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

Date of decision: 11th AUGUST, 2025

IN THE MATTER OF:

\+ **CRL.REV.P. 247/2017**

COURT ON ITS OWN MOTION .....Petitioner

Through: Mr. Vivek Sood, Sr. Advocate (*Amicus Curiae*), with Mr Amitanshu Satyarthi, Ms Medhavi Judevi, Ms Pankhuri Jain, Advocates.

versus

DHANPAT & ORS. .....Respondents

Through: Mr. Laksh Khanna, APP for the State.
Mr. H. S. Phoolka, Sr. Advocate with Mr. Gurbaksh Singh, Ms. Surpreet Kaur and Ms. Kamna Vohra, Advocates for Complainant.
Mr. Bhaskar Vali and Mr. Tarun Rajput, Advocates for Respondent No.4/Ramji Lal.
Ms. Tarannum Cheema, Mr. Akash Singh and Mr. Akshay N., Advs. for CBI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

Background

1. The present Criminal Revision Petition was instituted in *suo moto* exercise of powers under Section 401 of the Code of Criminal Procedure, 1973 ("**CrPC**") pursuant to Order dated 29.03.2017 passed by this Court.

This Court was *prima facie* satisfied of the untenability of the Judgment dated 28.05.1986 passed by the Ld. Additional Sessions Judge, New Delhi in Sessions Case 11/86 whereby four accused persons were acquitted in a case of alleged arson and killing of one Harbhajan Singh, a *Sikh*, as part of the pogrom which ensued in Delhi after the assassination of Ms. Indira Gandhi, former Prime Minister of India in 1984.

Events leading to the institution of the present Revision Petition

2. As is evident from a perusal of the Order dated 29.03.2017, this Court was considering the following appeals which had been filed challenging the Judgment dated 30.04.2013 passed by the Ld. District & Sessions Judge, North-East District, Karkardooma Courts, Delhi in Sessions Case 26/2010 (arising out of RC No. SI-1/2005/S0024):

a. Criminal Appeal No. 715/2013 titled '*Mahender Yadav* v. *CBI*'

b. Criminal Appeal No. 753/2013 titled '*Krishan Khokhar* v. *CBI*'

c. Criminal Appeal No. 831/2013 titled '*Jagdish Kaur&Anr*.v. *Balwan Khokhar & Ors.*'

d. Criminal Appeal No. 851/2013 titled '*Capt. Bhagmal Retd.* v. *CBI*'

e. Criminal Appeal No. 861/2013 titled '*Balwan Khokhar* v. *CBI*'

f. Criminal Appeal No. 1099/2013 titled '*State through CBI* v. *Sajjan Kumar & Ors.*'

g. Criminal Appeal No. 710/2014 titled '*Girdhari Lal* v. *CBI*'

3. The aforesaid Criminal Appeals related to the incidents of killing of five *Sikhs* in the Raj Nagar Part I area in Palam Colony in South West Delhi

on 01/02.11.1984 and the burning down of a *Gurudwara* in Raj Nagar Part II which were investigated by the Central Bureau of Investigation ("**CBI**").

4. During the course of hearing of the aforesaid Criminal Appeals, Ld. Counsel for some of the accused persons (Capt Bhagmal and Sajjan Kumar) had sought to place reliance *inter alia* on the following Judgments passed by Ld. Additional Sessions Judges, Delhi in:-

Sr. No	Case No.	Name of the Parties	Result of the trial	Details of complaint
(i)	SC No.31/86	State v. Vidyanand, Balwan Khokhar, Mahender Singh Yadav	Acquittal by judgment dated 29.04.1986	Dated 15.11.1984 by Jagir Kaur (widow)
(ii)	SC No.32/86	State v. Dhanraj, Mahender Singh, Balwan Khokhar, Mahender Singh Yadav	Acquittal by judgment dated 17.05.1986	Dated 18.11.1984 by Sampuran Kaur (widow)
(iii)	SC No.11/86	State v. Dhanpat, Ved Parkash, Shiv Charan, Ramji Lal Sharma	Acquittal by judgment dated 28.05.1986	Dated 15.11.1984 by Swaran Kaur (widow)
(iv)	SC No.10/86	State v. Balwan Khokhar	Acquittal by judgment dated 15.07.1986	Dated 19.11.1984 by Daljit Kaur
(v)	SC No. 33/86	State v. Mahender Singh, Ram Kumar	Acquittal by judgment dated 04.10.1986	Dated 04.11.1984 by Baljit Kaur (daughter) (registered as FIR 416/84)

5. The Ld. Counsel for the aforesaid accused persons sought to draw strength from these Judgments of acquittal on the basis that the incidents which formed the subject matter of these judgments as also the incidents under consideration in the Criminal Appeals being heard, although arising from different investigations, had taken place around the same time, *i.e.* 01/02.11.1984, in the aftermath of the assassination of Ms. Indira Gandhi.

6. In order to appreciate the contentions of the Ld. Counsel for the aforesaid accused persons, this Court deemed it fit to issue directions for tracing out the records of the cases in which the Judgments of acquittal tabulated above had been rendered.

7. Extracts of relevant Orders which indicate that the record of Sessions Case 11/86, *i.e.*, the subject matter of the present Revision Petition, was traced out and placed before this Court are as under:-

a. Order dated 08.02.2017 in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 &710/2014:

> *"…**2.** It would appear to be in the interest of justice that the record of these cases is traced out. Further directions with regard to the same would be made once the parties had a chance to inspect the same.*
>
> ***3**. A direction is issued to the District Judge (Headquarters) to trace out the record of the cases and cause the same to be produced before us within two weeks from today. Even if the digitized record is available, the same may be produced before us"*

b. Order dated 21.02.2017 in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014:

> *"…**11.** It appears therefore, that so far as the record of the SC No.11/86 and SC No.28/93 were available as on 13th February, 2012. So far as the record of other four cases are concerned, the same had been reported to be weeded out.*
>
> ***12.** In view of the above, a direction is issued to the District Judge (Headquarters), to cause the record of*

the SC No.11/86 and SC No.28/93 to be produced before us forthwith."

c. Order dated 16.03.2017 in Criminal Appeal Nos. 715/2013, 753/2013, 831/2013, 851/2013, 861/2013, 1099/2013 & 710/2014:

*"…**3.** Pursuant to our orders dated 21st February, 2017 and 9th March, 2017 calling for the records of these cases, only the record of SC No. 11/86 has been sent to this court by the office of the District & Sessions Judge (Headquarters)."*

8. After perusing the records and the Judgment dated 28.05.1986 in Sessions Case 11/86, the judicial conscience of this Court was shocked on account of the perfunctory manner in which investigation and trial were conducted, compelling this Court to take *suo moto* cognizance.

9. *Vide* Order dated 29.03.2017, this Court while exercising its jurisdiction under Section 401 CrPC, passed the following directions:-

*"**93.** We accordingly direct as follows:-*

***(i)** Let this order be registered as a petition under Section 401 of the Cr.P.C.*

***(ii)** Issue notice without process fee to the private respondent nos. 1 to 4 as well as the State – respondent no.5 to show cause as to why the judgment dated 28th May, 1986 in SC No.11/86 premised on the composite chargesheet dated 25th March, 1985 based inter alia on the complaint dated 15th November, 1984 of Smt. Swaran Kaur (clubbed with FIR No.416/84, P.S. Delhi Cantt.), be not set aside and a retrial/fresh trial be directed by this court in exercise of its revisional powers under Section 401 of the Cr.P.C.*

(iii) *Issue notice without process fee to private respondent nos. 1 to 4 as well as the State – respondent no.5 to show cause as to why this court not direct fresh/further investigation into the complaint of Smt. Swaran Kaur by an independent agency as the Central Bureau of Investigation.*

(iv) *The address of the complainant – respondent no. 6 shall be ascertained by the State within two weeks from today and the same shall be filed in the registry.*

(v) *Subject to the compliance with the above directions, court notice without process fee shall be issued for the service of complainant – respondent no. 6.*

(vi) *Compliance with the above directions shall be got ensured by the Commissioner, Delhi Police.*

(vii) *A copy of the composite final report dated 25th March, 1985 filed by the Delhi Police in SC Nos.10/86, 11/86, 31/86, 32/86 and 33/86 (placed by CBI on the record of Crl.A.No.1099/2013) and a copy of the judgment dated 28th May, 1986 in SC No.11/86 shall be placed in the file along with the present order.*

(viii) *For the reasons set out above, we appoint Mr. Vivek Sood, Sr. Advocate as Amicus Curiae in this matter.*

(ix) *The Registry shall ensure that a complete paper book is made available to the Amicus Curiae.*

(x) *It shall be the responsibility of the Delhi High Court Legal Services Committee to pay the fees of the Amicus Curiae which are quantified at `50,000/-.*

(xi) *All notices shall be returnable on 20th April, 2017."*

Challenge before the Apex Court

10. Order dated 29.03.2017, leading to the institution of Criminal Revision Petition 246/2017, *i.e.,* one of the connected matters, was challenged before the Apex Court by Mahender Singh Yadav, one of the accused in Sessions Case 31/86 (giving rise to Criminal Revision Petition 246/2017), by filing Special Leave Petition (Crl.) 3928/2017. The aforesaid matter is pending before the Apex Court since 2017. Even though no Order(s) staying the present proceedings were passed, the present matters remained pending, awaiting the outcome of proceedings in the Apex Court.

11. The Petitioner in Special Leave Petition (Crl.) 3928/2017, namely, Mahender Singh Yadav, *i.e.*one of the accused in SC 31/1986, had passed away during the pendency of the SLP, as recorded by this Court in Order dated 21.11.2023.

12. As such, since Mahender Singh Yadav, *i.e.* the Petitioner in Special Leave Petition (Crl.) 3928/2017, has passed away, and there was no Order of the Apex Court directing this Court not to proceed further with the hearing of the batch of Criminal Revision Petitions, including the present case, this Court has heard the parties as well as the *Amicus Curiae*.

Facts of Sessions Case 11/86

13. One Swaran Kaur ("**Complainant**"), widow of late Harbhajan Singh, who was residing at RZ-439F, Raj Nagar, New Delhi gave a Written Complaint dated 13.11.1984 [Exhibit PW2/A] to the SHO, Sadar Bazar, PS Delhi Cantonment on 15.11.1984. In her Complaint, she stated that on 01.11.1984 at about 10:00 AM, certain persons had attacked and set her husband and her house on fire, resulting in his death. The Complainant stated that she knew the persons who participated in the incident and

identified them as Shiv Charan, Dhanpat Kumar and his brother, one Goel residing behind her house, Ramji Lal Sharma, Bal Kishan, Surinder of Village Bagdola *etc*.

14. This Complaint was investigated as a part of FIR 416/1984 dated 04.11.1984 which had already been registered at PS Delhi Cantonment on the complaint of one Baljeet Kaur D/o late Avtar Singh.

15. Investigation was conducted by PW4 SI Arjun Singh and PW3 SI Ashok Kumar Saxena. Upon conclusion of investigation, a composite Chargesheet was filed which adverted to five such cases of alleged targeted killing of *Sikhs* in the Raj Nagar area on 01/02.11.1984. The portion of the composite Chargesheet dealing with the Complaint of Swaran Kaur was labelled as *Challan IV*. Five persons were arrayed as accused, namely Shiv Charan, Dhanpat, Ved Prakash, Ramji Lal Sharma and Surendra (who was declared as a Proclaimed Offender) for the alleged killing of Harbhajan Singh, *i.e.* husband of Swaran Kaur.

16. The composite Chargesheet gave rise to five trials – Sessions Case 10/86, Sessions Case 11/86, Sessions Case 31/86, Sessions Case 32/86 and Sessions Case 33/86. In the present Revision Petition, we are concerned with Sessions Case 11/1986.

17. Charges under Sections 201, 302, 392, 436, 449 read with Section 149 of the Indian Penal Code, 1860 ("**IPC**") were framed on 21.03.1986 against the accused persons who faced trial, *viz*. Dhanpat, Ved Prakash, Shiv Charan and Ramji Lal Sharma.

18. During the course of trial, the Prosecution examined the following witnesses:

a. PW1 – ASI Maha Singh (Scribe of FIR 416/1984)

b. PW2 – Swaran Kaur (Complainant)

c. PW3 – SI AK Saxena (IO)

d. PW4 – SI Arjun Singh (IO)

e. PW5 – Inspector Sita Ram (Police Witness to Written Complaint dated 15.11.1984 made by Swaran Kaur).

19. After conclusion of Prosecution evidence, accused persons were examined under Section 313 CrPC, who denied the allegations against them.

20. The Ld. Additional Sessions Judge, New Delhi *vide* Judgment dated 28.05.1986 in Sessions Case 11/86 acquitted all the four accused persons on the basis that:-

a. There was a contradiction insofar as PW2 Swaran Kaur had, in her Written Complaint [Exhibit PW2/A], stated that the incident had occurred at her own house, whereas, while deposing before the Ld. Additional Sessions Judge she had claimed that the incident took place at the house of her neighbour, one Mr. Thakur.

b. There was substantial delay in reporting the incident inasmuch as the occurrence was of 01.11.1984, whereas the Written Complaint [Exhibit PW2/A] was only given on 15.11.1984.

c. The deposition of PW2 Swaran Kaur had not been corroborated by any other witness.

d. There was prior enmity between the deceased and the accused persons on account of disputes regarding accounts of the *Mohalla Samiti*.

Appointment of various Commissions & investigation of incidents which took place during the 1984 Riots

21. It is pertinent to mention that in the aftermath of the assassination of Ms. Indira Gandhi, former Prime Minister of India, large scale violence took place in Delhi. Members of *Sikh* community were killed and their properties were ransacked. Several Commissions were appointed by the Government of India to examine different aspects of the matter, including (i) the Marwah Commission (1984), (ii) the Justice Ranganath Misra Commission of Enquiry (1985), (iii) the Dhillon Committee (1985), (iv) the Ahuja Committee (1985), (v) the Kapur Mittal Committee (1987), (vi) the Jain Banerjee Committee (1987), (vii) the Potti Rosha Committee (1990), (viii) the Jain Aggarwal Committee (1990), and (ix) the Narula Committee (1993).

22. There were several complaints of shoddy investigation which led to the constitution of a Commission of Inquiry headed by Justice G.T. Nanavati, former Judge of the Supreme Court of India, *i.e.*, the "**Nanavati Commission"**, to inquire into the causes, and the course of criminal violence targeting members of the *Sikh* community which took place in the NCT of Delhi and other parts of India on 31.10.1984 and thereafter; the sequence of events leading to and all such facts relating to such violence and riots. The Commission also covered questions as to whether the crimes which were committed against the *Sikh* community could have been averted and whether there were any lapses or dereliction of duty on the part of the Police Officials and other authorities. The Commission was also to inquire and report on the adequacy of administrative measures taken to prevent and

deal with the said violence and riots and certain other matters as may be found relevant in the course of the inquiry.

23. The Nanavati Commission of Inquiry gave its Report on 09.02.2005, which was placed before both Houses of Parliament. Before the Parliament, an assurance was given by the then Prime Minister and the Home Minister that wherever the Commission has named any specific individuals which would require further examination or re-opening of cases, steps will be taken to do so within the ambit of law.

24. After examination of the matter, a Communication dated 24.10.2005, was issued by the Ministry of Home Affairs for investigation/re-investigation of cases against Dharam Das Shastri, Jagdish Tytler and Sajjan Kumar for their role in the various cases/actions and the cases were entrusted to the Central Bureau of Investigation (CBI). Consequently, the CBI registered an FIR *vide* RC24/2005-SIU-I/SIC-1/CBI/ND.

25. Upon conclusion of investigation, Chargesheet No.1/10 dated 13.01.2010 was filed against eight accused persons, namely, Sajjan Kumar, Balwan Khokhar, Mahender Yadav, Capt. Bhagmal (Retd.), Girdhari Lal, Krishan Khokhar, Maha Singh and Santosh Rani @ Janta Hawaldarni. The case was registered as Sessions Case 26/2010. Since some of the accused, namely, Ishwar Chand Gaur @ Chand Sharabi, Dharamveer Singh Solanki, Balidan Singh and Raja Ram, had passed away before the trial, proceedings against them stood abated, and charges were framed against the surviving accused persons.

26. *Vide* Judgment dated 30.04.2013, the learned Additional District & Sessions Judge, Karkardooma acquitted Sajjan Kumar while the other five

accused persons were convicted for commission of different offences, which resulted in filing of the following appeals before this Court:

a. Criminal Appeal No. 715/2013 titled '*Mahender Yadav* v. *CBI*'

b. Criminal Appeal No. 753/2013 titled '*Krishan Khokhar* v. *CBI*'

c. Criminal Appeal No. 831/2013 titled '*Jagdish Kaur &Anr.* v. *Balwan Khokhar & Ors.*'

d. Criminal Appeal No. 851/2013 titled '*Capt. Bhagmal Retd.* v. *CBI*'

e. Criminal Appeal No. 861/2013 titled '*Balwan Khokhar* v. *CBI*'

f. Criminal Appeal No. 1099/2013 titled '*State through CBI* v. *Sajjan Kumar & Ors.*'

g. Criminal Appeal No. 710/2014 titled '*Girdhari Lal* v. *CBI*'

27. It is pertinent to note that the CBI investigation and the resultant trial pertained *inter alia* to:-

a. the larger conspiracy resulting in the incidents which took place on 01/02.11.1984 in the Raj Nagar area;

b. the murders of five *Sikh* persons (Kehar Singh, Gurpreet Singh, Raghuvinder Singh, Narender Pal Singh & Kuldeep Singh);

c. damage caused to the Raj Nagar *Gurudwara*.

28. The CBI case did not pertain to the alleged murder of Harbhajan Singh, which was the subject matter of Sessions Case 11/86, presumably on account of acquittal of the accused persons in the said case *vide* Judgment dated 28.05.1986, which were not followed up with any appeals on behalf of the State or the victims.

Submissions of *Amicus Curiae*

29. Learned *Amicus Curiae* has taken this Court through the Written Complaint [Exhibit PW2/A] as also the deposition of PW2 Swaran Kaur to contend that there is no discrepancy at all regarding the place of the incident. He points out that it has been stated in the Written Complaint [Exhibit PW2/A] that the Complainant's husband was attacked and burnt alive. In her deposition before the Ld. Additional Sessions Judge, the Complainant has elaborated to state that they had taken shelter in the house of their neighbour one Mr. Thakur after the mob had arrived, and that the incident took place there. He states that there is nothing to show that the Complainant, in her Written Complaint [Exhibit PW2/A], had alleged that the incident took place at her residence, as opposed to the house of her neighbour, Mr. Thakur. As such, he submits, that there is no contradiction.

30. He further states that the testimony of PW2 Swaran Kaur is unimpeachable. She had identified the accused persons in the Court. He also states that just because some questions were put regarding differences of opinion in connection with some accounts, the same would not be sufficient to disbelieve the entire testimony of PW2 Swaran Kaur.

31. He further states that the incident resulted in large scale violence, devastation of property, and displacement of affected persons. He states that the Complainant had left Delhi, having lost her husband and her place of residence. She had to initially take shelter in relief camps and later shift to Chandigarh. As a result, she was only able to lodge the Written Complaint on 15.11.1984 after getting it drafted whilst she was taking shelter in the relief camp. He submits that the delay of fourteen days in lodging the Written Complaint, which is dated 13.11.1984, has to be appreciated in this

backdrop, and from that angle is duly explained by PW2 Swaran Kaur in her deposition. He states that the conclusion arrived at by the Ld. Additional Sessions Judge of acquitting the accused is totally perverse, and deserved to be set aside.

Submissions on behalf of Ramji Lal Sharma

32. *Per contra*, Ld. Counsel for the sole surviving accused Ramji Lal Sharma, supports the Judgment of the Ld. Additional Sessions Judge. He states that the statements about the attack, identities of the accused, have been inconsistent and there is a contradiction regarding the location of the incident. An attempt has been made by the Ld. Counsel for the accused to contend that in the Written Complaint [Exhibit PW2/A] it is stated that the incident took place at her house whereas in the deposition in Court, it is stated that the incident took place in the house of one Mr. Thakur. He states that Mr. Thakur and his wife have not been examined. He also states that in the absence of any corroboration of the Complainant, the *ipse dixit* of the Complainant cannot be accepted. He states that a case of conviction cannot be made only on the basis of an uncorroborated version of the sole witness.

33. Ld. Counsel for the accused further states that the Respondent No. 4/ Ramji Lal Sharma was not subjected to any investigation by the CBI in any other case(s), and that he has only been roped in, in the present case. He states that the Investigating Officers are not available anymore. He further states that no useful purpose would be served in remanding the matter back to the Trial Court or directing any further re-investigation/fresh investigation.

Analysis:-

34. This Court has heard Mr. Vivek Sood, Ld. Senior Counsel and *Amicus Curiae,* Mr. Bhaskar Vali, Ld. Counsel for the sole surviving accused, *i.e.* Respondent No.4 Ramji Lal Sharma, and Mr. HS Phoolka, Ld. Senior Counsel. This Court has also perused the material available on record, including the record of Sessions Case 11/86, which includes:-

a. Composite Chargesheet dated 25.03.1985 (including *Challan* IV pertaining to PW2 Swaran Kaur's Complaint)

b. FIR 416/1984 dated 04.11.1984 [Exhibit PW1/A]

c. Written Complaint dated 13.11.1984 (submitted on 15.11.1984) by PW2 Swaran Kaur [Exhibit PW2/A]

d. Search-sum-Seizure Memoranda drawn up at the time of arrest of accused persons [Exhibits PW3/A, PW3/B & PW3/C]

e. Site Plan [Exhibit PW3/E]

f. Depositions of Prosecution Witnesses [PWs 1-5]

g. Statements of accused persons recorded under Section 313 CrPC

h. Judgment dated 28.05.1986 passed by the Ld. Additional Sessions Judge, New Delhi in Sessions Case 11/86

35. Even though this Court has not been able to peruse the statements recorded by the Investigating Agency under Section 161 of the CrPC, but that alone need not deter this Court from proceeding ahead by exercising its jurisdiction under Section 401 of the CrPC. Since 'vitally important basic records' a phrase employed by the Apex Court in State of U.P v. Abhai Raj Singh & Anr., **(2004) 4 SCC 6**, of Sessions Case 11/86 are available before

this Court, and the same reveal several manifest errors of law, as noted hereinbelow, this Court is proceeding with consideration of the matter.

36. Since three out of the four accused persons tried and acquitted have passed away, proceedings against them stand abated. The consideration and findings in the present case are limited insofar as the case of the sole surviving accused, *i.e.* Respondent No. 4/Ramji Lal Sharma, is concerned.

37. During the course of the present proceedings, the Complainant, *i.e.* Respondent No. 6 / PW2 Swaran Kaur, was traced out, and was reportedly residing in Chandigarh, as recorded in Order dated 11.07.2017.

Regarding purported contradiction in the version of PW2 Swaran Kaur

38. The Written Complaint [Exhibit PW2/A] dated 13.11.1984 is available before this Court. In the Complaint, PW2 Swaran Kaur has stated that she resides at F-439, RZ- Raj Nagar, Palam Colony, New Delhi. It is stated that on 01.11.1984 at about 10:00 AM, certain persons attacked and burnt her husband and her house. In the complaint, she identified Shiv Charan, Dhanpat Kumar and his brother, one Goel, who stayed behind her house, Ramji Lal Sharma, Bal Kishan, Surinder of Village Bagdola and others.

39. In her deposition, she has elaborated as to how the incident took place and has stated that a mob of about 2000-2500 people attacked her house, on account of which she and her husband along with their children went to the neighbouring house of Mr. Thakur for protection. It is stated that her house was set on fire, whereafter they went to the house of Mr. Thakur. The mob broke open the doors of the house of Mr. Thakur, where they had taken shelter. The Complainant and her children were pushed aside by the mob.

Thereafter, the persons in the mob blackened the face of her husband, cut his hair and set him on fire.

40. The substratum of acquittal of the accused persons by way of the Judgment dated 28.05.1986 under consideration is that there is a major contradiction between the version proffered by PW2 Swaran Kaur in her Written Complaint [Exhibit PW2/A] and her deposition before Court.

41. Having perused the record of Sessions Case 11/86, this Court is consciously refraining from expressing any opinion on facts in respect of the purported contradiction. Even if one were to assume that such contradiction did exist, the same has not been 'duly proved' in accordance with the procedure prescribed in Section 145 of the Evidence Act. A bare perusal of the deposition of PW2 Swaran Kaur reveals that her attention was not drawn by the Ld. Defence Counsel to the purportedly contradictory portion from her previous version [Exhibit PW2/A], nor were such portions marked out. At no point of time was PW2 Swaran Kaur called upon during cross examination to explain such contradiction.

42. The Apex Court in V K Mishra v. State of Uttarakhand, **(2015) 9 SCC 588**, while examining the provisions of Section 145 of the Evidence Act, has observed as under:

> *"**16.** Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used*

primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

17. *The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.*

18. *Section 145 of the Evidence Act reads as under:*

> *"145.Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."*

19.<u>*Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to*</u>

be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

(Emphasis supplied)

43. Similarly, in State of UP v. Anil Singh, **1988 (Supp) SCC 686**, the Apex Court has held as under:-

*"**19.** It was argued by Shri Frank Anthony, learned Senior Counsel for the accused that it would be impossible for any person to prepare such an*

> *exhaustive report and lodge the same before the police so soon after the occurrence. According to counsel, the report must have been prepared after the inquest and non-mentioning of the time of despatch of FIR to the court would lend support to his submission. We carefully examined the material on record. We are unable to accept the submission of learned counsel. In the first place, PW 1 was not specifically cross-examined on this matter. The court cannot therefore, presume something adverse to the witness unless his attention is specifically drawn to it. Secondly, the records contain unimpeachable evidence to the contrary. Apart from the records of the police station, the Panchnama (Ex. Ka. 7) to which Ramesh Chandra Dube (DW 1) has admittedly appended his signature shows that the reporting time of the crime was 9.15 p.m. DW 1 accompanied Prahlad Kumar to police station to lodge the report though he later defected to the defence. He is a political figure and social worker. Highly qualified too. He would not have signed the panchnama if the statements therein were not true and correct."*
>
> *(Emphasis supplied)*

44. In the absence of such steps, the Ld. Additional Sessions Judge fell in grave error in concluding that – (a) a contradiction existed; and (b) it was material enough to impeach her entire testimony.

Regarding purported delay in lodging Complaint

45. The other basis on which the Ld. Additional Sessions Judge proceeded to acquit the accused persons was on account of the purported delay in lodging the complaint. In that regard, *ex facie* the Court failed to factor in the precarious situation and communal tensions which existed in the aftermath of the assassination of Ms. Indira Gandhi, and the ensuing riots and violence against members of the *Sikh* community. A bare perusal

of the deposition of PW2 Swaran Kaur reflects that, after having lost her husband, she had to take shelter with her children in relief camps after her house was burnt in the attack on 01.11.1984. Only after finding shelter and coming to terms with the loss of her husband as well as her place of abode, was she in a position to get her Written Complaint [Exhibit PW2/A] dated 13.11.1984 drafted from the relief camp. The Written Complaint [Exhibit PW2/A] appears to have been given to PS Delhi Cantonment on 15.11.1984. At present, this Court is again consciously refraining from expressing any conclusive finding of fact on this aspect.Reference, however, can be made to the decision of the Apex Court in *Ravinder Kumar* v. *State of Punjab* [(2001) 7 SCC 690] which discusses the impact of delayed lodging of complaints and the manner in which a plea on that ground ought to be considered by a Court:

> *"…**13.** The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.*

14.*When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.*

15. *We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR."*

(Emphasis supplied)

Regarding prior enmity between the Deceased and accused persons

46. The Ld. Additional Sessions Judge appears to have treated the factum of certain quarrels between Harbhajan Singh (deceased) and the accused

persons over accounts of *Mohalla Samiti* as a basis for false implication of the accused persons. It is trite law that a plea of false implication on account of prior enmity cannot lead to acquittal if the evidence reveals commission of an offence.

Regarding lack of corroboration of testimony of PW2 Swaran Kaur

47. Finally, the last basis on which the Ld. Additional Sessions Judge proceeded to pass a Judgment of acquittal was on account of the fact that the testimony of PW2 Swaran Kaur had not been corroborated by any other witness(es). *Prima facie*, this Court is of the view that there is no bar in law in basing a conviction on the testimony of a sole eyewitness if the same inspires confidence, as what the Court is concerned with is not the quantity of witnesses on a particular point but the quality of the deposition.

48. This aspect of the present case also raises serious questions on whether a proper and thorough investigation was conducted in the present case by the Investigating Agency. From the record of Sessions Case 11/86, it appears that sufficient efforts were not made to associate all natural witnesses during investigation, including the children of the deceased who were present at the time of the incident, and/or any neighbours, including the persons in whose house the Complainant and her family had taken shelter after the mob had burnt their house down. It was on account of this position that this Court was constrained to observe as under in its Order dated 29.03.2017:-

> *"…**85.** A perusal of the above composite chargesheet / final report under Section 173 of the Cr.P.C. dated 25th March 1985 would show that the bare essential requirements of an investigation into any of the complaints do not appear to have been carried out before its filing…No effort was made to trace out the*

> *dead bodies or the stolen materials. No statement of the eye-witnesses, including relatives or any other neighbours or other public persons who may have been present has been recorded. To say the least, the bare notions of investigation do not seem to have been carried out before the challan has been filed.*
>
> *****
>
> ***87.****The prosecutors also appear to have completely abdicated their duties and have not assisted the trial courts nor ensured that the truth was brough out, guilty convicted and serious crimes punished. The prosecutions were launchedwithout any effort at ensuring that investigations were honestly complete and that culpability could be fixed."*
>
> *(Emphasis supplied)*

49. Even the Ld. Additional Sessions Judge, New Delhi clearly failed in his duty to ensure that the defects in investigation were rectified by appropriate directions *inter alia* of further investigation. We may make reference to the decision of the Apex Court in Zahira Habibulla H Sheikh & Anr. v. State of Gujarat & Ors., **(2004) 4 SCC 158,** in this regard insofar as it was observed that:-

> *"**43.** The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate*

objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

44. *The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. : (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In Mohanlal v. Union of India [1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, "any court", "at any stage", or "any enquiry or trial or other proceedings", "any person" and "any such person" clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is*

essential to the just decision of the case, "essential" to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

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55. *The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.*

56. *As pithily stated in Jennison v. Baker [(1972) 1 All ER 997 : (1972) 2 QB 52 : (1972) 2 WLR 429 (CA)] : (All ER p. 1006d)*

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble [(2003) 7 SCC 749 : 2003 SCC (Cri) 1918] .)

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61. *In the case of a defective investigation the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singhv. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])*

62. *In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104 (para 8)] it was held that if*

the lapse or omission is committed by the investigating agency designedly or because of negligence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of courts getting at the truth by having recourse to Sections 311, 391 of the Code and Section 165 of the Evidence Act at the appropriate and relevant stages and evaluating the entire evidence; otherwise the designed mischief would be perpetuated with a premium to the offenders and justice would not only be denied to the complainant party but also made an ultimate casualty.

63. *As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice in the hands of courts. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] .*

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68. *If one even cursorily glances through the records of the case, one gets a feeling that the justice-delivery system was being taken for a ride and literally allowed to be abused, misused and mutilated by subterfuge. The investigation appears to be perfunctory and anything but impartial without any definite object of finding out the truth and bringing to book those who were responsible for the crime. The Public Prosecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court. The Court in turn appeared to be a silent spectator, mute to the manipulations and preferred to*

be indifferent to sacrilege being committed to justice. The role of the State Government also leaves much to be desired. One gets a feeling that there was really no seriousness in the State's approach in assailing the trial court's judgment. This is clearly indicated by the fact that the first memorandum of appeal filed was an apology for the grounds. A second amendment was done, that too after this Court expressed its unhappiness over the perfunctory manner in which the appeal was presented and the challenge made. That also was not the end of the matter. There was a subsequent petition for amendment. All this sadly reflects on the quality of determination exhibited by the State and the nature of seriousness shown to pursue the appeal. Criminal trials should not be reduced to be mock trials or shadow-boxing or fixed trials. Judicial criminal administration system must be kept clean and beyond the reach of whimsical political wills or agendas and properly insulated from discriminatory standards or yardsticks of the type prohibited by the mandate of the Constitution.

69. *Those who are responsible for protecting life and properties and ensuring that investigation is fair and proper seem to have shown no real anxiety. Large number of people had lost their lives. Whether the accused persons were really assailants or not could have been established by a fair and impartial investigation. The modern-day "Neros" were looking elsewhere when Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected. Law and justice become flies in the hands of these "wanton boys". When fences start to swallow the crops, no scope will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments."*

(Emphasis supplied)

50. We are of the opinion that the proceedings have been conducted in a hasty manner.

51. The failure of the Investigating Agency as also the Ld. Additional Sessions Judge cannot inure to the benefit of the accused. It is now trite law that lapses or lacunae in investigation cannot be taken advantage of by the accused. The Apex Court in a recent Judgment passed in the case of Edakkandi Dineshan v. State of Kerala, **(2025) 3 SCC 273**, after placing relying on several judgments on the same issue, has observed as under:-

> *"**26.** A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper investigation could have strengthened its case. In Paras Yadav v. State of Bihar [Paras Yadav v. State of Bihar, (1999) 2 SCC 126 : 1999 SCC (Cri) 104] , the Supreme Court observed as under : (SCC p. 130, para 8)*
>
> > *"**8.** ... the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from Ram Bihari Yadav v. State of Bihar [Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085] : (SCC pp. 523-24, para 13)*
> >
> > *"**13.** ... In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be*

denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice."

27. *Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW 1 Jitesh, PW 2 and PW 4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A-2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 a.m., it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defence. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the accused and the witnesses were well acquainted with each other as PW 1, PW 2 and PW 4*

had defected from CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry."

(Emphasis supplied)

Requirement of re-trial

52. In light of the above findings, the conclusion of acquittal arrived at by the Ld. Additional Sessions Judge cannot be sustained. This Court is conscious of the bar on converting a finding of acquittal into one of conviction in exercise of revisional powers in terms of Section 401(3) of the CrPC. A conjoint reading of Sections 401 and 386 (a) of the CrPC provide this Court with the power to direct further inquiry and retrial while dealing with a judgment of acquittal in revisional jurisdiction. The exercise of such powers is permissible in exceptional cases which *inter alia* reveal a manifest error on a point of law resulting in flagrant miscarriage of justice. Reference in this regard can be made to the decision of the Apex Court in K Chinnaswamy Reddy v. State of Andhra Pradesh & Anr., **(1963) 1 Cri LJ 8** which outlines the circumstances in which the power of directing retrial may be exercised:-

*"**4.** The extent of the jurisdiction of the High Court in the matter of interfering in revision against an order of acquittal has been considered by this Court on a number of occasions. In D. Stephens v. Nosibolla [1951 SCC 184 : (1951) SCR 284] this Court observed—*

"The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised when it is invoked by a private complainant against an order of acquittal, against which the

Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice.This jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on the record."

5. *Again in Logendranath Jha v. Polailal Biswas [1951 SCC 856 : (1951) SCR 676] this Court observed—*

"Though sub-section (1) of Section 439 of the Criminal Procedure Code authorises the High Court to exercise in its discretion any of the powers conferred on a Court of appeal by Section 423, yet sub-section (4) specifically excludes the power to 'convert a finding of acquittal into one of conviction'. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court can in the absence of any error on a point of law reappraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stops short of finding the accused guilty and passing sentence on him by ordering a retrial."

6. *These two cases clearly lay down the limits of the High Court's jurisdiction to interfere with an order of acquittal in revision; in particular, Logendranath Jha case [1951 SCC 856 : (1951) SCR 676] stresses that it is not open to a High Court to convert a finding of acquittal into one of conviction in view of the provisions of Section 439(4) and that the High Court cannot do this even indirectly by ordering retrial. What had happened in that case was that the High Court reversed pure findings of facts based on the trial court's appreciation of evidence but formally complied*

with sub-section (4) by directing only a retrial of the appellants without convicting them, and warned that the court retrying the case should not be influenced by any expression of opinion contained in the judgment of the High Court. In that connection this Court observed that there could be little doubt that the dice was loaded against the appellants of that case and it might prove difficult for any subordinate judicial officer dealing with the case to put aside altogether the strong views expressed in the judgment as to the credibility of the prosecution witnesses and the circumstances of the case in general.

7. *It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still*

> *acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles."*
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> *(Emphasis supplied)*

53. This Court is mindful of the fact that more than forty years have passed since the date of commission of the offence. Ordinarily, a direction of retrial is unwarranted if the time lag between the date of the offence and the date of such direction is long, however, no straitjacket formula in this regard can be employed. The requirement of ensuring that the interests of justice are subserved must be kept at the forefront while considering a case such as the present. Reference in this regard may be made to the decision of the Apex Court in Jitendra Kumar Rode v. Union of India, **(2024) 11 SCC 559**. The relevant part of the judgment passed by the Apex Court in Jitendra Kumar Rode *(supra)* is reproduced herein below:-

> *"**31.** In numerous judgments rendered by various High Courts, a similar view to the effect that a conviction cannot be upheld in the absence of the records of the court below has been expressed. Taking note of Sita*

Ram [Sita Ram v. State of U.P., 1980 SCC OnLine All 531 : 1981 Cri LJ 65] , the time elapsed between the occurrence of the offence and the appeal being finally decided, these courts have held that in the absence of essential documents such as the FIR or witness statements, a retrial too cannot be said to be serving the ends of justice. [Khalil Ahmad v. State of U.P. [Khalil Ahmad v. State of U.P., 1986 SCC OnLine All 211] ; Vir Pal v. State of U.P. [Vir Pal v. State of U.P., 1999 SCC OnLine All 1348] ; Hira Lal v. State of U.P. [Hira Lal v. State of U.P., 1999 SCC OnLine All 1392] and Bhunda v. State of U.P. [Bhunda v. State of U.P., 2001 SCC OnLine All 864]]

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36. *In the facts at hand, the alleged offence in question was committed on 21.3.1995, and the judgment of the Trial Court was delivered on 7.12.1999. More than 28 years have passed since the commission of the offence. As already indicated, the relevant Trial Court record has not been able to be reconstructed, despite the efforts of the courts below. Hence, in our considered view, as discussed above, ordering a retrial is not in the interest of justice and will not serve any fruitful purpose. The time elapsed must be taken into consideration by the Court, and we may stress on that, only after taking due note of and taking steps to abide by the warning issued by this Court in Abhai Raj Singh (supra), as was correctly done in Sita Ram (supra).*

37. *...Therefore, in the considered view of this Court, it is not within prudence to lay down a straightjacket formula, we hold that non-compliance with the mandate of the section, in certain cases contingent upon specific facts and circumstances of the case, would result in a violation of Article 21 of the Constitution of India, which we find it to be so in the instant case."*

(Emphasis supplied)

54. Along the same lines, we may also advert to the following extract from the decision of the Apex Court in Zahira Habibulla H Sheikh &Anr. v. State of Gujarat & Ors., **(2004) 4 SCC 158**:-

> *"**52.** Whether a retrial under Section 386 or taking up of additional evidence under Section 391 is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated.*
>
> ***53.** In the ultimate analysis whether it is a case covered by Section 386 or Section 391 of the Code, the underlying object which the court must keep in view is the very reason for which the courts exist i.e. to find out the truth and dispense justice impartially and ensure also that the very process of courts are not employed or utilized in a manner which give room to unfairness or lend themselves to be used as instruments of oppression and injustice."*
>
> *(Emphasis supplied)*

55. The guiding factor in considering a plea for retrial is the demand for justice. A Constitutional Court is required to strike a balance between the rights of accused persons not to be subject to undue harassment at retrial, and the rights of victims to a fair and impartial investigation and trial. Echoing this sentiment, the Apex Court in Mohd Hussain @ Julfikar Ali v. State (Government of NCT of Delhi), **(2012) 9 SCC 408**, *albeit* in a slightly different context, observed as under:-

> *"**41.** The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code.*

That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked.

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43. *We have to consider now, whether the matter requires to be remanded for a de novo trial in the facts and the circumstances of the present case. The incident is of 1997. It occurred in a public transport bus when that bus was carrying passengers and stopped at a bus-stand. The moment the bus stopped an explosion took place inside the bus that ultimately resulted in death of four persons and injury to twenty-four persons. The nature of the incident and the circumstances in which it occurred speak volume about the very grave nature of offence. As a matter of fact, the appellant has been charged for the offences under Sections 302/307 IPC and Section 3 and, in the alternative, Section 4(b) of the ES Act. It is true that the appellant has been in jail since 9-3-1998 and it is more than 14 years since he*

was arrested and he has passed through mental agony of death sentence and the retrial at this distance of time shall prolong the culmination of the criminal case but the question is whether these factors are sufficient for the appellant's acquittal and dismissal of indictment. We think not.

44. *It cannot be ignored that the offences with which the appellant has been charged are of very serious nature and if the prosecution succeeds and the appellant is convicted under Section 302 IPC on retrial, the sentence could be death or life imprisonment. Section 302 IPC authorises the court to punish the offender of murder with death or life imprisonment. Gravity of the offences and the criminality with which the appellant is charged are important factors that need to be kept in mind, though it is a fact that in the first instance the accused has been denied due process. While having due consideration to the appellant's right, the nature of the offence and its gravity, the impact of crime on the society, more particularly the crime that has shaken the public and resulted in death of four persons in a public transport bus cannot be ignored and overlooked. It is desirable that punishment should follow offence as closely as possible. In an extremely serious criminal case of the exceptional nature like the present one, it would occasion in failure of justice if the prosecution is not taken to the logical conclusion. Justice is supreme. The retrial of the appellant, in our opinion, in the facts and circumstances, is indispensable. It is imperative that justice is secured after providing the appellant with the legal practitioner if he does not engage a lawyer of his choice."*

(Emphasis supplied)

56. Similarly, in Zahira Habibulla H Sheikh & Anr. v. State of Gujarat & Ors., **(2004) 4 SCC 158**, the Apex Court underscored the importance of

striking a balance between the rights of accused *vis-à-vis* the rights of victims, and outlined the concept of a fair trial in the following words:-

> *"**36.** The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.*
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> *****
>
> ***38.** A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and*

obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

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39. *Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.*

40. *The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.*

*****

49. *...As reiterated supra, the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the*

hands of the court in the discharge of its judicial functions."

(Emphasis supplied)

57. Keeping in mind the *dicta* of the Apex Court in the decisions cited above, this Court is of the view that the present case undoubtedly falls within the category of an 'exceptional case' warranting setting aside of the Judgment dated 28.05.1986 passed in SC No.11/1986 and consequent direction for a retrial since the Ld. Additional Sessions Judge committed several manifest errors of law as outlined in the preceding part of this Judgment. These errors have resulted in miscarriage of justice which is evident from the fact that a grave offence of murder and arson with communal overtones has neither been investigated properly by the Investigating Agency, nor tried in right stead by the Ld. Additional Sessions Judge. Resultantly, the victims, including the wife and children of the deceased Harbhajan Singh, have been deprived of their valuable fundamental right under Article 21 to a fair investigation and trial which if not rectified may result in a loss of hope in our legal system and compromise the interests of society.

58. We have consciously proceeded with care and circumspection to merely note bare facts concerning the incident which forms the subject matter of Sessions Case 11/86 only insofar as the same are necessary for proper adjudication of the present Revision Petition and to ascertain the manifest errors in law committed by the Ld. Additional Sessions Judge. None of our findings may be construed as an expression of opinion on the merits of the case. The jurisdictional Trial Court is required to independently

assess the evidence on record while deciding the case before it, uninfluenced by any observations contained hereinabove.

Requirement of further investigation

59. As noted above, it appears that sufficient efforts were not made to associate all natural witnesses during investigation, including the children of the deceased who were present at the time of the incident, and/or any neighbours, including the persons in whose house the Complainant and her family had taken shelter after the mob had burnt their house down, as also other public persons who may have been present. Similarly, no effort was made to trace out the corpse of the deceased Harbhajan Singh, as also articles stolen from the house of the Complainant.

60. We may advert to the deposition of PW3 SI AK Saxena, who served as the Investigating Officer of the case from 26.02.1985, which reflects the aforesaid position:-

> "Q: Did you made any enquiry to find out if one Thakur was residing in neighbourhood of that house or not?
>
> Ans: I made no such enquiry.
>
> I made enquiry from a lady residing in adjacent house she declined to give name or particulars."

61. The deposition of PW4 SI Arjun Singh, who served as the Investigating Officer till 23.02.1985, is in similar vein:-

> "I did not record statement of any one from the mohalla of the place of incident.
> …
>
> It is wrong to suggest that I made enquiry from Thakur and others and none corroborated the statement of Smt. Swaran Kaur…
> …

Q: Can you assign any reason for not recording the statement of Thakur or his wife?

Ans: I made a search of both Thakur and his wife but they were not available.

I do not remember the date on which I went to the house of Thakur but I had gone there a number of times."

62. As rightly stated by the Ld. *Amicus Curiae*, a bloodbath took place after the assassination of late Ms. Indira Gandhi, and as a result of the violence, widows, children and persons residing in the vicinity ran away for their safety and took shelter elsewhere, which naturally meant they would not have been readily available for investigation. That, however, would not absolve the Investigating Agency of its duty to make sure that the best evidence was gathered by taking recourse to the powers accorded under the CrPC, so that any gaps in the evidence could not be misused subsequently at trial by accused persons to get off the hook.

63. The fact that the investigations were conducted in a shoddy manner has been well recognised in the various Committee Reports including the Nanavati Commission Report, which led to directions for the investigation to been trusted to the CBI for looking into the larger conspiracy resulting in the incidents which took place on 01/02.11.1984 in the Raj Nagar area and the murders of five *Sikh* persons (Kehar Singh, Gurpreet Singh, Raghuvinder Singh, Narender Pal Singh & Kuldeep Singh), leading to the conviction of six accused persons named in that case.

64. In its Order dated 29.03.2017, this Court while invoking its jurisdiction under Section 401 of the CrPC, had *inter alia* passed the following directions:

> *"**90.** Given the manner in which the Delhi Police appears to have conducted itself and the failure of the prosecution in performing its basic functions, we are of the view that independent assistance is needed by this court for consideration of the case.*
>
> *****
>
> ***93.** We accordingly direct as follows:-*
>
> *****
>
> ***(iii)** Issue notice without process fee to private respondent nos. 1 to 4 as well as the State – respondent no.5 to show cause as to why this court not direct fresh/further investigation into the complaint of Smt. Swaran Kaur by an independent agency as the Central Bureau of Investigation."*

65. The power to order further investigation and of transferring investigation to another agency vests in this Court in exercise of its Constitutional powers under Article 226 as also its inherent powers under Section 482 of the CrPC, as clarified by the Apex Court in Vinay Tyagi v. Irshad Ali, **(2013) 5 SCC 762**, has observed as under:-

> *"**43.** At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of*

> *transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."*
>
> *(Emphasis supplied)*

66. Further, it is trite law that this Court is entitled to exercise its inherent powers while exercising revisional jurisdiction, as held by the Apex Court in Popular Muthiah v. State, **(2006) 7 SCC 296**:-

> *"**29.** The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters."*
>
> *(Emphasis supplied)*

67. Given the obtaining fact situation and to aid the truth-finding exercise which was given a go-by previously, we deem it fit to direct the CBI to conduct further investigation in the present case. The CBI would have a free hand in ascertaining the scope of such further investigation. We are cognisant of the fact that over forty years have passed since the occurrence took place. However, that by itself ought not to deter us from making the present direction for further investigation, since the alternative would entail turning a Nelson's eye to the needs of the society at large and the rights of victims, including the Complainant and her children, to a comprehensive free and fair investigation. The CBI is expected to carry out such further investigation on a best effort basis to gather whatever evidence is available today.

Conclusion

68. We accordingly hold as under:-

a. The Judgment dated 28.05.1986 passed by the Ld. Additional Sessions Judge, New Delhi in Sessions Case 11/86 acquitting the accused is set aside.

b. The matter is remanded back to the jurisdictional Trial Court for retrial.

c. The evidence recorded by the Ld. Additional Sessions Judge, New Delhi would stand, however, it would be open for the parties (Prosecution as well as the Defence) to adduce such further evidence, as may be necessary, and recall or re-examine such witnesses, as is considered necessary to meet the ends of justice.

d. Given the vintage of incident, and the fact that over forty years have passed since, the CBI is expected to conclude further investigation on priority in an expeditious manner.

e. The Delhi Police would cooperate in the handover of case files to the CBI for the purpose of further investigation.

f. The jurisdictional Trial Court must factor in the findings, if any, of such further investigation.

g. To obviate any difficulties on account of non-availability of witnesses and passage of time, the jurisdictional Trial Court may take recourse to any and all available provisions under the CrPC/BNSS and the Evidence Act/Bharatiya Sakshya Adhiniyam, including for reconstruction of any remaining records, if need be.

h. Needless to say, the observations made above are only for the purpose of deciding the present Revision Petition, and shall not be construed by the jurisdictional Trial Court as an expression of opinion on the merits of the case. The jurisdictional Trial Court is required to independently assess the evidence on record while deciding the case before it, uninfluenced by any observations contained hereinabove.

i. The jurisdictional Trial Court is expected to conclude the entire process of retrial as expeditiously as possible.

69. In view of the above, the present revision petition is disposed of, along with pending application(s), if any.

70. 56. This Court expresses its appreciation for the invaluable assistance rendered by Mr. Vivek Sood, learned Senior Counsel (*Amicus Curiae*), and Mr. Vishwajeet Singh, learned Counsel, who has ably assisted the learned *Amicus Curiae* and this Court.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

AUGUST 11, 2025
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