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**(2010) 10 P&H CK 0394**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Murder Reference No. 6 of 2007 and Criminal Appeal No. 731-DB of 2007

Central Bureau of Investigation

APPELLANT

Vs

Jagtar Singh Hawara and Balwant Singh  
Hawara and Others Vs State through Central Bureau of Investigation

RESPONDENT

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**Date of Decision :** 12-10-2010

**Acts Referred:**

**Citation :** (2010) 10 P&H CK 0394

**Hon'ble Judges :** Arvind Kumar, J.;Mehtab S. Gill, J.

**Bench :** Division Bench

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**Judgement**

Mehtab S. Gill, J.—We will be deciding Murder Reference No. 6 of 2007 of Jagtar Singh Hawara and Balwant Singh and CrI. Appeal No. 731-DB of 2007 of Jagtar Singh Hawara, Lakhwinder Singh @ Lakha @ Hero, Gurmit Singh @ Meeta and Shamsher Singh by a common judgment as the evidence of the prosecution is the same in all the cases.

2. On 31.8.1995 at 5:10 pm, a bomb blast took place in the Punjab and Haryana Civil Secretariat, in which 17 persons were killed namely the then Chief Minister S. Beant Singh, Yashpal Bali, Kultar Singh, Jagjit Singh Kotana, Laxman Dass, Swaran Singh, Rajinder Parshad, Balbir Singh, Dr. Anil Kumar Duggal, Tota Ram, Ajaib Singh, Jagdish Singh son of Dayal, Mukhtiar Singh, Chamkaur Singh, Ranjodh Singh Mann, Dhanwant Singh and Baldev Singh (MLA).

3. In this blast, the human bomb Dilawar Singh also perished and a number of persons were injured namely Manojit Pal Singh (PW56), Bakshish Singh (PW143), Kulwant Singh (PW142), Kesar Dumra (PW57), SI Amar Singh (PW42), Varinder Rana (PW141), D.K. Tripathi (PW78), Satinder Kumar (PW58), Upkar Singh (PW129), Joginder Pal Singh (PW128) and complainant Constable Pala Ram (PW 77). The witnesses who were not examined but were injured were Manmohan Singh, Mahavir Parshad, Constable Durga Dass and Pushpinder Kumar.



2. Balwant 1. 302 r/w Sentenced to death and both of them be hanged Singh and Section 120-B IPC by neck till they are dead. They are also Jagtar Singh sentenced to pay a fine of Rs. 7,000/- each, Hawara and in default of payment of fine, to further undergo simple imprisonment for a period of three years of three years

2. 307 r/w Section RI for 10 years and to pay a fine of 120-B IPC Rs. 5,000/- each, and in default of payment of further undergo simple imprisonment for a fine, to period of three years each.

3. 306 r/w Section 109 R.I for 10 years and to pay a fine of r/w Section 120-B IPC Rs. 5,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three years each.

4. 3(b) r/w Section 6 R.I for life and and to pay a fine of of Explosive Rs. 5,000/- each, and in default of payment Substances Act. of fine, to further undergo simple imprisonment for a period of three years each. 5. 4(b)(ii) r/w R.I for 10 years and and to pay a fine Section 6 of of Rs. 5,000/- each, and in default of Explosive payment of fine, to further undergo simple Substances Act imprisonment for a period of three years each.

6. 5(b) r/w R.I for 10 years and and to pay a fine of Section 6 of Rs. 5,000/- each, and in default of payment Explosive of fine, to further undergo simple Substances Act imprisonment for a period of three years each.

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3. Gurmit Singh, 1. 302 r/w 120B Imprisonment for life each and to pay a Lakhwinder IPC fine of Rs. 10,000/- each, and in default Singh and of payment of fine to further undergo Shamsheer Singh simple imprisonment for three years each.

2. 307 r/w R.I for 10 years and to pay a fine of Section 120B IPC Rs. 5,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of three years each. 3. 306 r/w R.I for 10 years and to pay a fine of Section 109 r/w Rs. 5,000/- each and in default of payment Section 120B IPC of fine, to further undergo simple imprisonment for a period of three years each.

4. 3(b) r/w R.I for life and to pay a fine of Section 6 of Rs. 5,000/- each and in default of payment Explosive of fine, to further undergo simple imprisonment Substances Act. for a period of three years each. 5. 4(b)(ii) r/w R.I for 10 years and to pay a fine of Section 6 of Rs. 5,000/- each and in default of payment Explosive of fine, to further undergo simple Substances Act imprisonment for a period of three years each.

6. 5(b) r/w R.I for 10 years and to pay a fine of Section 6 of Rs. 5,000/- each and in default of payment Explosives of fine, to further undergo simple Substances Act imprisonment for a period of three years each.

All the sentences awarded to the Appellants were to run concurrently.

9. Balwant Singh son of Malkiat Singh did not file an appeal, but since there is a murder reference before us of Balwant Singh also, evidence against him will also have to be re-appreciated.

10. Learned Counsel for CBI Mr. S.K. Saxena has argued that a wireless message Ex.P23/1 was sent by Constable Kartar Singh PW23 that a fire had broken out and the Fire Brigade be sent. Another message was sent at 17:16 pm on 31.8.1995 by the Senior Superintendent of Police to all concerned, that a bomb blast had taken place at the Punjab and Haryana Secretariat. Constable Subhash Chander PW27 sent a wireless message at 17:25 pm that a magnum (Fire Brigade) be sent as bomb blast had taken place. Similarly another message was sent at 17:28 pm that all suspicious vehicles be checked. Constable Rajinder Kumar PW28, the Operator in the Control Room proved the entries in the Log Book Ex.P28/1 and also sent a wireless message at 17:11 hours, to send an ambulance at the Civil Secretariat. Constable of the Traffic Police Gautam Singh PW29 send a wireless message Ex.P29/1 at 17:15 pm that all suspicious vehicles be checked.

11. P. Ganpati PW35 of UNI Services received a message through fax mark "AAA" from Pakistan sent By Wadhawa Singh (P.O) and Mahal Singh (P.O) claiming responsibility of the bomb blast. Similarly K.N. Parashar PW38 of the Hind Samachar Newspaper group received a message through fax mark "DDD", "EEE" and "FFF" from the Babbar Khalsa International, a terrorist organization (hereinafter called as BKI) claiming responsibility of the bomb blast.

12. Dilbagh Singh PW100 has elaborately explained what the BKI as an organization was. He has proved posters Ex. P137 to Ex.P150. Poster Ex.P150, he had got from a member of a Jatha which had gone to Pakistan, which shows the picture of Dilawar Singh, the human bomb and also of Sukhdev Singh Babbar, the head of the BKI organization. He brought on record the constitution of the BKI. He stated that he collected the press note dated 2.9.1995 from his sources in Pakistan. Learned CBI Counsel further argued that it is not the case of the defence that the originals of documents Ex.P137 to Ex.P150 were not available.

13. The motive for the commission of the offence was that the BKI wanted to assert their superiority over the Indian State. They want to impose their own Constitution. They wanted to undermine the authority of the Punjab State and the Government of India. The BKI wants to promote the cause of Khalistan, which was the objective of the BKI, by adopting the path of violence. This is not acceptable in a secular, democratic state. Further the BKI wanted to destabilize the elected Government of India in the Centre and the State Government.

14. In their statement under Section 313 Code of Criminal Procedure, Balwant Singh who has not filed an appeal, has confessed in his answer to question No. 953 put to him that he had committed the offence alongwith Dilawar Singh.

Jagtar Singh Hawara denied everything.

15. Learned Counsel has further argued, that from the judicial confessional statements of Shamsher Singh Ex.PW103/F, Balwant Singh Ex.PW65/F and Jagtar Singh Tara (Proclaimed Offender) Ex.PW86/6 given under Section 164 Code of Criminal Procedure, it comes out that the assassination of S. Beant Singh was the handy work of a conspiracy hatched by the Appellants.

16. Appellant Shamsher Singh before giving his confessional statement was told by PW103 Dinesh Kumar Sharma, Metropolitan Magistrate, New Delhi, that he was not under any compulsion to give the confessional statement and also Shamsher Singh was asked as to whether he had been tortured or coerced into making the statement. Shamsher Singh Appellant gave his statement voluntarily after Dinesh Kumar Sharma PW103 was fully satisfied. It is, thereafter, confessional statement Ex.PW103/G was recorded.

17. Application Ex.PW103/C was moved by the Deputy Superintendent of Police, (CBI) for recording of statement on 15.12.1995 at 11 pm. Shamsher Singh was produced before the Court on 16.12.1995 at 11 pm and his statement was recorded at 3:30 pm on the same day.

18. From the confessional statement of Shamsher Singh accused, it comes out that he was a driver, his job was to procure the RDX from a village in Ajnala Sub Division, which had been sent by Wadhawa Singh (PO) from Pakistan. This, he did, on the instructions of Appellant Jagtar Singh Hawara.

19. Learned Counsel has argued that it is not the case of the defence that the confessional statement was recorded by Dinesh Kumar Sharma, PW103 Metropolitan Magistrate, New Delhi. To question No. 330 given in his statement under Section 313 Code of Criminal Procedure, that the confessional statement Ex.PW103/F was recorded by Dinesh Kumar Sharma, Metropolitan Magistrate, New Delhi, PW103 the answer given by Appellant Shamsher Singh is that he did not know. There is no clear denial that the confessional statement was not recorded by the Metropolitan Magistrate, New Delhi infact he has accepted that the confessional statement is true.

20. Balwant Singh accused was arrested on 14.1.1996 and produced before the Chief Judicial Magistrate, Ambala. In his confessional statement Ex.PW65/E, he has confessed his offence and also that WadhawaSingh (PO), MahalSingh (PO), Jagtar Singh Tara(PO) and Shamsher Singh were involved with him. An application was moved by the Special Public Prosecutor, CBI, Ex.PE65/C on 22.1.1996 before the Metropolitan Magistrate Mr. M.P. Maheshwari, New Delhi. The Metropolitan Magistrate sent Balwant Singh to Judicial Custody till 23.1.1996, these orders being Ex.PW86/4 and Ex.PW86/5. It is, thereafter that the confessional statement of Balwant Singh was recorded on 23.1.1996. It is clear from the Statement of Balwant Singh that the conspiracy was hatched in Pakistan to eliminate S. Beant Singh.

21. The fax message mark "AAA" sent by Wadhawa Singh (P.O) from Pakistan has been proved by Har Charan Singh PW207. Har Charan Singh has stated that he knows Wadhawa Singh(P.O). He identifies his signatures on the posters and the fax message. He has further stated that he has studied with Wadhawa Singh in the Primary School of village Sandhu Jatha. Wadhawa Singh was a member of the Cooperative Agricultural Society of the village alongwith him and he recognizes his signatures. The signatures being the same on the posters and the fax messages sent to Sh. P. Ganpati mark "AAA" and Sh. K.N. Parbhakar mark "DDD". These had been sent on the same day i.e. on 31.8.1995. Inspector Gurdeep Singh PW232 who was the Station House Officer of Police Station Sadar, Kapurthala from 06.10.1995 for about 10 months has stated that Wadhawa Singh (PO) shifted to Pakistan and has a number of FIRs registered against him and has been declared as proclaimed offender in all the cases.

22. Tara Singh PW209 identified the signatures of Mahal Singh (P.O) on documents mark "AAA", mark AAA/1 mark "DDD" and mark DDD/1. He further stated that Mahal Singh was in the Army and they studied in the same class. They belong to the same village i.e. village Desuwal.

23. Appellant Lakhwinder Singh was a constable in the Punjab police. This was proved by Constable Balwinder Singh PW59, C Sukhwinder Pal Singh PW162, C Ranjit Singh PW197, C Driver Darshan Singh PW199 and Surinder Sharma Painter PW51. They have all stated, that Appellant Lakhwinder Singh was working in the Motor Transport Department of the Punjab Police in the Punjab Civil Secretariat. He was a resident of village Kansal.

24. Balwant Singh was a constable attached with Bhushan Sirhindi. Raju Tamirhaan PW60 has stated that Balwant Singh served as a P.S.O with his grand father Bhushan Sirhindi.

25. Taking the confessional statements of Shamsheer Singh, Balwant Singh and Jagtar Singh Tara in totality, a deep rooted conspiracy comes out to eliminate the former Chief Minister.

26. Learned Counsel for the CBI has further argued that Arvind Kumar Prashar PW64 has proved the attendance register Ex.PW64/A and the entries for the month of August and September Ex.PW64/B and Ex. PW64/C of Gurmeet Singh Appellant, who was working alongwith Arvind Kumar Prashar in B. P. L. Engineering Ltd. He has also proved the leave card of Appellant Gurmeet Singh Ex. PW64/D. The initials of Gurmeet Singh are in the register which are Ex.PW64/C-1 and Ex.PW64/B-1 for the month of August and September. Leave Card Ex.PW64/D shows that Gurmeet Singh was absent and was on leave on 31.08.1995, on the day of the occurrence. He was present on September 1 and 2 of 1995 in his office. Appellant Gurmeet Singh was a Diploma Holder in Mechanical Engineering. The belt which was tied around the waist of Dilawar Singh was prepared in the room of Gurmeet Singh at Mohali. RDX also was recovered from his house.

27. Appellant Shamsher Singh is an agriculturist by profession, as stated by Sapinder Singh PW107. In his statement under Section 164 Code of Criminal Procedure Ex.PW107/1 of Sapinder Singh which was recorded on 15.11.1995 by Mr. D.K. Sharma, Metropolitan Magistrate, Delhi, he has stated that he is making his statement voluntarily.

28. Appellant Jagtar Singh Hawara is the Co-ordinator and the king pin between Mahal Singh and Wadhawa Singh (Proclaimed Offenders) and the Appellants. The confessional statement of his co-accused Balwant Singh Ex.PW65/F reveals everything as to the part played by Jagtar Singh Hawara.

29. Jagtar Singh Tara (Proclaimed Offender), before he ran away from Burail Jail, Chandigarh had recorded his confessional statement Ex. PW86/6 to 13. Mohan Rajesh Shekhar PW25 had employed Jagtar Singh Tara as he knew the brothers of Jagtar Singh Tara. Jagtar Singh Tara worked for Mohan Rajesh Shekhar PW25 from the year 1993 as a driver of his car. He paid him Rs. 3,000/-. Jagtar Singh Tara (Proclaimed Offender) absented himself from duty from 24.08.1995 to 31.08.1995. He came back on duty on 01.09.1995 as stated by Mohan Rajesh Shekhar PW25.

30. Manjinder Singh accused(Proclaimed Offender) met Balwant Singh at Shish Ganj Gurdwara. As of today, he is in the United Kingdom. His handwriting has been identified on documents Ex.PW123/2, Ex. PW123/3, Ex.PW123/5 and Ex.PW123/6. The photographs of Manjinder Singh have also been identified on Ex.PW123/8.

31. Dr. Jagjiv Sharma, PW1 conducted post mortem on the body of Chamkaur Singh ASI on 01.09.1995, report is Ex.PW1/3. He conducted the post mortem on Jagjit Singh ASI Ex.PW1/6 on 01.09.1995. Post mortem on Tota Ram, the Gate Keeper Ex.PW1/9 was conducted on 02.09.1995. Post mortem on Dhanwant Singh Ex.PW1/12 was conducted on 10.09.1995 by this witness.

32. Dr. J.R. Chauhan, PW2 conducted the post mortem on Swaran Singh, P.A to the then Chief Minister on 01.09.1995 which is Ex.PW2/3. He conducted the post mortem on Kultar Singh, the Commander of NSG, report is Ex.PW2/11.

33. Dr. P.L. Goyal, PW3 conducted the post mortem on Jagdish Singh Ex.PW3/9 on 01.09.1995.

34. Dr. J.K. Kalra, PW4 conducted postmortem on Ajaib Singh Ex.PW4/10 on 01.09.1995. He conducted the post mortem on Rajinder Parshad, a Commando of the NSG Ex.PW4/22. PW5 Dr. Deepak Bakshi conducted the postmortem on Balbir Singh, the Commando of NSG Ex.PW5/11 on 01.09.1995.

35. A board of doctors headed by Dr. Inderjit Diwan was constituted. Dr. Inderjit Diwan came to the witness box as PW6 and proved post mortem report Ex.PW6/5 of S. Beant Singh. The post mortem on his body was conducted on 01.09.1995. Further the board conducted the post mortem Ex.PW6/26 on Anil Kumar Duggal on 01.09.1995. This board also examined the two legs and skull

and gave report Ex.PW6/43 on 05.09.1995 of being of one and the same person. DNA test on these parts was conducted. They were sent for examination after taking the blood samples of the brother Chamkaur Singh, father Harnek Singh and mother Surjit Kaur of Dilawar Singh. The DNA of the two legs and skull matched with those of the brother and father of Dilawar Singh, the human bomb. The board also conducted the post mortem on Baldev Singh MLA Ex.PW6/91 on 11.09.1995.

36. Dr. Sandeep Singh PW16 conducted the post mortem on Yashpal Bali Ex.PW16/12 on Ranjodh Singh Ex.PW16/38, on Lachman Dass Ex.PW16/15 and Mukhtiar Singh Ex.PW16/27.

37. The post mortem reports on all the dead bodies, as conducted by different doctors came to a definite conclusion that the deceased had been killed by a bomb. There were lacerated wounds on all the deceased and injuries which showed that there were sharpnel inside the bomb. These sharpnel could not be that of the car as they were colorless.

38. Learned Counsel for the CBI has argued that there was no security lapse in guarding the then Chief Minister. Sh. Hem Chand PW41 has stated that he was the Deputy Superintendent of Police Security, in the year 1995 with the Chief Minister, Punjab. The officials were detailed by him at various security points in the Civil Secretariat i.e. at the office of the then Chief Minister. The officials who worked till 5 pm used to continue working after that also, till the Chief Minister left his office. It was the duty of Hem Chand PW41 and his staff to lock up the office of the Chief Minister. Further, this witness has stated that after the blast, the second floor where the office of the Chief Minister was, it was secured and searched, but nothing incriminating was found.

39. Chander Mohan Bakshi PW39, Superintendent of Police Security (Punjab) of CRPF. He has stated that the VIP convoy of S. Beant Singh Chief Minister consisted of nine vehicles. These included three ambassador cars out of which one or two were bullet proof. The other vehicles being a pilot and escort of the CRPF and also vehicles of the Punjab Police and NSG. The NSG had separate vehicles. The last vehicle was an ambulance. All the vehicles were subjected to anti sabotage check in the morning. On the fateful day, the Chief Minister had to go to U. T. Guest House, Chandigarh. As the Chief Minister had to go to U. T. Guest House, Chandigarh, Chander Mohan Bakshi PW39 left a bit early but as he reached the High Court crossing, he heard a bomb explosion. He came back to the Civil Secretariat and saw the car of the Chief Minister in flames.

40. Head Constable Salamat Masih PW40 of the Punjab Police has stated, that his duty was alongwith Constable Raghubir Singh and Deputy Superintendent of Police Ved Pal for the purposes of anti sabotage check in the Chief Minister's residence. He had training in bomb disposal. He has further stated that on 31.08.1995, on checking the cars of the cavalcade, he did not find any bomb or any objectionable article implanted in any vehicle of the Chief Minister's convoy.

After checking the cars, they were handed over to the drivers. Checking was done at about 7:30/8:30 am on 31.08.1995.

41. Gurdeep Singh PW79, Superintendent Police, Commandant Ist IRD, Patiala was also incharge of the Chief Minister's security. This witness has stated that overall incharge of security was with Sh. S.M. Sharma, D.I.G on the fateful day i.e. on 31.08.1995. After Sh. S.M. Sharma, Sh. M.M. Kapoor, D.I.G took over. On 31.08.95, Mr. D.K. Tripathi (Superintendent of Police) was on duty with the Chief Minister. Chief Minister left his office at 5 pm and thereafter in a short time, there was an explosion. Car No. PB-08-3469 was in flames. This car was standing in the VIP porch. Dead bodies were lying around all over. The VIP gate of the Civil Secretariat for security purposes was being managed by the Punjab Police, Punjab Armed Police, C.I.D, Haryana Police and lady police officials. There was an x-ray machine also installed. The flames had also affected car No. PB-27-6516 and car No. PB-27-6514. He has also stated that once the cavalcade of the Chief Minister reached the Civil Secretariat, the three ambassador cars were parked in the VIP area and that area was always cordoned off.

42. Sq.Commander P.K. Joshi (Manesar) PW31 of the NSG has stated that two detachments were provided in Chief Minister's security, one in the day and one in the afternoon. The detachments consisted of six rangers and one Assistant Commandant. On 31.08.1995, two detachments had been ear marked for the security of S. Beant Singh.

43. Sh. D.K. Tripathi PW78, Superintendent Police of the Chief Minister's security is an injured/eye witness. He has stated that on 31.08.1995, he was in the cavalcade of the Chief Minister. At about 4:15 pm or 4:20 pm on 31.08.1995, he was informed by the Steno of the Chief Minister that the Chief Minister had to go to U.T. Guest House, Chandigarh. At about 5:05 pm, he gave a ready call to the cavalcade of the Chief Minister. Ranjodh Singh Mann came in the lift with the Chief Minister to the ground floor. Baldev Singh MLA met the Chief Minister at the lift gate when it opened. All of them went towards the Chief Minister's car. Dr. Anil Duggal wanted to talk to the Chief Minister so Sh. D.R. Tripathi PW78 stepped aside alongwith Swaran Singh, P.A. Sh. D.K. Tripathi PW78 asked ASI Jagdish Singh to shut the door of the car in which the Chief Minister was about to sit and thereafter Sh. D.K. Tripathi PW78 went to sit in the car behind the Chief Minister. He had just reached the car when he heard a loud explosion.

44. Constable Pala Ram PW77 of the Haryana Armed Police is another injured/ eye witness who has stated that after the explosion, he saw the cars which were near the Chief Minister's car in flames. The Chief Minister had come out at 5:10 pm from the VIP gate. The Punjab Police, incharge of the Punjab Civil Secretariat, Security were on duty. The personal security guards of the Chief Minister were near the staff car but when he was about to sit in his car there was a loud explosion.

45. Harkesh Singh PW218, a NSG guard is an eye witness to the occurrence. He

has stated that he was in the NSG from 1991 to 1995 and was posted at Chandigarh.

46. Mr. P.K. Joshi, Deputy Commandant PW31 was the security incharge of the Chief Ministers of Punjab and Haryana. His duty was to order the mobility of the NSG. S. Beant Singh left his residence on 31.08.1995 for the Punjab Civil Secretariat at about 1:25 pm. He reached the Civil Secretariat in his car No. PB-08-3469 from his residence. All the three ambassador cars accompanying the cavalcade were put on portico where VIP vehicles were parked. Two guards were posted near these cars, one of the CRPF and one of the NSG to guard the cars. At about 5 pm, he got information that Chief Minister Beant Singh was about to leave. At 5:05 pm, the Chief Minister came to the VIP porch. He saw the Chief Minister talking to Dr. Duggal and one other person. He has further stated as under:

Then I saw one person in police uniform coming towards Sh. Beant Singh and then there was a blast. D.K. Tripathi was also proceeding towards his car. The police personnel came towards the car was a young person. He was monna type and was not wearing a turban. After the blast, there was a lot of smoke and no visibility. This witness has further stated that he saw the Chief Minister's vehicle in flames. The fire brigade reached after about 10 minutes.

47. Manojit Pal, Lance Nayak PW56 in CRPF an injured/eye witness and has stated that on 31.08.1995 he was attached with the Punjab Chief Minister's security. They left at about 1:20 pm from the Chief Minister's residence to the office in a convoy. At about 5 pm, they got a signal that the Chief Minister was leaving. Manojit Pal PW56 took up his position on the LMG which was fitted in the escort vehicle. He was putting on his glasses when he heard a blast. He was also injured in the blast.

48. Dr. Pankaj Arora PW14 prepared the MLRs of Manojit Pal Singh PW56, Kesar Dumra PW57, Satinder Kumar PW58, Joginder Singh PW128, Upkar Singh PW129, Constable Varinder Rana PW141, Kulwant Singh PW142, Bakshish Singh PW143 and Amar Singh who was not examined by the prosecution and he prepared the MLR reports Ex.PW14/3, Ex.PW14/6, Ex.PW14/11, Ex.PW14/5, Ex.PW14/4, Ex.PW14/10, Ex. PW14/2, Ex.PW14/1 of the above respectively. Dr. Ishwar Lohana PW18 prepared the MLR Ex.PW18/2 of Constable Pala Ram PW77, Dr. R.K. Sharma PW10 prepared the MLR Ex.PW10/4 of D.K. Tripathi PW78.

49. Learned Counsel for the CBI has further argued that the identification of the human bomb is clear from the statement of Inspector Nanha Ram PW240 and the DNA test conducted on the body parts recovered, and later sent for tests. Inspector Nanha Ram PW240 has stated in his testimony before the Court that he was working as Station House Officer in Police Station North (Sector 3), Chandigarh. He recovered ambassador car No. DBA-9598 Ex.P76 and some articles from the car. On the fateful day, he was on duty in U.T. Guest House, Chandigarh at 4:30 pm. At 5:12 pm, he received a wireless message and then

another wireless message at 5:17 pm that a bomb blast had taken place in Punjab Civil Secretariat at the VIP gate. When he went there, he saw in the VIP gate the cars were on fire and a number of bodies were scattered around. He saw in the parking area an abundant ambassador car which was white in colour and had fresh paint on it. The number of car was DBA-9598 (Ex.P76). He asked Bhim Sen his gunman to guard the car.

50. Dr. Gopal Ji Mishra PW119 from the FSL Department, Punjab came on the spot and he was asked to take photographs. Mr. Mishra took about 70 photographs. Thereafter Nanha Ram PW240 left for the PGI. After getting a fitness certificate from the doctor incharge, he recorded the statement of Pala Ram PW77. Nanha Ram PW240 then came back to the spot at 8 pm. He searched the car and found papers and certain articles. The doors of the car (DBA-9598) were not locked. He found Insurance Cover Ex.PW32/1. There was a paper written in Punjabi Ex.PW60/A, battery Ex.P-P153, keys Ex.A-P-204. He saw 10 dead bodies lying around and two severed legs of a person near the car of the Chief Minister, Punjab. There was a skull also lying near the Chief Minister's car with no torso. Later on he came to know that the skull and legs were that of Dilawar Singh, the human bomb.

51. FIR No. 96/97 (Ex.PW30/4) was registered on the statement of C Pala Ram PW77. Inquest reports were prepared of 10 bodies. Inquest report of the two legs and skull Ex.PW6/42 was prepared and the two legs and skull were taken to the General Hospital, Sector 16 to be kept in the mortuary. Articles like burnt pieces of cloth and metal were taken into possession and put in a bag being Ex.Art.P156 to Ex.Art.P185. The recovery of the car and articles found in the car were witnessed by SI Sukhdev Singh PW177. Siteplan Ex.PW240/2 was prepared. Out of 10 bodies, four were sent to the Sector 16, Hospital and the remaining six to the P.G.I for conducting postmortem on them. He remained at the Civil Secretariat till 11:15 pm.

52. On 04.09.1995 Inspector Nanha Ram PW240 instructed Gamdoor Singh SI PW176 to take the two legs and skull to the PGI. Gamdoor Singh SI PW176, after taking permission from Mr. I.S. Sandhu, SDM, Chandigarh took the two legs and skull to the PGI. Dr. Inderjit Diwan PW6 has stated in his testimony that he received the legs and skull from SI Gamdoor Singh PW176.

53. Chamkaur Singh PW99, a senior clerk in the Department of Youth Service, Government of India is the real brother of the human bomb Dilawar Singh. Chamkaur Singh PW99 has stated that they are three brothers. Dilawar Singh is younger to him and younger to Dilawar Singh is Harvinder. He has further stated that Balwant Singh and Dilawar Singh were friends. Last time he met Dilawar Singh on 30.8.1995 at Chandigarh in Sector 45-D, in his house. On 31.8.1995 at 8 am both Balwant Singh and Dilawar Singh alongwith Gurmeet Singh and Lakhwinder Singh went away in car No. DBA-9598 which had been parked outside his house. Dilawar Singh told Chamkaur Singh PW99 to leave Chandigarh or the police would harass him, as they were going to commit some offence. A

khakhi turban and a khakhi pant was lying in the car. Thereafter, Chamkaur Singh PW99 left for Patiala with his wife and son. He told this to his father Harnek Singh. Harnek Singh stated that Dilawar may be joking. At that time when Dilawar Singh left, he was wearing sporting laced leather shoes. Thereafter, Chamkaur Singh PW99 went to his village Jaisingwala in Bathinda District and then to his in-laws house at Malout. On 02.09.1995, Chamkaur Singh PW99 on reading a newspaper report at Malout Bus Stand and seeing the photographs, he noticed that the car used in the assassination of the former Chief Minister was DBA No. 9598, the same car which was standing outside his house. On 04.09.1995, Chamkaur Singh PW99 was picked up by the CBI from Malout. This witness has further stated as under:

On 05.09.1995 myself and my father Harnek Singh had gone to P.G.I, Chandigarh. We were carried by the CBI officials. There we had identified portions of two legs and a face with a skull. They were parts of the body of my brother Dilawar Singh. These were identified by me as such and my father. 54. Mr. R.S. Punia, DSP PW247 asked Inspector of the C.B.I Mr. A.K. Chanda PW246 to take Chamkaur Singh and Harnek Singh to P.G.I for identification of the legs and skull kept there which had been recovered from the spot. The identification report/memo is Ex.PW99/1. Blood samples were taken by Dr. Lal Ji Singh PW245, DNA expert, who had come from Hyderabad. Dr. Inderjit Diwan, P.G.I, Chandigarh PW6 has stated that he remembered that Harnek Singh, father of Dilawar Singh had gone to the dissection board alongwith one person to identify the legs and skull of the deceased.

55. Chamkaur Singh PW99 has further stated that his blood samples were taken and that of his father Harnek Singh also. Photographs were pasted by him and signed by him. He identified the black laced shoes Ex.P50 of being of his brother. Further blood samples of his mother Surjit Kaur and that of the legs and skull of Dilawar Singh were also taken by Dr. Lal Ji Singh PW245. The document number of Surjit Kaur being D-197/B which is Ex.PW245/2, the document number of Harnek Singh is D-197/M which is Ex.PW99/3, the document number of Chamkaur Singh is 197/15 which is Ex.PW99/2 and the document number of the legs and skull of Dilawar Singh is D-197/16 which is Ex.PW245/1. All these document numbers pertaining to the blood samples were taken by Dr. Lal Ji Singh PW245.

56. Dr. Lal Ji Singh PW245, who was the Director, Center for Cellular and Molecular Biology (CCMB), Hyderabad prepared DNA report Ex.P245/7. Dr. Lal Ji Singh PW245 stated that he developed the technique of DNA in India in 1988. He stated that DNA can be taken from any part of the body. He was called to Chandigarh by the CBI on 04.09.1995. He reached on 05.09.1995 and was received by CBI officials at the airport and taken to the PGI mortuary. There two legs and a skull were shown to him. He took muscle pieces from the left leg, right leg, neck region and head portions. He had his DNA kit with him. He then took blood samples of Surjit Kaur, Harnek Singh and Chamkaur Singh. He took

these blood samples and the samples taken from the body of Dilawar Singh to Hyderabad where he prepared his report Ex.P245/7. He stated that his first Polymer Chain Reaction (PCR) was 100% positive and the second test of another type was made by him in which he was 200% sure that the result of both the tests was the same i.e. Dilawar Singh was the progeny of aforesaid Harnek Singh and Surjit Kaur. Apart from his report Ex.P245/7, he demonstrated this in his photographs Ex.PW245/8-A to Ex.P245/8-B. DNA of Harnek Singh, father of Dilawar Singh and Surjit Kaur, mother of Dilawar Singh matched with the legs and skull of Dilawar Singh.

57. Photographs were taken by the Investigating Officer of the place of occurrence. Photographs Ex.DRRR, mark KKKK, mark GGGG, mark 440/2, 440/1, UUU are of those of Balwant Singh accused.

58. Photographs mark FFFFF, mark 44-5, Ex.PW88/3, Ex.PW95/6, mark 44-4 are those of Dilawar Singh. Photographs mark TTT, TTT/1, mark TTT/2 are those of Gurmeet Singh accused.

59. The vehicles which were used for the commission of the offence was an ambassador car No. DBA-9598, scooter No. PB-11-1955 and scooter No. PCB-2085. Ambassador car No. DBA-9598, which was abundant in the Punjab Civil Secretariat parking belonged to Mrs. Rewa Datta w/o Mr. Subhash Kumar Datta PW32. Mr. Subhash Kumar Datta PW32 has stated that he was employed in Bhartiya Kala Kendra, New Delhi and his wife Ms. Rewa Datta worked in Simptoma School, New Delhi. He purchased ambassador car No. DBA-9598 in December 1994 from one Sh. Paul Samule for Rs. 32,000/- in the name of his wife Ms. Rewa Datta. In August 1995, he decided to dispose of the car, the colour of which was steel grey shade. It had insurance cover Ex.P32/1. Advertisements were given in newspapers. Seven-eight persons came to buy the car, out of them two were sikh gentlemen. One of them introduced himself as Basant Singh, the one who purchased the car for Rs. 32,000/-. Delivery receipt being Ex.PW32/2. Form No. 29 Ex.PW32/6 and form No. 30 Ex.PW32/5 were signed. All the documents were handed over to the person named by Basant Singh. CBI took into possession the documents of the car. Delivery receipt Ex.P32/3, Ex.P32/4 being the photocopy of the card and receipts. He further stated that on 05.09.1995 he was called to Chandigarh where he identified car Ex.P76. Mr. Subhash Kumar Datta, PW32 also identified Basant Singh as being Jagtar Singh Tara. The signatures on the documents were also that of Jagtar Singh Tara. The other person who came along with Jagtar Singh Tara to the house of Mr. Subhash Kumar Datta was Jagtar Singh Hawara. The bag of money was being carried by Jagtar Singh Hawara.

60. Mr. Tilak Raj Nehra PW166, the handwriting expert has in his opinion stated that the signatures on the documents are that of the same person i.e. Basant Singh and Jagtar Singh. These being the delivery receipt Ex.P32/2. Specimen signatures of Jagtar Singh Tara being S249 to S253 and the question signature Q17.

61. Jagtar Singh Tara in his confessional statement Ex.PW38/2 has stated that he could point out the place where he had purchased the car.

62. Scooter No. PB-11-1955 belongs to Darshan Singh son of Gurbux Singh, this was used by Dilawar Singh. Sampuran Singh PW44, clerk in the office of DTO, Patiala has stated that Darshan Singh sold the scooter to one Major Singh on 03.06.1991 and further it was transferred on 09.02.1995 to Amar Singh. Amar Singh PW42 has stated that he sold the scooter to Kamalpreet Walia PW34.

63. Deep Inder Mehta PW54, a scooter dealer, has stated that Tejinder Singh, Dilawar Singh, Lakhwinder Singh and he himself studied together in the same school. They were known to each other. Dilawar Singh wanted to purchase a scooter and he showed him scooter No. PB-11-1955 which he bought for Rs. 10,500/-. Lakhwinder Singh also wanted to purchase a scooter for his sister which he purchased for him from one Harjit Singh PW47, number of the scooter being PCP-2085. The conspiracy hatched to assassinate the former Chief Minister was amongst friends and associates.

64. Arun Kumar ASI PW49 has stated that on 24.08.1995 he stopped scooter No. PB-11-1955 as the number plate of the scooter was not written according to specifications. Registered cover of the scooter was taken into possession. The scooterist disclosed his name as Balwant Singh. Since the number was not in order, challan Ex.PW49/1 was given to Balwant Singh. Jagtar Singh Hawara was the second person who was ridding on the pillion. This witness identified Balwant Singh and Jagtar Singh Hawara from the photos shown to him. The photos of the pillion rider was Ex.49/4 and the scooterist was Ex.49/3.

65. Madanjit Singh @ Chhana PW69 resident of Kansal village, who worked as Senior Assistant in the Punjab and Haryana High Court has stated, that he knew Lakhwinder Singh who worked in the Punjab Police. Lakhwinder Singh also stayed at village Kansal. Madanjit Singh further stated that he visited the house of Lakhwinder Singh several times. He met Dilawar Singh there. On 31.8.1995, at 1:30 pm, he met Lakhwinder Singh at Lakha Dhaba near the Civil Secretariat. He was accompanied by one Dalbir Singh Maula.

66. Dalbir Singh Maula PW114 has stated that he knew Lakhwinder Singh, Balwant Singh and Dilawar Singh. He has stated that he used to meet them in the room of Lakhwinder Singh accused. He has further stated that he alongwith Lakhwinder Singh went to one Anil Kumar Tailor to loosen the pant which was brown in colour. Balwant Singh accompanied him to the shop of Surender Painter on 30.08.1995 They went on the scooter of Lakhwinder Singh. Dilawar Singh was also there. On 03.09.1995, Lakhwinder Singh told him that Dilawar Singh has been killed in the bomb blast and he alongwith one Balwant Singh and Hawara etc. are involved in the blast. Madanjit Singh Chhana PW69 on the same day i.e. on 03.09.1995 went to the room of Lakhwinder Singh and consumed liquor. Chhana openly proclaimed that he would not help the terrorists, thereupon an altercation took place between Lakhwinder Singh and others and Chhana.

Thereafter, Dalbir Singh Maula PW114 took away Chhana to his house. Surrender Kumar resident of Khuda Alisher has stated that Dalbir Singh Maula PW114 is known to him. He saw Lakhwinder Singh and Dilawar Singh in their company.

67. Gurpreet Singh PW94 studied in Yaswant Rao Chauhan College, Nagpur and did his B.E from there. On 02.09.1995 Balwant Singh came to Nagpur. Balwant Singh was known to Tejinder Pal Singh, a friend of Gurpreet Singh PW94. Tejinder Pal Singh PW95 further told Gurpreet Singh that Balwant Singh told him that Dilawar Singh was martyred in the assassination of S. Beant Singh. At Amba Kheri Lake in Nagpur, Tejinder Pal Singh and Balwant Singh who were alongwith Gurpreet Singh PW94, Balwant Singh narrated the whole of story of assassination of S. Beant Singh from the beginning till the end and also confessed that they had committed the offence. Statement of Gurpreet Singh PW94 was recorded by the Metropolitan Magistrate, Delhi when he was taken there by Superintendent of Police Bhupinder Singh and Deputy Superintendent of Police of C.B.I.

68. Learned Counsel for the CBI has further argued that the conspiracy and the friendship with each other of the accused are proved by the statements of Tajinder Pal Singh PW95 and others. Tajinder Pal Singh PW95 has stated that he joined the B.E (Mechanical Engineering), College in Yashwant Rao Chauhan, College of Engineering, Nagpur in the year 1989. He is a permanent resident of Guru Nanak Colony, Patiala. Dilawar Singh was known to him. He was also resident of the same colony of Patiala. In school, he played handball and athletics at Yadvindra Public School with Charanjeet Singh, Pritpal Singh and Balwant Singh who later joined the Punjab Police. He knew Gurmeet Singh accused who also resided at Guru Nanak Colony, Patiala. He also knew Lakhwinder Singh accused who also stayed in the locality of Guru Nanak Nagar Colony. Gurmeet Singh, Dilawar Singh and Lakhwinder Singh all were known to Balwant Singh. Gurpreet Singh, Harbir Singh Bhullar, Jatinder Singh and Jas Karan Singh used to live with him in a rented accommodation in plot No. 51, Laxmi Nagar, Nagpur. In October 1993, the marriage of his sister was performed. Balwant Singh, Dilawar Singh and Dapinder Singh were also at the marriage. On 2.9.1995 Balwant Singh accused came to Nagpur. Before that on 1.9.1995, a telephonic message came to the landlord of Tajinder Pal Singh PW95 which was attended to by him. Balwant Singh stated on the telephone that Dilawar Singh had become a martyr and the former Chief Minister had been assassinated.

69. At this stage, when the statement of Tajinder Pal Singh PW95 was being recorded, learned trial Court has observed that, "Balwant Singh accused raised slogans of Dilawar Singh Zindabad, Khalisatan Zindabad". Tajinder Pal Singh PW95 told Gurpreet Singh and Amandeep Singh, who were staying with him about the telephone he had received from Balwant Singh. On 2.9.1995, at 4 or 5 pm, Balwant Singh came to Nagpur. He alongwith Balwant Singh went to Amba Jhari lake. After some time, Amandeep Singh, Gurpreet Singh and Gurinder Singh reached there. There Balwant Singh made an extra judicial confession

before them and told them the whole story of the assassination of S. Beant Singh and he being involved in the assassination. He further stated that the belt in which the RDX had been placed was prepared in the room of Gurpreet Singh accused. The assassination had been done at the instance of Wadhawa Singh (PO) and Mahal Singh (PO).

70. Further Tajinder Pal Singh PW95 stated, that on 3.9.1995 he told Balwant Singh that they could not keep him so he was shifted to Hotel President in Sitamari Nagpur. The name of Sandeep Sharma was filled in the register in place of Balwant Singh. Balwant Singh made the entry in the register in the name of Sandeep Sharma which is Ex.PW94/1. Gurpreet Singh put his signatures in register which are Ex.PW94/2, Tajinder Pal Singh also signed in the register at Ex.PW95/2. Balwant Singh made international calls to Germany and USA from different PCOs. He made these calls to Resham Singh in Germany and Harjit Singh Bhullar in USA. On 6.9.1995, Tajinder Pal Singh stated that they asked Balwant Singh to leave as they could not keep him. They gave Rs. 25,000/- to Balwant Singh which was given back to them via Balbir Singh PW127 in Delhi. Tajinder Pal Singh PW95 identified the photographs of Dilawar Singh as being Ex.PW95/17 to Ex.PW95/25. After leaving Nagpur, Balwant Singh went to Hotel Surya and Ambala city. He checked in the name of Sandeep Sharma, the entry register being Ex.PW95/30 and the signatures of Balwant Singh being Ex.PW95/31. Thereafter, he went to Devika Hotel, Agra on 29.10.1995. He checked in as Sandeep Sharma, entry being Ex.PW95/33 and signatures being Ex.PW95/34. Then he went to Hotel Parbhat in Agra and checked in as Rajiv Kumar son of Pawan Kumar, entry register being Ex.PW95/36 and the signatures of Balwant Singh in the name of Rajiv Kumar being Ex.PW95/37. Thereafter, he stayed in various hotels in Panipat, Jaipur, Calcutta and Ferokhabad.

71. Balbir Singh PW127 has stated that he received Rs. 1,00,000/- from Harjit Singh Bhullar. He gave Rs. 50,000/- out of this to Gurpreet Singh PW94.

72. Constable Ranjit Singh has stated in his testimony before the Court that he knew about the friendship and acquaintance of Lakhwinder Singh, Balwant Singh and Dilawar Singh. They were all friends.

73. Darshan Singh PW199 was the co-driver of Lakhwinder Singh accused. He has stated that he knew Lakhwinder Singh and saw Dilawar Singh and Lakhwinder Singh several times in each others company.

74. Karamjit Singh PW213 has also proved the association and friendship of Gurpreet Singh, Lakhwinder Singh, Dilawar Singh and Balwant Singh. He has stated that he had last seen Dilawar Singh in Patiala on 15.8.1995 where Dilawar Singh told him that something is going to happen.

75. Mohan Pal Singh PW111 has also proved the friendship of the accused. He has stated that he has 35/40 killas of land in Rasoli village (HP). He was ill and had to have himself checked up in the PGI. He stayed at Khuda Ali Sher for 15/16 days in the house of Kulwant Singh as he was getting treatment from the

PGI. Here he came into contact with Surender Singh @ Chinda. He was introduced to Dilawar Singh, Maula and Tari as they wanted a peach orchard in Himachal Pradesh. Mohan Pal PW111 has further stated that Dilawar, Maula and Tari stayed with him in his house in village Rasoli thereafter they hired a room in the village. This witness stated that shoes Ex.P15, which were recovered from the place of occurrence were the same which were worn by Dilawar Singh when he came to his house in the month of May/June 1995.

76. Jasbir Singh PW124 is the Secretary of Gurudwara Sis Ganj, Delhi and Dalbir Singh PW125 is a clerk in the said Gurudwara. They stated that Manjinder Singh accused stayed in the Gurudwara from 19.6.1995 to 21.6.1995. Register of entry being Ex.PW124/A, entry of Manjinder Singh accused is Ex.PW124/A/1. Dalbir Singh PW125 has also identified the photo of Manjinder Singh accused in Court.

77. Vinod Kumar Vats PW132 is the Manager of Surya Guest House, Delhi. He has stated that on 23.6.1995 Jagtar Singh Hawara, Balwant Singh and Manjinder Singh accused met in Surya Guest House, the entry in register being Ex.PW123/7-A. They came in the morning and left at 1 am. This witness identified the photos of these three persons and identified Jagtar Singh Hawara and Balwant Singh in Court.

78. Amarjeet Singh PW76 is working as a tailor in Patiala. The name of his shop being Sidhu Tailors. He has stated that he knows Balwant Singh for the last 8/10 years. On 1.7.1995 Balwant Singh and Dilawar Singh came to him to have their police uniform stitched. After about 8/10 days they gave another order for 5 more police uniforms to be stitched. The measurement being the same as Balwant Singh had earlier given. Delivery of these uniforms was taken 4 to 5 days later. These uniforms were stitched as entry into the Secretariat was not possible without having a uniform. Balwant Singh accused had to wear this uniform though he had been dismissed from service earlier.

79. Jasbir Singh PW75 also is a tailor and working in A.C Market, Patiala. He has stated that he prepared the suicide belt on the asking of Balwant Singh who was known to him. Balwant Singh told him that the person alongwith him, his mother was ill and he wanted the belt to be made in such a manner that a hot water bottle could be kept inside the belt. Jasbir Singh PW75 took the measurement of the type of belt to be made. Measurement being Ex.PW75/C. Balwant Singh prepared the diagram of the belt. The belt was of an open type (Khuli) from under neath. He prepared two belts on the asking of Balwant Singh accused. This witness further identified Jagtar Singh Hawara, Dilawar Singh and Balwant Singh in Court.

80. Learned Counsel for the CBI has further argued that Surender Sharma, Painter, PW51 in his testimony before the Court has stated that he is the owner of a booth in Sector 7-C, Chandigarh where he does the work of painting of cars. He has stated that he knows Madannjit Singh @ Channa for the last 15 years who is an employee of Punjab and Haryana High Court. He was introduced to

Lakhwinder Singh and Dalbir Singh @ Maula, both residents of village Kansal by Lakhwinder Singh, who was working as a driver in Punjab Police. On 26.8.1995 Lakhwinder Singh came to his shop in ambassador Car No. DBA-9598, driven by himself. The colour of the car was steel grey. One person of the age group of 25/26 years having a trimmed beard, non sikh was alongwith him. A second person was sikh gentleman about 5'6" tall, had a patka on his head and was wearing a payjama kurta. The third person was a hindu gentleman 30/32 years in age. Lakhwinder Singh told him (Surender Sharma PW51) that the car belongs to a friend of his and it is to be painted but the painting should be completed by 29.8.1995. Surender Sharma PW51 told them that the work could not be done so early as it was a rainy season. Lakhwinder Singh stated that they could not go beyond 30.8.1995. Lakhwinder Singh stated that the car be painted from outside and from the inside they would have it done lateron. Rupees 1500/- were paid to him by Lakhwinder Singh out of Rs. 3,000/- for painting of the car. The car was left behind. On the same day i.e. on 26.8.1995, the car was handed over to Neeraj Kumar for having the denting work done. August 27th, 1995 was Sunday and the shop was closed. On 28.8.1995, the car was brought back from Neeraj Kumar and Surender Sharma PW51 started the work of painting of the car. Lakhwinder Singh came on 28.8.1995 at 6:30 pm alongwith a man who had a trimmed beard. They came on scooter No. PCP-2085. On 29.8.1995, the car was painted and parked in the garage of Ranjit Motors as it was raining. On 28.8.1995, when Lakhwinder Singh had come, he had told them that the car would be ready by 30.8.1995. They asked him to have the number plate also painted. Number plate was sent to Tota Ram. On 30.8.1995, the re-painted number plate was given back. The car was painted in Franco White Colour. From inside, the car was still steel grey as nothing had been done from inside. Delivery of the painted car was given to the person who had a trimmed beard on 30.8.1995 at 3:30 pm. He had come alongwith Maula on a scooter.

81. Surender Sharma PW51 further stated that he was at the naka with the police when Lakhwinder Singh was arrested on his pointing out and identified Lakhwinder Singh on 5.9.1995 on the chowk in village Kansal. Lakhwinder Singh was coming on a scooter No. PCP-2085. The scooter was taken into possession vide recovery memo Ex.PW51/1. The other witness to the recovery and arrest of Lakhwinder Singh was Surender Singh. On the search of Lakhwinder Singh, a piece of paper was recovered which is Ex.PW51/3. It was in the handwriting of Lakhwinder Singh which is mark Q2. On the paper, it was written that, "I WANT ONLY CM PUNJAB." Inspector Vijay Kumar PW238 was also an attesting witness. After the arrest of Lakhwinder Singh from the chowk at Kansal, the police party went to Sector 22 on the same day i.e. on 3.9.1995 where Gurmit Singh was apprehended. A piece of paper was recovered from the pocket of Gurmit Singh, the paper being Ex.PW51/5. The name of Lakhwinder Singh was written on the piece of paper.

82. Further this witness identified photos mark TTT of Dilawar Singh and Gurmit Singh at point 1 and point 2. He further identified that they were the same

persons who had come to his shop. Mark SSS was the photo of Gurmit Singh. He further stated that these persons had come to his shop on 29.8.1995 and 30.8.1995. Balwant Singh had also come to his shop at 29.8.1995 and 30.8.1995. Surender Kumar PW51 has further stated that on 2.9.1995 after seeing the photo of the ambassador car DBA-9598 in the newspaper, he tried to contact SI Ram Kumar but was not successful. Again on 3.9.1995, he went to Sector 26, Police Station, where he contacted SI Ram Kumar and told him that the car in the newspaper was painted by him. On 4.9.1995 Surender Kumar PW51 was taken to DSP Abrol in Sector 17 by SI Ram Kumar and told him about the painting of the car.

83. Tarlok Nath @ Tota Ram PW50 stated that he is a Scooter Mechanic and Painter. He has a shop in Rehri market, Sector 7, Chandigarh. In August, 1995 he was asked by Surender Kumar PW51 to paint the number plate of an ambassador car. He painted the number plate in English which was DBA-9598 and was paid Rs. 25/- for the painting.

84. Avtar Singh PW63 has stated that he has a STD booth in plot No. 981, Phase IV, Mohali on the ground floor of his house. One Satwinder Pal Singh @ Simpy PW101 stayed as a tenant with him in the year 1995 on the first floor. Satwinder Pal Singh @ Simpy PW101 asked Avtar Singh PW63 as to whether if he had any objection if he shared a room with the room of Gurmit Singh. Simpy allowed him to share the room. Gurmit Singh gave Rs. 600/- as rent to Simpy. On 28.9.1995, Gurmit Singh made a call to Germany which was noted down in his register Ex.PW63/A at serial No. 38. Simpy's telephone number was 672533. From 28th to 30th August, 1995, Gurmit Singh, Balwant Singh, Dilawar Singh, Jagtar Singh Tara and Jagtar Singh Hawara stayed in that room on the first floor. Avtar Singh PW63 stated that he had an employee by the name of Reema Kalhon PW55.

85. Reema Kalhon PW55 stated that she was working in the booth of Simpy. She identified the photographs of Dilawar Singh and stated that he visited Gurmit Singh in those days.

86. Satwinder Singh @ Satvinder Pal Singh @ Simpy PW101 has stated that he and Gurmit Singh jointly took Ist floor on rent of house No. 981, Phase IV, Mohali which was owned by Avtar Singh PW63. He has stated that he is a diploma holder in Mechanical Engineering from Thapar Polytechnic, Patiala. He knew Gurmit Singh as he was his class fellow. Gurmit Singh invited Dilawar Singh who also stayed with him. On the ground floor of the house, there was a STD booth which was operated by Avtar Singh PW63. On 28.8.1995 some friends of Gurmit Singh came to the house. Lakhwinder Singh, Dilawar Singh, Balwant Singh and Jagtar Singh Hawara were the ones who had come. On 31.8.1995, Simpy left for Jalndhar as he had some work there and when he came back he saw that Gurmit Singh and his friends had left. On 30.8.1995, when Simpy had gone upstairs, he saw that all the accused were sitting and they had a newspaper in front of them. Some uniforms, which he had never seen, before them were also hanging there. This newspaper was the one in which the RDX was kept. Simpy identified the

accused in Court. He identified Lakhwinder Singh, Balwant Singh, Gurmit Singh and Jagtar Singh Hawara.

87. Ram Kumar PW104 has stated that he went to the room of Gurmit Singh and he saw all the accused persons in the room of Simpy.

88. Gurmit Singh PW96, who owned a Dhaba by the name of Khalsa Sweets and Vaishno Dhaba, stated that on 31.8.1995, accused Gurmit Singh and Dilawar Singh came to him and took food after having it packed. He identified the photographs Ex.X1/A being that of Dilawar Singh.

89. Chamkaur Singh PW99 has stated that on 30/31st night, Balwinder Singh PW98 came to him and he repaired the puncture of an ambassador tyre tube. He identified the photograph of the accused which was Ex.X1/A.

90. Mewa Singh PW 185 has stated that he got a tea shop outside the Punjab Civil Secretariat. Dilawar Singh, whose photographs Ex.PSSSS were shown to him and of Lakhwinder Singh, Ex.PW111/3 visited his tea shop on 31.8.1995 at about 4 pm. Both Dilawar Singh and Lakhwinder Singh were last seen together by this witness. At that time two other persons were also alongwith them.

91. Inspector Vijay Kumar PW238 stated that on 4.9.1995 he was instructed by DSP Abrol to produce Surender Kumar PW51. After getting Surender Kumar to Police Station in Sector 17, Chandigarh, his statement was recorded. Thereafter Balwinder Singh, Scooter Mechanic was also produced and his statement was also recorded. Inspector Vijay Kumar PW238 alongwith Inspector Satbir Singh another police official went in search of Lakhwinder Singh to village Kansal. On 5.9.1995 at 6:30 am, he alongwith Inspector Satbir, another Inspector to the CIA staff, Surender Sharma PW51, Balwinder Singh PW98 alongwith DSP Abrol were standing attentive after laying a naka at village Kansal, Naya Gaon and Khude Ali Sher. At about 10/10:15 am, they saw a person coming on a scooter number PCP-2085. He was apprehended after Surender Kumar PW51 and Balwinder Singh PW98 pointed towards him as being Lakhwinder Singh. On the personal search of Lakhwinder Singh, Rs. 6,102/- one keyring and four keys alongwith two identity cards were recovered. From the identity cards, it came out that the person was Constable Lakhwinder Singh, driver in the Punjab Police. The piece of paper Ex.PW51/3 was recovered from his pocket which was taken into possession vide memo Ex.PW51/2. Thereafter the police party alongwith the independent witnesses went to Sector 22. Gurmit Singh was standing in front of SCO 466-64, Sector 22C from where he was arrested. Various recoveries were made. After completing the legal formalities, Surender Kumar Sharma PW 51 and Balwinder Singh PW98 were allowed to go.

92. Learned Counsel for the CBI Mr. S.K. Saxena has further argued that Puran Chand PW68 was living in a shed rented out to him by Avtar Singh PW63 in house No. 981, Phase IV, Mohali. The shed was constructed in portion of the plot. The first floor was occupied by accused Gurmit Singh and S.P. Singh PW101. This witness identified accused Gurmit Singh in the Court. He stated that he had seen

some people going and coming from the first floor where accused Gurmit Singh resided. On 28.8.1995, he went to the room of Gurmit Singh at about 11:30/12 mid night to get medicine as he had a severe toothache. The light on the first floor was on. He entered the room of Gurmit Singh and he saw four persons sitting in the room. One was Gurmit Singh and there was another sikh gentleman sitting alongwith him, the other three were clean shaven. Puran Chand PW68 asked for some medicine but Gurmit Singh stated that he did not have any medicine for his toothache. Thereafter, he came back and he went to consult a doctor at night but could not meet any doctor. The four persons he had seen earlier also on 26th, 27th and 28th August, 1995 coming to the room of Gurmit Singh. On 31.8.1995 at about 2/2:30 pm, he saw these persons, one of them was wearing a police uniform. Two had come in a car. Photographs were shown to him by the CBI. They being mark FFFF of Jagtar Singh Hawara, photo mark YY-3 being that of Dilawar Singh in police uniform, photo mark GGG being that of Balwant Singh. These photographs were of the same persons who had come on 27/28/31.8.1995. Photo mark HHHH was of Lakhwinder Singh.

93. Puran Chand PW68 has further stated that he was taken by the CBI officials to Mohali to house No. 981 where Gurmit Singh stayed. There from in his presence, the CBI officials lifted black granules and put them in a plastic bag. A cardboard box of the size of 2.5 x 3" in height with cover and another cardboard box without cover was also taken into possession. Some newspapers were also taken into possession. Accused Gurmit Singh in his presence made a disclosure statement Ex.PW68/A. It pertains to the recovery of newspaper, box of RDX, other pieces of RDX. All these were put in a pink bag after the recovery was made on the basis of the disclosure statement. The disclosure statement Ex.PW68/C was signed by Puran Chand PW68.

94. Pranabh Sen PW70 has stated that he was a recovery witness and also attested his signatures as witness to the disclosure statement Ex.PW68/A. Gurmit Singh signed on the disclosure statement alongwith Puran Chand PW68. The pink colored polythin bag was taken into possession which is Ex.84. The cardboard box with cover being Ex.85, the other cardboard box without cover being Ex.86 and newspaper being Ex.88.

95. Dr. R.S. Verma PW160 is the Director of Forensic Science Laboratory, Chandigarh. Dr. R.S. Verma has stated that he alongwith witnesses was taken to house No. 981, Phase IV, Mohali by the CBI on 8.9.1995. Accused Gurmit Singh was also alongwith them. Gurmit Singh on reaching the house took out a key lying underneath a flower pot. On the basis of the disclosure statement made by Gurmit Singh, particles of RDX were recovered. Some other articles were also recovered which were put in a pink bag. On the same day, the Investigating Officer sent the recovered articles to him in the laboratory. Dr. R.S. Verma PW160 prepared his report Ex.160/1. In his report, he stated that he detected RDX in the exhibits which was 81.81%, 81.92%, 82.56%, 81.11% and 81.57% in Ex.1 (II), Ex.1(III), Ex.1(IV)A, in Ex.1(V)A and Ex.2 respectively.

96. Mr. Saxena has argued that the past conduct of the accused be also taken into consideration as they did not behave in a normal manner as they felt guilty. Balwant Singh on 31.8.1995 reached Patiala on a scooter Ex.P77 at about 6:40 pm. He parked his scooter at the cycle stand near the Bus Stand, Patiala. This cycle stand was run by Kirat Mahinder Singh PW73. A receipt was given to Balwant Singh by Attendant Prem Singh PW72. Prem Singh PW72 has stated that the green belt Ex.P72/2 as per the recovery memo was recovered from the dicky of the scooter by the CBI. Prem Singh further stated that person who parked the scooter was Balwant Singh. Thereafter on the same day i.e. on 31.8.1995, accused Balwant Singh hired the taxi of Amrik Singh PW74 and went to Rampura Phul, Patiala. On 1.9.1995, he went to Ludhiana where he made an Extra judicial confession to Kuljit Singh PW102 who was his colleague and a Constable in the GRP, Jagraon. Balwant Singh accused was also posted in GRP, Ludhiana in September, 1995.

97. Learned Counsel for the CBI has further argued that the extra judicial confession made before Kuljit Singh PW102 proves the guilt of Balwant Singh accused. Kuljit Singh PW102 has stated that he studied with Balwant Singh in Khalsa High School, village Heran, District Ludhiana in 1987. Balwant Singh joined Punjab Police in Patiala District as a Constable and Kuljit Singh PW102 joined the GRP Patiala in the year 1989. The father and uncle (Taya) of Balwant Singh had been murdered by the militants. Dilawar Singh was a friend of Balwant Singh. In September 1995, Kuljit Singh PW102 was posted at GRP Ludhiana. At about 9:05 am on 1.9.1995, Balwant Singh accused came to his quarter. Balwant Singh was nervous and perplexed and told Kuljit Singh PW102 that he and his companions had committed the murder of S. Beant Singh. Balwant Singh further stated that Dilawar Singh had tied a belt bomb around his body and acted as a human bomb. Jagtar Singh Tara dropped Dilawar Singh in an Ambassdor car to the Punjab Civil Secretariat. The car could not be taken away from the Civil Secretariat as the man who had to take it away did not reach and now it is parked there. He further confessed to Kuljit Singh PW102 that his finger prints and those of Dilawar Singh were on the car. He stated that RDX was procured from Pakistan through Jagtar Singh Tara. Gurmit Singh accused helped in making the bomb. Kuljit Singh PW102 identified both Dilawar Singh and Gurmit Singh. At point X being Dilawar Singh and at point Y being Gurmit Singh in photograph mark TTT/2.

98. Balwant Singh and Jagtar Singh Hawara after the occurrence were on the run and visited various places. On 2.9.1995, Balwant Singh checked in President Hotel, Nagpur and signed as Sandeep Sharma. Don Basco Joseph PW139, who worked in the hotel from 1995 to 1996 identified Balwant Singh to be Sandeep Sharma. Thereafter Balwant Singh came to Panipat and stayed at Nanda Guest House from 13.9.1995 to 15.9.1995. He was identified by the Manager of the Hotel Anoop Singh PW131 as being Balwant Singh, who had checked in as Sandeep Sharma. Thereafter Balwant Singh and Jagtar Singh Hawara went to Ganpati Guest House, Jaipur alongwith three more persons out of them one was

a woman and another was a child. Babu Lal Sharma PW188, an employee of the Guest House stated, that they stayed in the Guest House from 15.9.1995 to 16.9.1995. He identified Balwant Singh and Jagtar Singh Hawara. Thereafter both of them checked in and stayed at Classic Hotel, Calcutta from 20.9.1995 to 30.9.1995. Badruzzaman PW226, who was the son of the owner of the hotel, identified both of them. From 30.9.1995 to 13.10.1995 Balwant Singh stayed at hotel City Lodge, Calcutta. He was identified by Anwar Khan PW220, a Receptionist. He also identified Jagtar Singh Hawara vide photograph mark TTTT and also Balwant Singh being in the photo. Some photographs of Balwant Singh and Jagtar Singh Hawara were identified by Badruzzaman PW226. From 18.10.1995 to 23.10.1995 Balwant Singh and Jagtar Singh Hawara then stayed at Hotel Anand Farukhabad (U.P). The owner of Hotel H. R. Radhey Sham PW137 identified them. From 29.10.1995 to 31.10.1995 both the accused stayed at Hotel Devika. From 6.11.1995 to 16.11.1995 they stayed at Parbhat Hotel, Agra. Balwant Singh checked in, in the name of Rajeev Kumar. Ajay Gupta, Proprietor of Parbhat Hotel, PW210 identified both Balwant Singh and Jagtar Singh Hawara. Thereafter, they stayed at Ambala in Hotel Surya.

99. The handwritings of Balwant Singh and Jagtar Singh Hawara in the registers of the various hotels and Guest Houses were examined by the Handwriting Experts, Dr. M.A. Ali PW242, S.L. Mukhi PW234 and Sh.Tilak Raj Nehra PW166. All have testified that the handwriting of Balwant Singh and Jagtar Singh Hawara are the same to be of in the registers of various hotels.

100. Balwant Singh was arrested on 14.1.1996 by the CBI after the Haryana Police had arrested him. The Chief Investigating Officer, Sh. S.N. Saxena, Superintendent of Police, CBI PW248 has stated that he learnt from the Haryana Police that Balwant Singh was in their custody. A formal application was made and thereafter he took Balwant Singh in his custody on 14.1.1996. Disclosure statements Ex.PW247/3 and Ex.PW247/4 were made by Balwant Singh in front of Randhir Singh Poonia, Additional Superintendent of Police, (Head Quarter) PW247. He made the disclosure statement regarding hiring of the taxi, procuring of ball bearing, nuts and bolts, stitching of Police Uniform and stitching of the belts which Dilawar Singh wore. Disclosure statement was made by Balwant Singh on 19.1.1996. Thereafter Balwant Singh was taken to the various places by Randhir Singh Poonia, Superintendent of Police (Head Quarter) PW 247 and he pointed out vide memo Ex.PW212/1 the taxi stand from where they had hired a taxi, vide memo Ex.PW213/3, the purchase of the batteries, wires and other electrical articles from a shop in Patiala. Thereafter Balwant Singh was taken to Air Conditioned Market, Patiala. Jasbir Singh PW75, Manager of the stitching shop Stitchko, stated that two pouch bag belts were stitched on the order of Balwant Singh. Receipts Ex.75/A and the Cash Book Ex.75/A1 were the proof to this effect. Thereafter Balwant Singh was taken to Kabadi Market, Patiala and vide memo Ex.P212/2, he pointed out from where the ball bearing, nuts and bolts were purchased. Thereafter he was taken to Sidhu Tailors, Patiala where he pointed out from where the Police Uniforms were stitched and Cash

Memo and Bill Books Ex.76/1 and Ex.76/1A were taken into possession by the Investigating Officer. Thereafter, Balwant Singh pointed out the shop of Painter Surinder Sharma PW51 and the house of Gurmit Singh accused in Mohali. Randhir Singh Poonia PW247 did the main investigation of the case.

101. Learned Counsel for the CBI Mr. S.K. Saxena has argued that the disclosure statements of accused Jagtar Singh Hawara and Nasib Singh proved the guilt of the accused. Jagtar Singh Hawara was interrogated by Sh. Surinder Pal Singh, ACP, CBI, Chandigarh, PW241 on 22.1.1996. He was arrested on 20.1.1996 by Sh. S.N. Saxena PW248. Punjab police had handed him over to the Haryana Police as some case was pending and thereafter Sh. S.N. Saxena, SP, CBI PW248 took the custody of Jagtar Singh Hawara through the Court of JMIC, Ambala. Jagtar Singh Hawara made disclosure statement Ex.PW201/1. Vide his disclosure statement, he took the CBI party to hotel Surya situated on Neta Ji Subhash Chander Road, Darya Ganj, Delhi. There he identified room No. 203 where he had met Balwant Singh accused and Manjinder Singh. Identification memo Ex.PW201/4 was prepared. It is in this room that the conspiracy to assassinate the then Chief Minister was hatched. Thereafter, he took the CBI team to Goal Market (Bhagat Singh Market), New Delhi and pointed out the PCO from where he had given several calls to Resham Singh, the alleged President of Babbar Khalsa International German Unit. Thereafter, he took the CBI team to Nand Gram Area, Meerut Road, Ghaziabad. He pointed out the booth from where he made calls to Resham Singh. This disclosure memo being Ex.PW121/A. Another disclosure statement was made by Jagtar Singh Hawara Ex.PW121/2. As per the disclosure statement, he took Sh. Surinder Pal Singh ACP CBI along with the CBI team to house No. 341-A, Nand Gram, Ghaziabad to the first floor of this house. He was staying in this room, which was locked. The lock was broken and under the television set, a rolled paper was recovered of a sketch Ex.PW121/3 of the Punjab Civil Secretariat and the bomb belt which was used. Thereafter, vide disclosure statement Ex.PW121/1, he took the CBI team to a STD Booth, No. 456, Sewa Nagar, Meerut Road, Ghaziabad from where he made telephone calls to Resham Singh in Germany. Another disclosure statement was made by him on 22.1.1996 Ex.PW201/2 whereby he took the CBI team to Goal Market near Bangla Sahib Gurudwara, New Delhi, from where he made calls to Resham Singh. He took the CBI team to the PCO Booth in Arihant Business Center, F-12, Bhagat Singh Market, New Delhi where he pointed out the booth from where he had been making calls to Germany.

102. Sketch Ex.PW121/3 was prepared by Jagtar Singh Hawara. Two handwritings on the sketch Ex.PW223/1 and Ex.PW223/2 were compared with specimen signatures of Jagtar Singh Hawara S34 to S50 by Mr. M.A. Ali PW242, the Handwriting Expert. The report of Sh. M.A. Ali stated that he strongly suggested that it was the handwriting of Hawara. The report of Mr. M.A. Ali, the handwriting Expert being Ex.PW242/1.

103. Two independent witnesses namely Anil Bhatia PW121 and Bhupinder Singh

PW122 were the attesting witnesses to the disclosure statement. They also came into the witness box and supported the case of the prosecution. Independent witnesses namely Dinesh Chand PW133 and Rajesh Malhotra PW130 were joined when Hawara pointed out the different places.

104. Several search teams were sent to search the houses and dwellings of the accused. On 5.9.1995 different teams went to different places. Accused Balwant Singh was residing in house No. 68-A Rattan Nagar, Patiala where he stayed as a tenant in the house of Jasbir Singh PW83. Jasbir Singh PW83 stated that he was the owner of the house. One room was given on rent to Balwant Singh in 1995. On 5.9.1995, a CBI team conducted search of the room of Balwant Singh. Search memo Ex.PW83/1 was prepared. Papers pertaining to Dilawar Singh were taken into possession by the CBI team. A letter head pad (Article P106) of Babbar Khalsa International was also taken into possession. Three newspapers of "AAJ DI AWAZ" which had not been opened as yet dated 29.8.1995, 1.9.1995 and 5.9.1995 were taken into possession showing that Balwant Singh had not entered the room in these days. The newspaper were still wrapped the way the hawker put them in the room. An audio cassette of Babbar Khalsa was recovered, with a lot of propaganda material in it. Jasbir Singh PW83 further stated that he saw Balwant Singh on 28.8.1995 in the room.

105. Mr. A.K. Ohri DSP, CBI PW237 searched the house of Dilawar Singh, House No. 1223, Mohalla Guru Nanak, Patiala where Dilawar Singh stayed as a tenant. Photographs of Dilawar Singh and some application forms were taken into possession. Photographs of Shahid Bhagat Singh were also taken into possession vide recovery memo Ex. PW85/1.

106. Mr. A.K. Ohri DSP, CBI PW237 searched the house of accused Gurmit Singh in Guru Nanak Nagar, Patiala and vide recovery memo Ex.PW237/1 took into possession joint photo of Gurmit Singh and Dilawar Singh.

107. On 12.9.1995 Mr. A.K. Ohri DSP, CBI PW237 went to the house of the foster father of Balwant Singh in village Rajoana, District Ludhiana. Ninety photographs of Balwant Singh and Dilawar Singh alongwith police uniforms were taken into possession.

108. Mr. A.P. Singh PW243 interrogated Jagtar Singh Tara on 18.9.1995 and vide his disclosure statement Ex.PW80/1, he pointed out the house in village Jhingran Kalan, District Ropar of Nasib Singh accused. Thereafter, Nasib Singh was taken into custody from his house and vide his disclosure statement Ex.PW81/1 one bag(Katta) of explosive material (RDX) was taken into possession on the same day from the cattle shed (under the turri). It weighed 30 kgms and 700 gms. The bag was taken into possession vide recovery memo Ex.PW81/2. Samples were also taken of the RDX.

109. Learned Counsel for the C.B.I. Shri S.K. Saxena has argued that the Investigating Officers Inspector Nanha Ram PW-240 and Inspector Vijay Kumar PW-238 are the ones who collected the evidence on the fateful day. Inspector

Nanha Ram PW-240 has stated in his testimony that he was the S.H.O. of Police Station North, Chandigarh from 6.1.1995 to 18.12.1996. On 31.8.1995, he left the police station for general patrolling at about 4.30 p.m. He was on duty in the U.T. Guest House, Chandigarh as the Chief Minister of Punjab was to come in the evening. At about 5.12 p.m., he got a wireless message that fire had broken out at the Civil Secretariat, Punjab. He left for the Civil Secretariat at 5.20 p.m. and saw a cavalcade of cars in front of the Secretariat and in the porch on fire. There were bodies scattered all around. He got the area cordoned off. He saw one white Ambassador car No. DBA-9598 Ex.76 standing on one side. He got suspicious and directed his Gunman Bhim Singh to guard the car. The car of S. Beant Singh, C.M. Punjab had been completely damaged. Some other cars bearing No. PB-08-3468 (C.M.'s car), No. PB-08-6516, No. PB-08-6514, No. CH-01-L-1035(Gypsy) and another Gypsy No. CH-01-L-5629 were damaged. On the instructions of Inspector Nanha Ram PW-240, Police Photographer took 17 photographs which are Exs.PW-119/1 to PW-119/17. The Director F.S.L. Punjab Dr. Mishra also took photographs. Inspector Nanha Ram PW-240 then prepared the inquest report of the former Chief Minister. He also prepared the inquest report of Dr.Anil Duggal. After identification of 2 legs and a skull to be that being of Dilawar Singh, he prepared the inquest report of this also. He took the white ambassador car into possession. On searching the car, he saw that it had batteries, wires and an insurance cover in it.

110. Vide applications Exs.PW-6/25, PW-16/1 and PW-2/1, post-mortem on the bodies of Chamkaur Singh, Lachhman Singh and Yash Pal Bali respectively was performed in Sector 16 Hospital, Chandigarh. Vide application Ex.PW-5/1, post-mortem was conducted on the body of Balbir Singh of the National Security Guard.

111. Twenty five articles were deposited with HC Paramjit Singh PW-189 which were handed over to the C.B.I. on 29.10.1995.

112. Inspector Vijay Kumar PW-238 stated that he was posted as the Incharge of CIA Staff, Sector 26, Chandigarh and he was asked to partly investigate the case in September, 1995. He produced Surinder Sharma PW-51 before the D.S.P. in Sector 15 and Balwinder Singh Scooter Mechanic. Their statements were recorded. Thereafter in the evening Inspector Vijay Kumar PW-238 with his police party along with Surinder Sharma PW-51 and Balwinder Singh went to the Chowk of Naya Gaon, Kansal and Khuda Ali Sher in the evening on 5.9.1995 at 6.30 p.m. Lakhwinder Singh was coming on Scooter No. PCB-2085 Ex.PW-51/1 and he was taken into custody.

113. SI Gamdoor Singh PW-176 had partly investigated the case. He recorded the statements of Amarjit Singh and Jaswinder Singh who identified the dead body of Swaran Singh. He moved an application Ex.PW-6/2 before the S.D.M., Chandigarh to conduct the post-mortem on the body of S. Beant Singh at the P.G.I. Permission was granted and thereafter he moved an application Ex.PW-6/1 before the Director, P.G.I. to conduct the post-mortem. Application Ex.PW-6/22

was moved before the S.D.M., Chandigarh to conduct the post-mortem on the body of Dr. Duggal. He has further stated that he took the legs and skull of Dilawar Singh from Sector 16 on 4.9.1995 and after taking permission vide application Ex.PW-6/41 from the S.D.M., Chandigarh, he moved application Ex.PW-6/40 before the Director, P.G.I. for conducting the post-mortem on the parts of the body of Dilawar Singh. The body of C.M. Punjab was identified before the post-mortem was conducted by Dr. Vijay Kumar PW-161 and Dr.Navjot Singh.

114. Surinder Pal, D.S.P. C.B.I. PW-241 lifted 35 finger prints from the white ambassador car bearing No. DBA-9598, which was standing near the Secretariat. Out of these 35 finger prints, 4 finger prints Exs.Q1 to Q4 were from the rear view mirror. One of the finger prints was matching with that of accused Lakhwinder Singh. These finger prints were lifted vide memo Ex.PW-178/1. Surinder Pal PW-241 went to the B.P.L. Office on 9.9.1995 where Gurmit Singh accused worked and took into possession various records vide seizure memo Ex.PW-67/A. The attendance register was taken into possession vide memo Ex.PW-64/A. Leave card was taken into possession vide memo Ex.PW-64/D. Leave applications Exs.PW-59/A to PW-59/D were taken into possession vide seizure memo Ex.PW-241/1. On 11.9.1995 the specimen signatures of Gurmit Singh accused were taken vide Exs.PW-176/1 to PW-176/4. The specimen signatures of Lakhwinder accused were also taken vide Exs.PW-112/1 to PW-112/4. On 21.1.1995 Surinder Pal PW-241 was asked to contact Roop Singh, Ballistic Expert, F.S.L., Delhi. He contacted Roop Singh who handed back to him 37 kgs. of RDX out of which a sample of 10 grams was taken. The remaining RDX was returned and deposited in the Malkhana. On 27.10.1995 he went to the D.T.O. Office, Patiala and took into possession the relevant record of Scooters No. PCB-2085 belonging to Lakhwinder Singh accused, No. PB-11-1955 belonging to accused Balwant Singh and No. PB-11-1956 belonging to accused Dilawar Singh. The documents were taken into possession vide seizure memo Ex.PW-43/1. On 29.10.1995, 25 articles seized by Inspector Nanha Ram PW-240 were taken into possession by him. On 22.1.1996 after the arrest of Jagtar Singh Hawara and after interrogating him, Jagtar Singh Hawara made disclosure statement Ex.PW-201/1 regarding his meeting in Surya Hotel, Delhi. He further made a disclosure statement Ex.PW-201/2 regarding the P.C.O. in Gol Market where calls were made to Germany to Resham Singh of Babbar Khalsa. Balwant Singh's disclosure statement Ex.PW-201/3 was recorded. On 23.1.1996 Jagtar Singh Hawara made another disclosure statement regarding telephone calls from a PCO at Ghaziabad to Germany.

115. R.S. Punia D.S.P., C.B.I. PW-247 investigated the case, as it was marked to him. On 1.9.1995 S.N. Saxena PW-248 took over the investigation. He was appointed the Chief Investigating Officer. R.S. Punia PW-247 was to assist S.N. Saxena PW-248 especially regarding the case being pursued by the Delhi Police. On 3.9.1995 R.S. Punia PW-247 came to Chandigarh. He was the Chief Investigating Officer till 7.9.1995.

116. R.S. Dhankar D.S.P.,C.B.I. PW-244 was given the task to trace and arrest Jagtar Singh Hawara by S.N. Saxena, the Chief Investigating Officer. R.S. Dhankar PW-244 arrested Jagtar Singh Hawara on 13.9.1995 from Bus Stand, Delhi. Jagtar Singh Hawara disclosed the names of the other accused. On 29.9.1995 Jagtar Singh Hawara made a disclosure statement Ex.PW-216/1 regarding the purchase of Ambassador car. Initially, Jagtar Singh Hawara posed himself as being Basant Singh. Jagtar Singh Hawara's confessional statement was recorded by the Special Magistrate Patiala vide application Ex.PW-86/3.

117. The Ballistic Expert Roop Singh PW165 has stated that he has done his Forensic Science from Delhi University and has also further studied Forensic Science in the Royal Military College, Wiltshir(U.K). He has 40 years experience. He examined the scene of occurrence on 1.9.995 till 3.9.1995 under the supervision of the CBI officials. Twenty seven articles were made and sent to the Director CFSL, Chandigarh on 22.9.1995. Twenty two sealed parcels were sent to the Biology Division of the CFSL, the articles being PW190. The metal car pieces being P91 to P203. He further stated that he gave his opinion after seeing the articles at the scene of occurrence which is as under:

If an explosive device is exploded while being kept or planted inside or beneath the car then the entire car will get shattered into pieces and there will be definite mark regarding the seat of explosion, on the ground. I had not noticed any such symptoms while examining the scene of occurrence of car No. PB-08-3469. I am just of the opinion the explosion in the said car was not a result of IED being kept inside the car or planted beneath it. 118. He further stated that if the explosive material is placed inside the car then the entire car will shatter into pieces. There will be definite marks on the seat of the explosion. If the explosion takes place and the explosive material is put under the car on the ground then the car would be damaged and radiator would fall on the ground. He has stated that the explosion was not due to the RDX being placed in the car or under the car of the deceased. The nature of the explosion in this case was RDX which was detected by him on examining the debris, nuts and bolts etc.

119. On 21.9.1995 Roop Singh PW165 received a gunny bag (Ex. P98) which was sealed containing 13.700 gms of black colored pasty material, the material being Ex.P99. He gave his opinion which is as under:

1. Chemical and instrumental analysis confirmed the presence of RDX based high explosive in the content of the above mentioned parcel.
2. RDX based high explosive was also detected in the contents of 22 parcels marked S1 to S9, S11 to S14, S16 to S19, S21 and S24 to S27 recovered from the site of blast at the VIP gate of Punjab and Haryana Civil Secretariat, Chandigarh and mentioned in my report Ex.PW165/1 dated 17.11.1995.

120. On 11.10.1995 he received a cloth belt Ex.P97 and after examining the belt, he came to the following conclusion:

On the basis of the experiments conducted in the laboratories about two kilogram RDX based high explosive can be filled in the cloth belt (Ex.P97) in question. 121. On 13.10.1995 he received battery Ex.153 and gave his report Ex.PW165/4 and came to the following conclusion:

A battery similar to the 9 bolt battery contains in the parcel describe above could have been used in causing the explosion at VIP gate of Punjab and Haryana Civil Secretariat, Chandigarh on 31.8.1995. 122. He received newspapers having marked Q6 and Q7. On examining the newspapers and the material on it, he came to the following conclusion:

Chemical and instrumental analysis confirmed the presence of RDX based high explosive in the stains available on the newspaper piece in question, which is Ex.P88. 123. On 30.10.1995, he received 25 parcels which he examined, they being Ex.A1 to Ex.A25 and prepared report Ex.PW165/6. Twenty seven articles which he received, they being Ex.S1 to S27. He prepared report Ex.PW165/1 dated 17.11.1995.

124. He further stated that at the time of the explosion of the human bomb, most parts of the body were blown away and the remaining few parts of the human bomb were lying may have been washed away in the blood etc.

125. As per report Ex.PW165/7 of CFSL, New Delhi, the maximum damage to car No. PB-08-3469 occurred due to the impact of force on the rear left portion from outside to inside.

126. Mr. S.N. Saxena PW248, DSP, CBI was the Investigating Officer of the case. Sh. S.N. Saxena PW248 stated that he reached the place of occurrence on 1.9.1995. He got the area cordoned off. The Punjab and Haryana Civil Secretariat was damaged upto 6th floor. All window panes were shattered. He saw four cars and a gypsy which were damaged and were in a burnt condition. Blood was splatted around on the floor. The false ceiling in the reception of the Secretariat had come down due to the impact of the bomb. He stated that he reached the spot on 2.9.1995 again. Two police officials of Chandigarh Police were also present. Two legs and a skull were found on the spot on 31.8.1995 which was later kept in the hospital of Sector 16, Chandigarh.

127. On 12.9.95, the names of accused Jagtar Singh Tara and Jagtar Singh Hawara surfaced in the investigation regarding their involvement. Learned Counsel has further argued that Lakhwinder Singh and Gurmeet Singh were arrested on 5.9.1995 and interrogated on the same day and thereafter also.

128. It was on the interrogation of accused Gurmeet Singh, the names of Jagtar Singh Hawara, Jagtar Singh Tara and Balwant Singh had surfaced.

129. Names of Jagroop Singh, Navjot Singh and Nasib Singh surfaced on 16.9.1995 on interrogation of Jagtar Singh Tara, who had been arrested on 14.9.1995 by R.S. Dhankar, DSP, CBI PW244. He has further stated that all the articles remained in his custody till 21.9.1995 and thereafter, he handed over the

articles to Roop Singh Ballistic Expert PW165.

130. The first charge sheet was filed by this witness on 29.11.1995. On 25.11.1995, he received the report of the Finger Prints Expert regarding Lakhwinder Singh. Sanction of the Govt. was obtained to file the charge sheet which is Ex.PW248/6 under the Explosive Act and also under Section 188 of the Code of Criminal Procedure which is also Ex.PW248/6.

131. Involvement of Jagroop Singh, Navjot Singh and Nasib Singh came to light on the interrogation of Jagtar Singh Tara. Sh. S.N. Saxena PW248 procured the non bailable warrants of arrest of accused Balwant Singh, Jagtar Singh Hawara, Mehal Singh, Wadhawa Singh, Paramjit Singh and Jagroop Singh.

132. On 18.12.1995, second charge sheet was filed against accused Shamsheer Singh.

133. This witness has further stated that the entire case was investigated by him with the help of R.S. Punia DSP, R.S. Dhankar DSP, K.P. Singh, A.K. Oheri, Surinder Parshad, N.C. Jaha, Kewal Singh, Harbhajan Ram, Surinder Pal and others including the Chandigarh Police.

134. The officers, who had assisted him in the investigation of the case handed over the case diaries, documents, articles seized and articles recovered including the statement of the witnesses to him.

134. The third charge sheet was filed against accused Balwant Singh on 18.2.1996.

135. Learned Counsel has drawn our attention to order sheet dated 24.1.2004 of the learned trial Court wherein it has been stated that Jagtar Singh Tara and Jagtar Singh Hawara were not produced before the Court as stated by the Superintendent, Burail Jail as they had escaped from Jail on 22.1.2004.

136. A number of witnesses had been examined in the presence of both accused Jagtar Singh Hawara and Jagtar Singh Tara out of a total of 248 prosecution witnesses. Jagtar Singh Hawara was produced before the trial Court after being arrested by the Delhi Police on 26.7.2005.

137. Both Shamsheer Singh accused and Lakhwinder Singh made extra judicial confession before Dalbir Singh @ Maula PW114.

138. Learned Counsel has argued that the motive for the commission of the offence was that the terrorist organization Babar Khalsa International, which has a worldwide network, wanted the Former Chief Minister S. Beant Singh to be assassinated. Dilbagh Singh PW100 has brought on record the literature that Babar Khalsa International was distributing. Ex. Articles 149 and Ex.P150 are showing the pictures of Dilawar Singh, the human bomb, Wadhawa Singh (PO) and Mehal Singh (PO). They are depicting Dilawar Singh as a martyr. Further it has been stated in the literature and the articles exhibited that S. Beant Singh had become an autocratic leader and his style of working had become despotic

and he was working against the interest of the Panth and thus, he needed to be eliminated. The accused have challenged the entire democratic system of India. It has been stated in these articles that there was no alternative left with the Babar Khalsa International but to eliminate S. Beant Singh.

139. Extra judicial confession was made by accused Balwant Singh to Gurpreet Singh PW95, in which he has stated, that he alongwith his friends from the Babar Khalsa International and at the instance of Mehal Singh (PO) and Wadhawa Singh (PO), he and Dilawar Singh assassinated S. Beant Singh.

140. The extra judicial confession of accused Shamsheer Singh though Shamsheer Singh retracted the confession vide order dated 20.2.1996, has also stated the same thing as what accused Balwant Singh stated.

141. Dilawar Singh and Balwant Singh did not have any personal enmity with S. Beant Singh. They only carried out the dictates of the Babar Khalsa International through Jagtar Singh Hawara.

142. The master mind of all this organization and who was a member of Babar Khalsa International was accused Jagtar Singh Hawara. He is a person who monitored, arranged, indoctrinated, arranged the money, arranged the places where the co-accused would stay, procured the RDX and other material/articles in the successful execution of the murderous plan. Jagtar Singh Hawara went about his work meticulously. He remained in control of the entire assassination of S. Beant Singh from the beginning till the end. He ensured that his directions be followed and he also made it sure that his participation and name did not surface anywhere. He did not leave a single trace of hatching of the conspiracy. It just showed that a very clever and intelligent mind was working. His intention was to destabilize the democratic system of India on the orders of Wadhawa Singh (PO) and Mehal Singh (PO).

143. Accused Jagtar Singh Hawara motivated Dilawar Singh to become a human bomb but he himself was not ready to give his own life. He is a master of reading human psychology. He picked up two soft targets i.e. Dilawar Singh and accused Balwant Singh. Dilawar Singh, was told that he would become a martyr and now Balwant Singh wants to become a martyr by confessing everything before the Court.

144. Jagtar Singh Hawara persuaded Jagtar Singh Tara (PO) to purchase the ambassador Car No. PB-A-9598 though he could himself have done so. He did not go to the painter to have the car paint changed to white but sent his co-accused. Just half an hour before the occurrence Jagtar Singh Hawara vanished from the company of the other accused. It was Jagtar Singh Hawara who sent the message to Wadhawa Singh (PO) and Mehal Singh (PO), that the assassination of S. Beant Singh was successful, as at 11:30 pm on 31.8.1995 a message was received by the News Agency U.N.I from abroad, claiming this responsibility. The assassination was claimed by the Babar Khalsa International. They not only claimed that they had assassinated S. Beant Singh but alongwith

him the other seventeen persons also.

145. In a democratic society and polity, ballet is the answer which has to be followed and not the bullet. Both accused Jagtar Singh Hawara and Balwant Singh became the prosecutors, Judges and also the executioners, they combined all the three roles to themselves and till date do not have any remorse to this effect.

146. Learned Counsel has argued that the Hon''ble Supreme Court in a number of judgments has held that where the case is based on circumstantial evidence then motive assumes significance. In State of Haryana Vs. Sher Singh and Others, it has held that:

The prosecution is not bound to prove motive of any offence in a criminal case, inasmuch as motive is known only to the perpetrator of the crime and may not be known to others. If the motive is proved by prosecution, the Court has to consider it and see whether it is adequate. In the instant case the motive proved was apparently inadequate, although it might be possible. 147. In Udai Pal Singh v. State of U.P. AIR 1972 (SC) 54 it has been held by the Hon''ble Allahbad High Court as under:

Now from the very nature of things apart from the inmates of the house there could be no eye witness of the occurrence of this case and the prosecution had, therefore, necessarily to rely on circumstantial evidence only. In cases where only circumstantial evidence is available at the outset one normally starts looking for the motive and the opportunity to commit the crime. If the evidence shows that the accused having a strong enough motive had the opportunity of committing the crime and the established circumstances on the record considered alongwith the explanation-if any-of the accused, exclude the reasonable possibility of anyone else being the real culprit then the chain of evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused. He may, in that event, safely be held guilty on such circumstantial evidence. 148. In Kuldip Sham Vs. State of Punjab, our own High Court has held that:

Obviously, there is no eye witness to the occurrence and the prosecution evidence comprises of only circumstantial evidence. In this situation, the motive and the conduct of the accused-convict are not only relevant but are of paramount importance in order to establish the guilt against him. 149. In Kehar Singh and Others Vs. State (Delhi Administration), it has been held by the Hon''ble Supreme Court as under:

The crime charged is not simply the murdering of a human being, but it is the crime of assassination of the duly elected Prime Minister of the country. The motive for the crime was not personal, but the consequences of the action taken by the Government in the exercise of constitutional powers and duties. In our democratic republic if the Government becomes subversive of the purpose of its creation, the people will have the right and duty to change it by their irresistible

power of ballot and have the Government of their own choice wisely administered. But no person who is duly constituted shall be eliminated by privy to conspiracies. Indian citizens are committed to the Constitution. They have faith in the ballot box. They have confidence in the democratic institutions. They have respect for constitutional authorities. The assassination of Mrs. Indira Gandhi, the third Prime Minister of India, has, therefore, come as a rude shock. It has sent shudder through the civilized world. The issues joined in these appeals involve the highest interest of the whole people of this country. It is a matter of great importance to the people of this country that the accused be lawfully tried and lawfully convicted or acquitted. A wrongful conviction or a wrongful acquittal may shake the confidence of the people in our justice delivery system. The matter, therefore, requires utmost concern. 150. Learned Counsel has argued that association is the first link to conspiracy. Various factors and situations shows that all the accused i.e. Balwant Singh, Jagtar Singh Hawara, Gurmeet Singh, Lakhwinder Singh, and Shamsher Singh were closely associated with each other.

151. Scooter No. PB-11-1955 which was purchased by Dilawar Singh was handed over to Balwant Singh which has been stated so by Deep Inder Singh PW54. This very scooter was seen by Dalbir Singh @ Maula PW114, Surender Sharma PW51 and Puran Singh PW68 in the possession of Balwant Singh. It was recovered from the Bus Stand, Patiala. Gurpreet Singh PW94 alongwith Dilawar Singh and Balwant Singh had gone to Nagpur together before the occurrence. They have been identified by photo mark FFFF in which Dilawar Singh can be seen. Similarly Tejinder Pal Singh PW95 also has identified the accused in the photograph. Scooter No. PCB-2085 was purchased by Lakhwinder Singh in the name of his mother. This has been stated so by Deep Inder Singh PW54. On 24.8.1995, Balwant Singh and Jagtar Singh Hawara while travelling on scooter No. PCB-2085 in Chandigarh were stopped by ASI Arun Kumar PW49. They did not have the necessary papers of the scooter and were challaned. The challan slip was recovered from the house of Chamkaur Singh, brother of Dilawar Singh where accused had stayed one day prior to the occurrence. Madan Jit Singh Chhana @ Channa PW69 has stressed on the friendship and association of Dilawar Singh and Lakhwinder Singh. Satwinder @ Simpy PW101 has stated regarding the association of accused Gurpreet Singh and Dilawar Singh. Surinder Kumar PW113 states about the association of Dilawar Singh and Lakhwinder Singh. Dalbir Singh @ Maula PW114, has stated about the association and friendship of Lakhwinder Singh and Balwant Singh with Dilawar Singh. C Ranjit Singh PW97 has stated of the association of Balwant Singh and Dilawar Singh. Paramjit Singh PW213 has stated about the association of Gurpreet Singh, Dilawar Singh, Balwant Singh and Lakhwinder Singh. Darshan Singh PW199 has stated about the association of Balwant Singh and Dilawar Singh. All these witnesses corroborated each other qua the friendship and association of the accused.

152. During the house search of the father of Balwant Singh on 12.9.1995, photographs of Balwant Singh and Dilawar Singh were taken into possession vide

recovery memo Ex.PW88/1. The attesting witness to this memo is Budh Ram Garg PW88. On 5.9.1995, house of Gurmeet Singh was searched and photographs Ex.PW37/2 of Gurmeet Singh and Dilawar Singh were taken into possession.

153. This close association as spelt out above, then turned into a conspiracy to assassinate former Chief Minister S. Beant Singh. All the accused were good friends, they knew each other very well and were closely associated with each other. Their friendship was so deep that they were totally sincere to each other and to their cause. Further it has been held in *Bhagwandas Keshwani and Another Vs. State of Rajasthan*, it has been held as under:

...At any rate, the proof of the fact, even from admissions of Vishnu Kumar, that false and fictitious cash memos were prepared due to an agreement between the two accused, could be used against each accused. After that, the only question which had to be decided was : was the agreement what Vishnu Kumar alleged or was it what the prosecution set up as the most natural logical inference? In cases of conspiracy better evidence than acts and statements of co-conspirators in pursuance of the conspiracy is hardly ever available. 154. In *Firozdeen Bashirudin and Ors. v. State of Kerala* 2001(4) RCR 21, it has been held as under:

23. Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where the application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently Dependent upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the Dependant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts. 155. Learned Counsel for the C.B.I. has argued that the Hon'ble Supreme Court has held in various authorities that identification of photographs is sufficient proof to show the association and conspiracy of the accused. In *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, it has been held as under:

...It is true that they had identified the accused from the photograph shown to them by PW-50 and that was sufficient to lend support to their identification in Court. 156. In *Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau*, it has been held in paras 10, 11 and 12 as under:

10. The next circumstance highlighted by the learned Counsel for the Respondent is that a photo of the Appellant was shown to Mr. Albert Mkhathshwa later and he identified that figure in the photo as the person whom he saw driving the car at

the time of interception of the truck.

11. It was contended that identification by photo is inadmissible in evidence and, therefore, the same cannot be used. No legal provision has been brought to our notice which inhibits the admissibility of such evidence. However, learned Counsel invited our attention to the observations of the constitution bench in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569 : 1994 Cri.LJ 3139 which struck down Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. By that provision the evidence of a witness regarding identification of a proclaimed offender in a terrorist case on the basis of the photograph was given the same value as the evidence of a test identification parade. This Court observed in that context:

If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we fell that gross injustice to the detriment of the persons suspected may result. Therefore, we are inclined to strike down this provision and accordingly we strike down Section 22 of the Act.

12. In the present case prosecution does not say that they would rest with the identification made by Mr. Mkhathswa when the photograph was shown to him. Prosecution has to examine him as a witness in the Court and he has to identify the accused in the Court. Then alone it would become substantive evidence. But that does not mean that at this stage the Court is disabled from considering the prospect of such a witness correctly identifying the Appellant during trial. In so considering the Court can take into account the fact that during investigation the photograph of the Appellant was shown to the witness and he identified that person as the one whom he saw at the relevant time. It must be borne in mind that Appellant is not a proclaimed offender and we are not considering the eventuality in which he would be so proclaimed. So, the observations made in *Kartar Singh* in a different context is of no avail to the Appellant.

157. In his confessional statement, Balwant Singh has stated that he met Dilawar Singh and both of them then conspired to assassinate S. Beant Singh as he had been imposed by Delhi to commit excess on the people. In his confessional statement Ex.PW65/F, he has stated, "due to this reason, both of us want to eliminate Beant Singh, so that people may have relief."

158. Balwant Singh, Lakhwinder Singh and Dilawar Singh went to village Ratuli (HP) sometime after the commission of the offence. This has been stated by Mohan Pal PW111. Statement of Mohan Pal PW111 has been corroborated by Madan Jit Singh PW69.

159. In June 1995, Balwant Singh got a call from Harjit Singh (PO) from USA that some person will come to meet him. He should meet him in Delhi and thereafter Jagtar Singh Hawara will instruct him and guide him as to what to do. On meeting Jagtar Singh Hawara, Hawara told Balwant Singh that the only way to eliminate S. Beant Singh was that a human bomb. It was in furtherance of this

conspiracy, police uniforms were stitched, RDX was procured and two belts were made.

160. Learned Counsel has placed reliance on a judgment of Hon''ble Supreme Court where death sentence was awarded for assassinating a democratic head of the Government, which is cited as Kehar Singh and Others Vs. State (Delhi Administration), it has been held as under:

142. The crime charged is not simply the murdering of a human being, but it is the crime of assassination of the duly elected Prime Minister of the country. The motive for the crime was not personal, but the consequences of the action taken by the Government in the exercise of constitutional powers and duties. In our democratic republic if the Government becomes subversive of the purpose of its creation, the people will have the right and duty to change it by their irresistible power of ballot and have the Government of their own choice wisely administered. But no person who is duly constituted shall be eliminated by privy to conspiracies. Indian citizens are committed to the Constitution. They have faith in the ballot box. They have confidence in the democratic institutions. They have respect for constitutional authorities. The assassination of Mrs. Indira Gandhi, the third Prime Minister of India has therefore, come as a rude shock. It has sent shudder through the civilised world. The issues joined in these appeals involve the highest interest of the whole people of this country. It is a matter of great importance to the people of this country that the accused be lawfully tried and lawfully convicted or acquitted. A wrongful conviction or a wrongful acquittal may shake the confidence of the people in our justice delivery system. The matter, therefore, requires utmost concern.

272. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence on the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand (Criminal Law Review 1974, 297 at 299) explains the limited nature of this proposition:

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been

said that it is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object: there need never have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done.

161. All conspirators are equally liable alongwith the main accused who executes the actual murder. On 10.8.1995 Jagtar Singh Hawara and Balwant Singh came and saw the security arrangements in and around the Civil Secretariat, Chandigarh. On 21.8.1995 Jagtar Singh Hawara came to Patiala and told his co-accused about the purchase of car No. DBA-9598. On 22.8.1995, Hawara told Balwant Singh that a cloth belt is required. On 24.8.1995 Balwant Singh and Hawara went to the market and ordered one belt with tailor master Jasbir Singh PW75. On the same day, switch and batteries were purchased.

162. On 25.8.1995, RDX was lifted from the house of Nasib Singh in village Jhingra Kalan. On the same day, the belt which had been stitched by the tailor master was taken into possession by the accused. On 26.8.1995 explosives were put into the belt at the house of Balwant Singh at Patiala. On the same day, Lakhwinder Singh went to Surinder Sharma PW51 to have the ambassador car No. DBA-9598 painted white.

163. On 27.8.1995 Balwant Singh and Dilawar Singh went to the Kabadi Market, Patiala and procured nuts and bolts.

164. From 28.8.1995 to 31.8.1995, all the accused assembled in the house of Gurmeet Singh at Mohali. This has been stated by Puran Chand PW68 who was a co-tenant in the house. He identified Gurmeet Singh, Balwant Singh and Jagtar Singh Hawara.

165. Lakhwinder Singh and Balwant Singhs' finger prints were taken from car No. DBA-9598, which was recovered from the Civil Secretariat, Chandigarh showing that they had been driving the car.

166. Puran Chand PW68 has stated that on 31.8.1995 two boys had come in a car to meet another person who was in the room. At about 2:30 pm, all of them went away. Two sat in the car and third on the scooter. The two who sat in the car were Balwant Singh and Dilawar Singh. Mewa Singh PW185 corroborated the statement of Puran Chand PW68. He also stated that he saw Dilawar Singh and Lakhwinder Singh together. Puran Chand PW68 has specifically stated that he saw Jagtar Singh Hawara in the room of Gurmeet Singh at Mohali at about 2:30 pm.

167. Learned Counsel has argued that the timing of the bomb to be blasted i.e. at about 5 pm was deliberately timed so that there would be the maximum number of casualties because that was the time when the Civil Secretariat closed and the employees come down to go to their homes.

168. Learned Counsel for the C.B.I. has vehemently argued that both Balwant Singh and Jagtar Singh Hawara come within the parameters of the guidelines of

the judgment in Machhi Singh's case and they should be awarded death sentence.

169. The Hon'ble Supreme Court in Machhi Singh and Others Vs. State of Punjab, , has framed the guidelines as under:

**I Manner of Commission of Murder:**

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

....

**V Personality of victim of murder.**

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity. (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust; (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons. 170. Babbar Khalsa International is operating from outside the soil of India though taking life by the due process of law is very painful but every individual crime is to be taken on its own merit. In this case not only a duly elected constitutional head had been assassinated but alongwith him a number of persons lost their lives.

171. Jagtar Singh Hawara was working with the motive to please his masters i.e. Wadhawa Singh (PO) and Mahel Singh (PO) who were living in a foreign country. They had total vehemence in the democratic system and the constitution of this country. Balwant Singh has been raising slogans in Court against the Constitution of India. By their acts and conduct, both Balwant Singh and Jagtar Singh Hawara have abdicated their right to live. Any other sentence, apart from death sentence would be insufficient. Sentence of life may be for any number of years but that would not serve the purpose, because society and the future generation has to be saved from terror.

172. There is no evidence as to the whereabouts of Jagtar Singh Hawara on 31.8.1995, as to where was he after 2:30 pm or where did he go. Apart from that he was arrested on 12.9.1995. Wadhawa Singh and Mehal Singh (POs) are

living abroad. Jagtar Singh Hawara is only their tool.

173. Learned Counsel for Appellants Sh. Baldev Singh, Senior Counsel for Jagtar Singh Hawara, Shamsher Singh, Gurmeet Singh and Lakhwinder Singh has argued that the unfortunate incident of the assassination of former Chief Minister S. Beant Singh alongwith whom sixteen other persons died and fifteen were injured was not because of a human bomb but because of a bomb placed in the dicky of car No. PB-08-3469, which was a bullet proof ambassador car. S. Beant Singh was found in a burnt condition on the rear seat of the car. The driver of the car also died. The car caught fire and two other bullet proof ambassador cars numbers being PB-27-6514 and PB-27-6516 were damaged. The driver of car No. PB-27-6514 was Constable Baljit Singh PW 53 and that of PB-27-6516 was constable Iqbal Singh PW66.

174. The car bomb theory came into existence on the instructions of Sh. KPS Gill, the then D.G.P, Punjab. He was the author of the human bomb theory which was introduced at a later stage to save his own skin.

175. The earliest version of the incident came to light by the statement of Inspector Nanha Ram PW240 of the U.T, Police, who was the Investigating Officer before the CBI took over the investigation. He has stated, "I found that car No. PB-08-3469 of the Chief Minister, Punjab was in a burnt condition and on its rear seat, a burnt body was there." He has further stated, "On my inquiry at the spot, I did not find any eye witness of the occurrence." Further he has stated, "When I reached the spot, no injured person was lying there." Further, "Bomb detection team arrived at the spot after half an hour when I reached there." From this statement, it is clear that at that time when Inspector Nahha Ram PW240 reached the place of occurrence though the body of the former Chief Minister was lying there, he could not find any eye witness. On 31.8.1995 when the bomb squad team came there, they could not detect whether it was a car bomb or a human bomb. In this team were experts and they were the best witnesses who should have come into the witness box and revealed what type of damage the car had gone through and further should have revealed to the Court whether it was a human bomb or a car bomb but they were not produced for the best reasons known to the prosecution. Inspector Nanha Ram PW240 was duty bound to investigate this aspect of the occurrence at that moment of time as he was the Investigating Officer and the first one to reach the spot. The bomb detection team reached the spot at 6:20 pm. Nothing has come on record in the form of evidence, documentary or oral regarding who all constituted the bomb detection team. Not even one member of the team was brought into the witness box for the reasons best known to the prosecution. The only inference to be drawn that is the prosecution wants to hide something.

176. Inspector Nanha Ram PW240 prepared the Inquest Report and he has stated that at 11 pm, the body of the Chief Minister was recovered from the car and taken to P.G.I, Chandigarh. The other bodies were also removed about the same time. In his statement he has stated, "I saw the burnt dead body lying in

the rear seat of the car meant for the Chief Minister."

177. Thereafter Inspector Nanha Ram PW240 went to PGI, recorded the statement of PW77 Constable Pala Ram. This statement formed the basis of the FIR which was recorded at 8 pm at Police Station, Sector 3, Chandigarh. Strangely no special report was delivered to the Illaqa/Duty Magistrate which is a clear violation of Section 157 of the Code of Criminal Procedure. Though Head Constable Mohinder Singh PW30 has stated that he delivered the special report to the Magistrate on 31.8.1995 but the statement of HC Mohinder Singh under Section 161 Code of Criminal Procedure was recorded on 16.9.1995. There is no endorsement on FIR Ex.PW30/4 of the Magistrate. Head Constable Mohinder Singh has not stated in his statement as to what time or day he delivered the special report.

178. Both Constable Pala Ram PW77 and HC Mohinder Singh are convenient and reliable witnesses for the prosecution and have been introduced at a later stage. The best persons to record the FIR were the injured/eye witnesses to the occurrence and specially Dr. Dinesh Kumar Tripathi PW78, S.P, Security, on whose basis the FIR should have been recorded. HC Baljit Singh PW53 and C Iqbal Singh PW66, the drivers of the other bullet proof cars who had seen the occurrence could also have recorded the FIR. No evidence had come on record that they were not fit to make a statement or they had been approached to make a statement by the Investigating Officer.

179. Strangely out of the fourteen eye witnesses examined, thirteen did not see any human bomb approaching. The only person who saw the human bomb approaching was Harkesh Singh PW218 and his statement is also recorded after several days of the occurrence under Section 161 Code of Criminal Procedure i.e. on 4.9.1995.

180. C Pala Ram PW77, the other star witness to the occurrence, also in his statement says that he did not see the human bomb approaching but as per his statement which is reproduced as under shows that there was a human bomb blast inside the car. He has stated, "I made a statement before Inspector Nanha Ram that the Chief Minister entered into the car parked in front of the VIP gate and that in the rear wheel there was a very powerful bomb blast in the said car." This witness has further stated, "My eye sight is normal. I did not see any suspected person at that place between 2 pm to 5 pm, even from 5 pm to 5:10 pm, I did not notice any suspicious type of person when the Chief Minister, Punjab came out of the VIP gate, the Chief Minister did not stay for one or two minutes at the gate, he came and directly sat in the car." Further he has stated, "One of the Security personnel opened the door of the car for the Chief Minister to enter the car and to sit himself in the car. I observed only the Chief Minister entering in that car. I did not observe any other person entering the car before the bomb blast. "Further he has stated, "I was at a distance of 7/8 feet from the car of the Chief Minister when the bomb blast took place." Learned Counsel has vehemently argued that the statement of this witness completely belies the

human bomb theory. He has not seen the human bomb Dilawar Singh coming towards the car, though present at the spot.

181. The other star witness to the occurrence is Dinesh Kumar Tripathi PW78, S.P Security of the Chief Minister. He has stated, "When the Chief Minister moved from his office, I gave ready call to the Chief Minister's carcade. It was about 5:05 pm at that time when I gave the ready call to the said carcade on the wireless set. S. Beant Singh moved from his office at about 5:05 pm."

182. D.K. Tripathi, PW78 as per his statement has also not stated that he saw the human bomb approaching the car just before the blast. Statement of this witness under Section 161 Code of Criminal Procedure was recorded on 11.9.1995. He has stated that nobody came to him to record his statement apart from CBI officials who did not note down his statement. This witness is the best witness to know about the security of the former Chief Minister. He was overall incharge of the security of the former Chief Minister being the senior most Officer. It was his duty to escort the former Chief Minister safely. He has also stated in his statement, "The last scene which I saw before becoming unconscious was that Dr. Duggal was talking to the Chief Minister." There is no mention by him of the human bomb approaching the car of the Chief Minister or as to whether it was a human bomb which triggered the blast.

183. The human bomb theory has been projected by C. Harkesh Singh PW218 of the NSG. He has stated very clearly and categorically in his statement that he knew Sh. KPS Gill, (Retd.) DGP (Punjab Police). He knew that Sh. KPS Gill was the Director General of CRPF for sometime. He has further stated that it is correct that for some time he (C Harkesh Singh) served in the CRPF and Sh. KPS Gill was the DGP of the force. He came on deputation with the Punjab Police when Sh. KPS Gill was the DGP of the Punjab Police. He has further stated, "There were 11 officials of the CRPF in the carcade. There were seven personnel of the NSG. The official incharge of CRPF in that carcade was of the rank of Sub Inspector. The officer incharge of the NSG was a Sub Inspector." Learned Counsel has argued that strangely both the Sub Inspectors have not been produced though they were the best witnesses to tell the correct version. This witness has further stated, "I had the operational control of the security staff in the carcade on that day." "On 31.8.1995 I saw security personnel coming with SLRs, carbines and MP 5 rifles." "The Chief Minister was cordoned by the security staff. At that time personnel of the NSG, two PSOs and myself cordoned the Chief Minister, this cordoned remained around him from the time he came out of the lift and made himself to sit in the car." "I looked around to my left and right and found that there were no public person nearby who wanted to see the Chief Minister." It is clear from the statements above that there was no human bomb present near the former Chief Minister. Learned Counsel has stated a man 5'7" tall, (Dilawar Singh) would have been easily noticed by the security of the Chief Minister. The human bomb theory can be completely ruled out.

184. Learned Counsel for the Appellants except Balwant Singh accused has

further argued that the statement of HC Baljit Singh PW53, driver of car No. PB-27-6516 has also in his testimony not proved the human bomb theory. As per his statement, he has stated which is as under:

It was about 5:10 pm when the Chief Minister came down and sat in the car then we heard an explosion. My car was about 10 feet towards the side of Chief Minister's car. My car was parked at a distance of 10 to 20 feet from the main gate of the Civil Secretariat. The third bullet proof car of the convoy was at a distance of 10 feet from my car. 185. Further he has stated, "When the Chief Minister came down and sat down in the car, two sentries were still on duty near the car. At the VIP gate, metal detectors were provided for checking the visitors. Security personnel were also having metal detectors for checking the visitors. I had seen the Chief Minister coming down of the VIP gate towards the porch. He was wearing a white colored payjama."

186. HC Baljit Singh PW53, being the driver of one of the bullet proof cars No. PB-27-6516 was standing at a very close quarter to the former Chief Minister i.e. at about 10 feet away. He had seen the Chief Minister coming and sitting in his car No. PB-08-3469. Thereafter, an explosion took place. Strangely this witness does not say a word about any person coming towards the Chief Minister. If there was a human bomb approaching the former Chief Minister, Baljit Singh PW53 would have surely seen him. In his testimony as reproduced above, he was seeing/observing everything but not the human bomb approaching the former Chief Minister. Infact, his evidence demolishes the story of the human bomb.

187. Manojit Pal, Lance Nayak CRPF, PW56 who was a part of security of the former Chief Minister was also standing nearby but he also has not said anything about the human bomb apart from that an explosion took place.

188. Kesar Dumra PW57, a peon with Late S. Har - Charan Singh Brar, who was at that time Health Minister, Punjab, stated that at 5 pm he was standing next to the car of S. Har Charan Singh Brar, No. CH-01-1035. In the meantime, the former Chief Minister came down and when he was going towards his vehicle, an explosion took place.

189. Satinder Kumar PW58, who was the driver of car No. CH-01-1035 stated that he was stopped by the security personnel attached with the former Chief Minister. In the meantime, the former Chief Minister came and thereafter an explosion took place.

190. Joginder Singh PW128 has stated that an explosion took place. Constable Varinder Rana PW141, another eye witness to the occurrence stated that he heard an explosion. His duty was at the VIP gate. Kulwant Singh PW142 Driver to the Principal Secretary to the former Chief Minister Sh. J.S. Maini stated that on 31.8.1995 he was present in the car parking area. He saw S. Beant Singh at 5:15 pm and thereafter there was an explosion. Constable Bakshish Singh PW143, who was on duty on the VIP gate at 5 pm stated that the Chief Minister came out of the VIP gate. His duty was at the x-ray machine and after a few

minutes, he heard an explosion. Babu Singh PW194 Head Gate Keeper has stated only about the bomb blast.

191. All the above witnesses have not stated a word as to whether they saw the human bomb (Dilawar Singh) approaching the former Chief Minister nor they supported the theory of the human bomb. It is clear from the testimony of these witnesses that there was a bomb blast from the car itself the bomb being placed in the dicky of the car.

192. The only witness to the seeing of the human bomb (Dilawar Singh) approaching the former Chief Minister was Harkesh Singh PW218. This witness is the star witness of the prosecution qua the human bomb theory. He is the sole witness though there were other eye witnesses who as narrated above, have not stated a word about this aspect. Harkesh Singh PW218 has stated that he was posted in the NSG as Ranger No. 1. He was with Sh. P.K. Joshi, Deputy Commandant. Sh. P.K. Joshi gave the daily duties. This witness has stated as under:

On that day at about 5 pm, we got the information that Chief Minister was about to leave. We took our positions. At 5:05 pm, Chief Minister came to the porch. I was facing the Chief Minister then I saw my NSG Guard Kultar Singh following him. K. Ramarao was the head of the vehicle of the Chief Minister. Mr. D.K. Tripathi, S.P given the ready message to move. Then we sat in the vehicles. Then I saw K. Ramarao briskly walking towards us. At that time Chief Minister S. Beant Singh was talking to Dr. Duggal and one other person who had come to meet him. Then I saw one person in police uniform coming towards S. Beant Singh and there was a blast.

The police personnel who came towards the car was a young person. He was a monna type person and was not wearing a turban. After the blast, there was a lot of smoke and there was no visibility. K. Ramarao had fallen down due to the impact of the blast. We lifted him and he informed Commandant of our task force on wireless "bomb blast ho gaya".

193. Learned Counsel has argued that K. Ramarao was a very important witness to the occurrence and the best person to corroborate Harkesh Singh PW218. He has been deliberately held back and no reason has been given as to why he has not been brought into the witness box.

194. Further Harkesh Singh PW218 has stated, "the police personnel I saw coming towards the car was not seen by me after the blast. I saw that monna person in police uniform present near the VIP gate. When I saw that person, he was at a distance of about 16 or 17 yards from us. When I saw that person first time, the former Chief Minister had sat in his car but the door of the car was still open."

195. It is strange that though Harkesh Singh PW218 was a witness to the occurrence, his statement was not recorded by the Investigating Officer of the

Chandigarh Police on the same day. Statement of Harkesh Singh PW218 was recorded by the CBI under Section 161 Code of Criminal Procedure on 4.9.1995. In that statement nothing has been mentioned about the person he saw being a monna (clean shaven) person. The statement of the person being a monna person was the first time given in Court by Harkesh Singh PW218 on 29.3.2003. Such was the observation of Harkesh Singh PW218 that he saw 7/8 security personnel of the Secretariat wearing turbans or caps. He should have mentioned that the person approaching was a monna person in his statement under Section 161 of the Code of Criminal Procedure, which has not done so. The human bomb would have been very easily distinguishable from others as he was not wearing a cap or turban while the others were. This witness has specifically stated that his statement was not recorded in Sector 3 Police Station when he reached there at 5:30 pm on 31.8.1995. Prosecution is falsely relying on this witness solely to prove its human bomb theory.

196. In FIR Ex.PW30/4, there is no mention of Harkesh Singh PW218 or the human bomb. Seventeen inquest reports were prepared by Inspector Nanha Ram PW240 who was at that time investigating the case, but not a word has been mentioned about Harkesh Singh PW218. Nothing also has been mentioned in these inquest reports that a human bomb had killed the then Chief Minister alongwith sixteen other persons.

197. Inspector Nanha Ram PW240 reached the spot at 5:20 pm (first Investigating Officer) and on his inquiry strangely he could not find any eye witness. Harkesh Singh PW218 reached the Police Station at 5:30 pm. His statement should have been the basis of the FIR as he saw the occurrence and the human bomb. But this witness as already stated above was introduced at a later date and that is the reason that his name does not find mention in FIR Ex.PW30/4 and in the inquest reports prepared.

198. Harkesh Singh PW218 is the sole eye witness to the human bomb theory and should not be believed. The Court is dealing with a single eye witness regarding the human bomb theory. This witness does not find any corroboration from either the injured eye witnesses or the police personnel standing on the side nearby. No credibility should be given to his statement. If Harkesh Singh PW218 had given his statement on 31.8.1995 to Nanha Ram Inspector and stated to him regarding the human bomb approaching the then Chief Minister then credibility could have been given to his statement. It is on 4.9.1995 the statement of Harkesh Singh PW218 was recorded by the CBI. Harkesh Singh PW218 was not the only witness. K. Ramarao (S.P Security) and the two other rangers alongwith Harkesh Singh, Ashok Kumar and Babu Lal should have been brought into the witness box. Infact K. Ramarao was the best eye witness but he has been withheld. The theory of human bomb blast as propounded by Harkesh Singh PW218 cannot be believed because of infirmities in his statement as pointed out above.

199. Learned Counsel for the Appellants has further argued that the Ballistic

Expert Roop Singh PW165 is not an expert as envisaged in Section 45 of the Indian Evidence Act, which is reproduced as under:

45. - Opinions of Experts- When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting[ or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting][ or finger impressions] are relevant facts.

Such persons are called experts.

Roop Singh PW165 has not specifically stated that the damage to the car was from the outside and not from the inside. On 24.9.2004, in his testimony before the trial Court he has for the first time stated about the bomb explosion being from the outside of the car and not from inside the car. This he has confessed in his cross examination by conceding that he stated this for the first time. He is an unreliable witness. He has been disbelieved in the Jassica Lal's case by the Hon'ble Supreme Court where he had given his evidence as a Ballistic Expert. In his statement before the court he has not stated that he is an expert in explosives. His statement reads as under:

I prepared damage report of the convoy of the Chief Minister including the CM's car but the damage report were not handed over to the Investigating Officer for producing in the Court. We searched the five cars lying there and assessed the damage and burning effect. Search report was not handed over to the Investigating Officer for producing in the Court. On search of CM's car I did not recover any article. I do not know when these cars were lifted from the spot. I do not remember if any car was lifted from the spot in my presence or not, from 1st to 3rd Sept. during my stay. I do not remember if I read newspapers in those days or not. I have not seen any such newspaper wherein the photograph was such that the car was totally damaged from its base. It is wrong to suggest that total portion of the CM's car was reduced to mangled iron. Vol. That engine portion and right side doors of the car were undamaged, left side door was pushed towards from (engine side) left portion of the dicky was completely shattered and right side of the dicky was pushed towards right side and was not shattered, the base of the dicky was slightly pressed downward but not shattered, fuel tank was intact. This car has not been shown to me in Court at the time of examination at any stage. Regarding damage and intact portion whatever I have stated in my statement volunteered above was mentioned in crime scene visit report and that report was not handed over to the Investigating Officer for producing in the Court....

...I passed diploma in Forensic Ballistic which include studying of explosive as well." "I conducted examination in connection with Rajiv Gandhi's case in which a human bomb was used. Apart from it, we gained some experience when a team came from Sri Lanka in connection with the assassination of Jaywardhney, the late President of Sri Lanka....

200. Going through his testimony as above it is clear though allegedly he collected evidence but did not hand it over to the Investigating Officer. This witness has not been cited as a witness. In the Rajiv Gandhi's case, he does not figure anywhere in the judgment rendered in that case. Believing such a witness is very dangerous. The Hon''ble Supreme Court in State of Himachal Pradesh Vs. Jai Lal and Others, has stated as under:

An expert witness is one who has made the subject upon which he speaks a matter of particular study, practice, or observation; and he must have a special knowledge of the subject.

Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art or as to identify of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identify of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration alongwith the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of the conclusions.

The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross examination.

As per the judgment in State of H.P v. Jai lal and Ors. (supra) Roop Singh PW165 cannot be put into the category of being an expert witness.

201. Roop Singh PW165 has further stated in his testimony, "I had also visited the scene of occurrence and also assessed the extent and magnitude of the explosions." "At the spot, I did not prepare final report and the report was prepared by me lateron when exhibits were sent to me for examination." "I did not prepare any such document mentioning that bomb detection instruments have been used." "I had prepared a rough sketch showing places where the above mentioned vehicles were lying, I did not give the rough sketch to the Investigating Officer." "Due to the explosion, the CM's car moved towards the South and towards the right side of the car upto three feet." The Hon''ble Supreme Court in Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), has held as under:

The opinion of R, ballistic expert exhibited as Ext. PW89/DB only says that "it appears that the two cartridge cases are from two different pistols.". Such a vague opinion of the expert can neither be relied upon or can be any basis to come to a conclusion that there were two persons who had fired two different shots.

The moment R uses the word "appear" his opinion unsupported by reasons becomes inconclusive and stands discredited for the purpose of placing reliance on. Besides, clearly an option was available to the accused under Section 293 Code of Criminal Procedure to call for the witness and ascertain from him for sure that the two empties were infact fired from two different weapons. However, the accused did not choose to do so."

Para 163. According to the State the same also contained inconclusive opinion. It was pointed out that the State has neither relied on the report of the expert Shri Rup Singh nor had filed it in the trial Court. An application was moved by the accused for the supply of the document and vide order dated 14.1.2000, the Metropolitan Magistrate directed that the State will have to supply all the deficient copies and also the remaining CFSL reports sent by CFSL to SHO. The opinion of Shri Rup Singh, the ballistic expert finally exhibited as Ext.PW89-DB only says that it appears that the two cartridge cases are from two different pistols." As rightly pointed out such a vague opinion of the expert can neither be relied upon nor can be any basis to come to a conclusion that there were two persons who had fired two different shots.

Para 171. Assuming for the sake of the argument, though not admitting that the said report of Rup Singh i.e. Ext. PW89/DB is admissible even though a photocopy has been placed on record and even though nowhere has it come in evidence that the same i.e. the photocopy has been compared and scrutinized with the original by the Court and then placed on record, the same still loses all credence in the light of the fact that a perusal of the forwarding letter and report would show that there seems to have been some tampering with the said documents since the sequence of numbering of the parcels as between the forwarding letter and the report has been changed by somebody which fact remains unexplained as, therefore, casts a further doubt on the genuineness of the said report. The report itself with regard to query 3 shows that" it appears that the two cartridge cases C-1 and C-2 have been fired by two different weapons." This opinion of the expert was vague and on the basis of said opinion, no credence can be lent to the fact adverted to by the defence that there were two persons who fired two different shots from two different weapons. Moreover, the said report is oddly silent on Query 7 of the forwarding letter wherein it was specifically asked about the various markings on the live cartridge and the bullet empties.

Para 179. In the present case, the moment Rup Singh uses the word"appear" his opinion unsupported by reasons becomes inconclusive and stands discredited for the purpose of placing reliance on. The opinion of Rup Singh was at Query 7 as

to "please examine and opine whether ejector, trigger, chamber, magazine or other tool marks are present on the live bullet and the bullet empties contained in parcels Nos. 6 and 5 respectively" Though Shri Rup Singh has given opinion qua Query 5 that the two .22" cartridge cases appears to have been fired from two different .22" calibre standard firearms but his opinion is completely silent on the marks i.e. ejector, trigger, chamber, magazine or other tool marks on the bullet empties (Ext.PW89-DB). In any case, the opinion of Rup Singh as of today is of little use to the accused for the reasons stated above and since it is both inconclusive and unsupported by any reasoning whatsoever and, therefore, cannot appeal to the judicial mind of this Court.

Further Roop Singh PW165 has stated: "...This report was also not given to the Investigating Officer..." "...I prepared the crime scene report wherein damage to the CM's car and other car was mentioned...." "...I recorded the material and articles which were collected from each divided portion. That report is in our file and same was not handed over to the Investigating Officer..." "...I examined the marks regarding damage of window panes etc. and also marks on the walls and road of the Secretariat building, this report was kept by me with me in the official file and was not handed over to the Investigating Officer..." "...Towards the back of CM's car, the affect of the explosion was upto 100 feet and debris was lying in the area...." "...The back light, back number plate, dicky portion (left side) and dicky cover and its frame were thrown to the west side upto a distance of 100/150 feet. In the direction of the front side of the car, the damage due to explosion was caused upto about 50 feet in the open area...." "...I was the only Ballistic Expert at the spot on 1.9.1995 from the Division...."

...I am just of the opinion that explision in the said car was not a result of IED being kept inside the car or planted beneath it. I gave this opinion as mentioned above in my statement dated 24.9.2004 first time and prior to that my no such statement was recorded. My this opinion was neither mentioned in the report nor in any other document concerned with this case....

...I received information that Ballistic Expert, CFSL, Chandigarh and CFSL, Punjab visited the spot on 31.8.1995 in the evening. Learned Counsel has stated that these experts never came into the witness box nor they were cited as a witness....

202. ...I mentioned in crime scene visit report. I noted damage caused also in the crime scene visit report. The crime scene visit report is in our file which I have brought today and the same was not handed over to the Investigating Officer for producing in Court. The Hon"ble Supreme Court in Sidhartha Vashisth @ Manu Sharma v. State NCT of Delhi (supra) has rejected the expert report of this witness and he has been disbelieved. Similarly, in this case also this witness should not be believed and his opinion and report should be rejected by this Court also.

203. The other ballistic reports Ex.PW240/2 which on the file are of Balwinder

Kaur, who has not been examined. The only thing she has stated that she had detected RDX. This witness has not said anything about the damage to the car and specifically regarding the human bomb explosion whether it was from outside the car of the then Chief Minister or inside the car in her report. The third expert witness Dr. S.R. Singh has submitted his report Ex.PW165/7, his designation being Principal Scientific Officer. As per Section 293 of the Code of Criminal Procedure, the report of Dr. S.R. Singh could not have been exhibited as he does not fall within the category who can be counted as an expert as per Section 293 of the Code of Criminal Procedure. No advantage can be taken by the report of this witness.

204. It is clear from the statement of Roop Singh PW165 that he is not a ballistic expert and all the evidence he had collected from the spot, the papers he had prepared were not handed over to the Investigating Officer. They being not handed over to the Investigating Officer, the court should presume that these documents were prepared at a later stage.

205. Prosecution is relying on another circumstance that Inspector Nanha Ram PW240 found two legs and one skull on the day of occurrence i.e. on 31.8.1995. As per his statement, he after recovering the legs and skull, deposited them in the mortuary of Sector 16, Chandigarh Hospital. But this aspect has not been mentioned in the inquest report Ex.PW6/42. Infact the legs and skull recovered were of different persons and not of one and the same person. The inquest report is a forged document which was prepared lateon. It is also missing from the Daily Diary Report No. 47 dated 31.8.1995 which was written by Inspector Nanha Ram PW240 on 1.9.1995 at 3:40 am at Police Station Sector 3, Chandigarh, after he had returned from the place of occurrence.

206. The record shows that for the first time Dr. Inderjit Diwan PW6 saw the legs and skull on 4.9.1995. Nothing has come on record to show as to for four days where the legs and skull had been kept. SI Gamdoor Singh PW176 moved an application Ex.PW6/41 dated 5.9.1995 for conducting post mortem on the legs and skull. It clearly shows that from 31.8.1995 till 4.9.1995, nothing was done, for the reason that nobody knew whose legs and skull had been collected from the spot. The police was groping in the dark. As per the statement of Gamdoor Singh PW176 the inquest report was prepared on 5.9.1995. He has stated:

Inquest report of two legs and a skull were prepared by Nanha Ram SHO, I do not know at what time this inquest report was started and completed by Nanha Ram SHO. When inquest report was prepared I was not present lateron I appeared there. I signed the inquest report regarding two legs and skull later on. I signed inquest report on 5.9.1995. The inquest report was prepared on 5.9.1995. From the above statement it shows that the inquest report was prepared at a later date.

207. Dr. Inderjit Diwan PW6, who conducted the postmortem on the two legs and skull has stated that in the PGI also no record of the legs was kept. "These legs

and skull reached on 4.9.1995. There is no record from 31.8.1995 to 5.9.1995 where were these legs and head kept." He has further stated, "these legs and skull do not belong to the same person. It seems that the legs and skull did not belong to Dilawar Singh. Prosecution just picked up two legs and skull as there were many lying after the bomb blast and created these two pieces of evidence to be that of Dilawar Singh."

208. Dr. Lalji Singh PW245 had submitted his DNA report Ex.PW245/7 but Dr. Inderjit Diwan PW6 has stated:

There is no mention of the fact that Dr. Lal Ji Singh had taken samples from the specimen examined by me in my report but a receipt was obtained from Dr. Lalji Singh separately of this transaction. The same is the position in relation to the samples handed over by me to Dr. Lalji Singh but I had obtained a receipt. The receipt issued by Dr. Lalji Singh is on a loose paper. I did not enquire from Dr. Lalji Singh as to who had advised the performance of DNA test." "No special mark of identification or scar was found on the legs as far as I remember. However, even if any such mark had been present it would not be necessary for me to incorporate the same in my report. Personally I would not have been able to identify the legs as they were mostly burnt and had injuries. I have seen the photographs Ex.PW6/46 to Ex.PW6/49. I have not been able to find any specific scar leading to identification. This casts a doubt that the correct procedure was not adopted by Dr. Lal Ji Singh PW245 to compare the DNA of both the legs and skull with the blood of Harnek Singh (Father), Surjit Kaur (mother) and Chamkaur Singh PW99 (Brother) of Dilawar Singh.

209. Dr. Sandeep Singh Sahni PW16 has in his statement before the Court has stated that, "The decision to preserve the two legs and skull in formaline was taken on 3.9.1995 when the CBI visited the mortuary." As per Dr. Sandeep Singh Sahni PW16, it was the CBI who brought the legs and skull. He does not mention anything about SI Gamdoor Singh PW176 having brought the body parts to the PGI. This is a clear contradiction which the prosecution has not been able to reconcile with.

210. Chamkaur Singh PW99, the real brother of Dilawar Singh has stated that he left Malout at 1 am in the intervening night of 4/5.9.1995 when the CBI had taken him in custody. He also though being an important witness of the prosecution did not identify the legs and head of Dilawar Singh and has stated, "We were not able to identify those legs and part of the head and face but on the suggestion of the CBI Officer, I told him that these could be the legs and part of the head and face of Dilawar Singh. "That the identification was done by my father, and I was with him." "...It is correct that those parts of the human body were so mutilated that they could not be identified...."

211. Statement of Chamkaur Singh PW99 was recorded on 25.9.1995 under Section 164 of the Code of Criminal Procedure by the Metropolitan Magistrate, Delhi. The CBI had kept him in their custody from 4.9.1995 to 24.9.1995 and it

is thereafter his statement was recorded. By the statement of Chamkaur Singh PW99, it is not established as to whether the legs and skull were that of Dilawar Singh as Chamkaur Singh PW99 is evasive in his statement. The only witness which the prosecution is then left with is Dr. Lal Ji Singh PW245 regarding the DNA test.

212. Dr. Lal Ji Singh PW245 was the Director of Central Forensic and Molecular Biology, Hyderabad. He received a telephone call from the CBI on 4.9.1995 to reach Chandigarh. On 5.9.1995 he left Hyderabad and was received by the CBI at the Chandigarh Airport. He was taken to the PGI mortuary where he was shown the two legs and a head. Chamkaur Singh PW99, the brother of Dilawar Singh and Harnek Singh father of Dilawar Singh identified the legs and skull but as per Dr. Lal Ji Singh PW245, they were not 100% sure. Blood samples of Harnek Singh, father of Dilawar Singh and Chamkaur Singh PW99, brother of Dilawar Singh were taken. This witness has stated, "It is correct that legs and head portion of the body was badly shattered and badly decomposed due to the affect of bomb blast and environmental insult. I did not give any opinion after examination as to whether the legs and skull is part of the body of a male or a female." "I have seen my report Ex.PW245/7 in this report it is nowhere mentioned regarding exhibits D to I that any of the sample was taken with the help of the doctors or alone. In this regard there is mention in the identification card Ex.PW245/5 that muscle pieces were taken from the left leg, right legs and neck region of the head as well as from the head with scalp and hair in the presence of the witnesses. In this document also it was not specifically written that the samples were obtained by me or that these samples were obtained by me with the help of the doctors." The body parts it clearly shows were not kept in a proper manner. Further this witness has stated that, "All the three blood samples were kept by me and they were not sealed. I reached Hyderabad on 7.9.1995. These samples parcel were kept by me in my custody and was not handed over to any official in my office at Hyderabad. These parcels were kept by me in my office. I have seen my report Ex.PW245/7. It is correct that in the portion of the report regarding taking of samples A,B and C, it is not mentioned that the blood samples were taken by me or in my presence. It is also correct that in these documents it has not been mentioned that the blood samples were taken in my presence." Statement of Dr. Lal Ji Singh PW245 falsifies the investigation done by the police of Police Station Sector 3, Chandigarh and also of the CBI.

213. The delivery of samples to Dr. Lal Ji Singh PW245 is also not clear. Further Dr. Lal Ji has stated, "It is correct that the samples marked Ex.G to Ex. T were not fit for examination as they had been improperly stored in formaline and ethanol and its DNA had decomposed." "After seeing the container it has been stated by the witness that the container containing the label of right leg hair residue is having traces of residue. The above said container in which traces of residue have been mentioned by me pertains to exhibits G to T. After processing DNA was not found in good condition. Ex.G to T were not used for isolation of

DNA because they were not properly preserved." "Ans-Since in the present case the sample was preserved in formaline the recovery of DNA was very-very small just sufficient to do PCR reaction to complete the present test. There was no DNA left."

214. The Division Bench of the Hon<sup>ble</sup> Gujarat High Court has held in 2009 Cri. L.J 2888 Premjibhai Bachubhai Khasiya v. State of Gujarat and Anr. as under:

Para 10- Now, therefore, what is left out is the documentary evidence, which is heavily relied upon by the trial Court in form of the DNA report. The DNA report says that the DNA profile of the Appellant is consistent as biological father of the foetus of the prosecutrix, whereas the DNA profile of Arvindbhai excludes him from being biological father of the foetus of the prosecutrix, and this evidence is relied upon by the trial Court to record conviction of the Appellant.

Para 11-The question, therefore, that arises for our determination is whether the DNA report can be the sole basis and conclusive evidence of the paternity of the child (foetus) or guilt of the accused for rape, in absence of any other evidence and whether the DNA can be considered as a substantive and conclusive piece of evidence to record conviction of an accused of rape on its sole basis.

Para 13.1 After referring to the decision in the case of Smt. Kanti Devi and Another Vs. Poshi Ram, , the commission has further observed:

It is, therefore, fairly established that if the DNA result does not match, then the identity of the person is not established. But, the contrary is not true. Where the test result is that the DNA does not match, it cannot lead to a conclusion of identity of the person.

Para 13.2 In the latter part of the report, it has been observed thus:

If the samples match, that does not mean the identity is conclusively proved. Rather an expert; will be able to derive from a data base of DNA samples, an approximate number reflecting how often a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 100,000. This is described as the "random occurrence ratio" (Phipson 1999, 15th Edn. Para 14.32).

Thus DNA may be more useful for purpose of investigation but not for raising any presumption of identity in a court of law.

It is clear from the above statements of the prosecution witnesses that the case of the prosecution is specific to this point that on 31.8.1995 at 5:10 pm S. Beant Singh was sitting on the rear seat of car No. PB-08-3469 and was killed by a bomb blast and not by a human bomb.

215. The learned trial Court has carved out a case that the human bomb Dilawar Singh came near the car of S. Beant Singh when he was going to sit in his car and it is thereafter that the blast took place in which 17 persons died and 15 got

injured.

216. The first question to be answered, is whether the bomb blast was a human bomb or a car bomb, the second question to be answered is whether the two legs and skull recovered belonged to one and the same person, thirdly whether the legs and skull were of a male or female, fourthly whether the legs and skull were of Dilawar Singh and fifthly as to whether Dilawar Singh acted as a human bomb as there is no eye witness account to state that Dilawar Singh was the human bomb. All these questions have gone unanswered by the prosecution.

217. The prosecution produced Dr. Inderjit Diwan PW6 who prepared the postmortem report. This witness is not categorical as to whether the legs and skull recovered from the place of occurrence were that of the same person as already discussed above. He has also stated that he does not rule out that they are of a female. There are how two views of Dr. Inderjit Singh Diwan PW6 before the Court, the one favourable to the accused should be taken into consideration.

218. The legs and skull, it comes out from the evidence, were not that of Dilawar Singh. Harnek Singh, father of Dilawar Singh and Surjit Kaur, mother of Dilawar Singh and Chamkaur Singh PW99, brother of Dilawar Singh were brought to PGI, to identify the body of Dilawar Singh. Harnek Singh and Surjit Kaur have not been examined for the reasons best known to the prosecution. The non examination of these two vital witnesses creates a doubt on the identification of the legs and skull and an adverse presumption be taken against the prosecution.

219. Learned defence Counsel has argued that we have a solitary witness for identification of the legs and skull that is Chamkaur Singh PW99. He has stated in his statement before the Court that the portions of the body shown to him were unidentifiable and this statement of Chamkaur Singh PW99 is corroborated by the statement of Dr. Inderjit Diwan PW6. Chamkaur Singh PW99 has further in his statement stated, that the CBI officers suggested to him that the legs and head belonged to Dilawar Singh and he told them it may be. It is clear that Chamkaur Singh PW99 was also not sure. On showing of a shoe to him, Chamkaur Singh PW99 stated that his brother wore such like shoes. It is clear that the prosecution has failed to establish that the legs and skull belonged to Dilawar Singh.

220. Dr. Lalji Singh PW245 has in his statement before the Court has shown serious infirmities. The DNA test was done on the basis of samples of blood taken from Harnek Singh, father of Dilawar Singh and Surjit Kaur, mother of Dilawar Singh which was compared with the tissues of the two legs and skull. The documents on record show that the name of the doctor who took the blood and the name of the Investigating Officer in the presence of whom the blood was taken is not mentioned in these columns as they are blank. Further the samples of blood and the tissues taken were not sealed. Dr. Inderjit Diwan PW6 has stated that no samples were taken in his presence.

221. There are three versions of the samples being taken to Hyderabad. Dr. Lal ji

Singh PW245 has stated that he had taken the samples alongwith him to Hyderabad. He reached Hyderabad on 7.9.1995. Letter Ex.D4 written by the CBI states that the samples were taken to Hyderabad to the Laboratory of Dr. Lal Ji Singh PW245 by them. In the third version Ex.PW245/7, the DNA report of Dr. Lal Ji Singh and as per the report, the samples were received in the laboratory on 8.5.1995. No credibility can be given to the DNA report after taking these infirmities into consideration. It is apparent that the prosecution has failed to establish that the two legs and skull were that of Dilawar Singh. The prosecution case completely collapses as they have failed to prove beyond reasonable doubt the human bomb theory.

222. Even if it is proved that the legs and skull were that of Dilawar Singh but still the prosecution has not proved that Dilawar Singh was the human bomb at the most one can presume that he was also a victim of the bomb blast if he was there.

223. As per the prosecution version, S. Beant Singh was sitting on the rear car seat and talking to Dr. Anil Duggal. The left door was held by ASI Jagdish Singh. On the side of ASI Jagdish Singh was standing Dinesh Kumar Tripathi, SP (Security) PW78. In such a situation, the human bomb Dilawar Singh could not have penetrated the circle of security. The findings of the learned trial on the human bomb theory and to this effect that S. Beant Singh was about to enter the car when the blast took place is a nullity and manifestly wrong.

224. The judicial confessional statement of accused Shamsher Singh was recorded by Sh. Dinesh Kumar Sharma, Metropolitan Magistrate, New Delhi PW103. He has stated in his testimony that application Ex.PW103/A dated 15.12.1995 and vide his endorsement Ex.PW103/B dated 16.12.1995 that the accused was not produced before him. This application had been put up by Sh. S.K. Sharma, DSP, CBI for recording of the confessional statement of Shamsher Singh.

225. On 16.12.1995 Sh.Bhupinder Singh, Superintendent of Police, Incharge CBI produced Shamsher Singh accused. Glaring infirmities can be made out from the statement of Sh. Dinesh Kumar Sharma PW103 that he did not follow the procedure laid down for the recording of the statement as envisaged under Section 164 Code of Criminal Procedure. His statement reads as under:

I did not specifically ask the accused because it was already mentioned in the application put up before me on 15.12.1995 which is Ex.PW103/A that accused had been arrested on 11.12.1995. I thoroughly satisfied myself that accused is willing to make the statement voluntarily without any fear, force or coercion. I have recorded all these things in my proceedings recorded in my own hand. These proceedings are Ex.PW103/E. These are in my hand and signed by me. I gave him three hours of time to reconsider over his own wish of making confessional statement. During this period he was asked to sit in my court room/ chamber.

I did not ask the accused since when he has been in police custody. There was no need for asking me orally from the CBI officer incharge since when the accused was; in police custody as this fact was already recorded in the case diary as also in the application moved on 15.12.1995 by the CBI. I did not think it necessary to enquire from the CBI as to from which place he had been arrested and where he had been kept after arresting him.

Before actually recording the confessional statement of the accused, which I recorded sometime after 3:35 pm, I did not record the preliminary statement of the accused in vernacular that he was making statement without threat, inducement or promise.

However, in this preliminary enquiry I have not specifically mentioned that these warnings were given to the accused in Punjabi or that he had given answers in Punjabi. Before asking him to sit in my court room/Chamber after recording the proceedings Ex.PW103/E, I did not record the statement of the accused in Punjabi or Hindi that he was at liberty to sit in the court room/chamber for three hours to recollect and make up his mind whether he was prepared to make a voluntary confessional statement.

During the cursory glance of the case diary, no material came to my notice about the disclosures of the accused regarding his involvement and the involvement of the others.

I am aware of the right of the accused that at the time of the remand he should have the services of a lawyer. I do not remember whether I enquired from accused Shamsher Singh whether any friend or relative had met him during the period of his police remand. I do not remember whether it was recorded in the zimni that the accused had been provided with legal aid at the time of police remand.

226. It is clear as per the above statement of Sh. D.K. Sharma PW103 Metropolitan Magistrate, New Delhi that Shamsher Singh accused was brought before him by Bhupinder Singh, Superintendent of Police, CBI. Bhupinder Singh Superintendent of Police, CBI was a vital witness to the confessional statement. He has not been examined by the prosecution. Admittedly, Shamsher Singh was in police custody when he was brought before the Metropolitan Magistrate, Sh. D.K. Sharma, PW103.

227. Sh. D.K. Sharma, PW103 passed order dated 16.12.1995 Ex.PW103/D for the recording of the statement of accused Shamsher Singh. It shows that accused Shamsher Singh was in police custody when his statement was recorded. Reflection time (time to think over whether confession is to be made or not) should have been given to accused Shamsher Singh by sending him to judicial custody but he was given only three hours to make up his mind and that also when he was in Police custody.

228. Section 164 of the Code of Criminal Procedure provides a number of

precautions and a number of questions, to be put to the accused. These questions should have been put to him in his own language i.e. Punjabi or Hindi, if he could understand it, but in this case questions put to him were in English. No signatures were taken of Shamsher Singh. No question was put to him as to whether he had been tortured, pressurised and whether he is in a fit state of mind to make the confession. Shamsher Singh accused was also not informed by Sh. D.K. Sharma PW103 that he is a Magistrate. No legal aid was provided to Shamsher Singh at the time of his remand or before his confessional statement was going to be recorded. It was the duty of the Magistrate to provide him legal aid.

229. Strangely though not legally incorrect, Shamsher Singh accused was produced in a Delhi Court while the case was that of Chandigarh. This itself is a suspicious circumstance that the CBI was determined to procure the statement of Shamsher Singh under Section 164 Code of Criminal Procedure. Before Shamsher Singh accused came into the custody of CBI, he was in the custody of Punjab Police. This fact was not brought to the knowledge of the Magistrate.

230. The confessional statement of Shamsher Singh cannot be said to be voluntarily and has been procured when he was in police custody. Shamsher Singh on 20.2.1996 retracted from his confessional statement. Thus now it cannot be taken into consideration for the purposes of convicting him.

231. Learned Counsel for the Appellants has argued that the confessional statement of Balwant Singh recorded by Sh. V.K. Maheshwari, Metropolitan Magistrate, New Delhi PW65 is full of infirmities. As per the statement of the Magistrate as stated by him, "...After completing these proceedings, I started recording the statement of accused Balwant Singh which runs from page 7 to page 19 of the file relating to the confessional proceedings. I have recorded the statement of the accused Balwant Singh correctly, without any addition or alteration. The statement and all the proceedings were recorded directly on a typewriter by my Steno on my dictation in my Chamber/Retiring room...." "...On 22.1.1996 I did not examine the covered part of the body of Balwant Singh to determine whether he had any injury on his person because he had not complained of any such injuries later portion volunteered. On 23.1.1996 the examination of the accused for determining whether he had injuries on his person which was conducted by me was confined to the visible parts of the body for the reasons already indicated by me. It is incorrect to suggest that when the accused Balwant Singh was produced before me, his groins were sore on account of the torture inflicted by the police. I say this because the accused did not complain of any maltreatment at the hands of the CBI...." "...When the accused told me that he had been arrested by the Punjab Police I did not try to find out the date on which he was arrested by the Punjab Police because he was produced before me by the CBI in whose custody he was since 14.1.1996 and as such any influence of which detention by the Punjab Police would no longer continue on him. I did not try to find out from the I.O as to what investigation

has been conducted by him during the period Balkwant Singh remained in his custody. XXX By Sh. S.K. Chopra, defence counsel: It is correct that not a single word of the proceeding had been recorded by me in Punjabi or Hindi...." "...It had come to my notice as a fact that Balwant Singh when he was produced before me while making the application, was not being represented by a counsel. It is correct that I did not deem it necessary to provide a counsel to the accused but this was because the accused did not evince any desire to seek legal advice nor did he tell me that he had engaged some counsel whom he wanted to consult...."

232. On 20.2.1996 accused Shamsheer Singh and accused Balwant Singh moved an application to retract their confessional statements. Shamsheer Singh retracted from his confessional statement while Balwant Singh on 24.12.1997 moved another application reiterating his confessional statement and stating that he does not want to retract and wants to withdraw the previous application of retraction..

233. Accused Balwant Singh was arrested by the Haryana Police by Sh. S.N. Saxena, DSP, CBI. From 14.1.1996 to 27.1.1996, he was given on remand to the CBI by the then Chief Judicial Magistrate, Ambala who took him into custody from Ambala. It has not come on record as to when the Haryana Police had arrested him.

234. The judicial confession of Balwant Singh should have been recorded at Ambala. No reason has been given as to why it was recorded at Ambala and as to why it was recorded at Delhi.

235. Sh. V.K. Maheshwari Metropolitan Magistrate PW65 did not inquire from the police or did not even look into the case diary as to when Balwant Singh, accused was arrested by the Haryana Police or as to when he was taken into custody by the CBI. The confessional statement was recorded in the Magistrates' chamber which was a violation of Rule 5 of the High Court Rules and Order Chapter 13 Volume 3, which is reproduced as under:

The following instructions are issued for the guidance of the Magistrate for recording confessions and statements under Section 164 of the Code of Criminal Procedure. It is not intended to fetter any discretion given by the law to Magistrates as such, but it is only desired to indicate the directions under which such discretion may be exercised:

(a) Unless for exceptional reasons to be recorded in writing, confessions should ordinarily be recorded in open Court and during court hours.

236. No legal aid was provided to accused Balwant Singh. The learned Magistrate had seriously faulted in the recording of the statement. The confession was not voluntary and thus it should not be acted upon by this Court. It has been held by Honble Supreme Court in a number of judgments regarding the recording of judicial confessions as under:

In *Sarwan Singh Vs. The State of Punjab*, held as under:

10. ...The question of the corroboration that his evidence receives from the confessional statement made by Sarwan Singh himself. It is, however, true, that Sarwan Singh has made a confession and in law it would be open to the Court to convict him on his confession itself though he has retracted his confession at a later stage.

Nevertheless usually Courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.

....

Prima facie whether or not the confession is voluntary would be a question of fact and we would be reluctant to interfere with a finding on such a question of fact unless we are satisfied that the impugned finding has been reached without applying the true and relevant legal tests in the matter.

....

It is hardly necessary to emphasize that the act of recording confessions under Section 164, Code of Criminal Procedure is a very solemn act and, in discharging his duties under the said section, the Magistrate must take care to see that the requirements of Sub-section (3) of Section 164 are fully satisfied. It would of course be necessary in every case to put the questions prescribed by the High Court circulars but the questions intended to be put under Sub-section (3) of Section 164 should not be allowed to become a matter of a mere mechanical enquiry. No element of casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary.

....

The whole object of putting questions to an accused person who offers to confession is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in Section 24 of the Indian Evidence Act.

In *Shivappa v. State of Karnataka* 1995(1) R.C.R. 284 held as under:

7. The Magistrate who is entrusted with the duty of recording confession of an accused coming from public custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a "voluntary" statement within the meaning of the provisions of Section 164 Code of Criminal Procedure and the Rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must only be satisfied as to the

voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the Court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and statutory provision were strictly complied with.

8. From a perusal of the evidence of PW17, Shri Shitappa, Addl. Munsif-Magistrate, we find that though he had administered the caution to the Appellant that he was not bound to make a statement and that if he did make a statement that may be used against him as evidence but PW-17 did make a statement that may be used against him as evidence but PW-17 did not disclose to Appellant that he was Magistrate and that the confession was being recorded by him in that capacity nor make any enquiry to find out whether he had been influenced by any one to make the confession.

In *Bhagwan Singh and Ors. v. State of M.P.* 2003 (1) R.C.R. 660 held as under:

28. It has also been held that the Magistrate in particular should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial. he should be granted sufficient time for reflection. He should also be assured of protection from any sort of apprehended torture or pressure from police in case he declines to make a confessional statement. Unfortunately, in this case, the evidence of the Judicial Magistrate (PW-1) does not show that any such precaution was taken before recording the judicial confession. In *Babubhai Udesinh Parmar Vs. State of Gujarat*, , held as under:

19. We must notice that there was no direction to provide free legal aid to the Appellant. He had no opportunity to have independent advice. We may, however, hasten to add that it does not mean that such legal assistance must be provided in each and every case but in a case of this nature where the Appellant is said to have confessed in a large number of cases at the same time, the State could not have denied legal aid to him for a period of three years. 237. We have before us the judicial confession of accused Shamsheer Singh and accused Balwant Singh but there is no judicial confession regarding accused Jagtar Singh Hawara, accused Gurmeet Singh and accused Lakhwinder Singh. The Hon"ble Supreme Court has held in a number of judgments that the value of a confession of an accused cannot be of use against his co-accused until and unless there is other convincing evidence before the Court. The Hon"ble Supreme Court in a number of judgments, which are reproduced as under has held as under:

In *Mohtesham Mohd. Ismail v. Spl. Director Enforcement Directorate and Anr.* (2007) 3 SCC 531 held as under:

19. Apart therefrom the High Court was bound to take into consideration the factum of retraction of the confession by the Appellant. It is now a well-settled principle of law that a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an

assurance in support of the conclusion deducible therefrom. See Haricharan Kurmi v. State of Bihar, Haroom Haji Abdula v. State of Maharashtra and Parkash Kumar v. State of Gujarat.

In Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, held as under:

12. ...It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way. Because whatever is considered by the Court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense because of the provisions of Section 30, the fact remains that is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

In Parkash Kumar alias Parkash Bhutto v. State of Gujarat (2007) 2 S.C.C. 285 held as under:

6. The concession of a co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidence, if any, adduced by the prosecution see Haricharan Kurmi v. State of Bihar. Though in State v. Nalni it has been held that confession is a substantive piece of evidence, but as a rule of prudence the court should seek other corroborative evidence to test its veracity.

238. It is clear if we go by the judgments of the Hon"ble Supreme Court as above, the confessions of Balwant Singh and Shamsher Singh are of no value. These judicial confessions even if believed are of no help to the prosecution as far as the other three accused are concerned i.e. Jagtar Singh Hawara, Gurmeet Singh and Lakhwinder Singh.

The extra judicial confession of Lakhwinder Singh accused made before Dalbir Singh PW114 on 2.9.1995 is also of no value. Dalbir

239. Singh PW114 has stated, "...In the evening I was present in the jungle adjacent Rock Garden and I heard the noise of blast in the jungle. In the evening at about 8 pm, I came to the shop of my brother. There I met Lakhwinder Singh accused. He disclosed to me that Beant Singh has been killed in a bomb blast. At that time Lakhwiner Singh was preplexed...." "...Lakhwinder Singh disclosed to me and at that time, Surjit had gone inside the room, that Dilawar Singh had been killed in the bomb blast and he further disclosed to me that he alongwith Balwant Singh and Hawara etc. are involved in the bomb blast and he is apprehending that the police might kill him in an encounter..." "...It is correct

that I am addicted to liquor and charas. I prepare charas from the plants. Surinder Chhida is also fond of Charas. Madanjit is not addicted to Charas. It is correct that I consume charas from my childhood." "...It is wrong to suggest that charas is being supplied to me by the police and the CBI, and in order to help them, I have deposed falsely...." "...My statement was recorded by the police in the CBI office. The same was recorded on 10.9.1995. After that, I never suffered a statement before the police or before the Court till today...."

240. According to Dalbir Singh PW114, the extra judicial confession was made at 8 pm on 2.9.1995. From 2.9.1995 to 10.9.1995 nothing has been said by him as to what stopped him from going to the police. Further Lakhwinder Singh met Dalbir Singh PW114 on the day of the blast i.e. on 31.8.1995 but strangely Lakhwinder Singh did not disclose anything to Dalbir Singh. Dalbir Singh PW114 has further stated that he was in daily contact with Lakhwinder Singh from 31.8.1995 to 2.9.1995. No explanation has come as to why Lakhwinder Singh accused remained silent about the whole occurrence. The extra judicial confession is a very weak type of evidence. There are gaping loopholes in the confession. This confession does not have any value in the eyes of law.

241. The extra judicial confession of accused Balwant Singh made on 2.9.1995 before Gurpreet Singh PW94 at Nagpur has also infirmities and lacunas, which the prosecution has failed to provide any answer to. Gurpreet Singh PW94 has stated that, "... (objected to being hear say statement). On 2.9.1995, at about 5/6 pm, Amandeep Singh came to my house and told me that Tejinder Singh and Balwant Singh had gone to Amba Jhari lake and that they had summoned me there. Then alongwith my friend Gurinder Singh Sandhu and Amandeep Singh went to Amba Jhari lake. There TejinderPal Singh Sandhu and accused Balwant Singh met us. Balwant Singh enquired from me about my friend Gurinder Singh as to who he was and I told him that he was my friend Gurinder Singh Sandhu from Amritsar. Then Tejinder Singh enquired from Balwant Singh that he should narrate the same what he had told on telephone on the previous day...." "...He told this fact on 2.9.1995, that they assassinated Beant Singh on 31.8.1995. (This answer has come in reply to the question of the prosecutor, as to on which date according to Balwant Singh accused, they had murdered S. Beant Singh, Ex- Chief Minister Punjab. The witness has firstly stated 2.9.1995 and then has corrected himself that on 2.9.1995 he told that they have murdered Beant Singh, Ex-Chief Minister on 31.8.1995.)...." "He further told that when the car reached the Secretariat, the driver of the car left it and went away. Balwant Singh accused told us that he and Dilawar Singh kept sitting in the ambassador car and waiting till the arrival of CM...." "He also told that at that time Dilawar Singh gave a coin to Balwant Singh and that Balwant Singh accused wrote a poem on a piece of paper and gave it to Dilawar Singh...." "On 2.9.1995 Balwant Singh himself told about his involvement and that of Dilawar Singh in the assassination of Beant Singh. That saying of Balwant Singh accused could be true or otherwise...." "I was questioned by the CBI from 2.1.1996 to 4.1.1996. But my questions-answers were not recorded by the CBI on that dates. My statement

was recorded by the CBI on 5.1.1996. The typist recorded the statement on typewriter but I do not remember the name of the typist. The CBI officer was questioning me on 5.1.1996...."

242. It is most improbable that accused Balwant Singh would go to Nagpur and make a extra judicial confession before Gurpreet Singh PW94. Gurpreet Singh PW94 belong to Amritsar. Nothing has come on record as to what was Gurprret Singh doing in Nagpur.

243. Similar is the fate of the extra juducial confession made before Tejinderpal Singh PW95 who also was at Nagpur. Tejinder Pal Singh PW95 was a resident of Sangrur and nothing has come on record as to what was he doing in Nagpur studying or ding work.

244. The second extra judicial confession made by accused Balwant Singh before Constable Kuljit Singh PW102 at Ludhiana on 1.9.1995 at 9 am also speaks of volume as to how this confession has been manipulated by the Investigating Agency. Kuljit Singh is a constable with the Police. There was no need for Balwant Singh to go to him. Kuljit Singh being in the Police should have gone to the Police Station immediately and told the story to the police. Why he kept quite, nothing has come on record regarding this aspect.

245. Learned Counsel for the Appellants further argued that as per the prosecution, the conspiracy to assassinate S. Beant Singh was hatched in Pakistan by the Organization called Babbar Khalsa International. Further this outfit was formed in 1978, after the Nirankari Firing Episode in Amritsar. Wadhawa Singh (PO) and Mehal Singh (PO) are in Pakistan. The conspiracy to assassinate S. Beant Singh was discussed and formulated someway in the month of May/June 1995 between Wadhawa Singh (PO), Mehal Singh (PO) and Jagtar Singh Hawara in Pakistan. It is, thereafter that Jagtar Singh Hawara was sent to India to achieve the task. On 31.8.1995, after the bomb blast in which the then Chief Minister S. Beant Singh was assassinated, Babbar Khalsa International owned up responsibility. Motive to commit the offence was in the minds of Wadhawa Singh and Mahal Singh. The whole case is based on this motive and the conspiracy being hatched in Pakistan.

246. Learned Counsel has argued that the theory of conspiracy is only in the air. There is no substantial evidence produced by the prosecution to substantiate the conspiracy theory. Prosecution is relying upon six witnesses in this regard, the first being Dilbagh Singh PW100, DSP Intelligence Bureau, Government of India. In his statement before the Court Dilbagh Singh PW100 stated: "...On 28.10.1995 my statement was recorded by the DSP, CBI, at Chandigarh. At that time, I handed over the official record relating to the Babbar Khalsa International which is a militant outfit...." "...Article P137 is a Photostat copy. The original is in possession of the Intelligence wing. I had handed over the original of P137 to the CBI. Then said, the BKI made this constitution. They would not give the original to the Intelligence. Ex.P137 is the Photostat copy, and it was this document,

which came into possession of the intelligence. Ex.PW100/1 is the covering letter under which I produced the document Ex.P137 to P149 before the CBI and these are the same documents which I had supplied to the CBI under the aforesaid covering letter. According to me, this is the original which I supplied to the CBI. These are the Photostat copies. But for us the Intelligence People, these are original, because these were collected by us from different sources. This is my statement relating to all the documents from P137 to P149...." "...In the documents P137 to P149, the mention of the names of none of the accused is there. That from the intelligence reports, we had it that Jagtar Singh Hawara accused had either joined BKI, or he was about to join it. However, on the judicial file, I have not produced any such documentary evidence relating to Jagtar Singh Hawara. The CBI IO did not ask me particularly about Jagtar Singh Hawara accused...." "...Whatever documents were demanded by the CBI during investigation, I supplied to them. I did not show the files of the CID to the IO of the CBI. I did not feel the necessity of putting the query to my subordinate or to my source to find out as to in whose handwriting the manuscript constitution has been written, Photostat copy of which is document article P137...." "...We had collected Intelligence from one source reports that in the year 1995, Jagtar Singh Hawara had either been joined BKI or likely to join BKI and I had noted this fact in my diary...." "...Subsequently I handed over those documents on 13.11.1995. On 13.11.1995 I visited the CBI office, and handed over the documents to the CBI. I have gone through my statement recorded on 28.10.1995 Mark NNNNN in which it is stated that I was submitting the documents mentioned in this statement to the CBI. However, I did not actually hand over the documents to the CBI on 28.10.1995...."

247. Dilbagh Singh PW100 is the only witness examined in this case to prove the conspiracy theory and motive. Documents P137 to P149 as stated by Dilbagh Singh PW100 were not prepared by him, they being Photostat copies. These documents infact are not admissible in evidence and cannot be looked into. Dilbagh Singh PW100 has stated that he gave these documents to the CBI. These documents are forged and no credibility should be given to these photostat copies. The originals have not been shown to the Court nor put on record.

248. There is no evidence on record that Babbar Khalsa International came into existence in the year 1978 and as to when accused Jagtar Singh Hawara had joined it. Dilbagh Singh PW100 never met Mehal Singh (PO) and Wadhawa Singh (PO). Nothing has come on record as to whether they are still alive or dead, whether they are in Pakistan or in some other country. Till date, there is no notification banning Babbar Khalsa International under the Unlawful Activities (Prevention) Act, 1967. No documentary evidence has come on record that accused Jagtar Singh Hawara was ever a member of Babbar Khalsa International. No town (street) or house number has been mentioned by any witness as to where the three i.e. Wadhawa Singh (PO), Mehal Singh (PO) and Jagtar Singh Hawara hatched the conspiracy in Pakistan to assassinate the then Chief Minister.

249. It is clear from the statements of the Investigating Officer and Dilbagh Singh PW100 that the motive for the commission of the offence to assassinate S. Beant Singh was embedded in the minds of Wadhawa Singh (PO) and Mehal Singh (PO). Dilawar Singh, Balwant Singh, Jagtar Singh Hawara, Shamsher Singh, Gurmeet Singh and Lakhbir Singh did not have any motive to assassinate the then Chief Minister.

250. V. Ganpati PW35, a Journalist and working as the Deputy Chief Editor, UNI has stated, "...On 31.8.1995 the important news which was received in our office was relating to the assassination of the Chief Minister, Punjab Sardar Beant Singh. On that day, we received a Fax message from one Organisation called the Babbar Khalsa International claiming responsibility the assassination of Sardar Beant Singh (Objected to). This message was received in our office in New Delhi. The message was received around 11:30 pm by my colleagues who were on duty at that time, in my absence. It was communicated to me on telephone by my colleagues who were on the desk and he sought instructions as to whether he could distributed on the teleprinter(objected to). After I had given the clearance the UNI prepared the story which was read over to me for distribution to all subscribers, after I had approved the contents...." "...On 6.9.1995 another message was received from Babbar Khalsa International on our Fax machine and we had decided not to use that particular message...." Similarly, N.N. Prabhakar, P.A to the Proprietor of Hind Samachar Group Jalandhar PW38 has stated, "Messages were received on Fax Machine in our office from Babbar Khalsa International in relation to the assassination of Sardar Beant Singh. Fax message mark "DDD" was received in our office on 31.8.1995. Mark "DDD/1" is the photocopy of the above said message. A fax message mark "EEE" was received after one or two days of mark "DDD". Mark "EEE-1" is the photocopy of the abovesaid message...." Statements of both these witnesses is the only piece of evidence to prove the messages sent allegedly by Babbar Khalsa International owning up the responsibility. These messages are Photostat copies but nothing has come on record as to from wherein Pakistan, which number or from which town these messages had been sent.

251. Tara Singh Sarpanch of village Dasuwal PW209 has stated as, "...I am Sarpanch of the village since 1998. I was also member of the Block Samiti of our village since 1991. Mahal Singh s/o Jind Singh is known to me. He belongs to our village and his brother. Sukhdev Singh was studying with me. Mahal Singh was serving in the Army. I can identify the handwriting of Mahal Singh. I can also identify his signatures, since I hae gone through his letters which he used to write to his brother. I have seen the photo copy of the document marked AAA/1 and this document bears the signatures of Mahal Singh at point B. I identify the signatures of Mahal Singh on mark AAA, DDD/1, DDD. All these documents bears the signatures of Mahal Singh at point B which I identify...." "...I had seen his letters in the year 1968. His letters were received by his brother...." "...In 1968 I was studying in the school with the brother of Mahal Singh. For the first time I have disclosed this fact before the Court with regard to receival of letter by

Sukhdev Singh from his brother. I have also deposed about the signatures and writing of Mahal Singh for the first time today in the Court...." The letters which Tara Singh PW209 has stated about are not admissible in evidence as per Section 47 of the Indian Evidence Act. These letters were not addressed to Tara Singh PW209 but they were addressed by Mehal Singh (PO) to his own brother. It comes out that Tara Singh was only 10 years old when the letters were sent by Mehal Singh (when he was serving in the Army) to his (Mehal Singh's) brother Sukhdev Singh. These letters were not produced in Court. Sukhdev Singh was the best witness to identify the signatures of Mehal Singh. Tara Singh PW209 was not acquainted to the signatures of Mehal Singh and thus he could not have proved the signatures. This witness has been introduced only to falsely prove the signatures of MehalSingh (PO).

252. Har Charan Singh, Retd. Teacher resident of village Sandhu Chatha PW207 has stated, "...Wadhawa Singh belongs to my village. He is known to me. We are having one Primary School in our village and Wadhawa Singh studied there. High School is located at village Kala Singha. Lateron Wadhawa Singh studied in the High School. Sandhu Jatha Cooperative Agriculture Society in our village and I am member of that society. Wadhawa Singh was also member of that society. I have seen Wadhawa Singh signing and writing during the meetings of the society. We both used to attend the meetings together. For the last about 20/25 years Wadhawa Singh is not residing in the village. I do not know where he is residing now. I had identified the signatures of Wadhawa Singh on two books of the society on the asking of CBI officials. I have seen the fax message which is signed by Wadhawa Singh. I identify his signatures on this fax message. Same is mark as AAA and the signatures of Wadhawa Singh are Ex.PW207/1...." "...I have seen the poster Ex.P150. It also carries the photograph of Wadhawa Singh. Same is at point A...." But strangely, the prosecution did not prove the books of the Cooperative Society nor were they taken into possession by the CBI on the basis of which the identification of Wadhawa Singh's signatures could have been done.

253. Surinder Pal Singh Additional S.P. CBI, Chandigarh PW241 has stated, "On 5.11.1995 on the instruction of Chief Investigating Officer, I visited Kapurthala and examined Dharam Singh s/o Budh Singh, Malkiat Singh s/o Phumal Singh and Harcharan Singh s/o Ujjagar Singh r/o village Sandhu Chhatha and recorded their statement under Section 161 Code of Criminal Procedure after showing them three fax messages dated 31.8.1995, 2.9.1995 and 7.9.1995 printed on the letter heads of Babbar Khalsa International. The same are mark AAA and copy thereof mark AAA/1, mark DDD and mark DDD/1 and mark EEE and mark EEE/1. The documents referred to above were shown to Harcharan Singh, Dharam Singh and Malkiat Singh with respect to identification of the signatures of Wadhawa Singh the sender of the fax messages...." "...I had tried to find out the signatures of Wadhawa Singh from the School record and from the office of Coop.Society but I could not get the same as I was already late. It was at about 6 pm and by that time the school and offices were closed...." No record of the

Cooperative Society was taken into possession by him nor was it produced when he came into the witness box. It was incumbent upon Surinder Pal Singh PW241 to get the books of the Society on record to prove the signatures of Wadhawa Singh (PO). Merely identifying the signatures without the record means nothing. Identification of the signatures of both MahalSingh (PO) by Tara Singh PW209 and of Wadhawa Singh by Har Charan Singh PW207 is all falsehood and does not have any evidentiary value.

254. The above evidence is the only evidence led by the prosecution regarding the conspiracy theory. The Hon''ble Supreme Court has held in Smt. J. Yashoda Vs. Smt. K. Shobha Rani, , as under:

9. ...Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section.

10. The admitted facts in the present case are that the original was with one P. Srinibas Rao. Only when conditions of Section prescribed in Section 65 are satisfied, documents can be admitted as secondary evidence. In the instant case Clause (a) of Section 65 has not been satisfied. Therefore, the High Court''s order does not suffer from any infirmity to warrant interference.

255. The Hon''ble Supreme Court in Ashok Dulichand Vs. Madahavlal Dube and Another, , has held that photostat copies, fax messages, posters and documents cannot be brought on record without showing the original. It has been held as under:

7. ...The Appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession of or having anything to do with such document. The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the Appellant for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.

256. The RDX theory, as propounded by the prosecution also collapses, as per the statements of their own witnesses. As per the prosecution, on 10.8.1995, Jagtar Singh Hawara hired truck No. PB-12-A-7947, whose owner was Sapinder Singh PW107. He then went to Ajnala near the Pakistan Border, there he got possession of two bags (kattas) of RDX which he brought and handed over to accused Shamsher Singh of village Ukasi, District Patiala. From the house of

Shamsher Singh, these two bags were brought to the house of Nasib Singh in village Jhingra, District Ropar. Sapinder Singh PW107 has stated, "I never took my truck to Amritsar in the month of August, 1995 at the instance of Shamsher Singh accused. I never went to a village on the younder side of Ajnala alongwith Shamsher Singh accused, Jagtar Singh Hawara @ Tony nor I had brought two "kattas" of explosives in mytruck to village Ukasi or Rajpura...." Sapinder Singh PW107 has not supported the case of the prosecution. The RDX being brought from Ajnala remained unproved and is merely an allegation.

257. There is no evidence on record that first the RDX was brought to village Ukasi to the house of Shamsher Singh and how it was then taken to village Jhingra, the house of Nasib Singh.

258. Amrik Singh PW74 has stated that two persons engaged his taxi from Patiala on 28.8.1995. He took two bags to Mohali from village Ukasi. He identified the photos of the two persons, they being mark UUUU and the other being mark UUUU/1. The photos which he identified have not been exhibited and thus they cannot be read as evidence. Evidence of these witnesses are of no help to the prosecution as firstly the prosecution should have linked the RDX from village Ukasi to village Jhingra and thereafter to Mohali.

259. Raghbir Singh, Ex-Sarpanch of village Jhingra, PW81 has not supported the case of the prosecution. It is clear from the statement of the witnesses, that the RDX having been brought from Ajnala is only a figment of imagination of the prosecution to falsely implicate the accused in the bomb blast.

260. The prosecution is relying upon some other circumstances against the Appellants to prove their case.

261. Learned defence Counsel has argued that the prosecution has examined Mohan Raj Shekhar PW25 and his wife Mrs. Revti Raj Shekhar PW26. According to their evidence they owned an old Ambassador car No.DBD-949 and Jagtar Singh Tara was hired by them as driver. According to the PWs he absented himself from his job on September 2, 1995 and thereafter did not turn up. From this evidence, it is apparent that there is nothing incriminating so far as the present Appellants are concerned.

262. PW132 Vinod Kumar Vats, Manager Surya Guest House, Delhi has been examined. According to him, there was an entry at Sr. No. 236 dated 23.6.1995 in the name of Manjinder Singh who checked-in at 9.25 am on 23.6.1995 and left at 1:00am. He has stated that Manjinder Singh was accompanied by a sikh youngman and after 15/20 minutes of their stay, another person who was having some beard but not long hair come there. CBI has shown him some photographs during investigation after 6/7 months of this entry and on the basis of these photographs, CBI got from him identified Balwant Singh and Jagtar Singh Hawara in court. The evidence of this witness is against the contents of document Ex.PW23/7A where only name of Manjinder Singh is entered and no mention of any other person is shown as accompanying him. This witness further

admitted that he did not know those persons and had seen them only on 23.6.1995 and thereafter on 7.8.2001 after six years he had identified those persons in Court. Identification on the basis of photographs cannot be equated with a identification parade. Identification of the two accused Balwant Singh and Jagtar Singh Hawara in Court after six years has no evidentiary value.

263. Jasbir Singh, Supervisor of Gurdwara Shishganj, Delhi was examined as PW124 who had proved some entry in register Ex.PW124/A on 2.2.1996 before the CBI. He does not say anything substantive against any of the persons. However, the prosecution has examined Dalbir Singh PW125 a Sewadar in Shishganj Gurdwara. According to this witness, Manjinder Singh signed entry Ex.124/A at point 125/A and 125/B. However, when the prosecution showed him the photograph of Manjinder Singh, he could not identify him. Besides that he had stated that the other man who accompanied him (Manjinder Singh) was disclosed by Manjinder Singh as his father. He was having long grey coloured beard. The evidence of this witness totally falsifies the version of the prosecution that Manjinder Singh (PO) was accompanied by Balwant Singh or Jagtar Singh Hawara while visiting Gurdwara Shishganj, New Delhi. This statement of the witness has not been challenged by the prosecution by way of re-examination or by declaring him hostile. He has further stated that his statement was not recorded by the CBI officials and whatever he disclosed in Court has been disclosed by him for the first time. Therefore, from the evidence of these two witnesses, it is apparent that prosecution could not get anything incriminating against the Appellants.

264. The prosecution has advanced a version that an old white ambassador car No. DBA-9598 was owned by Sh. S.K. Datta PW32 who had allegedly sold the same on 20.8.1995 to one Basant Singh. The prosecution has stated that this witness i.e. Basant Singh was infact Jagtar Singh Tara. When in Court, the Special Public Prosecutor on 18.12.1996 asked this witness to identify Jagtar Singh Tara, the witness first pointed towards accused who infact was Balwant Singh. He was again asked by the PP to go and touch the accused then he touched Jagtar Singh Tara. However, on that day, he could not identify Jagtar Singh Hawara as the person accompanying said Basant Singh (Jagtar Singh Tara) on 20.8.1995 when this car was sold to him. However, when this witness was asked to identify Jagtar Singh Hawara on 21.12.1996, he identified Jagtar Singh Hawara as the person accompanying Basant Singh (Jagtar Singh Tara). Admittedly there was no identification parade held during investigation. PW admitted to have been consistently questioned and detained by the Delhi Police and then produced before the CBI where he was again consistently questioned and then the alleged statement was procured from him. The failure of the witness to identify Jagtar Singh Hawar in Court on 18.12.1996 is very significant and in view of that identifying of Jagtar Singh Hawar in Court on 21.12.1996 is of no value. The said car was never transferred from the name of S.K. Datta PW32 to the name of any of the Appellants or their co-accused Jagtar Singh Tara. This witness had admitted that he did not know the real name of the two sikh

gentlemen. However, he knew one of them as being Basant Singh. The photographs were black and white and colour mix and single photograph of different persons. From all circumstances, it is apparent that neither the sale of said car to the Appellants or their co-accused Jagtar Singh Tara has been proved nor identity of Jagtar Singh Hawara, the person accompanying Jagtar Singh Tara at the time of deal, of said car, was established.

265. Prosecution has examined PW111 Mohan Pal of village Rasoli, Tehsil Rajgarh, District Sirmour, Himanchal Pradesh. According to this witness, he knew Surinder Singh @ Chhina of village Khuda Ali Sher and in May, 1995 said Surinder Singh @ Chhina accompanied by another person by the name of Joginder Singh came to him and stayed for a night with him and the next day returned to Chandigarh. Thereafter Surinder Singh @ Chhina again came alongwith his three companions who according to the witness were Dilawar Singh, Maula and Tari and he had arranged for the house of Joginder Singh on rent for them. After 2/3 days they returned to Chandigarh. According to this witness, another clean shaven young man of 17/18 years visited them those name was Bawa. He has stated that for one night they had stayed at his house where Lakhwinder Singh came and met them. He has also stated that, there a fair complexion man came who Dilawar Singh had introduced as his cousin. This witness has stated that during investigation, CBI had shown him photographs of Dilawar Singh and Lakhwinder Singh and their other friend. He also identified one shoe P50 stated to be that of Dilawar Singh. However, when this witness was asked to identify in Court, he could only identify Balwant Singh and could not identify Lakhwinder Singh and stated that he was not in a position to identify Lakhwinder Singh. This witness had made many improvements from his police statement Ex.DD with which he had been duly confronted. The fact that the shoe identified by him in Court of being of Dilawar Singh is not there in his statement under Section 161 Code of Criminal Procedure. It remains a mystery as to how this witness was discovered by the CBI. This witness has been falsely introduced and deserves no reliance.

266. Another witness in this regard examined by the prosecution is PW113 Surinder Kumar of Khuda Ali Sher. Although he was examined to corroborate the version of PW Mohan Pal, however, he could not corroborate his version in Court regarding his visit to village Rasoli. He has stated, "I disclosed for the first time today in Court regarding the visit of Kulwant Singh and my visit to village Rasoli for the last time and this fact was not disclosed by me to anyone else." The evidence of these two witnesses is not of any value.

267. The prosecution has examined PW75 Jasbir Singh, a tailor master of AC Market, Patiala. According to this witness on 24.8.1995, Balwant Singh accused accompanied with a Keshdhari young man gave an order of two pants and also of a loose cloth belt, which he delivered to Balwant Singh and his Keshdhari companion on 27.8.1995. While examined in Court on 7.12.1998 after two years and about four months, CBI got Jagtar Singh Hawara identified from this witness

in Court as the person accompanying Balwant Singh on 24.8.1995 and 27.8.1995. Admittedly, no identification parade was held. The photographs were shown to this witness during investigation on 24.1.1996. However, the admission of this witness that the said sikh young man was seen in the custody of CBI on 24.1.1996, his identifying of Jagtar Singh Hawara in Court on 7.12.1998 is valueless and cannot be relied upon. Under these circumstances, from the evidence of PW75, the identity of Jagtar Singh Hawara accompanying Balwant Singh for getting the uniform and loose belt tailored is not at all established and this important link in the evidence of the prosecution breaks and the whole prosecution case collapses against him.

268. The prosecution has also examined Amarjit Singh PW76, a tailor master of Tripati Chowk, Patiala. According to this witness on 1.7.1995, Balwant Singh accused with his companion Dilawar Singh placed orders for stitching police uniforms and they took delivery of the same on 3.7.1995. Then another order was placed by Balwant Singh for stitching five more police uniforms and 4/5 days thereof they were delivered to Balwant Singh. From the evidence of this witness, nothing incriminating comes out against the Appellants.

269. The prosecution has relied upon some circumstances regarding the association of Balwant Singh, Jagtar Singh Tara (PO), Jagtar Singh Hawara, Lakhwinder Singh and Gurmit Singh at Chandigarh. The prosecution examined Surinder Sharma PW51 who stated that on 26.8.1995 Lakhwinder Singh alongwith three other persons came in an ambassador car No. DBA-9598 driven by Lakhwinder Singh. It was of steel grey colour and ordered painting of the same to white and that it be delivered by 29.8.1995. This witness has further stated that on 28.9.1995 Lakhwinder Singh came to his shop at 6:35 pm alongwith the persons who had a trimmed beard on a scooter No. PCP-2085 belonging to Lakhwinder Singh and on 30.8.1995 at about 3:30 pm the car was delivered to the man with a trimmed beard and the person accompanying him. From this witness on 26.2.1997, Lakhwinder Singh was got identified on 27.2.1997, Gurmit Singh accused was got identified from this witness in Court. No identification parade was held during investigation. However, CBI got some photographs identified from this witness on 6.9.1995 in their office. Equating this type of identification on the basis of photographs with identification parade on the face of it is illegal. Even Balwant Singh was got identified from this witness on 27.2.1997. Besides having been examined by the CBI, this witness was also examined by the Chandigarh Police. Some photographs mark YY-4 alleged to be that of Dilawar Singh were also got identified. No document including any bill has been produced regarding the said painting of the car etc. Without holding any identification parade, identity of the Appellants is not established from the evidence of this witness. This witness further states that he had seen the car in the newspaper on 2.9.1995. However, he did not appear before the police and according to the said witness, he had approached Sub Inspector Ram Kumar of Sector -17 and on 4.9.1995, he appeared before DSP Abrol of the Chandigarh Police. Strangely enough, neither any statement of this witness before Sub

Inspector Ram Kumar or DSP Abrol has been produced before the Court nor any of the two officers examined. Even otherwise, this witness has made numerous improvements from his earlier statement. Therefore, the evidence of this witness cannot be relied upon to fix the identity of Lakhwinder Singh or any of the other Appellants having any hand in getting the said car painted from him and even painting of the car from this witness is not established.

270. In order to support the version of Surinder Sharma, PW51, the prosecution has examined PW48 Ranjit Singh, another mechanic of Sector 7, Market Chandigarh. From his evidence nothing incriminating has been brought on file against the Appellants. Tirlok Nath @ Tota PW50 allegedly re-painted the number plate of DBA-9598. This version is also a concocted version just to create false evidence in support of the false version of Surinder Sharma.

271. Prosecution has examined ASI Arun Kumar PW49. According to him on 24.8.1995 he had challaned scooter No. PB-11-1955 and the scooterist was challaned because the number plate was not written according to specification. As per this witness, the scooterist told his name as Balwant Singh. HC stated that another person was sitting on the pillion seat of the scooter and he had identified Jagtar Singh Hawara as the person sitting on the pillion seat on 21.7.1995. Admittedly there was no identification parade held during investigation and as per the contents of challan Ex.PW49/1, there is no reference to the person riding the pillion seat. This version of this witness, who is a police official of Chandigarh Police cannot be relied upon to fix the identity of Jagtar Singh Hawara. It is further important in this regard that although the witness was summoned to appear in the Court on 20th February but on that day he was not examined and the accused were present in the Court room and were shown to the witness who, thereafter, on 24.2.1997, identified Jagtar Singh Hawara in Court. This type of identification parade is of no value.

272. Prosecution has examined PW63 Avtar Singh the owner of House No. 981, Phase IV, Mohali. According to this witness Reema Kahlon was employed to run the STD booth of this witness and the first floor of the same was rented out by him to Satinder Pal Singh @ Simpi PW101 in the year 1995. He has stated that Gurmit Singh Appellant was also residing alongwith Simpi on the first floor of the house in August, 1995. One call made to Germany on 28.8.1995 has been also proved by this witness from this STD booth. No rent note was prepared about tenancy nor he had issued any receipt in relation to the rent received by him from Gurmit Singh Appellant or even PW Satinder Pal Singh. Therefore, renting out of this house to Satinder Pal Singh @ Simpi or Gurmit Singh staying as tenant in that house has not been proved at all. In the entry relied upon by this witness 63/A1, The said call to Germany and the handwriting is not owned by him. Although remaining entries on the register are in his hand and he has further admitted that the name of the country is not mentioned against any of the entries except the said referred to above. From the evidence of this witness neither his first floor being on rent with Satinder Pal Singh @ Simpi PW101 or

Gurmit Singh Appellant is proved nor any entry of call to Germany by any of the Appellants is proved.

273. The prosecution examined PW55 Reema Kahlon. She was examined in Court on 20.3.1998 and for the first time from her the prosecution got mentioned that 2/3 young men were seen by her visiting the first floor of the house. She has stated that she had seen some photographs during investigation and according to her when the photographs were shown, the CBI officer told her that one of the photographs was of Dilawar Singh who had died. This witness had admitted that none of these facts are admitted in her statement mark YYY made to CBI during investigation. However, the CBI has not made any attempt to get any of the Appellants identified from her in Court. Evidence of this witness is of no value to the prosecution.

274. Prosecution has also examined Puran Chand PW68 in this regard to support the alleged version of Gurmit Singh living as a tenant in the said house or the other Appellants visiting him in August, 1998. He has stated while appearing in Court that on August 28, 1995 at 11:30 pm or 12:00 mid night he had seen five persons sitting in the room. One of them was Gurmit Singh, two of them were Sikh Gentlemen and three were clean shaven. This version on the face of it is unbelievable. This witness has admitted that he has seen the photograph mark FFF in January, 1996 and his name was told to him by the Investigating Officer as Jagtar Singh Hawara. Also the prosecution got from his mouth that photograph YYY-3 was of the person who was seen by him in police uniform on 31.8.1995 when he left the room of Gurmit Singh. This witness has also been made a witness of alleged disclosure statement 68/A of Gurmit Singh and also some recoveries of some black coloured substance. This witness had admitted that when he was called upstairs by the CBI he had seen them with a polythene bag in their hands and they were lifting black granules and he says that he does not remember that where there was any big newspaper in the plastic bag or not. On 8.5.1998, Balwant Singh and Jagtar Singh Hawara were got identified by him in Court. Earlier the witness was examined on 7.5.1998. Why no such attempt was made on 7.5.1998 when the witness was examined for the first time for getting the two identified, no explanation is coming forward. As there was no identification parade, identifying the two in Court after about two years and on the second day of his evidence is of no value.

275. The tenancy in House No. 981, Phase IV, Mohali of Puran Chand PW68 is not proved at all. There was no lease deed produced or receipt of any rent paid, has been produced. He stating that he does not know whether Avtar singh PW is the owner or his father is owner of the house. This itself is enough to discredit the evidence of this witness regarding his tenancy. He is a person belonging to West Bengal and under the influence of the police has been falsely introduced. His answers with regard to his residing in this house totally belies his version. He has admitted that he was living alone in this house and his family was not residing with him. He had no ration card having address of house No. 981, Phase IV,

Mohali or enlisted as a voter at this address. Further admission of this witness that test identification was held in Delhi in the CBI office Delhi in January, 1996 where he had identified Balwant Singh and Jagtar Singh Hawara totally demolishes the case of the prosecution qua the identity of these two.

276. Learned Counsel has relied upon a judgment of Hon<sup>ble</sup> Supreme Court in Mohan Lal Gangaram Gehani v. State of Maharashtra : 1982 Cri. L.J. 630 as under:

Identification of accused - Victim not knowing accused prior to occurrence - Test identification parade not held - Accused shown to victim by police before trial - His identification in Court by victim is valueless and cannot be relied upon. 277. It is apparent that evidence has been created regarding alleged staying of Gurmit Singh in house No. 981, Phase IV, Mohali in August 1995 or persons collecting there on the night of 28.9.1995 or the alleged recoveries on 6.9.1995 from the same room. Thus a very important link in the case of prosecution is missing. Prosecution has also examined PW104 Raman Kumar. However, he has not supported the prosecution case and was declared hostile.

278. The prosecution has examined PW99 Chamkaur Singh brother of Dilawar Singh, the alleged human bomb. The prosecution has failed to establish even the death of Dilawar Singh. Even the version of prosecution that the blast was the result of a human bomb has not been established. On the other hand, version that it was a car bomb stood established thus demolishing the case of the prosecution.

279. Chamkaur Singh PW99 brother of Dilawar Singh, his father Harnek Singh were picked up by the Punjab Police and CBI on 4.9.1995. They were illegally detained till 24.9.1995 when under torture and threat to eliminate the family, a statement allegedly under Section 161 Code of Criminal Procedure was procured from them. Statements under Section 164 of Code of Criminal Procedure were also recorded on 25.9.1995 at Delhi before a Magistrate. It is clear that Chamkaur Singh has been falsely introduced by using third degree methods not only upon him but also on his old father. A false version has been introduced that Dilawar Singh and Balwant Singh came to his house in House No. 3031/1 Sector 45-D, Chandigarh at 11 pm on 30.8.1995 and that they took beer and a bottle of liquor and stayed there for the night and left the house next morning in ambassador car DBA-9598. Dilawar Singh has either been concealed by the CBI or by someone else but his death having been not proved, the whole version of prosecution in this regard is, therefore, a concocted story. If Chamkaur Singh's evidence is excluded then there is no other evidence to show that the Appellants were involved in any illegal activity on 30.8.1995 or 31.8.1995. However, there is no evidence that Jagtar Singh Hawara had accompanied them at any stage on 31.8.1995. Similarly, neither Shamsher Singh nor Gurmit Singh were in any way involved in any such activities on 31.8.1995. Therefore, the prosecution has failed to prove all the links to form a chain from which the inference of guilt is deducible against any of the Appellants for the commission of this crime or

entering into any conspiracy for making them liable for the offences charged against them. Evidence of Shankar Lal PW97 and Dalbir Singh PW114 has already been referred to. From these witnesses, it is apparent that on 30.8.1995 and 31.8.1995 at Chandigarh active participation of Jagtar Singh Hawara Appellant is not at all proved by the prosecution. So far as Shamsheer Singh, Gurmit Singh and Lakhwinder Singh Appellants are concerned, although some evidence has come that they were seen together at one or two places, however, nothing more than that has been proved to establish that they were co-conspirators in the alleged crime.

280. It is apparent that investigation in the present case was dishonest, unfair and tainted. Even in the registration of the case, the Investigating Agency has bungled. A total false and frivolous version of alleged human bomb was created at the instance of Sh.KPS Gill, the then DGP, Punjab although apparently the present was a case of car bomb exploded from underneath the rear seat of car No. PB-08-3469 where S. Beant Singh the then Chief Minister was sitting. Besides that, the Investigating Agency has created another false version of Dilawar Singh acting as a human bomb and by picking two legs and skull without torsoe to be that of Dilawar Singh. Without proving the factum of death of Dilawar Singh, his identity could not be fixed. The whole prosecution case is based upon identity of the Appellants having been fixed by PW5 Dr. Deepak Bakshi after several years identifying them in Court. The most fundamental infirmity in the investigation of this case was that no identification parade was held and the reason for the same was not far to seek because the Appellants were kept in illegal custody firstly by the Punjab and Haryana Police and then by the CBI. Had identification parade taken place then the Appellants would have to be remanded to judicial custody. The prosecution did not want that because they wanted to concoct and extort a false judicial confession from them by torturing them and keeping them in illegal custody. For this purpose, the CBI investigation being dishonest, they did not hold any identification parade. On the other hand, the CBI investigation tried to get the Appellants involved on the basis of photographs and equating that identification on the basis of photographs with the identification parade is clearly illegal.

281. The Hon"ble Supreme Court in a Constitutional Bench of five Hon"ble Judges in Kartar Singh v. State of Punjab reported in 1994(2) RCR 168 had struck down Section 22 of the TADA Act and has held as under:

O. Terrorists and Disruptive Activities (Prevention) Act, 1987, Section 22 - Constitution of India, Article 21 - Identification of accused on basis of photograph - Not possible to identify any person on basis of his photograph especially when trick photographs are being taken - Section 22 struck down being opposed to fair trial enshrined in Article 21 of Constitution of India.

....

389. Though no oral argument has been advanced by the learned Counsel

challenging the validity of this provision, since we are scrutinizing the entire Act, we feel that it would be better if our view on this provision is also recorded. However, Mr. Jethmalani in his written submissions has stated that this Section is unintelligible and that it is quite impossible to identify any person on the basis of his photograph especially in the present day when the trick photographs are being taken. I see much force in this submission.

390. If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result. Therefore, we are inclined to strike down this provision and accordingly we strike down Section 22 of the Act.

282. This observation of the Hon'ble Supreme Court, therefore, holds that identification during investigation on the basis of photographs is illegal and unconstitutional. The whole version of RDX being brought from Ajnala is created and concocted. There is no evidence of staying of the Appellants and others at House No. 981, Phase IV, Mohali on 28.8.1995 and 29.8.1995. No credible evidence has been led regarding formation of Babbar Khalsa International with object of forming Khalistan or being in Pakistan, Mahal Singh (PO) and Wadhawa Singh (PO) hatching the conspiracy or sending RDX from there. The standard of investigation of the CBI, the premier investigating agency of the country stands exposed when prosecution led evidence of Tara Singh PW 209 and Harcharan Singh PW207 to identify the signatures of Mahal Singh (PO) and Wadhawa Singh (PO) on the alleged fax messages. Therefore, it is abundantly clear that the investigation in the present case was dishonest, most unfair and tainted by fabricating false evidence.

Individual cases of Jagtar Singh Hawara, Shamsher Singh, Gurmit Singh and Lakhwinder Singh:

Jagtar Singh Hawara:

283. The prosecution is relying upon the judicial confession as well as extra judicial confession of Balwant Singh, Jagtar Singh Tara, Shamsher Singh and Lakhwinder Singh. However, as already submitted, the same are not even substantive evidence and cannot be used against Appellant Jagtar Singh Hawara who had admittedly made no judicial or extra judicial confession. The prosecution has failed to establish association of Jagtar Singh Hawara with Manjinder Singh. No credible evidence has been led or his participation in the alleged purchase of car No. DBA-9598. It totally demolishes the case of the prosecution against Jagtar Singh Hawara. The prosecution has been mainly relying upon the disclosure statement of Jagtar Singh Hawara and in this regard has examined PW121/2 Anil Bhatia of Ghaziabad. As per his version, two disclosure statements were made on 23.1.1996 Ex.PW121/1 and Ex.PW121/2 and consequent recovery of sketch map of Secretariat of Punjab and Haryana at Chandigarh and another of some belt. As per this witness, his statement was recorded under Section 161

of the Code of Criminal Procedure Ex.DF on 15.2.1996 regarding the alleged disclosure statement. There is no explanation as to why no statement under Section 161 of the Code of Criminal Procedure of this witness was recorded on 23.1.1996 when the alleged disclosure statements were made or recovery was affected. There was no need of Jagtar Singh Hawara to prepare a sketch map of the Secretariat or to keep it at Ghaziabad because the prosecution version that Balwant Singh and Dilawar Singh were the persons to commit crime being in the service of Punjab Police were very much acquainted with the Secretariat of Punjab and Haryana. Similarly, there was no occasion for him to prepare a sketch map of belt even when his association in getting the belts stitched is not proved. The disclosures and recoveries are of no consequence.

284. Another piece of circumstance alleged against Jagtar Singh Hawara is his association with Kuldeep Singh of Ghaziabad. However, prosecution could not lead any credible evidence in that regard. Evidence of Bhupinder Singh PW121/2 is of no consequence. As already submitted, there is no other credible evidence to prove any overt act qua Jagtar Singh Hawara. His co-accused have retracted their confessions. It is not substantive evidence. Conviction of Jagtar Singh Hawara has been recorded without there being any credible legal and substantive evidence against him. The contents of Ex.PW201/1 reveal that his statement is inadmissible and amounts to a confessional statement of the accused before the police which is hit by Section 25 of the Evidence Act. Neither the prosecution can rely upon the same nor there is any justification by the learned trial Court to place reliance on the same.

285. Pointing out of STD Booth at Meerut Road, Ghaziabad by Jagtar Singh Hawara is sought to be proved by PW130 Rajesh Malhotra. This witness has admitted that after 4/5 days of preparation of the memo his statement was recorded and not recorded on 23.1.1996. In the police statement he has not mentioned the presence of other PWs at the spot nor about the factum of Jagtar Singh Hawara having identified his booth. This witness is of no value to the prosecution.

286. Prosecution has examined PW133 Dinesh Chand of Ghaziabad. According to him on 23.1.1996, CBI had brought Jagtar Singh Hawara to his booth. However, according to him his statement was not recorded on that day but was subsequently recorded after 4/5 days. His version in Court is conspicuously missing in his police statement Ex.PJ.

287. The evidence of PW134 Murli Dhar with regard to some calls from his booth to Germany in November, 1995 is not at all proved by any credible evidence. This witness has admitted that although he signed memo Ex.PW134/1 on 15.1.1996 but his statement was recorded on 31.1.1996.

288. The prosecution from PW135 Munish Pal of Fatehgarh UP has got identified Balwant Singh and Jagtar Singh Hawara in Court on 22.8.2001. In the absence of any identification parade having been held during investigation, mere showing of

photographs is of no value.

289. The prosecution has examined PW201 S.V. Singh. He is a witness to some alleged disclosure statement of Jagtar Singh Hawara Ex.PW201/1 and another such disclosure statement Ex.PW201/2. No recovery in consequence of these alleged disclosure statements was made. These disclosures are inadmissible and could not be acted upon. Except this evidence, referred to above, there is no evidence brought on the file against Jagtar Singh Hawara.

Shamsher Singh

290. Except the retracted judicial confessions PW103/6, there is no other evidence. There is no single circumstance on the file to nail him in this case. PW 107 Sapinder Singh was examined by the prosecution to create some evidence against Shamsher Singh. However, he did not support the prosecution case and was declared hostile and even his cross examination by the learned PP did not yield anything. The learned trial Judge has placed reliance upon the statement under Section 164 of the Code of Criminal Procedure of PW107 i.e. Ex.PW107/1. Undoubtedly, his statement under Section 164 Code of Criminal Procedure cannot be treated as substantive evidence, however, the learned trial Court has treated it as substantive evidence which is on the face of it illegal. Except the statement under Section 164 Code of Criminal Procedure, statement of PW107 Sapinder Singh, there is no substantive evidence led by the prosecution against Shamsher Singh.

Gurmit Singh

291. Accused Gurmit Singh residing in House No. 981, Phase IV, Mohali, the evidence led by the prosecution is of Reema Kahlon PW55, Avtar Singh PW63, Puran Chand PW68 and Satinder Pal Singh PW101. The other evidence is the examination of PW70 Parnav Singh who is a witness to the disclosure statement Ex.PW68/A of Gurmit Singh recorded by the CBI on 8.9.1995. Ex.PW68/A infact is a confession and not a disclosure before the police. The law with regard to Section 27 of the Evidence Act is very clear that only the statement which leads to discovery is admissible nothing more or nothing less.

292. Learned defence Counsel has relied upon a judgment of Hon"ble Supreme Court in authority Babboo and Ors. v. The State of M.P. 1978 CriLJ 908 as under:

"Discovered in consequence of information received"- Meaning of. Decision of Madhya Pradesh High Court reserved.

Katarna was recovered from accused No. 1 under seizure memorandum in which it was recited that accused No. 1 made the statement that he would show the Katarna with which he assaulted deceased.

Held that the first part in the seizure memo would be inadmissible because the fact that accused No. 1 assaulted the deceased was not discovered in pursuance of the information given by accused No. 1.

293. Prosecution has examined PW214 Santokh Singh to show that Gurmit Singh Appellant was an acquaintance of Dilawar Singh during their young age and he does not say anything more. Nothing incriminating has come against Gurmit Singh so far as charges are concerned. From the evidence referred to above, Gurmit Singh's involvement in the conspiracy is not at all proved.

Lakhwinder Singh

294. The prosecution has relied upon evidence of PW97 Shankar Lal, Dhaba owner in Civil Secretariat in the year 1995 and according to him at 1 pm on 31.8.1995, Lakha, Maula and Channa came to his Dhaba and took meal. Lakhwinder Singh according to this witness was clean shaven. When this witness was asked to identify Lakhwinder Singh in Court, he could not do so. However, the prosecution did not challenge the statement of this witness. He has further stated that he did not know the full name of Lakha.

295. Another witness against Lakhwinder Singh examined by the prosecution is PW114 Dalbir Singh @ Maula, regarding alleged extra judicial confession of Lakhwinder Singh before him on 2.9.1995 and regarding his respectability. He has confessed that he is a liquor addict and charas addict from the very birth. His statement before the CBI was recorded on 10.9.1995. From these submissions, it is apparent that PW114 Dalbir Singh is a most unreliable witness.

296. PW116 Anil Kumar is a tailor and has identified Lakhwinder Singh in Court on 4.10.2000 and the prosecution case is that Lakhwinder Singh got some alteration done in his pant. This witness states that so far he has not seen that pant either before the police or in Court and he had not attached any mark of identification with that pant.

297. Prosecution has examined PW163 Raj Mohan of Khuda Ali Sher. He had attested one recovery memo 163/3 regarding recovery of two fixed deposit receipts and one cheque book from the room of Lakhwinder Singh. According to this witness, he was taken to Naya Gaon by SHO Satbir Singh of the Chandigarh Police who was known to him earlier. However, Inspector Satbir Singh has not been examined in this case. This witness admits that he did not know how to read or write in English. It shows that he did not know the contents of said recovery memo written in English and being very close to Satbir Singh Inspector, he was a convenient witness for the police. No reliance ought to be placed on his evidence. Another witness of this raid was PW164 P.C. Sharma Inspector CBI. He has admitted to have appeared in case State v. Paramjit Singh on 15.4.2002, wherein he admitted that the sarpanch of his village had joined the raiding party. The evidence of this witness contradicts the evidence of PW163.

298. Prosecution examined PW185 Mewa Singh. According to him on 30.8.1995, Lakhwinder Singh, Dilawar Singh and one or two other persons visited his shop and when he was asked to identify Lakhwinder Singh in Court. The note of the learned trial Judge in this regard being "witness after seeing all the accused present in Court categorically deposes that Lakhwinder Singh is not present in

the Court". Identity of Lakhwinder Singh is not at all established and regarding Dilawar Singh this witness admits that "the name of Dilawar Singh was told to him by the Police."

299. Constable Ranjit Singh PW197 identified Lakhwinder Singh in Court. However, from his evidence nothing incriminating has come out.

300. Prosecution examined PW213 Karamjit Singh who states that he was known to Lakhwinder Singh and also Gurmit Singh Appellants and also Balwant Singh. He also states that Dilawar Singh was also known to him. According to this witness, he had met Dilawar Singh on 15.8.1995 and Gurmit Singh last time in the first week of August, 1995 and he says that on that meeting Dilawar Singh had told him that some big incident is going to take place. The said Constable of Punjab Police has been falsely introduced to toe the line of CBI in proving the above mentioned talk of Dilawar Singh which on the face of it is improbable and unbelievable and from his evidence nothing incriminating has come out against Lakhwinder Singh.

301. The prosecution has miserably failed to prove that any conspiracy was hatched in Pakistan by Wadhawa Singh (P.O.) and Mahal Singh (PO) active members of so called Babbar Khalsa International and in consequence of that Jagtar Singh Hawara was sent from Pakistan to India to procure the services of others in achieving the task of elimination of S. Beant Singh. Neither formation of Babbar Khalsa International is proved, nor existence of any Wadhawa Singh and Mahal Singh has been proved. Nor the membership of Jagtar Singh Hawara being member of any such terrorist outfit.

302. The prosecution has failed to lead any credible evidence to prove the other circumstances. Involvement of Jagtar Singh Hawara in the purchase of Ambassador Car DBA-9598 is not proved. On 30.8.1995 and 31.8.1995, no active participation of Jagtar Singh Hawara in any activity is proved. Rather his presence at Chandigarh on 31.8.1995 conceded by the prosecution. Therefore, involvement of Jagtar Singh Hawara in the crime is not proved on the file by any legal credible and admissible evidence. Even otherwise the prosecution case being based on circumstantial evidence and not direct evidence. The failure of prosecution to lead any credible circumstantial evidence to form a complete chain of circumstances against Hawara and the case against him only remains a suspicion and prosecution could not lead any credible evidence to fill the gap of may be and might be and to cross the hurdle from suspicion to concrete proof of being a young man facing trial since 1995. The prosecution led against him being scanty. Sentence of death awarded to Jagtar Singh Hawara does not deserve to be confirmed.

303. Learned Counsel has argued that version of RDX being brought from some place near Ajnala near Pakistan Border in Truck No. PB-12A-7947 to village Ukasi, the village of Shamsheer Singh in District Patiala is false. The only witness examined by the prosecution PW107 Sapinder Singh, owner of truck No.

PB-12A-7947 had not supported the prosecution and was duly confronted with his statements under Sections 161 and 164 Code of Criminal Procedure. The learned trial Judge committed a grave illegality in treating his statement under Section 164 Code of Criminal Procedure as substantive evidence. So much so statement under Section 161 Code of Criminal Procedure of Dajit Singh a person referred to in statement under Section 164 Code of Criminal Procedure of PW107 has also been treated as substantive evidence although Daljit Singh was not examined. The version regarding RDX is not supported by any evidence and the finding of the learned trial Judge based on statements under Sections 161 and 164 Code of Criminal Procedure treating the same as substantive evidence which is on the face of it illegal. Learned Counsel has placed reliance upon a judgment of Hon"ble Supreme Court in Brij Nath Shah v. State of Bihar 2010(3) RCR 434 as under:

Statement of witness under Section 164 Code of Criminal Procedure is not substantive evidence - Accused cannot be convicted on basis of statement under Section 164 Code of Criminal Procedure.

....

Statement of 164 Code of Criminal Procedure is not substantive evidence and can be utilized only to corroborate or contradict the witness vis-a- vis statement made in Court - In other words, it can be only utilized only as a previous statement and nothing more.

304. Learned Counsel has argued that collection of all the accused at House No. 981, Phase IV, Mohali on the intervening night of 28/29.8.1995 is a false story. Besides the other witnesses regarding which submissions have already been made another witness examined in this regard by the prosecution was Satwinder Singh @ Satwinder Pal Singh @ Simpi PW101. According to this witness on the night of 28.8.1995 although at the instance of Gurmit Singh he had gone to sleep at the STD booth on the ground floor but he felt the necessity of Chadar and for bringing the same went to the room of Gurmit Singh where he found Gurmit Singh and his friends sitting with a newspaper spread on the floor of the room. This version of the said witness is on the face of it unbelievable being most improbable. However, even otherwise it does not advance the case of the prosecution any further. This witness was asked to identify the accused on 4.12.1999. However, he could not identify them. The case was adjourned to 6.12.1999. What happened on 6.12.1999 is not on the file. However, on 7.12.1999 he identified all the accused. Even otherwise according to this witness, he was summoned by the CBI in Delhi in January, 1996 where he saw Balwant Singh and Jagtar Singh Hawara in Police custody. This witness is identifying these persons having seen them in police custody earlier.

305. Satwinder Singh PW-101 was approached by a CBI officer on 9.9.1995. However, he did not disclose anything regarding this case to him and he made statement before the CBI as per his own version only on 10.9.1995 when

summoned to the CBI office Chandigarh and he came to know the name of Jagtar Singh Hawara on 10.9.1995 as told by the CBI officer. As per his statement, he could only identify Balwant Singh and Gurmit Singh and none other. The version of this witness is totally falsified by Puran Chand PW-68 wherein he had categorically stated that he had not seen Jagtar Singh Hawara in the room of Gurmit Singh on 28.8.1995. This version of the prosecution that the accused collected in the room of Gurmit Singh for preparing bomb etc. stands falsified by another piece of evidence relied upon by the prosecution is the judicial confession of Balwant Singh Ex.PW65/E, wherein Balwant Singh has stated that he and Jagtar Singh Hawara had prepared the bomb at Patiala on 26.8.1995 and 28.8.1995. These two inconsistent versions of the prosecution cannot be reconciled. The prosecution version that in the room of Gurmit Singh all the accused collected together on 28.8.1995 and prepared bomb etc. is then false. Stay of accused after incident at Nagpur, Jaipur, Calcutta, Farukabad, Agra etc. is a concocted story. The activities after incident are neither relevant nor admissible except that if an accused absconds that may be treated as a circumstance against the accused. In this respect in case of Shamsheer Singh, Balwant Singh and Jagtar Singh Hawara, the case of CBI is that Shamsheer Singh was arrested by the Punjab Police and it was from the Punjab Police that custody of Shamsheer Singh was obtained by the CBI on 11.12.1995. Similarly, Balwant Singh and Jagtar Singh Hawara were as per CBI arrested by the Haryana Police and then CBI got their custody on 14.1.1996 and 20.1.1996 respectively. Custody of the accused by the Punjab and Haryana Police remains a mystery, whether legal or illegal and in which case no police officer of any of the states was examined nor any details were given by the CBI. The alleged circumstance of absconding is not proved. That the learned trial Judge has acquitted Navjot Singh on the same set of evidence. The same reasons applied by the learned trial Judge recording acquittal of Navjot Singh are fully applicable to the case of the Appellants.

306. The argument of the learned Counsel for the C.B.I. is that Jagtar Singh Hawara is a master mind and kingpin of the whole affair and that he was obeying the orders of his masters in Pakistan, namely, Wadhawa Singh and Mahal Singh and he is solely responsible for the whole episode, is falsified as already discussed. Neither did he bring the RDX, nor in procuring car DBA-9598, Jagtar Singh Hawara has no role to play. No credible evidence has been produced by the prosecution regarding his role in preparing the uniform or belt and also in preparing the bombs etc. Even on 30.8.1995 after 2.30 p.m. and 31.8.1995, presence of Jagtar Singh Hawara in Chandigarh is not proved by any credible evidence.

307. We have heard the learned Counsel for the parties and perused the record with their assistance.

308. Going through the sequence of events and the circumstances which were built up and with the evidence we have perused minutely, it is clear that the

bomb blast was that of a human bomb. The human bomb being Dilawar Singh and it was not a bomb which was exploded in the car of the former Chief Minister S. Beant Singh (hereinafter referred to as the "C.M.").

309. Gurdip Singh PW-79 who was the Incharge of the security of Chief Minister at his residence, has stated that the C.M. had 12 santry posts of C.R.P.F. There were Santries standing on every gate. Commandos of the Punjab Police were also posted there. With such a lot of security personnel, the residence of the C.M. was virtually a Fortress and it was not possible for anyone to breach the security and plant a bomb in any of the three bullet-proof Ambassador cars allotted to the then C.M., nor was it possible to plant a bomb underneath or in the rear seat or in the dicky of the car.

310. The three bullet proof cars bearing Nos. PB-27-6514, PB-08-3469 and PB-27-6516 used to be ready and nobody knew as to in which car the C.M. was to sit in. On the day of the tragic incident i.e. on 31.8.1995, the C.M. sat in the car driven by Jagdish Singh as stated by HC Baljit Singh PW-53.

311. Salamat Masih PW-40 has stated that on 31.8.1995 he did the anti-sabotage checking of the three bullet proof cars and the other vehicles which were to accompany the C.M. from his residence to the Civil Secretariat in his convoy. It was after they were checked, that they were handed over to the drivers and the personnel of National Security Guards (hereinafter referred to as the N.S.G.) who were on duty at that time. D.K. Tripathi, S.P. Security(PW-78) has stated that everyday in the morning anti sabotage checking staff used to do the checking.

312. The C.M.'s convoy on 31.8.1995 reached the Civil Secretariat where his office was at about 1.00 p.m. The bullet proof cars were locked and parked in a secluded place and were guarded by security personnel. It was in the evening at about 5 p.m. that D.K. Tripathi PW-78 asked the drivers to unlock them and get them to the gate where the C.M. had to come out. Constable Baljit Singh PW-53, Constable Iqbal Singh PW-66 and Harkesh Singh PW-218 have corroborated D.K. Tripathi PW-78.

313. Roop Singh PW-161 the Ballistic Expert has stated in his testimony that if an explosive device is kept in the back seat or in the dicky, then the entire car will get shattered. There would be also a crater formed in the ground underneath the explosion. He has stated in his testimony that "I had not noticed any such symptoms while examining the scene of occurrence and in car No. PW-08-3469." He has given his opinion that the explosion was not the result of a bomb kept inside the car, or beneath the car. Further, if a bomb had exploded under the rear seat or in the dicky of the car, the roof of the dicky of the car would be blown off.

314. The argument of the learned Counsel for the Appellants except Balwant Singh that out of the 14 witnesses examined who were at the place of occurrence, and that 13 have not stated anything as to whether they saw

Dilawar Singh or he approached the C.M.'s car just before the explosion does not cut much ice. The prosecution case is based on circumstantial evidence and it is not a eye-witness account, though Harkesh Singh PW-218 who is corroborated by Dr. D.K. Tripathi PW-78 has stated as under:

Const. Jagdish Singh was the driver of that car and he was in the driver seat at that time. Shri Yash Pal Bali, PA was standing near the rear right hand door of the car which is on the back side of the driver seat. The National Security Guard Kultar Singh was standing near the door of the car near to the driver seat. CM asked Ranjot Singh Mann to come to his bungalow later on. Dr. Anil Duggal told me that he wanted to exchange a word with the C.M. and so I and Sarwan Singh, PA stepped back and gave directions to ASI Jagdish Singh to shut the door of the car, and I myself went to the following car just behind the car of the C.M. I had just reached the door of that car, that there was a very powerful blast. After the blast, I became unconscious. 315. In his cross-examination, this witness (PW-218) has stated as under:

That when I asked ASI Jagdish Singh to shut the rear left door of the car of the CM, I retracted back by about 4 yards. I did not hear the clank of the shutting of the door of the car of CM. When I just stepped back, there was powerful bomb blast. The last scene which I saw before unconscious was that Dr. Duggal was talking to the C.M. The blast took place on my back side. 316. The presence of Harkesh Singh PW-218 of the N.S.G. is established and corroborated by the statement of D.K. Tripathi PW-78 who in his cross-examination has stated as under:

SI Rajinder Prasad of NSG was also on duty with the carcade of CM on 31.8.1995 while making my statement Under Section 161 Code of Criminal Procedure mes of all the Punjab Police, CRPF and NSG security personnel on duty with the CM on 31.8.1995." "Before the pilot Gypsy of CRPF, there was NSG Gypsy in which beside driver of Punjab Police NSG guard also in that Gypsy. The number of the Gypsy was PB-08-2243. Three guard of NSG namely K.Ramarao, ASI Ashok Kumar and Harkesh were in this Gypsy as security guards. 317. Inspector Nanha Ram PW-240 has stated that when he reached the P.G.I., out of the three witnesses, Constable Pala Ram was fit to make a statement and he then recorded his statement.

318. At the time when the explosion took place, the whole place was full of police officials and NSG Commandos, all being in uniform and this is the reason that Dilawar Singh the human-bomb who was also in police uniform, could not be noticed. If he had been noticed, he would have been stopped from coming near the C.M. Harkesh Singh PW-218 saw Dilawar Singh near the car of the C.M. when the explosion took place, but mistook him to be one of the Punjab Police Personnel. Harkesh Singh PW-218 is a credible witness whose presence is established, and corroborated by others. The story of the bomb to be kept in the dicky is falsified by him.

319. Dr. S.R. Singh PW-165 has stated that the maximum damage to the car (No. PB-08-3469) was at the rear left portion from outside to inside. This also corroborates the theory of human bomb. It is Dilawar Singh who was standing at the side when the bomb was triggered off by him.

320. Going through the statement of Dr. Roop Singh PW-165 Ballistic Expert who has a vast experience in fire arms and explosives, has stated that he has examined over 100 cases regarding RDX and has an experience of 40 years that the explosion was of a human bomb. His report Ex.PW-165/1 states that a powerful improvised explosive device (IED) exploded near the rear window and dicky portion of ambassador car No. PB-08-3469. The device when it exploded was at a height of three feet from the ground. He has further stated that the right side of the dicky was intact. The petrol tank of the car and front side of the dicky was also intact. This witness has further stated that he has investigated human bomb explosives and the places where the human bomb explosions had taken place. He examined the place/case of the assassination of Shri Rajiv Gandhi who was also killed by a human bomb. His credibility is not tarnished as he was never examined as a witness in the Manu Sharma alias Sidharath Vasishtha case famously known as Jassica Lal murder case. In that case (Jassica Lal murder case), it is the defence who placed heavy reliance on the report submitted by him. If strictures have been passed, that does not mean that this witness is not telling the truth in this case.

321. Going through the statement of Inspector Nanha Ram PW-240 coupled with the statement of Dr. Sandeep Sharma PW-16, it is clear that two legs and a skull were lifted from the spot on 31.8.1995 by Inspector Nanha Ram PW-240. They were kept in the mortuary in General Hospital, Sector 16, Chandigarh. Dr. Sandeep Singh PW-16 has stated that on 2.9.1995 he saw the two legs and back of the skull in the mortuary of General Hospital, Sector 16. He gave his opinion on that day to Inspector Nanha Ram PW-240 that it was because of the blast that the torso could have been blown off and the two legs and skull remained. These two legs and skull were recovered by Inspector Nanha Ram on 31.8.1995. He had deposited the same in General Hospital, Sector 16. Dr. Sandeep Singh PW-16 has corroborated the statement of Inspector Nanha Ram PW-240.

322. The two legs and skull were identified by Chamkaur Singh PW-99 brother of Dilawar Singh and by his father Harnek Singh. Dr. Lalji Singh PW-245 who conducted the DNA test of the legs and skull of Dilawar Singh, and who also proved report Ex.PW245/7 states as under:

The first PCR was 10% positive and the second independent test of another type was made by me in which I made my opinion 200% sure. The result of both the tests was same i.e. Dilawar Singh was the progeny of aforesaid Harnek Singh and Surjit Kaur. 323. Dr. J.L. Chaudhary PW-20 has stated that when Dr. Sandeep Singh PW-16 told him about the enquiry being made by Inspector Nanha Ram PW-240, all of them went to the mortuary on 3.9.1995 and saw the skull and the two legs there. SI Gamdoor Singh PW-176 has stated that the two

legs and skull were brought by him to the P.G.I. from General Hospital, Sector 16, Chandigarh on 4.9.1995 where he deposited them and thereafter moved an application Ex.PW-176/40 for the post-mortem examination of these parts of the body at the P.G.I. Dr. Inderjit Dewan PW-6 has stated that he received two legs and head in a bucket containing formalin on 4.9.1995. On 5.9.1995 he received instructions from the P.G.I. to conduct the post-mortem on the application Ex.PW-176/40 filed by SI Gamdoor Singh PW-176. After performing the post-mortem, he gave his opinion that both the legs belonged to the same person/individual. They were smeared just above the knees by a blast which created a big lacerated wound at the upper end of both the legs. He further stated that it could have been an explosive device.

324. Going through the sequence of events and the statements of the witnesses as discussed above, the chain of circumstances from the time the former C.M. left his house and till the legs and skull of the human bomb Dilawar Singh reached the P.G.I. and thereafter being examined by the doctor at PGI is complete. There is no ambiguity in these chain of events.

325. Dilawar Singh's father Harnek Singh was not produced as a witness for the sole reason that he had only identified the legs and skull. Chamkaur Singh PW-99 brother of Dilawar Singh was produced in the Court where he stated that he identified the legs and skull to be that of his brother. Producing the father of Dilawar Singh would have only added to what Chamkaur Singh PW-99 had already proved. Blood samples of the father Harnek Singh and mother Surjit Kaur of Dilawar Singh were taken for conducting the DNA test.

326. V.K. Maheshwari PW-65 recorded the confessional statement of Balwant Singh accused and Shamsher Singh. Shamsher Singh later on retracted from his confessional statement Ex.PW-103-C Balwant Singh first also retracted from his confessional statement Ex.PW-65/F, but at a later stage, he moved an application reiterating what he had said earlier and stood by the judicial confession.

327. Accused Jagtar Singh Tara (P.O.) and Jagtar Singh Hawara purchased ambassador car No. DBA-9598 from S.K. Datta PW-32 on 20.8.1995 at Delhi. Jagtar Singh Tara was working with Mohan Raj Shekhar PW-25 as a driver. The judicial confession of accused Jagtar Singh Tara Ex.PW-86/4 states that after receiving a telephone call from Jagtar Singh Hawara on Telephone No. 609275 of Mohan Raj Sekhar PW-25 in the coded word "mama ne Bulaya hai" (maternal uncle has called) by which it would be understood that the car should be taken to the University in Patiala. Smt. Rewti Raj Sekhar PW-26 confirmed that on 23.8.1995 at around 5.36 p.m. she received a call at her telephone installed in her house where a person asked for Jagtar Singh Tara. She stated that Jagtar Singh Tara (P.O.) was out on duty with her husband and she was then told that Jagtar Singh Tara should be told that "kal 6 baje wo mama ke ghar pahunch jayega". She conveyed this message to Jagtar Singh Tara and thereafter he did not come for duty till 1.9.1995.

328. Jagtar Singh Hawara had contacted S.K. Datta PW-32 for the purchase of ambassador car No. DBA-9598 and the deal was struck for Rs. 32,000/- which was paid in cash by accused Jagtar Singh Hawara. Jagtar Singh Tara (P.O) executed a fictitious receipt in the name of Basant Singh. The evidence of S.K. Datta PW-32 reveals that all the accused persons had changed their identity by tying their beards with neck and wearing spectacles, on the day their evidence was to be recorded. On 18.12.1996 he identified Jagtar Singh Hawara in Court.

329. Dalbir Singh PW-125 has stated that a room was allotted to Manjinder Singh (PO) and others in Gurudwara Shishganj and they occupied it from 9.6.1995 to 21.6.1995. He identified the photographs of Manjinder Singh. Jasbir Singh PW-124 proved the record of Gurdwara Shishganj, Delhi containing entries of persons who stayed in the Gurdwara. Balwant Singh in his confessional statement has also stated that Manjinder Singh was in the Gurdwara where he went to meet him. Vinod Kumar Vats PW-132 of Surya Guest House at Delhi has stated that Manjinder Singh occupied the room in his hotel from 23.6.1995 at around 9.25 a.m. He was accompanied by a Sikh young man and one another person. He identified the photograph as well as the person to be Balwant Singh and Jagtar Singh Hawara who were with Manjinder Singh on that day. He identified them in Court also. Jasbir Singh PW-75, Mohan Pal PW-111, Amarjit Singh PW-76, Arun Kumar PW-49, Puran Chand PW-68 and SI Surender Sharma PW-51 identified accused Balwant Singh, Jagtar Singh Hawara, Lakhwinder Singh, Shamsheer Singh and Gurmeet Singh in Court.

330. Puran Chand PW-68 has stated that he had seen Jagtar Singh Hawara and others in the room of Gurmit Singh between 26.8.1995 to 31.8.1995. He identified both Balwant Singh and Jagtar Singh Hawara by touching them in Court. On 28.8.1995 Gurmit Singh accused introduced Dilawar Singh, Balwant Singh and Jagtar Singh Hawara to him. Satwinder Singh Simpy PW-101, Avtar Singh PW-63 and Puran Chand PW-68 have stated that Gurmit Singh was a co-tenant in House No. 981, Phase-IV, Mohali. These witnesses do not have any grudge or animosity with the accused to falsely implicate them.

331. Dalbir Singh PW-100 has established existence of an organization by the name of Babbar Khalsa International headed by Wadhawa Singh (P.O). and Mahal Singh (P.O). The accused in their statement under Section 313 Code of Criminal Procedure have not denied existence of this organization. Various material was collected, as already stated by the learned Counsel for the CBI as above of Babbar Khalsa International. Pamphlets, literature, articles and posters have been put on record. Photographs of Dilawar Singh, Wadhawa Singh and Mahal Singh are shown on these posters. Dalbir Singh PW100 collected all this material when he went with a jatha to Pakistan. In cross-examination, the existence of these pamphlets, literature and posters etc. has not been challenged. The existence of Babbar Khalsa International is confirmed by the fax messages sent to various news agencies received in India claiming responsibility for the assassination of S. Beant Singh. In the statements of Gurmit Singh PW-35 and

K.N. Prabhakar PW-38 a detailed account has been given of receiving these messages from Pakistan.

#### BALWANT SINGH ACCUSED

332. Balwant Singh in his statement before the Court at various stages which are reproduced as under has not denied the occurrence but infact has supported his own version again and again of having been part and parcel with Dilawar Singh in the assassination of S. Beant Singh.

333. In order sheet dated 20.2.1996, it is stated that both accused Balwant Singh and Shamsher Singh moved an application denying the earlier confessional statement they had made before the Magistrate.

334. Sh. S.K. Chopra, Advocate was appointed as Amicus Curiae. On 24.12.1997 Balwant Singh filed an application narrating in detail the commission of the offence and also stating that he did not have any faith in the constitution. He stated that the earlier judicial confession he had made was correct and withdrew his application dated 20.2.1996.

335. As per order sheet dated 12.3.1998, accused Balwant Singh moved an application through his counsel Sh. Chimni Advocate that he did not want to contest the case. On 16.3.1998, Mr. S.K. Chopra, Amicus Curiae was discharged by the Court and told to not to represent Balwant Singh accused as the accused himself did not want to be represented by any counsel and he did not want to contest the case.

336. This Court asked the District and Sessions Judge, Patiala to verify as to whether letter dated 10.8.2009 written by Balwant Singh from Kothi (Barack) No. 5, Model Jail, Chandigarh addressed to Hon''ble the Chief Justice, Punjab and Haryana High Court was written by him or not. Learned District and Sessions Judge, Patiala alongwith Chief Judicial Masgistrate, Patiala visited the jail premises and asked Balwant Singh accused whether he had written letter dated 10.8.2009. Accused Balwant Singh stated as under:

I have seen photocopy of letter dated 10.8.2009 addressed to the Hon''ble Chief Justice of Punjab and Haryana High Court. It has been written by me and is in my handwriting and under my signatures. I have not filed any appeal against my conviction in the Hon''ble High Court. I do not want to engage any lawyer in the Hon''ble High Court. I do not want any amicus curiae to be appointed by the Hon''ble High Court to argue my case. I may be allowed to appear in the Hon''ble High Court in person to argue my case. 337. Letter dated 10.8.2009 written by Balwant Singh to the Hon''ble Chief Justice is reproduced as under:

Translation of an application dated 10.8.2009, sent by Balwant Singh Rajoana, Kothi(Barrack) No. 5, Model Jail, Chandigarh addressed to Hon''ble the Chief Justice, Punjab and Haryana High Court, Chandigarh.

XXX

To

Hon''ble the Chief Justice, Punjab and Haryana High Court, Chandigarh.

Through Superintendent, Model Jail, Chandigarh

Re: Case State v. Gurmeet Singh and Ors. (Beant Murder Case).

May it please your Lordship!

It is submitted that I have already submitted an application to the Hon''ble High Court stating therein that I have not filed any appeal against death sentence pronounced by the Ld. Sessions Judge because I have no faith in judiciary of this Country. Whereas the other co-accused who have been sentenced in this case have filed appeal in the Hon''ble High Court because they have faith in judiciary. Therefore, the case relating to my death penalty may be considered separately. The decision, if any, to be taken in this behalf may please be taken immediately. I have neither requested the Hon''ble High Court to hang me early nor to hang me later as has been published in all the newspapers. I have not begged for life from the High Court.

It is further submitted that Hon''ble High Court has taken a decision on 7.8.2009 on my application that hearing regarding my death penalty would be given with the hearing of other co-accused Appellants. Hon''ble High Court has provided me services of Sh. S.S. Dinarpur, renowned Advocate. I request these feelings so expressed by the Hon''ble Court and the Id. counsel to whom even I do not know. With due respect, I refuse to accept the services of counsel so appointed for me without my demand without my will, without my asking and without my consent. If any advocate appears in the Court on my behalf without power of attorney then it would mean the mockery of law, If I had to engage an advocate then I would have done so 14 years ago.

I want to tell for the information of Court that I had also not engaged any Advocate in Sessions Court. Neither I have pursued my case nor put forth any cross examination of any witness. The Id. Judge had offered to provide me with the services of an Advocate during the pendency of case but I refused flatly for the same and told the Id. Judge that I had tied bomb with my hands with the body of my friend (Bhai Dilawar Singh) and that I have seen him dying. How can I say that I am innocent and why should I engage any advocate as my consciousness does not allow me to do so. The Id. Judge had allowed my request for not getting the services of an Advocate.

I have already made it clear in writing prior to it to Hon''ble High Court that I refuse to file an appeal against my death sentence to any Court of this country which had xxx while attacking with xxxx and xxxx and that the law that does not apply to the murderers of thousands of innocent Sikhs and the legal system against whom thousands of my brothers have died. Slavery of such system is not acceptable to me.

Legal system, judicial system of this Country and the rulers of this Country have been discriminating. In xxxx, when the xxx with xxx and xxx by injuring the religious sentiments of Sikhs then xxx. The xxx who committed this xxxx were honored by giving promotions and medals of bravery by the rulers of the country. By doing so, they sprinkled salt on the wounds of Sikhs. Thereafter in xxxx, the patriot of this country xxxx in the capital of country, Delhi and other big cities. The xxxx continued xxxx the xxxx for xxxx xxxx in the xxxx of Delhi and after making xxxx. They also continued to kill the daughters, sisters of the xxxx after outraging their modesty. Old persons, children and women were mercilessly killed. Their houses were put on fire. But these murders were not restrained by any law, military and any commandos. The dead bodies of the Sikhs were eaten by the dogs etc. and crows by pinching them. The only reason behind it was that they belonged to xxxxx. Thousands of Sikhs were massacred. It is submitted that these murderers have neither been arrested nor have been punished by any Court of law of the country even after 25 years. Rather the killers were given promotions or were included in the cabinet.

It is further submitted that other brethren belonging to xxxx and thereby injured the sentiments of crores of xxxx. They could not be restrained by any law. Thereafter, after the xxxx (happening), thousands of xxxx were killed in xxxx. The only reason behind it was that they belonged to xxxx. At that time no law prevailed and the killers were allowed to do whatever they wanted at their will. This system also failed when these assailants destroyed the religious places of xxxx and put on fire their property. Even the administration did not take any action.

Here, I would like to ask your Lordship that the persons who have killed thousands of innocent xxxx, xxxx and xxxx are not the terrorists. Why not the law of the nation, xxxx try to interfere in the matter. On the contrary, when the hotels of Mumbai are attacked then the military of the country immediately interferes. The commandos of Delhi initiate immediate action after reaching Mumbai. This is made to known as to in which village the assailants reside in xxxx. Contrary to it, the xxxx of xxxx of people in Delhi could not be identified. How the security can be assured without the law when everybody knows the killers.

It is submitted that the rulers who injured the religious sentiments of xxxx, who have destroyed xxxx and who have massacred thousands of innocent persons are being called as sons of India and are called as protectors/guardians of the Country. But when somebody kills these assailants then he is called as a terrorist. On one side there are people who are surrounded by security guards, having bullet proof vehicles and wearing jackets and on the other hand there are people who have the will power to sacrifice themselves by becoming human bomb in order to fight against injustice being done by these persons. Who is terrorist? Who is patriot? This may please be considered.

It is submitted that Beant Singh was also a leader of this xxxx who was

nominated as Chief Minister of Punjab all of a sudden by xxxx and tried to oppress the xxxx through him. Thousands of young xxxx were xxxx by xxxx them from their houses and were burnt by declaring them as unclaimed. The custodian/protectors of law themselves used to play the role of Judge, Court, Police and also the murderers. They were honored with the medals of bravery in doing so. This all has been done by Beant Singh, Chief Minister of Congress at the instance of Delhi.

It is also submitted that Beant Singh was a murderer/killer of thousands of innocent Sikhs, who was awarded appropriate punishment by Bhai Dilawar Singh of his brutal actions. I have no regret of being a part of this murder. The death sentence awarded to me for this act is justice like blessings in disguise and I accept the same gladly and refuse to bow before such type of worthless system.

In view of facts mentioned in the application, I gladly accept capital punishment awarded to me but refuse to bow my head before such type of hypocrites.

Dated 10.8.2009

Application of Balwant Singh Rajoana, Kothi (Barrack) No. 5, Model Jail, Chandigarh. Sd/- Balwant Singh Rajoana (In Punjabi)

#### CONFESSION OF BALWANT SINGH

338. Confession of Balwant Singh is divided into two parts.

(i) judicial confession made before the Magistrate;

(ii) Extra judicial confession made before Kuljit Singh PW102, Gurpreet Singh PW94 and Tejinder Pal Singh PW95.

339. The judicial confession made by Balwant Singh accused was made before Mr. V.K. Maheshwari PW65, Metropolitan Magistrate, Delhi. Balwant Singh was arrested on 14.1.1996 by the CBI. He was produced before the Magistrate to record his judicial confession on 22.1.1996. Mr. V.K. Maheshwari PW65, sent him to judicial custody on 22.1.1996 and recorded the following order on 23.1.1996 as under:

Accordingly on 22.1.1996 accused Balwant Singh was produced before me by the IO Sh. S.K. Saxena, Dy.SP, CBI. Mr. Saxena had identified the accused before me whereafter the accused was placed in custody of my Peon Sh. Kartar Singh. All other police personnel's including the IO were directed to leave the Court. After getting the door of my chamber locked, I called the accused in my Chamber, and at that time, my Steno was also present in my Chamber. I first satisfied myself that there is no policeman at the place from where the proceedings could have been seen or heard. I asked the accused whether he wants to make a confession with his free-will. The accused answered that he wanted to tell the truth. The accused, further explained that whatever he had done, he had done for the sake of his Panth. He had then told me that he had now realised that some innocent persons had died alongwith Mr. Beant Singh and on that account he is feeling

sorry.

I satisfied myself that no force, coercion, pressure etc. has been used against the accused for pressuring the accused to make the confession.

Q. Whether any mark of injury on the person of Balwant Singh was visible or not, to you or whether he had complained of any misbehavior against him on the part of CBI or not. (Objected to).

Ans. I found no external mark of injury on his body and the accused himself told me that he has not been subjected to any coerce or force by the CBI.

I explained the accused that he was not bound to make the confession. I further told him that if he would have make the confession, it may be used in evidence against him. Inspite of this, accused was firm for making confession. He told me that he wanted to give the details as to how he and his co-accused killed Sardar Beant Singh.

In order to further ensure myself that there remains no impression of fear or coercion in the mind of the accused for making confession I remanded the accused in judicial custody till 23.1.1996. These entire proceedings were reduced into writing and are Ex.PW65/D. On these proceedings, I have also obtained the endst and signatures of Sh. S.N. Saxena identifying the accused produced before me. The endst and signatures are Ex.PW65/D-1 and the same was made in my presence. I read over the proceedings to Balwant Singh accused and had obtained his signatures at point "x", "y", "z".

On 23.1.1996, accused Balwant Singh was again produced before me from Judicial Custody by HC (Head Constable) Updesh Kumar alongwith Avdesh Kumar Head Constable and other constables of the Delhi Armed Police. Thereafter all the police personnel's were directed to leave the Court Room and the accused had been taken in custody of my Peon Kartar Singh. Doors and windows of the Court room were bolted. No Police personnel was present inside the Court Room at that time. Only my Court staff was present at that time.

I again enquired from the accused whether he wants to make the confession. Accused told me that he wants to make confession. Thereafter I directed the accused, my Peon and my Steno to come in my Retiring Room for recording the statement. I again explained to the accused that he was not bound to make the confession and in case he will make the confession, then it can be used against him and he can be convicted on the basis of his confession. Accused replied that he wanted to make confession. In order to satisfy myself whether accused was making confession voluntarily, without any force or pressure, I again examined him physically. I did not find any injury. Accused himself told me that he has not been subjected to any kind of force or pressure.

I had remanded the accused to Judicial Custody for providing him peaceful atmosphere and to remove any impression of fear, threat or coercion or inducement. After these proceedings, I was fully satisfied that the accused had

not been subjected to any kind of physical torture for making confession. I again warned him that he was no obligation to make the confession. I put several questions to accused in order to satisfy myself whether the accused was making confession voluntarily without any force, inducement or threat. All those questions I recorded in my proceedings. From the answers given by the accused, I was satisfied that accused was making confessional statement without any force, coercion, pressure, inducement or threat. Hence, I recorded the confessional proceedings and these proceedings are Ex.PW65/E in three sheets. These were read over to the accused whose signatures were obtained at point "A", "B", "C" in token of the same having been correctly recorded. The proceedings dated 22.1.1996 and 23.1.1996 bear my signatures.

340. It is clear that Sh. V.K. Maheshwari PW65 took all legalities into consideration before recording the judicial confession. The judicial confession of Balwant Singh made before Sh. V.K. Maheshwari PW65 has already been reproduced in previous pages.

341. Accused Balwant Singh in his statement under Section 313 Code of Criminal Procedure, in answer to the last question i.e. question No. 953 has stated as under:

Q. 953 Do you want to say anything else or not?

Ans. I have already submitted a written explanation in this regard when my statement was started under Section 313 Code of Criminal Procedure and the same be read as part of my answer to this question. (xxxx). I again reiterate that I strapped the bomb around his waist and killed Beant Singh and I helped him in achieving/doing this. But all the other accused with me are innocent and had no role in this matter. I did so for the cause of independence of my brotherhood because Beant Singh was killer of thousands of Sikh innocent persons and started claiming himself to be incarnation of Sh. Guru Gobind Singh and also proclaimed himself Ram Avtar.(xxxx).

In his statement under Section 313 Code of Criminal Procedure to question No. 953 he has stated that whatever he has stated, he stands by his statement Ex.BS/A, which is reproduced as under:

TRANSLATION OF EX.(BS)/A

xxx xxx xxx Respected Judge Sahib

xxx

xxx Judge Sahib attack on sikh religion in June 1984 by Govt. of India is not a new story. From the time this religion has come into existence with the idea of hardship, meditation from that time it has got the hate feeling of cruel Govt. The list of enemy of Sikh Dharam has been very long. Sometime in the image of Jahangir, Aurangzeb, Abdali, Sase Ranger and xxx, it had tried to eliminate Sikh religion. Sikhs has always given stick reply to these cruel rulers. Sikhs in the

image of Sri Guru Arjan Dev Ji, Sri Guru Teg Bahadur Ji, sometime in the image of Sahabijadas image, Banda Bahadur and Baba Deep Singh Ji's image have given their lives to save their beloved religion.

Judge Sahib, even after the independence of Hindustan, the story of extortion's of sikh religion did not stop. Time to time sikhs have made struggle for their rights. By taking guidance from Sri Akal Takht Sahib the political and religious organization of Sikhs stricked Dharmyud morcha for their rights against the cruel xxx. Observing sikh's great respect towards Sri Akal Takht Sahib the frustrated xxx attacked on the most respectable religious pilgrimage of Sikhs Sri Harminder Sahib. At that time sikh Sangats were peacefully celebrating the birthday anniversary of their fifth Guru Sri Guru Arjan Dev Ji. xxxx. Judge Sahib the Supreme Court of Sikhs i.e. Sri Akal Takht Sahib and Darshani Daodi were destroyed. Sri Harminder Sahib was shattled with bullets. The historic library of sikhs was fired. Thousand of innocent devotees were killed with bullets. The holy land of Darbar Sahib and pious sarover were painted with the blood of innocent people. Under the leadership of xxxx sikhs achieve martyrdom for the protection of their religion. I salute those great martyrs and put my head down for their sacrifices.

Judge Sahib it is the limit of cruelty xxx of this country who has killed its own people. This attack on sikh religion is the biggest attack of 20th century. With this attack sikhs hurt badly.

Judge Sahib after destroying the supreme Court of Sikhs i.e. Akal Takht Sahib on xxx who was responsible for the xxx of innocent Sikhs. Thereafter the cruel face of xxx against sikh religion came forward. After the murder of xxx the main people of xxx alongwith police and administration and other agencies of country took the image of murderers. In the capital of India Delhi and in the other important cities of country innocent sikhs become the target who were not at all connected with this murder. Thousands of innocents sikhs were brought out of their houses and were brutally killed. Alive sikhs were put on fire by hanging tyres in their necks. Children, women and old aged people were killed brutally. This brutal episode of killing innocent people by xxx police and other agencies remained for 72 hours.

Judge Sahib today after 22 years of that episode no has been arrested. Different Govt. from time to time have been showing false sympathy by forming enquiry commissions. Forming those commissions again and again is the extent of these rulers cunningness of these Governments. Sikhs have no hope of justice from these cunning and cheat rulers because the killers themselves appoint enquiry commission at their own will and gets enquiry conducted as per their own will.

Judge Sahib the story of atrocities of xxx Govt. of India does not complete here. Thereafter they gave full liberty to their agencies and police to kill innocents youth sikhs. The Govt. of xxx was forced on Punjab by becoming Beant Singh its Chief Minister. Whereas all the sikh political parties had boycott the election.

Formed by 10% forged votes Chief Minister Beant Singh with collaboration of agencies in Delhi, painted the pious land of Punjab with the blood of innocent people. Thousands of youth sikhs were picked from their homes and were killed. Their bodies were buried by declaring them unclaimed, their bodies were also washed away in the rivers, where their bodies were become the food of fishes.

Judge Sahib there no bridge of any river or drain where the blood of innocent sikh was not dropped, by declaring child of the age of 1 and half year as militant, was killed with bullets. Human right commission which tried to speak against these cruelties, their heads were killed, police who was supposed to protect the people became took the image of killers and robbers. These atrocities were inflicted by the Chief Minister of Punjab Beant Singh on the saying of Agencies in Delhi.

Judge Sahib Beant Singh assumed himself angel of peace after killing thousand innocent people, compared himself with Guru Gobind Singh Ji and Ram Ji, thereafter we had decided to kill Chief Minister Sh. Beant Singh.

Judge Sahib on 31 August 1995 Bhai Dilawar Singh born in the house of mother Surjit Kaur and father S. Harnek Singh tied bomb with his waist and collided with Chief Minister Beant Singh in Secretariat, finished his story of cruelty.

Judge Sahib on that day I was with Bhai Dilawar Singh Yes I was involved in this murder. I have no repentence of involvement in this murder. I and Bhai Dilawar Singh prepared this bomb. Other accused Gurmeet Singh., Lakhwinder Singh, Shamsheer Singh, Navjot Singh, Nasib Singh etc. arrested by CBI in this case were not involved in this case. These people are totally innocent. They are got involved in this case falsely.

Judge Sahib for the sake of my religious/community and for during independence struggle bowed my head against their sacrifices-I respect all those martyrs. I bow at the sacrifices of my younger brother Harpinder Singh Goldy and Bhai Dilawar Singh, I declare that I will not let waste the blood of those martyrs and will continue this struggle independence achieved.

Judge Sahib the country who has destroyed the supreme Court of Sikhs i.e. Akal Takht Sahib, killed thousands of innocent sikhs, protected killers of innocent sikhs, I refuse to accept the constitution of such country as well as its courts. I on the behalf of xxx set aside the constitution as well as its court, in this Court xxx and announce the establishment of the xxx. I also pay obeysance (homage) to those brothers who have given their lives for the freedom.

xxxxx xxxxxxxx xxxxxxxx xxxxx From Balwant Singh Rajoana xxxxxxxx 342. The complicity of Balwant Singh in the murder of Former Chief Minister S. Beant Singh is proved beyond any reasonable doubt by the above confessions he has made as above. Further no cross examination has been done by him or his counsel to the material witness, though opportunity was given. Court orders show that he declined to cross examine them. It has been held by the Hon''ble

Supreme Court in Bal Kishan Vs. State and Another, that:

Section 138 in the Evidence Act permits cross examination. It has been held by Courts that where a particular material assertion is made in examination-in-chief and the witness is not cross examined in respect of that assertion then it will be taken that the party affected admits the truth of that assertion. The provisions of Section 138 came in for interpretation before the Patna High Court in Karnidan Sarda and Another Vs. Sailaja Kanta Mitra and Another, , and the Punjab High Court in Ganpat Ram Khosla v. Kishan Lal (1958) 60 P LR 349. Considering the law laid down in those cases I am of the view that where cross examination is not directed against the positive material assertion affecting the opposite party, it would amount to the affected party accepting the truthfulness of that assertion, unless there is some exceptional proof to the contrary. 343. Balwant Singh had desired to make a statement before us vide his statement given to the District and Sessions Judge, Patiala. We instructed the Jail authorities, Patiala to produce him before us. He was produced before us but before he made a statement, we made it clear to him as to whether he wanted to engage a counsel or should we appoint a senior counsel as Amicus curiae, which he declined. Thereafter, he submitted a written statement Annexure B, which was in Punjabi. He first read out his statement to us in Punjabi and thereafter, put his signatures on it. The same reads as under:

I want to apprise Hon"ble Court that Martyr Bhai Dilawar Singh was the rising sun of struggle for independence of Sikh Community. The people who do not realise the sacrifice of Dilawar Singh, are like a blot. I do not have any objection in making efforts by anyone to prove me innocent or to defend myself. The contention of prosecution that it is not a case of Human Bomb, is making mockery of the sacrifice of Dilawar Singh. Some conspiracy is being smelt from the said effort of these persons as making insult of the sacrifice of Bhai Dilawar Singh for the personal benefits of these persons is just like making insult of these great Sikh rituals which the brave martyrs have achieved by making great sacrifices. These people have been canvassing through newspapers and magazines for the last 15 years and they had inspired Bhai Dilawar Singh for becoming human bomb and by impleading their names with his sacrifice, prove that they have been wasting the sacrifice made by him. In this way, they have been misleading the nation. The legal representatives of these people continued making mockery of the sacrifice of Bhai Dilawar Singh. The political representatives of these people demand for placing photograph of Bhai Dilawar Singh in Sikh Museum. Such type of double mentality people can be the pawns of Indian Intelligence Agency, but such type of people have got no concern at all with the struggle for the freedom of Sikh community. They are posing themselves as false heirs of Bhai Dilawar Singh and are ignorant/unaware about the sacrifice made by him. They are even ignorant about the sacrifice of Martyr xxx for 20 years and there is only one power working behind this although every child of the nation realizes the sacrifice of Bhai Dilawar Singh for the freedom of Sikh community.

The contention of CBI that some other person had inspired Bhai Dilawar Singh for being Human Bomb, is wrong. The people who are ignorant of the sacrifice of Bhai Sahib and who love their lives cannot do so at all. Bhai Dilawar Singh was inspired to do so with the intense feeling of love for his community, the sobbing land of five rivers irrigated with the blood of innocent people, the numerous atrocities upon Sikh Community, mean conspiracies hatched by Indian rulers against Sikhs at an hour when conscience of a person have self respect refuses to accept the authority of callous rulers. Such feelings instigate a person for becoming human bomb rather than to become a human being.

It is humbly submitted that at that time the xxx ruling in Delhi(Centre) instead of accepting the genuine demand of Sikhs during "Dharam Yudh Morcha" launched by Sikh Political Parties, committed atrocities and harassed the xxx and I think that there is no necessity to mention the same here time and again. After that the xxx forcibly made congress Govt. in the Punjab as well. They made Sh.Beant Singh as Chief Minister of Punjab by violating the democratic values. Thereafter, the said people committed murders of innocent persons over the said land of Punjab. During that time, any other political party was not allowed to hold rally, stage dharna or any political congregations in Punjab. In the land of Punjab thousands of Sikh Youth were murdered after having been picked up from their respective houses and their dead bodies were cremated by declaring them unclaimed. Identification of the said persons is yet to be made. Indian rulers tried to destroy the Sikh Community through Beant Singh. After doing so, Beant Singh started considering himself as "Ram Avtar" and "Sri Guru Gobind Singh Ji".

All these acts were direct attacks (actions) on the Sikhs by Delhi congress Govt. and Indian Intelligence agencies. The murder of said Chief Minister belonging to congress by us was outcome (reaction) of the attacks and atrocities committed upon us. On 31st August, 1995, I was accompanying Bhai Dilawar Singh. I had tied bomb on the person of Bhai Sahib with my own hands. I do not have regret for my involvement in the said murder. I am proud of the sacrifice of Bhai Dilawar and bow my head before him in his respect.

The contention of CBI that we chose 5 pm on 31st August 1995, for the reason that we may kill maximum people, is wrong. By saying so, CBI is trying to hold us responsible for the murder of innocent people. Infact we were waiting for the Chief Minister belonging to Congress party since 2 pm as to when he could come out. The general public was neither our target nor our motive was to kill the innocent people but our motive was to kill the murderer of innocent people. He (Beant Singh) himself was to decide the time for coming out.

It is evident from the double policy of CBI that they consider Beant Singh as patriot who is killer of thousands of innocent Sikh people. They also consider xxx and in committing atrocities in xxx. Every possible effort is being taken to withdraw case against them or to weaken the cases. The rulers of the country and other agencies are providing protection instead of sending them to jail. The people like Anderson, Head of Union Carbide who is responsible for the death of

25,000 innocent people during Bhopal Gas Tragedy are considered to be patriots. Instead of sending them to jail by initiating trials, the rulers of the country make arrangements of aeroplane so as to flee away in order to save them. These disguised agencies protect these killers of thousands of innocent people and try to get the maximum sentence awarded to the person who had killed these kind of killers.

It is worth mentioning here that Indian rulers and agencies praised the Sikh Community as "Marshall Community" whenever there is need to fight against Pakistan or in order to vacate the Kargil Sector from the clutches of Pakistan.

But at the same time, the Sikh community whenever raises its voice against the atrocities they are called as terrorists and separatists.

It is further respectfully submitted that there is no such country in which Sikh Community had to face such type of atrocities during last so many years. After having tolerating all these atrocities there is no way out for any respectable community except to get liberty from clutches of such cruel rulers.

I refuse to accept the superiority of such corrupt judicial system which has become puppet in the hands of influential persons. I do not beg for life but want independence. I, therefore, demand for the creation of xxxx from xxxx.

344. Apart from the judicial confession, statement under Section 313 Code of Criminal Procedure and statement before us, there is other evidence also implicating Balwant Singh. PW218 Harkesh Singh in his examination in Chief has stated that he was deployed in the security of the former Chief Minister. On the fateful day i.e. on 31.8.1995 he left his residence for the Punjab Secretariat at 1:25 pm. From the three bullet proof ambassador cars, it was always for the Chief Minister to decide as to in which car to sit. On that day, he sat in Car No. PB-08-3469, which was driven by C Jagdish Singh. On the same day at about 5 pm, they got information that the Chief Minister was about to leave. At about 5:05 pm, the Chief Minister came to the porch, he was facing towards the Chief Minister when he saw the NSG Guard Kultar Singh following him. K. Ramarao was a head of him. Sh. D.K. Tripathi, Superintendent of Police gave the message to be ready. He saw K. Ramarao walking towards them. At that time, Chief Minister was talking to Doctor Duggal. Then he saw one person in police uniform coming towards S. Beant Singh and thereafter, there was a big blast. The person who came towards the car of the Chief Minister was a young person. He was a mona(clean shaven), who was not wearing a turban. After the blast, there was a lot of smoke and there was no visibility. Qua this statement, Balwant Singh accused was given an opportunity to cross examine Harkesh Singh PW218. He declined to do so by himself or through his counsel. Whatever was said by Harkesh Singh PW218, qua the human bomb in his examination in chief, it has not been challenged by accused Balwant Singh, Jagtar Singh Tara and Navjot Singh. Balwant Singh in his confessional statements has stated that on that day he was present alongwith Dilawar Singh at 2 pm waiting for the then Chief

Minister to come down. Similar are the statements of Sh. D.K. Tripathi PW78 and Sh. P.K. Joshi PW31 whose statements have also gone unchallenged by Balwant Singh.

345. On 2.9.1995 Balwant Singh went to Nagpur and made an extra judicial confession before Tajinder Pal Singh PW95 who further told Gurmit Singh PW-94 about the confession made to him. Statement of this witness has gone unchallenged.

346. Amarjit Singh PW76 has stated that he is a Tailor Master at Patiala and he stitched a police uniform for Balwant Singh. Jasbir Singh PW75, a Tailor Master, also stated that he stitched the bomb belt on the asking of Balwant Singh who was known to him. Both these witnesses identified Balwant Singh in Court.

347. Balwant Singh made disclosure statements Ex.PW247/3 and Ex.PW247/4 in front of Randhir Singh Punia, Additional Superintendent of Police (H.Q) PW247 regarding hiring of taxi, procuring of ball bearings nuts, bolts, stitching of police uniform and stitching of belt which Dilawar Singh wore.

348. Without having any evidence in favour of Balwant Singh to go into, so that we can have a second thought on the murder reference of Balwant Singh, coupled with his three confessional statements made by him, there is no other alternate with us but to confirm the findings of the learned trial Court qua Balwant Singh. Murder Reference No. 6 of 2007 qua Balwant Singh is affirmed.

#### JAGTAR SINGH HAWARA

349. Jagtar Singh Hawara was arrested on 21.9.1995 by the CBI and was interrogated. He made a disclosure statement Ex.PW121/1 on 22.1.1996 regarding the meeting he had with Manjinder Singh (PO) and Balwant Singh accused at Surya Hotel, Delhi. He pointed out Surya Hotel when he was taken there. This meeting took place sometimes in the month of June 1995. He pointed out the booths in Ghaziabad from where he rang up Resham Singh in Germany and Wadhawa Singh (PO) and Mehal Singh (PO) in Pakistan. In Ghaziabad he stayed with Kuldeep Singh. Jagtar Singh was a member of the banned Organization of Babbar Khalsa International. Dilbagh Singh PW100 has brought pamphlets, posters and other evidence on record to show that Babbar Khalsa International was an organization based in Pakistan. Ex.Art.149 and Ex.150 are showing the human bomb Dilawar Singh with Wadhawa Singh (PO) and Mehal Singh (PO). Further these articles show the grudge they had with the former Chief Minister. It has been stated that he was an autocratic leader and his style of working was despotic. He needed to be eliminated. The mastermind in India of the Babbar Khalsa International was Jagtar Singh Hawara. He motivated, arranged, indoctrinated, procured the money to be spent, arranged the places where he and the other co-accused would stay and hide and procured the RDX. Learned Counsel for the CBI has rightly argued that he remained in control of the entire assassination of the former Chief Minister. His directions were followed by one and all. He motivated Dilawar Singh to become the human bomb. He told

Dilawar Singh that he would become a martyr.

350. Jagtar Singh Hawara persuaded Jagtar Singh Tara (PO) to purchase ambassador car No. PBA-9598 though he could have done it himself. He did not go to the painter Surinder Sharma to have the car painted white, but sent his other co-accused Lakhwinder Singh and Shamsher Singh. He was not to be seen on the day of occurrence i.e. on 31.8.1995. A message was received on 31.8.1995 at 11:30 pm by the News Agency UNI when the Babbar Khalsa International took responsibility.

351. Jagtar Singh Hawara though was a part of the bigger conspiracy to eliminate the former Chief Minister but he kept himself outside the main action. As rightly argued by the learned Counsel for the CBI that he was a tool in the hands of Mehal Singh (PO) and Wadhawa Singh (PO) who were guiding him from Pakistan. All the accused i.e. Balwant Singh, Jagtar Singh Hawara, Gurmit Singh, Lakhwinder Singh and Shamsher Singh were closely associated with each other in the execution of the plan.

352. The conspiracy for the assassination of the former Chief Minister could have been nipped in the bud if ASI Arun Kumar PW49 had been alert. On 24.8.1995 Balwant Singh and Jagtar Singh Hawara while travelling on scooter No. PCB-2085 in Chandigarh were stopped by ASI Arun Kumar PW49. They did not have the necessary papers of the scooter. Scooter was not searched. If on that day, the scooter had been searched then from the dicky he would have recovered the material which was used to make the bomb. All that ASI Arun Kumar PW49 did was to challan them and the challan slip was later on recovered from the house of Chamkaur Singh, brother of Dilawar Singh. He recognised them from photographs Ex.P49/4 and Ex.P49/3.

353. Satwinder Singh @ Simpi PW101 and Madanjit Singh Chhana PW69 have given a detailed account of the friendship and association of Dilawar Singh, Lakhwinder Singh, Balwant Singh and Shamsher Singh and Hawara. The other witnesses also i.e. Surinder Kumar PW113, Dalbir Singh @ Maula PW114, C Ranjit Singh PW197, Paramjit Singh PW213 and Darshan Singh PW199 have also given an account of the friendship and association of all the Appellants Gurpreet Singh, Lakhwinder Singh, Jagtar Singh Hawara, Shamsher Singh and also the non Appellant Balwant Singh. This close friendship between all the accused as stated by the prosecution witnesses, turned into a conspiracy to assassinate the former Chief Minister S. Beant Singh. All of them knew each other very well.

354. The prosecution has failed to prove that the RDX was brought from some place near Ajnala near the Pakistan border by Jagtar Singh Hawara to village Ukasi, the village of Shamsher Singh and then shifted to village Jhingra Kalan, the house of Nasib Singh, co-accused or from thereto House No. 981, Phase IV, Mohali. In none of these activities, Jagtar Singh Hawara's role in any manner has been proved. This version has not been proved and remains a bald allegation against Hawara of prosecution.

355. Further the role attributed to Jagtar Singh Hawara is that on 10.8.1995 he alongwith Balwant Singh saw the security arrangements in and round the Civil Secretariat, Chandigarh. On 21.8.1995 he came to Patiala and informed them about the purchase of Car No. DBA-9598. On 24.8.1995 Balwant Singh and Jagtar Singh Hawara went to the market and ordered the tailor master Jasbir Singh PW75 to prepare a belt. On the same day batteries, switch and wires were purchased.

356. Jagtar Singh Hawara it comes out was an active member of the conspiracy like Shamsher Singh, Gurmeet Singh and Lakhwinder Singh who have been awarded life sentence. He was merely a tool in the hands of Mehal Singh (PO) and Wadhawa Singh (PO). There is no evidence on record of the whereabouts of Jagtar Singh Hawara on 31.8.1995 and as to where he was after 2:30 pm on 30.8.1995 or where did he go. All that comes out by the prosecution is that he was arrested on 12.9.1995. His other co-accused on 31.8.1995 were either in Mohali or Chandigarh. Infact the whereabouts of Jagtar Singh Hawara on 30.8.1995 before 2.30 p.m. is also very sketchy. Though, Jagtar Singh Hawara being a part of the larger conspiracy, the only inference we can make is that his not being present on 30.8.1995 or 31.8.1995 anywhere near the Secretariat or near Chandigarh is that he did not want to be a part of execution of the assassination of the former Chief Minister S. Beant Singh.

357. It is the case of the prosecution that the conspiracy to assassinate the former Chief Minister was hatched in Pakistan between Mahal Singh (PO), Wadhawa Singh (PO) and Jagtar Singh Hawara. Apart from the prosecution saying so there is no evidence on record to substantiate this. Nothing is on record as to when did Hawara go to Pakistan and when did he come back. No town, street or house number is mentioned as to where the three i.e. Wadhawa Singh (PO) and Mahal Singh (PO) and Hawara met and hatched the conspiracy to assassinate the former Chief Minister.

358. Jagtar Singh Hawara was arrested on 12.9.1995. His co-accused Lakhwinder Singh and Gurmeet Singh were arrested on 5.9.1995. It is not believable that during 7 days intense interrogation done by the C.B.I., the name of Jagtar Singh Hawara did not crop up. It is on 12.9.1995 that according to the prosecution the name of Hawara cropped up.

359. We are of the considered opinion that as per already discussed above, the case of Jagtar Singh Hawara does not fall within the parameters of the guidelines laid down by the Hon"ble Supreme Court in Machhi Singh and Others Vs. State of Punjab, . But we are conscious of the fact that a gruesome murder of the former Chief Minister S. Beant Singh alongwith 16 others had taken place and Hawara was the organiser of the heinous crime. In Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka 2008(3) RCR 773 the Hon"ble Supreme Court has held as under:

Para 66 The matter may be looked at from a slightly different angle. The issue of

sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an Appellant comes to this Court carrying a death sentence awarded by the trial Court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court, i.e. the vast hiatus between 14 years imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years imprisonment would amount to no punishment at all.

Para 67 Further, the formalization of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of the rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh (supra) besides being in accord with the modern trends in penology.

Para 68 In light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be.

It has been further held by the Hon<sup>ble</sup> Supreme Court as under:

...This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts being the superior Courts in their respective states.... 360. We are inclined to follow this judgment of the Hon<sup>ble</sup> Supreme Court, as the case of Jagtar Singh Hawara is a borderline case for death sentence to be awarded.

361. Murder Reference No. 6 of 2007 qua Jagtar Singh Hawara is declined but we substitute his death sentence imposed to him by the learned trial Court to imprisonment for life and direct that he shall not be released from prison till the

rest of his life, by following the judgment in *Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka* 2008 (3) RCR 773 (supra).

LAKHWINDER SINGH, GURMEET SINGH AND SHAMSHER SINGH

362. Appellant Lakhwinder Singh is a co-conspirator and associate of the other accused. He is the one who has done recce regarding the movement of the late C.M. He helped Dilawar Singh the human bomb in the fitting of his clothes and the belt. His finger-prints were found on the car No. DBA-9598. He went to Surinder Sharma PW-51 on 26.8.1995 in ambassador car No. DBA-9598 for getting the car painted white before 29.8.1995 along with the another Sikh gentleman. He pursued painting of the car. Lakhwinder Singh was arrested on 5.9.1995 near Village Kansal, Chandigarh. The car was painted white from outside. Lakhwinder Singh paid Rs. 1,500/- as advance total being Rs. 3,000/-. Lakhwinder Singh was arrested on 5.9.1995 on the chowk of village Kansal and was identified by Surinder Sharma PW51. He was coming on scooter No. PCP-2085.

363. Gurmeet Singh accused is also a co-conspirator. He took on rent alongwith Simpi, a house whose owner was Avtar Singh PW63, one room was taken in House No. 981, Phase IV, Mohali. There was a STD Booth on the ground floor. Simpi PW101 was the main tenant. Puran Chand PW-68 and Simpy PW-101 have confirmed this fact that a belt-bomb was prepared in the room in which he lived. He made calls to Germany which were noted in register No. PW63/A He was seen in the room by these witnesses and the other co-accused from 26.8.1995 to 31.8.1995. Reema Kahlon PW55 also identified Gurmeet Singh. He provided shelter to the other co-accused. He being an Electronic Engineer, checked circuit of the belt-bomb and made necessary corrections. As per the disclosure statement under Section 27 of the Evidence Act, he got recovered pieces of newspapers used for preparing the bomb, card-boxes from the Padchatti (top portion of his room). His room was searched and there were traces of RDX found on the floor on the cardboard boxes and the Padchatti where the RDX had been hidden. The report submitted by R.S. Verma PW-160 confirmed the presence of RDX in his room. Satwinder @ Simpi PW101 saw all the accused sitting with a newspaper in front of them on 30.8.1995.

364. Shamsher Singh accused was instrumental in procuring the RDX from across the border and keeping it in his own house. Satwinder Singh PW-101 though was declared hostile, but his statement under Section 164 Code of Criminal Procedure before the Magistrate has stated so. RDX was kept in the house of Gurmeet Singh in Village Jhingra Kalan and it weighed 13.700 kgs. Shamsher Singh being a co-conspirator, his role and complicity in the commission of the offence cannot be diluted.

366. Mewa Singh PW185 has stated that he has a Tea Shop outside the Punjab Civil Secretariat. Lakhwinder Singh and Dilawar Singh visited his Tea Shop on 31.8.1995 at 4 pm. Inspector Vijay Kumar PW238 stated that he apprehended

Lakhwinder Singh on 5.9.1995 at 6:30 am on the chowk of village Kansal, Nayagaon and Khuda Ali Sher. Balwinder Singh PW98 and Surinder Kumar PW51 identified him.

367. Puran Chand PW68 was living in a shed rented to him by Avtar Singh PW63 in House No. 981, Phase IV, Mohali. The first floor was occupied by Gurmeet Singh accused and Simpi PW101. He identified Gurmeet Singh accused in Court. On 28.8.1995 he came back at about 11:30/12 in the night and saw five persons in the room of Gurmeet Singh accused. Earlier also on 26th, 27th and 28th August, 1995 he saw them coming to the room. On 31.8.1995 at 2/2:30 pm, he saw these persons. After the occurrence, CBI officials lifted black granules cardboard box, newspapers into their possession in his presence.

368. Mr. A.K. Ohri, DSP, CBI PW237 searched the house of accused Gurmeet Singh in Guru Nanak Nagar, Patiala and vide recovery memo Ex.PW237/1, took into possession joint photograph of Gurmeet Singh and Dilawar Singh. Surinder Pal DSP, CBI PW241 lifted 35 finger prints from the white ambassador car No. DBA-9598, which was standing near the Punjab Civil Secretariat after the blast. One of the finger prints was matching with that Lakhwinder Singh.

369. Shamsheer Singh retracted his confessional statement made under Section 164 Code of Criminal Procedure before Sh. D.K. Sharma Metropolitan Magistrate, New Delhi PW103. This confessional statement has a big infirmity, as it was recorded when the accused was in the custody of the CBI and Shamsheer Singh was given only 3 hours to make up his mind. After recording his statement the Metropolitan Magistrate handed him back to the CBI. There are other infirmities also as pointed out by the learned defence Counsel. We are not inclined to give any credence to the judicial confessional statement as it was not voluntary.

370. The role of all the accused have been discussed in the previous paras also of our judgment.

371. Lakhwinder Singh, Gurmeet Singh and Shamsheer Singh were merely pawns in the hands of Balwant Singh and Jagtar Singh Hawara. They were only giving logistic support, for the assassination of the former C.M. S. Beant Singh. The State has not come into appeal against enhancement of their sentence. We do not find any reason to interfere qua them in the findings of the learned trial Court. Their conviction and sentence is confirmed, as already decided by the learned trial Court.