court, therefore, concurs with the finding reached by the trial Court that the deceased was in fact apprehended at the spot itself by the police personnel who reached there after getting a wireless message about two boys having a scuffle with A-2. The police raided Room No.9 at the Jain Dharamshala at 1.30 pm on 3<sup>rd</sup> July 2009 by breaking the lock thinking that it was the room booked by the deceased and his associates. The police could have reached there only upon information being disclosed to them by the deceased after his apprehension from the place of the scuffle near the Mohini Road Gurudwara.

***Entries in the DD at PS Dalanwala and the registers at the CCR***

117. Jaspal Singh Gosain (A-17) was in the CCR on 3<sup>rd</sup> July 2009. The message given at 1.12 pm in the CCR by A-1 was to the effect that a boy with a *tamancha* had been brought to PS Dalanwala and therefore, the



search for the same can be stopped. Correspondingly, at PS Dalanwala, Manoj Kumar (A-18) made an entry in the general diary at 1.10 pm (entry No. 28) and 1.12 pm (entry No. 29). Entry No. 28 recorded that A-8 and Jitender Joshi had brought one *badmash* in green shirt and jeans along with one revolver and information had been given to the SHO who in turn had informed the CCR to stop the search. This did not correspond with the information given by A-1 at the CCR which was recorded at 1.12 pm.

118. The entry made by A-17 in the CCR register at 1.15 pm was to the effect that under the orders of SP, City (Panther), one motorcycle HR-06G-9093 “with three *badmash* sitting on it” was going towards Nehru Colony and checking was to be done. It has been explained through R.S. Rana (PW-110) in his report dated 23<sup>rd</sup> October 2009 (Ex.PW-110/B) that the above entry was inserted. The next page in Ex.PW-16/A with the time began at 1.20 pm which showed that the above entry at 1.15 pm was inserted later on.

119. The Court is inclined to agree with the conclusion of the trial Court that the entry at Pt. Q-4 (Ex.PW16/B) inserting the entry at 1.15 pm on 3<sup>rd</sup> July 2009 was a manipulated entry. Further, as far as the GD of PS Dalanwala is concerned, no effort was made to ascertain whether Ct. Karunesh was in fact carrying a service revolver issued to him or whether he was issued a rifle as stated by PW-68. As regards the information given by Rajesh Bisht (A-3) which led to Ct. Paras Mani (DW-16) making entry (Ex.PW-16/B), this information was given by none other than A-3. Therefore, the trial Court is right in proceeding on the basis that there could be no inference as to the correctness of this entry.

***TIP, CDRs and location data not essential to prosecution case***

120. Non-holding of a TIP to identify the police officials who had gone to the Mohini Road Gurudwara is not necessarily fatal to the case of the prosecution since the identity of the accused persons was established. The CDRs were held to be not proved under Section 65B IEA. The location data of the jeeps were also held to be not proved for the same reason. The oral testimony of certain witnesses and the accused themselves establish their presence even independent of the above pieces of evidence.

***The 'encounter' at Ladpur Forest***

121. The issuance of weapons to the accused is not in dispute. PW64 has confirmed that after returning to PS Dalanwala at around 2.30-3.00 am, A-1 disclosed to PW64 that he had used 2 cartridges in the encounter and the empty cartridges has been deposited at PS Raipur. A-1 then handed over to PW64 one revolver and empty cartridges. PW-64 also deposed that Nagendra Rathi (A-12) and Ajeet Singh (A-7) had also come to the PS along with A-1 and that A-12 told him that he had used 2 cartridges in the encounter and the empty cartridges were deposited at PS Raipur. A-12 then handed over an AK-47 and 28 cartridges to be kept in the *malkhana*. The weapon was seized on 8<sup>th</sup> July 2009 from PS Dalanwala by Bimla Gunjwani (PW-81).

122. Forty-six sealed parcels were received by Dr. B.K. Mahapatra (PW82) on 12<sup>th</sup> August 2009. There was one unsealed parcel and one sealed parcel which was received on 28<sup>th</sup> August 2009 from SP, CBI, Dehradun confirming that the parcels were found intact.

123. As far as the Ladpur Forest encounter is concerned, the presence of the accused was confirmed from the text of the FIR (Ex.PW-122/A) registered in FIR Nos.98/09 and 99/09. This was based on the oral statement of the complainant which clearly states that after receiving a message at the CCR, A1 along with A7 and A12 and driver Mohan Singh Rana (A15) took the official police vehicle and started searching for the three boys by immediately getting blockades erected in the area. The complaint further proceeds to state that A-1 reached Sahastradhara crossing along with 'humrahi force' and confirms that he found SI Neeraj Kumar (A-4), Chander Mohan Singh Rawat (A-6), G.D. Bhat (A-2), Satbir Singh (A-8), Sunil Saini (A-9), Nitin Chauhan (A-5) along with Chander Pal (A-10), Saurabh Nautiyal (A-11) doing the checking for search. Thus, the presence of all the accused at the place of occurrence is clearly established.

124. In fact, the presence of the accused in the Ladpur forest is not in dispute. The witness who had signed the recovery memo, i.e. Kapil Vohra (PW-36) and Rakesh Kumar (PW-37), showed that all the above accused were in fact present. The FIR itself clearly states how many rounds were fired by each of them:

“We policemen also alighted from our vehicles, protecting ourselves. I, SHO fired two rounds by my official revolver, SO Nehru Colony Shri Rajesh Bisht fired 6 rounds from his official pistol, SOG Incharge Nitin Chauhan fired 6 rounds from his official pistol, SI Gopal Dutt Bhatt fired 6 rounds from his official pistol, SI Neeraj Kumar fired 2 rounds official revolver and CP 526 Ajeet Singh fired two rounds from official AK-47 rifle in self-defense. At the same time I gave the information of encounter, going on between the police and goons, to the City Control Room through the wireless set. During the firing, a goon fell down sustaining the bullet shots. After no

reaction from the injured goon lying on the ground, at around 1530 hours we saw going near then observed that the goon had died and two other goons fled away taking benefit of jungle. Seeing the dead goon, SI Gopal Bhatt told that he is that very goon who had clashed with him along with his companions, snatched his official pistol and fled. A pistol was lying near the dead body and at some distance a motorcycle number HR-06G 9093 Hero Honda of black colour is lying. And a country made pistol, four pieces of nylon rope of blue colour, a cello tape and a pair of cloths are kept in the bag which is hanging with the motorcycle. The information about death of one goon in encounter and fleeing away of two goons has been given by me i.e., SHO to Senior officials through wireless set SI Shri Neeraj Kumar, SI Shri Gopal Dutt Bhatt., CO. 553 Suneel Saini, Co. 141 Satveer Singh were left by me at the spot; and SO Nehru Colony Shri Rajesh Bisht & his Hamrahi Co. 145 Hamrahi Co. 1065 Chandra Pal, Co. 1237 Saurabh Nautiyal have been directed by me for search of fled away goons.”

125. With the presence of the accused at the Ladpur forest spot being confirmed in the above FIR itself, the plea taken by all of them or any of them to the contrary is to no avail. Further, the bullets/rounds fired have been matched by the medical evidence which goes to show that the entry wounds on the body of the deceased were all as a result of the firing. As already noticed, there are as many as twenty-six entry wounds found on the body of the deceased during his post mortem. Merely because some of the rounds were shown to be fired from a country pistol does not mean that they could not have been fired by the policemen themselves. In their respective statements under Section 313 Cr PC, A1 to A7 do not dispute that they fired on the deceased using their respective weapons. A-1 fired two rounds, A-2 fired six rounds from his service pistol, A-3 fired six rounds, A-4 fired two rounds from his service revolver, A-5 fired six rounds from his service pistol, A-6 fired six rounds from his service pistol, and A-7 fire two rounds

from AK-47 [which in fact had been issued to Nagendra Rathi (A-12)].

126. The version of the defence that A1 to A7 were firing in self-defence has not been able to be established by them. Not one of them has been injured which is very strange considering that the three boys were supposed to have been armed. In the opinion of the Court, it is clearly a case of shooting with the intention to kill the deceased and not in self defence. The photograph of the deceased showed that his trouser is pulled downwards near the thigh exposing his underwear. As rightly pointed out by Mr. Bhandari, this is more consistent with the body being held at both ends and being dropped on the ground in the Ladpur Forest. It is not natural for a person who flees from the police to fall in that position. The photograph of the deceased, taken soon after the encounter does not show the presence of a pool of blood on the ground where he had fallen. However, at this stage the entire investigation was in the hands of the accused. Therefore, they have a lot of explaining to do, which unfortunately they have not been able to.

127. When the scene of the 'encounter' in the Ladpur forest was examined by the CBI team with the CFSL team, nearly a month later, eleven fired bullets were recovered by digging out the upper layer of the soil up to 7/8 inches. Human blood of O group - which was the blood group of the deceased - was detected on some of the bullets (Ex.PW80/A). The clothes purportedly worn by the deceased also contained O group blood.

128. By a letter dated 26<sup>th</sup> October 2009, the CBI sought a clarification from the FSL as to the maximum distance in feet from which the bullets were fired at the deceased. This was said to be a maximum of 3 feet. When read

along with the post-mortem report, the ballistic evidence clearly suggests an excessive use of force by A-1 to A-7 with a view to eliminate the deceased. This is inconsistent with the plea of self-defence. There has been matching done of the cartridges recovered from the Ladpur forest and the weapons used by each of the accused. It is, therefore, not possible to agree with the submissions of the accused that this was a genuine encounter.

***Circumstances that have been proved***

129. The law relating to circumstantial evidence was summed up by the Supreme Court in ***Brajesh Mavi v. The State*** (*supra*) as under:

“From the several decisions of this court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is accused and nobody else who had committed the crime.”

130. From the discussion thus far, this Court holds that the following circumstances, which form a continuous chain, stand proved beyond reasonable doubt by the prosecution:

- (i) Near the Mohini Road Gurudwara on 3<sup>rd</sup> July 2009 at around 12.45 to 1 pm, A2 and two boys were seen engaged in a scuffle. This is spoken to by a large number of witnesses as discussed hereinbefore, including PW 15.
- (ii) When PW 15 fired in the air using his licensed pistol, the boy who had snatched the licensed revolver of A2 ran away in the crowd (and not on a motor cycle). The other boy i.e. the deceased, who also attempted to run

away, was caught at the spot by two policemen of PS Dalanwala who had reached there by then, and taken away with them. This is comprehensively proved by PW15. This was when the deceased was last seen with the policemen of PS Dalanwala. Thereafter his dead body was seen at the Ladpur forest.

(iii) Within half hour of the incident at Mohini Road, eight of the accused policemen went to the Jain Dharamshala, broke open the lock of Room No.9 there, ransacked the said room, and took away from there a black bag. They did this thinking that it was the room of the deceased and his associates when in fact it was the room of PW7. These facts have been clearly established by the PWs of Jain Dharamshala and the documents seized from there. The above raid further proves that the deceased had been by then caught hold of by the police.

(iv) The entries in the GD at PS Dalanwala and the insertion of the entry at the CCR further showed that it was made to appear as if Karunesh had been brought to the PS Dalanwala mistakenly presuming him to be the deceased, and then allowed to go.

(v) A1 to A6 were issued licensed arms which they used at the encounter in the Ladpur forest. A7 used the AK 47 that was issued to A12. That each of the accused A1 to A7 were present and fired several rounds to kill the deceased stands admitted in the statement of A1 that formed the basis of two FIRs registered at PS Raipur.

(vi) A1 to A7 were unable to prove that they fired in self defence. There was

no evidence to show that the deceased while trying to run away into the forest fired upon A1 to A7.

(vii) The medical and ballistic evidence accounted for all the rounds fired by A1 to A7 on the deceased. His suffering a homicidal death as a result thereof stands comprehensively proved. Both the medical and ballistic evidence prove that the encounter was not genuine but a fake one.

131. In the present case, the above proved circumstances give rise to the only possible conclusion viz., the guilt of A1 to A7 for the offences under Sections 364 and 302 IPC. In other words the circumstances unerringly point to the culpability of A1 to A7 for abducting the deceased, unlawfully detaining him and then killing him by indiscriminate firing in a fake encounter. The circumstances, however, do not prove the culpability of the other accused for those offences. This will be elaborated later when the Court discusses the role of each of the accused.

### ***Criminal conspiracy***

132. The trial Court held that the offence of criminal conspiracy punishable under Section 120B IPC was proved against A-1 to A-16 and A-18. Before discussing the evidence in this regard, it is necessary to briefly recapitulate the law in regard to the offence of criminal conspiracy under Section 120 B IPC. In ***Devender Pal Singh v. State NCT of Delhi 2002 Crl LJ 2035***, it was held:

“For an offence punishable under Section 120B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an



agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

14. No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

15. In Halsbury's Laws of England (Vide 4th Ed., Vol. 11, page 44, para58), the English Law as to conspiracy has been stated thus-

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The *actus reus* in a conspiracy is the agreement to execute the illegal

conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

133. In *Gulam Sarbar v. State of Bihar (now Jharkhand)* 2014 Crl LJ 34, the Supreme Court explained:

"The essential ingredients of criminal conspiracy are (i) an agreement between two or more persons; (ii) agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence.

The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them between the parties. Agreement is essential."

134. It was urged on behalf of the accused that there was no time during the few hours of 3rd July 2009 between the scuffle at Mohini Road and the

encounter at the Ladpur forest when all of the accused could have actually planned to kill the deceased. There is according to them no evidence to show that each of the accused were part of the larger plan to kill the deceased.

135. Indeed these are relevant factors. The burden lies on the prosecution to show that each of the accused had agreed to commit the crime of eliminating the deceased in a fake encounter. As cautioned by the Supreme Court in *State v. Nalini* (*supra*):

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

136. In the impugned judgment, the trial Court failed to separate out the cases of A1 to A7 on the one hand and A8 to A16 and A18 on the other when it discussed the case against them for the offence of criminal conspiracy. Also, the trial Court appears to have discussed the law relating to circumstantial evidence and in that process drawn conclusions regarding

the guilt of the above mentioned accused for the offence under Section 120 B IPC. This also led the trial court to overlook the legal position as explained hereinbefore in *State v. Nalini* (*supra*).

137. In examining the charge for the offence under Section 120 B IPC, in a case of a fake encounter, it is necessary to understand the ranks in the police force that the accused persons held. A1 and A3 were SHOs and A5 was the In Charge of the SOG. They were, therefore, the senior-most officers among the accused. In the next rung we have A2, A4 and A6 who were all SIs. A7 to A18 were all constables. Of these, A7 stands on a different footing. He went to the Jain Dharamshala and noted the mobile numbers of himself and A-1 in a register there. Secondly, he took an AK47 from A12 and used it to fire two rounds on the deceased. Therefore A7 was certainly privy to the plan hatched by A1 to A6 in eliminating the deceased.

138. Therefore the actual planning, if at all, could be attributed only to A1 to A7 and not A8 to A18. These were constables who had to accompany their superiors and obey the instructions issued to them. They were in no position to 'join' the larger conspiracy, i.e. entering into an agreement to commit a crime.

139. Therefore, as far as the offence under Section 120-B IPC is concerned, while the trial Court rightly acquitted A-17, it erred in overlooking the distinction between A1 to A7 on the one hand and A8 to A16 and A18 on the other. The Court finds no evidence led by the prosecution, not even circumstantial, to show that A-8 to A-16 and A18 entered into a criminal conspiracy with A1 to A7 to commit the offences under sections 364 and

203 IPC.

140. The legal requirement as explained in *State v. Nalini* (*supra*) is for the prosecution “not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement.” Further as explained in *Gulam Sarbar v. State of Bihar* (*supra*), where the circumstantial evidence is incomplete or vague, “meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence.” In the considered view of this Court, the prosecution has failed to meet the above legal threshold to prove the offence under Section 120B IPC *qua* A8 to A16 and A18. Therefore, they too, like A17, are entitled to the benefit of doubt as regards that offence. As far as A1 to A7 is concerned, their position will be discussed while discussing the individual roles of the accused.

***The role of Accused 1 to 7***

141. The Court now proposes to examine role of each accused and in that process, proposes to deal first with A-1 to A-7.

142. Turning first to the offence under Section 120 B IPC, it requires to be first noted that the prosecution has been able to establish beyond doubt that A1 to A6 were issued licensed weapons as confirmed by Gopal Singh Negi (PW-64). A7 took the AK-47 rifle from A-12. The motive for A1 to A7 to commit the crime was the public humiliation of A2 who was an SI. The possibility of these six accused talking to each other and planning to eliminate the deceased after he was taken to the PS Dalanwala is not unbelievable. That they spoke to each other and decided to stage the fake encounter at a place away from PS Dalanwala is obvious because the three

teams led by A-1, A3 and A-5 converged at Ladpur forest. A7 participated in the plan from earlier on. He had gone for the raid at the Jain Dharamshala and later joined A1 to A6, who were all armed, with an AK47 that he took from A12 and also fired rounds to kill the deceased.

143. Therefore the ingredients of a criminal conspiracy viz., (i) an agreement between two or more persons; and (ii) the agreement having to relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means, stands satisfied in the present case as far A1 to A7 are concerned. The conviction of A1 to 6 for the offence of criminal conspiracy punishable under Section 120 B is therefore affirmed.

144. Now for the substantive offences under Sections 302 and 364 IPC. As far as A-1 is concerned, it is plain from his complaint which led to the registration of FIR No. 98/09 under Section 302 IPC and FIR No.99/09 under Section 25 Arms Act registered at PS Raipur, both of which are against 'unknown dead person and two others *badmash*', that even according to him he was present at the encounter site and fired two rounds from his revolver. PW64 has confirmed that A1 returned the revolver with 12 cartridges, i.e. 2 used and 10 unfired cartridges.

145. Kapil Vohra (PW-36), Gram Pradhan of Ladpur, proved Ex.PW36/A regarding recoveries of one pistol, country made pistol, one bag and one motorcycle at the site. Dinesh Mohan (PW-38) proved that a total of 38 shells cartridges, i.e. 24 empty shell of 9 mm, 4 empty shells of 38 mm and two empty shells of AK-47, were recovered from the spot. The presence and

actions of A-1 stand proved by above documents and depositions.

146. Likewise, as regards A-2, his presence at the encounter is not in doubt. That he was issued a pistol and 12 cartridges is also proved. Even in his case, his presence is proved by the evidence of PW-36 and PW-38.

147. Turning to Rajesh Bisht (A-3), in his case too, apart from his statement under Section 313 Cr PC, the evidence of Mahipal Singh (PW-50) is clearly against him. He is also one of the police officers who did not dispute the weapon which he used for firing on the deceased. His plea of self-defence carries no merit in the facts and circumstances of the case. The FIR (Ex.PW-69/A) clearly mentions that A-3 had fired six rounds.

148. Turning to Neeraj Kumar (A-4), FIR 98 and 99 of 2009 registered at PS Raipur acknowledges that he had fired two rounds. PW-64 confirms that A4 was issued one revolver and 12 cartridges. A4 used 2 of them and returned the revolver and 10 cartridges. His presence and role is also spoken to by PW-36 and PW-38.

149. Turning to Nitin Chauhan (A-5), the evidence against him too is likewise. The FIR registered at PS Raipur at the instance of A-1 mentions that A5 had fired six rounds from his service pistol. The evidence of PWs 36 and 38 also support the prosecution in this regard. Even in his statement under Section 313 Cr PC, A-5 had admitted to firing six rounds. Although he states that he had tried to aim his fire at the legs, the fact remains that the deceased received several gun shots on the neck and back area which resulted in instantaneous death.

150. As far as Chander Mohan Singh Rawat (A-6) is concerned, in his statement under Section 313 Cr PC he admits to being issued the pistol along with 12 cartridges and that he too fired six of them. The FIR registered at the instance of A-1 proves the presence of A5 at the encounter spot and his act of firing upon the deceased.

151. Ajeet Singh (A7), who borrowed the AK-47 that was issued to A-12, fired two rounds using the AK-47. He does not deny this in his statement under Section 313 Cr PC. A-7 also went to the Jain Dharamshala, broke the lock of Room No.9 and ransacked it. There is, therefore, overwhelming evidence as far as the role of A-7 is concerned.

152. Consequently, as far as A-1 to A-7 is concerned, the prosecution has proved beyond reasonable doubt their guilt for the substantive offence of abduction of and illegal detention of the deceased (Section 364 IPC), and his murder by firing with armed weapons (Section 302 IPC) read with Section 120 B IPC

153. A1 to A7 have failed to prove their defence viz., that they fired in self defence consequent upon the deceased and his two associates firing upon them. The bullet marks on the teak trees in the forest do not conclusively prove that the deceased fired upon the policemen. Not even one of the accused policemen has suffered any injury. None of exceptions to Section 300 IPC stand attracted in this case as far as A-1 to A-7 is concerned.

154. That the deceased was taken away to PS Dalanwala from the place of the scuffle at Mohini Road by the policemen of that PS has been proved



beyond reasonable doubt. The fact of his detention was concealed. It was made to appear that he had run away with two of his associates in a motor cycle. The offence of unlawful abduction by the police of the deceased from the place of the scuffle on Mohini Road and detaining him in custody thereafter till the time of his death in a fake encounter is clearly proved by the prosecution. The guilt of A1 to A7 for the offences under Section 302 and Section 364 read with Section 120 B IPC stands proved beyond reasonable doubt by the prosecution. Their conviction for the said offences and the corresponding sentences awarded to each of them by the trial Court is hereby affirmed.

***Role Accused 8 to 14***

155. Next we take up the cases of A-8 to A-14. Their presence at the encounter site is sought to be established through the FIR registered at PS Raipur (Ex PW69/A) and the recovery memo (Ex PW 36/A), the translated copies of which have been placed before this Court by the learned Spl PP for the CBI. The said recovery memo, proved by Kapil Vohra (PW36) the Gram Pradhan of village Ladpur, mentions the presence of A-1 to A-14 at the time of recovery of one pistol, one country made pistol, one bag containing clothes and one motor cycle from the place of occurrence.

156. While the presence of A-8 to A-14 at the place of occurrence at the time of the aforementioned recoveries can be said to be established, their case cannot be said to be on the same footing as A-1 to A-7. A-8 to A-14 were not armed. A-12 who was issued the AK-47 admittedly gave it to A-7. Even if it is taken that A8 to A14 accompanied A1 to A7 to the place of

encounter in the Ladpur forest, the prosecution was required to prove that A-8 to A-14 shared a common intention with A-1 to A-7 as far as elimination of the deceased was concerned. It is significant that as far as the encounter is concerned, there is no overt act attributed to A-8 to A-14 which could support such a conclusion.

157. All the bullet entry wounds on the body of the deceased have been accounted for by the medical and ballistic evidence. They have all been shown to have been caused by the weapons wielded by A-1 to A-7. Therefore, clearly, A-8 to A-14 cannot be held responsible for those bullet wounds which caused the death of the deceased. As far as the other injuries on the body of the deceased, there is no evidence to show that A-8 to A-14 had either participated in any manner or themselves inflicted any of those injuries on the deceased.

158. A-8 Satbir Singh was part of the Cheetah team that picked up the deceased from Mohini Road where the scuffle with A2 took place. However, at that stage A8 was perhaps merely carrying out orders and clearly was not a party to any plan to illegally detain the deceased and subsequently kill him in a fake encounter. Therefore the mere fact that he was one of the two policemen who took away the deceased from Mohini Road to PS Dalanwala is not sufficient enough to fasten on him the guilt for the offence under Section 364 read with Section 34 IPC.

159. The Court is therefore inclined to grant the benefit of doubt to A-8 to A-14 as far as offences under Sections 302 and 364 read with Section 120-B

IPC is concerned. The impugned trial Court judgment and order on sentence is set aside to the extent that A-8 to A-14 have been found guilty of the above offences.

***Role of A15 and A16***

160. A-15 and A-16 are drivers of the two jeeps of PS Dalanwala and PS Nehru Colony respectively. As drivers, they were bound to take their superiors wherever they were asked to take them. It is not at all clear that they shared the common intention with their superiors as far as the elimination of the deceased in the fake encounter. It is not likely that the senior officers will discuss with their drivers their strategy in dealing with criminals.

161. The job profile of A-15 and A-16 is such that they could not have been aware of the plans of A-1 to A-7 and in particular the plan to murder the deceased. They cannot be fastened with the same degree of culpability as A-1 to A-7. The trial Court has failed to appreciate the above aspect in determining the guilt of A-15 and A-16. The evidence on record does not support a finding of guilt of A-15 and A-16 for the offence under section 120 B IPC. They are acquitted of the above offence.

***Role of A-17 and A-18***

162. That brings us to A-17 and A-18. A-17 made the entry in the CCR and A-18 made the GD entry in the PS Dalanwala. There is no evidence to show when precisely A-17 inserted the entry. It is also, therefore, not clear whether he had inserted the entry subsequently or on the same day, i.e.

3<sup>rd</sup> July 2009. It is also not clear whether he did it with the knowledge that this would help the case of A-1 to A-7 in putting forth the story of a genuine encounter. Too short a time had elapsed between the entries on 3<sup>rd</sup> July 2009 for A-17 to have been aware of impending common intention of A-1 to A-7 to eliminate the deceased.

163. Moreover, A-17 was on duty on that date only till 2 pm. While the evidence has shown that the entry at 1.15 pm was in his handwriting that by itself will not bring whom the guilt of A-17 for the aforementioned offences with which A-1 to A-7 have been charged. Likewise, A-18 happens to be a constable making DD entries at the PS Dalanwala.

164. Again, the manner of recording the entry only shows that A-18 was acting on instructions and not that he shared any common intention with his superiors for elimination of the deceased in the fake encounter. Clearly that possibility was not in his imagination when he made that entry. Something more would have to be brought on record to show that A-17 and A-18 are guilty for the offence under Section 218 IPC. The crucial element here would be the *mens rea* for the offence.

165. The prosecution has not been able to prove that either A-17 or A-18 intended or knew about the conspiracy their actions enabled. In any event, even the prosecution does not suggest when they became aware of the larger plan of A-1 to A-7 to eliminate the deceased. Therefore A-17 and A-18 are acquitted of the offence under section 218 IPC. The corresponding order on sentence is set aside.

***Fake encounters: A grim scenario***

166. This was a tragic case of the killing of a 20 year old by the Uttarakhand police in a fake encounter. A fake encounter is a form of extra judicial killing which has no place in a legal system governed by the rule of law. It is a manifestation of the impunity with which armed forces, including the police, are prone to act in utter disregard of the rule of law. It also is symbolic of the cynicism with which the police themselves view the efficacy of the criminal justice system. The police, in this perception, are not just the accusers, but the prosecutor, the judge and the executioner.

167. The lawlessness of a police force, which is what a fake encounter represents, is not a new phenomenon. It is universal too. The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1980 defined 'extra-judicial killings' as 'the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups acting with the support, tacit or otherwise, of official forces or agencies.'

168. In *Om Prakash v. State of Jharkhand (2012) 12 SCC 72*, the Supreme Court observed:

"This Court has repeatedly admonished trigger happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognized as legal by our criminal justice administration system. They amount to State sponsored terrorism."

169. The two barriers in prosecuting those involved in extra judicial killings

including fake encounters are 'impunity' and 'immunity'. When the law enforcement agencies refuse to register a complaint, or neglect to register and prosecute a case of an extra-judicial killing, the State is seen as clothing the offender with impunity. 'Immunity' represents the statutory or legal protection that is available to law enforcers like policemen who cannot be prosecuted without the sanction of the executive government. When such sanction to prosecute is refused, the victims cannot hope to bring the guilty officials to criminal justice.

170. The barriers of 'impunity' and 'immunity' represent also the State's unwillingness and inability to prosecute law enforcers who have acted in violation of the rule of law. Unwillingness arises from the refusal to grant sanction to prosecute. Inability could arise from not putting in place an effective mechanism that will ensure that the criminal justice process is not frustrated.

171. In *PUCL v. State of Maharashtra (2014) 10 SCC 635*, the Supreme Court was examining the genuineness of 99 encounters by the Mumbai police resulting in the death of around 135 persons between 1995 and 1997. The Supreme Court issued guidelines "to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation." The guidelines, which were to have the force of law under Article 141 of the Constitution, included registering "an FIR initiating proper criminal investigation" in the event that "pursuant to a tip-off the police uses firearms and this results in the death of a person". The other important guidelines

were that the FIR and police diary entries had to be forwarded to the Court without delay and disciplinary action being initiated "against and suspension of a police officer found guilty of wrongful encounter." The Supreme Court emphasised that there should be "no out of turn promotions or instant gallantry awards for the officers involved in encounter killings."

172. In *Extra Judicial Execution Victim Families Association v. Union of India (2016) 14 SCC 536*, the Petitioners compiled a list of 1528 alleged extra-judicial killings at the hands of the police and security forces in Manipur alleging that no FIRs were registered. The killings included those of innocent persons with no criminal records who were later labelled being militants. The Commission appointed by the Court enquired into six of the claims of the Petitioners and found that those were not genuine encounters; and that the victims did not have any criminal records. The Supreme Court reiterated the decision of the Constitution Bench in *Naga People's Movement of Human Rights v. Union of India (1998) 2 SCC 109* that the use of excessive or retaliatory force by the Manipur Police or the armed forces of the Union is not permissible and that an allegation of excessive force resulting in the death of any person must be thoroughly enquired into. The Supreme Court observed:

"even while dealing with the 'enemy' the rule of law would apply and if there have been excesses beyond the call of duty, those members of the Manipur Police or the armed forces who have committed the excesses which do not have a reasonable connection with the performance of their official duty would be liable to be proceeded against."

173. In the present case, although the investigation was entrusted to the CBI

it required orders from the Supreme Court to transfer the criminal trial from the courts in Dehradun, where the fake encounter took place, to Delhi. Despite this a large number of PWs turned hostile, thus pointing to the non-existent protection to witnesses and victims. The accused in the present case were all policemen of Uttarakhand. Many of the witnesses were local residents of Dehradun. Despite their statements being recorded under Section 164 Cr PC the prosecution could do little to stop these witnesses from turning hostile in Court. But for PW15, also a local resident, standing firm, the entire trial may have collapsed. This is yet another case that underscores the urgent need for a robust scheme of protection to witnesses and victims. Although the Law Commission of India gave its recommendations in that regard more than a decade ago, little has been done to implement them.

### ***Conclusion***

174. As a result of the above discussions, this Court orders as under:

- (i) This Court confirms the conviction of A-1 to A-7 for the offences under Section 120-B IPC and Sections 302 and 364 read with Section 120-B IPC. The corresponding judgment and order on sentence of the trial Court *qua* A-1 to A-7 for the aforementioned offences stands confirmed.
- (ii) A-8 to A-16 and A-18 are acquitted of the offence under Section 120 B IPC and corresponding judgment and order on sentence of the trial Court is hereby set aside.



- (iii) A-17 and A-18 are acquitted of the offence under Section 218 IPC and the corresponding judgment and order on sentence of the trial Court is hereby set aside.
- (iv) The bail bonds and surety bonds, if any, furnished by A-1 to A-7 are cancelled. If any of them is on bail he shall surrender forthwith to serve out the remaining sentence.
- (v) The bail bonds and surety bonds if any furnished by A8 to A18 stand discharged. If any of them is in jail, he shall be released forthwith unless wanted in some other case.
- (vi) A-8 to A-18 shall fulfil the requirements of Section 437 A Cr PC to the satisfaction of the trial Court at the earliest.

175. The appeals of A1 to A7 are dismissed and those of A-8 to A-18 are allowed in the above terms. The trial Court record be sent back forthwith along with a certified copy of this judgment.

**S. MURALIDHAR, J.**

**I.S. MEHTA, J.**

**FEBRUARY 06, 2018**

*rd/anb/rm*