

§~

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

+ **CRL.A. 1099/2013**

STATE THROUGH CBI

..... Appellant

Through: Mr. R. S. Cheema, Sr. Advocate with
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.

Mr. H. S. Phoolka, Sr. Advocate with
Ms. Kamna Vohra and Ms. Shilpa
Dewan, Advocates for Complainant
Jagdish Kaur.

Mr. Gurbaksh Singh, Mr. Jarnail
Singh and Ms. Jasleen Chahal,
Advocates for Complainant Jagsher
Singh.

versus

SAJJAN KUMAR & ORS

..... Respondents

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Anil K. Sharma, Mr. S. A.
Hashmi, Mr. Vinay Tripathi,
Mr. Anuj Kumar Sharma, Mr. Ambar
Bhushan and Mr. C. M. Sangwan,
Advocates for R-1.

Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rakesh Vats, Advocate and
Mr. Jeetin Jhala, Advocate for R-2.

Mr. R. N. Sharma, Advocate for R-3.

Mr. Aditya Vikram, Advocate
(DHCLSC) with Mr. Avinash,
Advocate for R-4.

Mr. Vikram Panwar, Advocate with
Mr. Vikas Walia and Mr. Suyash
Sinha, Advocates for R-5 and R-6.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

ORDER
17.12.2018

1. By a common judgment passed today in this appeal (certified copy placed below) and the connected appeals, this Court has partly allowed this appeal and reversed the impugned judgment dated 30th April 2013 passed by the District & Sessions Judge, North-east District, Karkardooma Courts in SC No.26/2010 to the following extent.

2. As far as Respondent No.1 is concerned, he is convicted and sentenced as under:

- (i) For the offence of criminal conspiracy punishable under Section 120B read with
 - (a) Section 302 IPC, to imprisonment for life, i.e. the remainder of his natural life;
 - (b) Section 436 IPC, to RI for 10 years and fine of Rs. 1 lakh and in default of payment of fine to undergo SI for 1 year;
 - (c) Section 153A (1) (a) and (b) IPC, to RI for three years; and
 - (d) Section 295 IPC, to RI for two years.
- (ii) For the offence of abetting the commission of criminal offences punishable under Section 109 read with Sections 302, 436, 153A (1) (a) and (b), and 295 IPC to identical sentences as in (i) (a) to (d) above.

3. The bail and surety bonds furnished by Respondent No.1 stand cancelled

and he shall surrender not later than 31st December 2018, failing which he shall forthwith be taken into custody to serve out the sentences awarded to him.

4. As far as Respondent Nos. 2 to 6 are concerned, the convictions and sentences awarded to each of them by the trial Court by its judgment dated 30th April 2013 and order on sentence dated 9th May 2013 are hereby affirmed. Further, this Court convicts and sentences each of them for the offence of criminal conspiracy punishable under Section 120B read with

- (i) Section 436 IPC, to RI for 10 years and fine of Rs. 1 lakh and in default of payment of fine to undergo SI for 1 year;
- (ii) Section 153A (1) (a) and (b) IPC, to RI for three years; and
- (iii) Section 295 IPC, to RI for two years.

All sentences, including those awarded by the trial Court, to run concurrently.

5. Respondent Nos. 2, 3, and 4 are already in custody. Respondent Nos. 5 and 6 shall surrender not later than 31st December 2018, failing which they shall forthwith be taken into custody to serve out the sentences awarded to each of them. The bail bonds and surety bonds furnished by Respondent Nos. 5 and 6 stand cancelled forthwith.

6. Respondent Nos. 5 and 6 shall not, from this moment till their surrender, leave the NCT of Delhi in the meanwhile and each of them shall immediately provide to the CBI the addresses and mobile number(s) where each of them can be contacted.

7. The appeal is disposed of accordingly.

S. MURALIDHAR, J.

VINOD GOEL, J.

DECEMBER 17, 2018

§~

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

Reserved on: 29th October 2018
Pronounced on: 17th December 2018

+ **CRL.A. 1099/2013**

STATE THROUGH CBI

..... Appellant

Through: Mr. R. S. Cheema, Sr. Advocate with
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.
Mr. H. S. Phoolka, Sr. Advocate with
Ms. Kamna Vohra and Ms. Shilpa
Dewan, Advocates for Complainant
Jagdish Kaur.
Mr. Gurbaksh Singh, Mr. Jarnail
Singh and Ms. Jasleen Chahal,
Advocates for Complainant Jagsher
Singh.

versus

SAJJAN KUMAR & ORS

..... Respondents

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Anil K. Sharma, Mr. S. A.
Hashmi, Mr. Vinay Tripathi,
Mr. Anuj Kumar Sharma, Mr. Ambar
Bhushan and Mr. C. M. Sangwan,
Advocates for R-1.
Mr. Sandeep Sethi, Senior Advocate
with Mr. Rakesh Vats and Mr. Jeetin
Jhala, Advocates for R-2.
Mr. R. N. Sharma, Advocate for R-3.
Mr. Aditya Vikram, Advocate
(DHCLSC) with Mr. Avinash,
Advocate for R-4.
Mr. Vikram Panwar, Advocate with

Mr. Vikas Walia and Mr. Suyash
Sinha, Advocates for R-5 and R-6.

+ **CRL.A. 861/2013 & CRL.M.B. 1406/2018**

BALWAN KHOKHAR Appellant
Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Rakesh Vats and Mr. Jeetin
Jhala, Advocates.

versus

CBI Respondent
Through: Mr. R. S. Cheema, Sr. Advocate with
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.

+ **CRL.A. 715/2013**

MAHENDER YADAV Appellant
Through: Mr. Vikram Panwar, Advocate with
Mr. Vikas Walia and Mr. Suyash
Sinha, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. R. S. Cheema, Sr. Advocate with
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.

+ **CRL.A. 851/2013 & CRL.M.A. 6605/2018**

CAPT. BHAGMAL RETD. Appellant
Through: Mr. R. N. Sharma, Advocate

versus

CBI Respondent
Through: Mr. R. S. Cheema, Sr. Advocate
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.

+ **CRL.A. 710/2014**
GIRDHARI LAL Appellant
Through: Mr. Aditya Vikram, Advocate
(DHCLSC) with Mr. Avinash,
Advocate.

versus

STATE THROUGH CBI Respondent
Through: Mr. R. S. Cheema, Sr. Advocate
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.

+ **CRL.A. 753/2013**
KRISHAN KHOKAR Appellant
Through: Mr. Vikram Panwar, Advocate with
Mr. Vikas Walia and Mr. Suyash
Sinha, Advocates.

versus

C B I Respondent
Through: Mr. R. S. Cheema, Sr. Advocate
Mr. D. P. Singh, Ms. Tarannum
Cheema, Ms. Hiral Gupta, Mr. Manu
Mishra & Ms. Smrithi Suresh,
Advocates for CBI.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

JUDGMENT

Dr. S. Muralidhar, J.:

Contents

Charges framed against A1.....	8
Charges framed against A2 to A-6	10
The prosecution case.....	12
Raj Nagar Gurudwara incident and killing of Nirmal Singh	13
Murders at Shiv Mandir Marg	16
Inconclusive investigation and subsequent Commissions of Inquiry.....	23
The Justice Nanavati Commission and subsequent investigation by CBI.....	25
The charge sheet.....	28
The trial Court's judgment.....	31
Appeals against the acquittal of A1	37
Prosecution's submissions as regards A1	38
Complainant's submissions as regards A1	45
Submissions on behalf of A-1	50
The Court's findings as regards the role of Sajjan Kumar (A-1).....	65
Failure to register FIRs and unsatisfactory investigations.....	65
Past involvement of A-1	75
Order framing charges against A1 upheld.....	85
Admissibility of statements made before the Commissions of Inquiry.....	89
Extraordinary circumstances leading to A1 not being named.....	91
Analysis of the evidence of PW-1	95
Analysis of the evidence of PW-3	116
Analysis of the evidence of PW-4	119
Analysis of the evidence of PW-6	121
Analysis of the evidence of PW-7	125
Analysis of the evidence of PW-12	127
Analysis of the evidence of PW-10	129
Analysis of the evidence of PW-9	136
Analysis of the defence witnesses.....	137
Finding on A-1's involvement in criminal conspiracy.....	143
Reversal of acquittal	157
Conviction of A-1	162
Appeals by Mahender Yadav (A-3) and Krishan Khokar (A -6).....	163
Appeal by Captain Bhagmal (Retd) (A-4)	174
Appeal by Balwan Khokar (A -2)	186
Appeal by Girdhari Lal (A -5)	187
Crimes against humanity.....	191
Summary of conclusions.....	198
Sentences.....	201
Conclusion.....	203

In the summer of 1947, during partition, this country witnessed horrific mass crimes where several lakhs of civilians, including Sikhs, Muslims and Hindus were massacred. A young poet, Amrita Pritam, who fled to this country with her two little children from Lahore was witness to the manifold tragedies during that perilous journey. She was moved to pen an 'Ode to Waris Shah' in which she spoke of the fertile land of Punjab having "sprouted poisonous weeds far and near" and where "Seeds of hatred have grown high, bloodshed is everywhere / Poisoned breeze in forest turned bamboo flutes into snakes / Their venom has turned the bright and rosy Punjab all blue". The killings would continue in the streets of Delhi.

Thirty-seven years later, the country was again witness to another enormous human tragedy. Following the assassination of Smt. Indira Gandhi, the then Prime Minister of India, on the morning of 31st October 1984 by two of her Sikh bodyguards, a communal frenzy was unleashed. For four days between 1st and 4th November of that year, all over Delhi, 2,733 Sikhs were brutally murdered. Their houses were destroyed. In the rest of the country too thousands of Sikhs were killed.

A majority of the perpetrators of these horrific mass crimes, enjoyed political patronage and were aided by an indifferent law enforcement agency. The criminals escaped prosecution and punishment for over two decades. It took as many as ten Committees and Commissions for the investigation into the role of some of them to be entrusted in 2005 to the Central Bureau of Investigation (CBI), 21 years after the occurrence.

The present appeals arise as a result of the investigation by the CBI into the killing of five Sikhs in the Raj Nagar Part I area in Palam Colony in South West Delhi on 1st and 2nd November 1984 and the burning down of a Gurudwara in Raj Nagar Part II. Six accused, including Sajjan Kumar a Congress leader who was a Member of Parliament at that time, were sent up for trial some time in 2010. Three years later, the trial court convicted five of the accused: three of them for the offences of armed rioting and murder and two of them for the offence of armed rioting. Sajjan Kumar stood acquitted by the trial Court of all offences. The convicted accused as well as the CBI appealed to this Court.

In the judgment that follows this Court has partly allowed CBI's appeal and reversed the acquittal of Sajjan Kumar. This Court has convicted him for the offences of criminal conspiracy and abetment in the commission of the crimes of murder, promoting enmity between different groups on grounds of religion and doing acts prejudicial to maintenance of communal harmony, defiling and destruction of the Gurudwara by burning. Further while affirming the conviction and sentences awarded by the trial court to the other five accused, this Court has additionally convicted and sentenced them for the offence of criminal conspiracy to commit the aforementioned crimes.

The accused in this case have been brought to justice primarily on account of the courage and perseverance of three eyewitnesses. Jagdish Kaur whose husband, son and three cousins were the five killed; Jagsher Singh, another cousin of Jagdish Kaur, and Nirpreet Kaur who saw the Gurudwara being burnt down and her father being burnt alive by the raging mobs. It is only after the CBI entered the scene, that they were able to be assured and they spoke up. Admirably, they stuck firm to their truth at the trial.

This Court is of the view that the mass killings of Sikhs in Delhi and elsewhere in November 1984 were in fact 'crimes against humanity'. They will continue to shock the collective conscience of society for a long time to come. While it is undeniable that it has taken over three decades to bring the accused in this case to justice, and that our criminal justice system stands severely tested in that process, it is essential, in a democracy governed by the rule of law to be able to call out those responsible for such mass crimes. It is important to assure those countless victims waiting patiently that despite the challenges, truth will prevail and justice will be done.

* * * * *

1. These appeals are directed against the judgment dated 30th April 2013 passed by the District & Sessions Judge, North-east District, Karkardooma Courts, Delhi ('trial Court') in SC No.26/2010 arising out of FIR No.RC-SI-1/2005/S0024 registered at PS Delhi Cantonment acquitting Sajjan

Kumar (Accused No.1: 'A -1') of the offences of criminal conspiracy and abetment while, at the same time, convicting Balwan Khokar ('A-2'), Mahender Yadav ('A-3'), Captain Bhagmal (Retd.) ('A-4'), Girdhari Lal ('A-5'), and Krishan Khokar ('A-6'). The trial Court convicted A-2, A-4, and A-5 for the offences punishable under Sections 147, 148, and 302 read with 149 IPC. A-3 and A-6 were convicted for the offences punishable under Sections 147 and 148 IPC. By the order on sentence dated 9th May 2013, they have been sentenced in the following manner:

- (i) For the offence punishable under Section 302 read with Section 149 IPC, A-2, A-4, and A-5 were sentenced to imprisonment for life along with payment of a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment ('RI') for six months;
- (ii) For the offence punishable under Section 147 IPC, all five convicted accused were sentenced to two years' RI along with payment of a fine of Rs.1,000/- and, in default of payment of fine, to undergo RI for six months;
- (iii) For the offence punishable under Section 148 IPC, all five convicted accused were sentenced to three years' RI along with payment of a fine of Rs.1,000/- and, in default of payment of fine, to undergo RI for six months.

2. The Central Bureau of Investigation ('CBI') has filed CrI.A.1099/2013 challenging the complete acquittal of A-1 and the acquittal of the other accused for the other charges framed against them. The complainant, Jagdish Kaur (PW-1), had also preferred CrI.A.850/2013 against the acquittal of A-1 which was subsequently withdrawn, with this Court

granting her liberty to address arguments in Crl.A.1099/2013.

3. The convicted accused, have filed separate appeals. Crl.A.861/2013 has been preferred by A-2, Crl.A.715/2013 by A-3, Crl.A.851/2013 by A-4, Crl.A.710/2014 by A-5, and Crl.A.753/2013 by A-6.

Charges framed against A-1

4. Four articles of charge were framed against A-1. First, he was charged with having committed the offence of criminal conspiracy punishable under Section 120B read with Sections 147, 148, 302, 395, 427, 436, 449, 153A, 295, and 505 IPC on account of entering into an agreement, on or about 31st October 1984, with A-2 to A-6 as well as Maha Singh, Santosh Rani @ Janta Hawaldarni, Ishwar Chand Gaur @ Chand Sharabi, Dharamveer Singh Solanki, Balidan Singh, Raj Kumar @ Rajaram (all since deceased), and other known and unknown persons including police personnel to commit the following acts:

- (i) Rioting,
- (ii) Rioting armed with deadly weapon,
- (iii) Murder,
- (iv) Mischief causing damage,
- (v) Mischief by fire with intent to destroy houses etc.,
- (vi) House trespass in order to commit offence punishable with death,
- (vii) Dacoity,
- (viii) Promoting enmity between different groups on grounds of religion and doing acts prejudicial to maintenance of harmony,

- (ix) Injuring or defiling place of worship with intent to insult the religion of Sikh community, and
- (x) Making statements conducing to public mischief.

5. Secondly, A-1 was charged with being a principal offender who abetted and instigated the aforementioned co-accused persons in the wake of the assassination of Smt. Indira Gandhi to commit, in pursuance of the aforementioned conspiracy, offences punishable under Sections 147, 148, 302, 395, 427, 436, 449, 153A, 295, and 505 IPC and thereby having committed the offence punishable under Section 109 IPC read with the aforementioned provisions of the IPC.

6. Thirdly, A-1 was charged with having delivered fiery/provocative speeches to the mob gathered at Raj Nagar, Palam Colony, Delhi Cantonment on 1st/2nd November 1984 and having instigated and promoted violent enmity against the Sikh community and disturbed harmony between the two religious groups/communities of the locality in retaliation of the assassination of Smt. Indira Gandhi, giving rise to feelings of enmity, hatred, and ill will between members of the non-Sikh and Sikh communities which was prejudicial to the maintenance of harmony and disturbed public tranquillity and was thereby guilty of committing the offence punishable under Section 153A IPC.

7. Fourthly, A-1 was charged with having publicly made a statement on 1st/2nd November 1984, to wit, by asking members of the Jat community to not leave any Sikh or any other person who had given shelter to Sikhs alive, inciting the mob gathered there by delivering fiery/provocative speeches

and was thereby guilty of committing the offence punishable under Section 505 IPC.

Charges framed against A-2 to A-6

8. Nine articles of charge were framed separately against the five other accused, viz. A-2 to A-6. Firstly, they were charged in a manner similar to A-1 with commission, on or about 31st October 1984, of the offence of criminal conspiracy punishable under Section 120B read with Sections 147, 148, 302, 395, 427, 436, 449, 153A, 295, and 505 IPC.

9. Secondly, they were charged with having been members of an unlawful assembly on 1st/2nd November 1984 in Raj Nagar, Palam Colony, Delhi Cantonment using force and violence in pursuance of the common object to loot, damage, and burn the properties of the Sikh community as well as to kill members of the Sikh community residing in the area in retaliation to the assassination of Smt. Indira Gandhi and were thereby guilty of commission of the offence punishable under Section 147 IPC. Thirdly, they were charged with commission of the aforementioned acts while being members of an unlawful assembly armed with guns, jellies, iron rods/pipes, lathis, kerosene oil, etc. and were thereby guilty of commission of the offence punishable under Section 148 IPC.

10. Fourthly, they were charged with having committed, while being members of the aforementioned unlawful assembly, the murders of Kehar Singh son of Dhyan Singh, Gurpreet Singh son of Kehar Singh, Raghuvinder Singh son of Gurcharan Singh, Narender Pal Singh son of Gurcharan Singh, and Kuldeep Singh son of Hardev Singh and were

thereby guilty of commission of the offence punishable under Section 302 read with Section 149 IPC. Fifthly, they were charged with committing mischief and causing loss and damage amounting to approximately Rs.3,30,000/- while being members of the aforementioned unlawful assembly and were thereby guilty of commission of the offence punishable under Section 427 read with Section 149 IPC.

11. Sixthly, they were charged with committing mischief while being members of the aforementioned unlawful assembly by setting fire to a place of worship, viz. the Raj Nagar Gurudwara, as well as the dwelling houses H.No.RZ-1/129 & RZ-15, Shiv Mandir Marg, Raj Nagar, Palam Colony, New Delhi and were thereby guilty of the commission of the offence punishable under Section 436 read with Section 149 IPC. Seventhly, they were charged with having committed house trespass while being members of the aforementioned unlawful assembly by entering H.No.RZ-1/129 & RZ-15, Shiv Mandir Marg, Raj Nagar, Delhi Cantonment, which were the dwelling house of the five deceased persons, in order to commit the offence of murder which is punishable with death, and were thereby guilty of commission of the offence punishable under Section 449 read with Section 149 IPC.

12. Eighthly, they were charged with having committed dacoity while being members of the aforementioned unlawful assembly in H.No.RZ-1/129 & RZ-15, which belonged to the deceased persons, and were thereby guilty of commission of the offence punishable under Section 395 read with Section 149 IPC. Lastly, they were charged with destroying/damaging/