

DLCT110003052021



**IN THE COURT OF MS. KAVERI BAWEJA,
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE (PC
ACT), CBI-09 (MPs/MLAs CASES), ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

SC No. 03/2021

CNR No. DLCT-11-000305-2021
(Old CNR No. DLCT120000332021)

State

Versus

**Sajjan Kumar
S/o Ch. Raghunath Singh,
R/o H.No. B-3/1, Mianwali Nagar,
Paschim Vihar, New Delhi.**

**FIR No. 458/91
PS Saraswati Vihar
(now known as PS Subhash Place)
U/S 147/148/149/302/307/326/
395/397/427/436/440/201 IPC**

Date of institution of case	05.05.2021
Date of pronouncement of judgment	12.02.2025

J U D G M E N T

BRIEF FACTUAL BACKGROUND:-

1. The present case relates to one of the several instances of the widespread anti-Sikh riots that took place in Delhi and other parts

of the country after assassination of the then Prime Minister, Smt. Indira Gandhi by her two Sikh bodyguards. In the said riots, thousands of Sikhs were mercilessly killed in various parts of the country, their houses and shops were burnt and their belongings were looted.

2. The instant case is in respect of killing of one S. Jaswant Singh and his son S. Tarundeep Singh, both residents of Raj Nagar, Delhi, at the hands of an unruly mob comprising of thousands of persons. It is the case of the Prosecution that Accused Sajjan Kumar was leading the said mob and it is upon his instigation and abetment that the mob burnt alive the above named persons, damaged and looted their household articles and other property, burnt down their house and also inflicted severe injuries on their family members and relatives residing in their house.

3. As per record, initially the chargesheet of this case was filed in e-form in the court of Ld. Chief Metropolitan Magistrate, Rouse Avenue District Court (RADC). On 05.05.2021, charge sheet was received physically and it was accordingly directed to be checked and registered.

4. Vide order dated 26.07.2021, learned Additional Chief Metropolitan Magistrate took cognizance of the alleged offences. Subsequently, vide order dated 30.07.2021, after compliance of provisions of Section 207 Cr.P.C., Ld. ACMM committed the matter to the court of Sessions as the offence punishable U/S 302 IPC, along with other offences, are exclusively triable by a court of

Sessions.

5. The instant case bearing FIR No. 458/91 PS Saraswati Vihar U/S 147/ 148/ 149 /395 /397 /302 / 307/ 436 / 440 of Indian Penal Code (IPC) was registered on the basis of an affidavit dated 09.09.1985 of the complainant 'A' (As per charge sheet and 'X' as per order on charge) which was filed before the Hon'ble Mr. Justice Ranganathan Mishra Commission of Inquiry and on recommendations of the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal, one statement (Ex.B/CC) of the complainant was also recorded before the said Committee on 06.09.1991.

6. It is also necessary of mention here that vide order dated 25.02.2021 passed by the Competent Authority under the Witness Protection Scheme, 2018, the identity of above three alive victims of this case, i.e. the complainant 'X', her daughter 'Y', and her niece 'Z' was directed to be protected so that they are not coerced, threatened or influenced by anyone and they are able to depose freely during the trial as Accused was an influential person.

7. The Complainant is the wife of deceased S.Jaswant Singh and mother of deceased S.Tarundeep Singh. Complainant, who was referred to as 'A' in chargesheet and as 'X' as per order on charge, shall hereinafter be referred to as 'X'. Similarly, victim 'B' (as per chargesheet and 'Z' as per order on charge) i.e. niece of Complainant shall hereinafter be referred to as 'Z' and 'C' (as per charge sheet and 'Y' as per order on charge) daughter of the

Complainant shall hereinafter be referred to as 'Y'.

8. In her affidavit dated 09.09.1985 (Ex.PW-10/DA), complainant 'X' narrated about the incident of attack on their house by a violent mob in the evening of 01.11.1984, which led to the killing of her husband and son, causing of injuries on her person and to some other persons, as well as damage and destruction of their property etc. She also stated in the said affidavit that details regarding the attack, killing and the goods looted/burnt have already been given in the Police Post, Punjabi Bagh, vide FIR No. 511/84. She further stated that the mob and its leader were though not known to her, but when she saw a photograph of the accused later on, it was resembling with the face of the man who had instigated the mob.

9. In her statement Ex.B/CC recorded before the Committee of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal on 06.09.1991, Complainant 'X' narrated about the above incident and further stated that she saw a photograph of the accused in a magazine later on and identified it to be of the person who was instigating the mob.

10. The above-mentioned Committee then wrote a letter bearing No. F.597/2646/85/JPRC/SP/638 dated 09.10.1991 (Ex.PW-14/D) to the Administrator, Union Territory of Delhi for registration of a fresh case in respect of the above allegations of killing of the husband and son of Complainant, as stated in the above affidavit of complainant which was tendered before the Hon'ble Mr. Justice

Ranganathan Mishra Commission on 09.09.1985. The original affidavit of the Complainant (Ex.PW-10/DA) along with its enclosures, her statement recorded by the Committee and a copy of the certificate issued by the IO (namely SI Dharam Singh) of case FIR No. 511/84, PS Punjabi Bagh were also enclosed with the said letter.

11. It was specifically stated in the said letter (Ex.PW-14/D) dated 09.10.1991 that scrutiny of the police record conducted by the Committee had revealed that though the Complainant was examined and her statement was recorded U/S 161 of the Code of Criminal Procedure (Cr.P.C.) in the above FIR No. 511/84, PS Punjabi Bagh regarding the said incident, but the incident was neither investigated fully by the police nor was it made the subject matter of the chargesheet filed before the court in the said case. It is necessary to mention here that as per the chargesheet, FIR No. 511/84 of PS Punjabi Bagh was registered U/S 147/148/149/302/307/335/395/397/427 IPC in respect to various incidents of killing of Sikhs and destruction and damage to their property in different areas of the said PS, including the area of Raj Nagar. However, the judicial record pertaining to the said case is stated to have been destroyed in the weeding out process. It is also the case of the Prosecution that Accused Sajjan Kumar was neither charge sheeted nor tried in that case.

12. It is further the case of the Prosecution that on the basis of above letter sent by the Committee consisting of Hon'ble Mr.

Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal, the present case i.e. case FIR No.458/91 PS Saraswati Vihar was registered and investigated by Inspector Ram Kishan of Riots Cell. During the course of investigation, he recorded a statement of the Complainant 'X' on 08.01.1992 (Mark PW-10/1), regarding the above said incident and the Complainant reiterated her previous statements and stated that she recognized the accused later on from his photograph which had been published in a magazine, as the same person who was instigating the mob on the day of incident.

13. On completion of investigation, the final report was filed in the court of Ld. Metropolitan Magistrate (MM) concerned. Vide order dated 08.07.1994, the Ld. MM sent the case as 'untraced' as he was of the view that the evidence collected by the IO so far was not sufficient to initiate prosecution against any particular person and accordingly the case was sent as 'untraced' till any substantial evidence came to light.

14. Further, it is the case of Prosecution that no notice was issued to the Complainant before sending the case as 'untraced' by the Ld. MM. It is also stated that one supplementary statement of the complainant dated 12.05.1992 (Ex.PW-10/DB) was recorded in the present case by the then ACP, Riots Cell, Sh. Rajiv Ranjan, before filing of the above 'untrace report' and the complainant is alleged to have stated therein that though the photograph of accused published in a magazine and seen by her later on, resembled with the man who was leading the mob on day of incident of this case, but she

could not say it with any degree of certainty that the bearded man leading the mob was the accused.

15. Thereafter on 12.02.2015, Govt. of India, Ministry of Home Affairs (MHA) vide order No. 13018/13/2014-Delhi-1 (NC) constituted a Special Investigation Team (SIT) for investigating/re-investigating the cases of 1984 riots. The terms of reference of the SIT were as follows:-

“a. To re-investigate the appropriately serious criminal cases which were filed in the National Capital Territory of Delhi in connection with the 1984 Riots and have since been closed. For this purpose, the SIT shall examine the records afresh from the Police Stations concerned and also the files of Justice J. D. Jain and Sh. D. K. Agrawal Committee and take all such measures under law for a thorough investigation of the criminal cases:

b. To file charge sheet against the accused in the proper court where after investigation sufficient evidence is found available.”

16. The Office of SIT (1984 riots) was notified as a separate PS having jurisdiction over whole of the National Capital Territory (NCT) of Delhi by the Hon’ble Lieutenant Governor of Delhi vide Notification No.6/13/2015/2124 to 2131 dated 09.07.2015 (Ex.PW-14/C).

17. It has stated in the charge sheet that the present case was examined thoroughly by the SIT and after scrutiny, it was decided

that this case is required to be further investigated. An intimation to this effect is also stated to have been given to Ld. CMM, Rohini Court Delhi on 21.11.2016.

18. It is further stated that a public notice was published on 11.11.2016 in various leading newspapers in Punjab and Delhi requesting all persons concerned or acquainted with facts of the present case to give evidence or depose about the same before the SIT to facilitate further investigation of the case and details of the case were also uploaded on the website of Ministry of Home Affairs (MHA) to give it more wider publicity. It is claimed that during the course of investigation, material witnesses of the case were traced out, examined and their statements were recorded U/S 161 Cr.P.C.

19. The statements of complainant was recorded on 23.11.2016 (Ex.PW-12/DA) during the course of this further investigation. It is the case of Prosecution that she again narrated the above incident of looting, arson and murder of her husband and son by the mob armed with deadly weapons and she is also claimed to have deposed therein about the injuries suffered by her and the other victims of the case, including her sister-in-law namely 'W', who subsequently expired. She also clarified, *inter-alia*, in that statement that the above photograph of accused was seen by her in India Today magazine after around 1½ months. It is alleged that the statements of daughter of complainant and her niece (daughter of her sister-in-law) named 'Y' and 'Z' respectively were also recorded about the said incident and in their above statements they also claimed to be

eye witnesses of the said incident. They further claimed therein that when the complainant had shown them 'India Today' magazine having photograph of the accused published in the said magazine, they identified the above photograph of accused as to be of the person who was leading the mob at the time of incident.

20. Further, in the course of investigation, the death certificates of both deceased as well as documents relating to the medical treatment of the above three injured persons/victims were produced by the complainant and they taken into possession by the Investigating Officer (IO) vide separate seizure memo [Ex.PW-13/E & Ex.PW-13/F (Colly)] and these death certificates and medical papers were also verified by the IO from the concerned persons/authorities. The certified copies of 'India Today' magazine of editions dated 15.12.1984 and 31.12.1984, along with two CDs containing digital editions of this magazine were also procured from the office of concerned publication agency and the same were seized in this case. It is stated that page No. 20 of the said edition dated 15.12.1984 was having a photograph of accused and this edition of magazine was also subsequently identified by the complainant to be the same edition of magazine in which she had earlier seen the photograph of accused and identified the same.

21. However, it has been claimed that the sister-in-law of complainant, the then DCP of District West Sh. U. K. Katna, the then ACP of PS Punjabi Bagh, Sh. J. K. Saxena and the then IO of case FIR No. 511/84, PS Punjabi Bagh SI Dharam Singh could not

be examined during the course of this further investigation as they all had passed away by that time.

22. As per the chargesheet further investigation conducted into this case revealed that on 01.11.1984 at around 4/4.30 pm, the victims 'X', 'Y' & 'Z', sister-in-law of victim/complainant 'X', along with both the deceased were present at their house in Raj Nagar area, Delhi, when a violent mob consisting of thousands of persons and armed with iron rods and lathis etc. had attacked their house, broken its doors and windows, looted household articles and committed mischief by fire or otherwise by destroying their household articles and by setting their house on fire.

23. It is alleged that due to the above violent conduct of mob, all the victims were forced to come out of their house and while both the deceased were murdered by burning them alive in an adjoining vacant plot, the other victims of this case were also beaten by the mob and they suffered grievous injuries, though they somehow managed to save their lives. It has been stated that no member of the above unruly and violent mob could be identified at that time by the victims as they were new in the said area having been shifted there only around 1½ months back, but later on, when the complainant 'X' saw the photograph of accused, who was a local MP of that area from INC party, in India Today magazine, edition dated 15.12.1984, she identified it to be of the same bearded man who was leading the mob on the day of incident. Further, the other two victims had also identified the above photograph of accused appearing in the said

magazine in the same way. Thus, it has been alleged that the accused, by leading and being a member of an unlawful assembly consisting of thousands of persons and armed with deadly weapons, had committed the offences of rioting, dacoity, murder, attempt to murder, causing grievous hurt and mischief by fire or otherwise by destruction of house and other household property of the victims.

24. The Accused was interrogated and formally arrested in this case on 06.04.2021, while he was confined in Tihar Jail in another case.

25. Upon conclusion of further investigation, the charge sheet for commission of the above said offences punishable U/S 147/148/149/302/307/326/395/397/427/436/440/201 IPC was filed against the accused.

CHARGE:-

26. After hearing detailed arguments on the aspect of charge, vide order dated 04.12.2021, this court directed framing of charges for offence punishable under Sections 147/148/149 IPC as well as for the offences punishable under Sections 302/ 308 /323 /395 /397 /427 /436 / 440 read with Section 149 IPC.

27. Though, Accused was directed to be charged for offences punishable under Sections 147/148/149 IPC as well as the offences punishable U/Ss 302/308/323/395/397/427/436/440 read with Section 149 IPC, however, no case for commission of the offences under Section 201 IPC as well as 307 IPC was *prima facie* found to

be made out against the Accused. The formal Charge was framed on 16.12.2021. The Accused pleaded not guilty and claimed trial when the said charges were read over and explained to him.

DOCUMENTS ADMITTED BY THE ACCUSED:-

28. After framing of charges, the case was posted for admission and denial of Prosecution documents. On 23.12.2021, Ld. Defence Counsel, on instructions from the Accused stated that the contents of the following documents filed with the chargesheet shall not be disputed by the accused:-

Admitted Documents

<i>Serial number of admitted document mentioned in the list of documents</i>	<i>Nature of Documents</i>	<i>Exhibited as</i>
03	Copy of FIR No.458/91	Ex.AD/V
07	Letter No.F10(R-68)81/91-HP-II to Home (Police-II) Department dated 22.11.1991 of Dr.(Mrs.) Satbir Silas, Joint Secretary (Home) Delhi Administration to the Commissioner of Police Delhi for registration of case	Ex.AD/I
10	Final Report (Untraced) dated 04.02.1994 u/s 173 Cr.PC of FIR No.458/91 PS Saraswati Vihar	Ex.AD/II (Colly)
26	Letter No.19/BHI/VS/HQ/2019 dated 14.01.2019 of Sub-Registrar/HQ/SDMC with verified death certificates	Ex.AD/IV

27	Form CAI regarding destruction of record of case FIR No.511/84 PS Punjabi Bagh	Ex.AD/III
37	Arrest Memo	Ex.AD/VI

29. In view of the said submissions and the above noted admitted documents, the Ld. Prosecutor for the State stated that the prosecution would not examine the following witnesses related to aforesaid admitted documents:-

<i>Serial number of witness which were dropped by Prosecution</i>	<i>Name of witness</i>	<i>Type of evidence to be tendered</i>
10	Dr.Satbir Bedi (Silas)	To prove Letter No.F10(R-68)81/91-HP-II to Home (Police-II) Department dated 22.11.1991
15	Sh.Mam Chand	Previous IO to prove Untraced report
16	Record-in-charge	To prove the destruction of record of case FIR No.511/84 PS Punjabi Bagh
17	Sub-Registrar/HQ/SDMC	To prove letter No.19/BHI/VS/HQ/ 2019 dated 14.01.2019 regarding verification of death certificates
18	MHCR	To prove the FIR No.458/91 PS Saraswati Vihar
20	Insp.Ashok Kumar	Witness to the arrest and to prove his statement under Section 161 Cr.PC.

30. Hence, aforesaid witnesses were ordered to be dropped in view of the related documents having been admitted on behalf of

the accused.

PROSECUTION EVIDENCE:-

31. In the course of trial, 14 witnesses were examined by the Prosecution. Two witnesses cited by the Prosecution namely PW Inspector Ram Kishan and Sh.Balbir Singh could not be examined as they reportedly expired during trial. The witnesses examined on record by the Prosecution and their deposition are summarized as under:-

Doctors:-

32. Dr.Ashok Kumar Kapoor was examined as **PW-1**. He deposed that he had received one letter dated 19.12.2016 from the police and the same was replied by him. This witness was shown the said letter during the course of his deposition in the court and he identified it and the letter was exhibited as Ex.PW-1/A. He also identified his mobile number at the point encircled as A on the same letter.

33. PW1 further deposed that the queries raised in the above letter were regarding some certificates issued by him regarding some patients named in the said letter. The said certificates were exhibited as Ex.PW1/B, Ex.PW-1/C and Ex.PW1/D. The reply to the above said letter (Ex.PW1/A) was exhibited as Ex.PW1/E. He also deposed that the said certificates were issued by him in his own handwriting and that he was residing at the same address i.e. B-234,

Greater Kailash-I, New Delhi when the said certificates were issued by him.

34. **PW-2** is Dr. Versha Sehgal, who is a Doctor with specialization in the field of Gynecology and she was running a Nursing Home by the name Sehgal's Nursing Home. During the course of her deposition, she was shown one letter dated 19.12.2016 written by the IO of this case and witness stated that this letter was received by her receptionist Ms.Anshu Sharma and she also identified the signatures of her above receptionist on the said letter and the said signatures along with landline number of the nursing home mentioned on the said letter were encircled at point marked as A on page 1 of the said letter and the same has been exhibited as Ex. PW2/A.

35. PW2 was also shown another document, dated 28.12.2016 on the letter head in name of the witness and on being asked the witness stated that this is her reply given to the above letter Ex.PW2/A received from the IO. The reply has been exhibited as Ex.PW2/B. After seeing the documents, PW2 deposed that the said documents were issued from their above Nursing Home/Institute in respect of payments receipts or treatment given in respect of some patients named in the said documents. The said documents were exhibited as Ex.PW2/C, Ex.PW2/D, Ex.PW2/E, Ex.PW2/F, Ex.PW2/G, Ex.PW2/H and Ex.PW2/J respectively. On being asked PW2 stated that she cannot identify the signatures appearing at point A on documents Ex.PW2/C, Ex.PW2/D, Ex.PW2/F,

Ex.PW2/H and Ex.PW2/J of the person who had issued the said payment receipts. The same is her reply with regard to signatures appearing at point A on documents Ex.PW2/E and Ex.PW2/G. (The documents Ex.PW2/C to Ex.PW2/J were objected on the ground of mode of proof).

36. The witness further deposed that she does not remember whether her statement was recorded by the IO as many years have passed and she is 86 years old and that no original record regarding the above documents or of any other document of the above said period is available with her as the said Nursing Home was closed long back in the year 2012.

37. **PW-3** is Dr. Jiwan Singh Arora, who deposed that he is doctor by profession with specialization in the field of Orthopedics. He further deposed that he was running a Clinic at C-136, Greater Kailash-I, New Delhi till around three months ago and since 1986.

38. During the course of his deposition, PW-3 was shown one letter dated 19.12.2016 written by IO of the case and after seeing the letter witness stated that the same bears the signatures/initials of one of the officials working in his above clinic, along with his own mobile number and the address of the clinic. The said letter has been exhibited as Ex.PW3/A.

39. PW3 was shown another letter bearing his signatures with date 02.01.2017 and the witness states that this was his reply sent to

the IO in response to the above letter Ex.PW3/A. The reply of the witness has been exhibited as Ex. PW3/B.

40. During the course of his deposition PW3 was also shown two documents/prescription slips dated 06.11 (year not written along with date and month) available on the file and on being asked, the witness stated that the medicines written in the above slips were prescribed to the patient named in the prescription slips. PW3 further deposed that both the above slips are copies of the same original prescription slips pertaining to the same patient and the same were in his own handwriting and the same were exhibited as Ex.PW3/C (colly.)

41. PW3 further deposed that the medicines prescribed vide the above slips are anti-inflammatory and antibiotics for an injury in the form open wound suffered by the patient and that the medicines to the patient were prescribed for 7 days. PW3 further deposed that the original of the above prescription slip is normally given to the patient however, no carbon or copy of such prescription slip was retained by him.

Public Witnesses:-

42. **PW4** Dr. Punit Jain deposed that he had been working with India Today Group as Group Chief (Law and Compliance Officer) since 1995 till March, 2020. He further deposed that summons were received in the aforesaid matter in the year 2016 and in response to the same, the revert from the company was sent in December, 2016.

43. During the course of his deposition, this witness was shown one letter dated 23.12.2016 on the letterhead of India Today Group and after seeing the above letter, the witness stated that it is the same letter which was sent by India Today Group in response to the summons/notice received by the Group. The witness also identified his signatures appearing at Point A along with seal of the above Group on the said letter. On being asked the witness stated that was unable to exactly recall as to in what context the above notice or summon was received but the same was in respect to some SIT investigation.

44. PW4 was also permitted to refresh his memory from the file and on seeing the above letter, he stated that the details pertaining to the articles that were published by M/s Living Media India Ltd. qua November, 1984, December, 1984 and January, 1985, India Today Fortnightly Editions were sought from their Group and consequently, three digital versions of India Today Editions for the above said months, along with the certificate U/S 65B of the Indian Evidence Act, were furnished in response to the said summon.

45. PW4 further clarified that the contents were sent in two CDs along with duly certified copies of the Editions. These details were sent through the company rider Mr. Manoj Negi for delivering the same to the appropriate authorities. The above letter dated 23.12.2016 has been exhibited as Ex.PW4/A.

46. PW4 was also shown two certified copies of the Editions of India Today of dated 15.12.1984 and 31.12.1984 and after seeing the same, the witness identified his signatures and stamp of company on these two Editions on each page at Point A. The said Edition dated 15.12.1984 running from pages 76 to 131 of the chargesheet and the Edition dated 31.12.1984 running from pages 132 to 179 of the chargesheet have been exhibited as Ex. PW4/B (colly) and Ex.PW4/C (colly) respectively.

47. Further, after seeing certificate U/S 65B of the Indian Evidence Act, PW4 identified his signatures and stamp of the company at Point A, which has been exhibited as Ex.PW4/D, and the same has been issued in respect of the above said two CDs and above said certified India Today Editions of dated 15.12.1984 and 31.12.1984.

48. PW4 has also been shown one letter dated 25.01.2017 during the course of his deposition, which is bearing his signatures and stamp of the company at Point A and after seeing the same, the witness stated that along with this letter the above said certified Editions and certificate U/S 65B of the Indian Evidence Act were sent to the appropriate authorities through company rider Sh. Manoj Negi. The letter dated 25.01.2017 has been exhibited as Ex.PW4/E.

49. During the course of his deposition, PW4 has also shown two CDs, which are stated to be containing the above two Editions of India Today magazine in digital form and the witness stated that

these are the same CDs which he had sent through the company rider Sh. Manoj Negi and vide the above letter Ex. PW4/A, in response to the above summon. The said CDs have been exhibited as PW4/1 and Ex.PW4/2.

50. PW4 further stated that he identifies the said CDs as being manufactured by Moserbaer which as a process were being procured by the above company and used in connection with the business and affairs of the company.

51. Further, in reply to the court query, PW4 stated that the digital version of above two Editions of Magazine was copied by him from his own laptop, the details of which were provided by the Editorial Section on a common drive, which was exclusively accessible by him.

52. **PW5** Sh. Manoj Singh Negi deposed that in the year 2016-17, he was working as a Rider in India Today Group having office in Film City Noida and in the month of December, 2016, Dr. Puneet Jain had given him one sealed/closed envelop and asked him to deliver it to Insp. Jagdish in Lok Nayak Bhawan, New Delhi. After delivery of the above envelop, he had handed over back the receipt of delivery thereof in his office.

53. PW5 further deposed that in the month of January, 2017, he had again delivered another envelop/packet given by Dr. Puneet Jain in closed/sealed condition to Insp. Jagdish and receipt thereof was

also delivered back by him in his office. He also deposed that he was not aware as to what was contained in above envelopes or packets.

54. Sh. D. K. Agarwal, who was aged about 94 years was examined on commission by Ld. Court Commissioner as **PW6**, in terms of order dated 29.03.2022. PW6 deposed that in the year 1991, he was a member of Committee, namely, Jain Aggarwal Committee, having office at some DDA Tower, but he was unable to remember the exact address as it was an old matter. He further deposed that the purpose for which Committee was constituted by the Government was to examine the affidavit before Justice Ranganath Mishra Commission and to recommend proper action after looking into the police records.

55. PW6 was shown one affidavit running into three pages, dated 09.09.1985 and one statement dated 06.09.1991 and after seeing the documents i.e. the affidavit dated 09.09.1985 (Marked as Mark 'A'/CC), the witness has stated that these were the affidavits of victim and after the document Ex.B/CC, the witness has stated that the statement of the victim in his handwriting which is bearing his signatures at point 'A' and of the victim at point 'B'.

56. **PW7** Sh. Sarabjit Singh Bedi deposed that in the year 1984, he was posted in Delhi Customs as Deputy Collector Customs, Incharge of Imports, having my office in the Central Warehousing Corporation Complex, Near Palam Airport and my residence was at House No. S-485, First Floor, Greater Kailash-I, New Delhi.

57. He further deposed that on 02.11.1984, on account of riots, he was at home and he received a phone call from someone, whose name he did not remember, informing him that the ladies in 15, Raj Nagar had been saved and taken to safety and he should make arrangements to have them picked up. He also deposed that on being informed that the ladies had been saved, he managed to get in touch with a distant relation Col. Sodhi, who was Commandant of the President's bodyguards and requested him for help and he arranged to send a vehicle to pick up the above said ladies and they were brought to his residence on the same day. The ladies were in a bad shape. They had injuries. PW7 also deposed that his wife's sister had injuries on her head, all ribs were also fractured and the bones of her one hand were broken. The other three ladies had injuries also on their persons. He was informed by his wife's sister that her husband Sh. Jaswant Singh Sethi and son Sh. Tarundeep Singh Sethi had been killed by the mob which had attacked their house on 02.11.1984 by first hitting them with rods and then burning their bodies. The ladies managed to find a place of safety at some neighbour's place where they were brought to his residence. Subsequently, PW7 rang up the jurisdictional police station and lodged a complaint about the incident. The police functionary who attended the phone informed him that they had lodged an open FIR regarding such incidents of the area and they would tag the complaint with the said FIR. The injuries sustained by the ladies were got treated from Dr. Ashok Kapoor, his family doctor who was in Greater Kailash-I and subsequently, from Sehgal Nursing Home

and the victim's broken bones in the hand were got treated from AIIMS later.

58. PW-7 further deposed that on 03.11.1984, he along with Sh. Mohinder Singh, his wife's uncle visited 15, Raj Nagar and saw the house where his sister-in-law's family had been staying. The house was found broken open, partially burnt, furniture looted and a lot of papers were lying scattered out of which some were in torn condition, which he gathered. Outside the house, there was a pile of ashes and fragments of some bones which he was informed by the neighbors that these were the remains of Sh. Jaswant Singh Sethi and his son Sh. Tarundeep Singh Sethi, who had been attacked, killed and their bodies burnt by the members of the mob. These remains he gathered in a cloth bundle and brought these to his residence to conduct their last rites as per Sikh customs.

59. PW7 also deposed that the identity of the members of the mob which attacked their residence 15, Raj Nagar was not known to him as he was not present at the place, but sometime later, about one month and half or 2 months, his wife's sister mentioned that she had seen a magazine in which there was a picture of a person Sh. Sajjan Kumar, which she said resembled a person instigating the mob which attacked her house on 01.11.1984. PW7 further stated that he was informed by the ladies that their house was attacked on 01.11.1984 and not on 02.11.1984.

60. **PW8** Sh. Dilip Kumar Ohri deposed that on the date of

incident i.e. 01.11.1984, he was not present in Delhi and away to Immamganj, Bihar for the purpose of Punjab National Bank audit. On 02.11.1984, he reached at Delhi in the night by train and railway station of Delhi, it came to his knowledge that area of Rani Bagh was under curfew. So, he went to his in-law's house at Tilak Bridge Railway Colony and stayed there till 03.11.1984 and on learning that curfew was being relaxed, he went to his house on 04.11.1984.

61. PW8 further deposed that his father told him that Sardarji living at H. No. 15, Raj Nagar which is almost opposite to his house and his son had been killed. Father of PW8 also told him that members of his family came to their house and after sometime, they went away.

62. **PW11** is victim 'Y', who deposed that at the time of incident i.e. on 01.11.1984, she was residing with her family at Raj Nagar in West Delhi which consisted of her father, her brother and her mother, her aunt i.e. father's sister and her daughter and herself. The things were quite normal in the morning and even their maid had come to work in the house. But, around 11 am, a crowd had suddenly gathered and came towards their house and started pelting stones on their house and they were forced to lock themselves inside the house.

63. She further deposed that since she had newly shifted in the above-said house, they were not having any telephone connection there and hence, they were not in a position to call anyone for help.

After some time, the things appeared to be normal outside and they felt that the crowd had left the place. However, after some time they heard some sound of 'shots' from right side of our house and then they realized that the mob was concentrating on some other house.

64. PW11 further deposed that at around 4/4.30 pm, the crowd had again erupted suddenly and attacked their house from both sides i.e front and right side as they were having two entry points in their house. She also deposed that as her parents had seen from inside the room while peeping through the holes, the crowd which had entered from front side of their house had broken the door glasses and had looted the household articles like sofa, T.V. etc. kept in the drawing room. Somebody in the crowd was also shouting for putting our house on fire. They were also told by the crowd to go to the roof to save their lives. Their house was then put on fire by the crowd and since there was no way out, they decided to exit the house from the right side entry.

65. She further deposed that as they came out from the above entry, they had seen a crowd consisting of thousands of persons armed with bricks, *lathies* and iron rods and the crowd had started hitting them with the same. She was hit on her head with a brick and rod and her father and brother were battered in a very bad manner by the crowd. The females of the house were told by the crowd to save themselves if they could, but they told them that they were not going to spare her father and brother. In order to save her father and brother respectively, her mother and cousin had even laid upon them

in an attempt to save them from the crowd. However, nothing helped as the ribs of her mother were broken and even she, her cousin and her *bua* were hurt badly. The wrist of her mother was also fractured when somebody from the crowd had attempted to pull away the bangle from hand of her mother and in the said process she was hit with some object when the above attempt was not successful.

66. PW11 further deposed that her father and brother almost became unconscious as a result of the beatings given by the crowd and they were not in a position to help them. Some police official was also present there but even he did not make any attempt to help them. Some persons from the crowd had come and dragged and separated her mother and cousin from her father and brother and then her father and brother were put on fire and burnt alive by the crowd.

67. She also deposed that somebody from the crowd had pulled them i.e. the females and they were taken to the house of one Mr. Ohri, which was located just opposite their house. Her mother was almost not in the senses, though, she being young was alert and she wanted to atleast save her mother. They remained in the house of Mr. Ohri for around 15 minutes and since, Mr. Ohri was also fearing that even his house may be put on fire by the crowd, he asked them to leave his house from the back gate. Then she, her mother, her *bua* and her cousin all left the house of Mr. Ohri from the back gate and they took shelter in some under construction building at some distance as the Chowkidar of the said building was helpful.

The above area was a partly developed area and some plots were lying vacant and some were under construction.

68. PW11 further deposed that in the next morning i.e the morning of 02.11.1984, they shifted to a nearby Gurudwara in Srinagar Colony and took shelter there where an army truck had taken them to Sehgal Nursing Home in South Delhi, which was located near the house of her aunt i.e. *Mausi*, and her mother was got admitted there since she was injured badly and not in a condition to walk. She also deposed that perhaps, her *bua* had also remained admitted in the above Nursing Home and she and her cousin were both dropped in the army truck at the house of her *Mausi* after giving first aid and some treatment. Since, she had suffered injury on her head, she was given some stitches also.

69. She also deposed that after around one and a half month from the above incident, her mother while glancing through a magazine had seen the photograph of a person and she stated to her that the said man was leading the crowd on the day of incident. The name of that man given in the magazine was Sajjan Kumar.

70. **PW12** is victim 'Z', who deposed that on 01.11.1984, she along with her mother was residing at the house of her maternal uncle namely Late S. Jaswant Singh at Raj Nagar, Delhi. She also deposed that in the morning of that day, at around 11 am, a mob had suddenly gathered outside our house and there was a lot of

noise (*halla gulla*) by the mob and they kept confined themselves inside the house. Before that the things were normal and even their maid had come to work at the house and she had left by that time. After sometime, they felt that it was silent outside our house and we thought that the mob had left.

71. She further deposed that after some more time therefrom, they heard some sound of shots towards right side of their house. At around 4/4.30 pm, they again heard a huge noise of mob near their house and they were wrong in thinking that the mob had left, whereas the mob might have been in some other house nearby her uncle's residence. They found that the mob had then attacked their house and her uncle and aunt/mamiji had peeped through the windows of the room and had seen that the mob had broken the window glasses of their drawing room and had also looted and taken away the articles kept in the drawing room like Sofa-set, T.V. etc. The mob had entered their house from both sides i.e. the front side as well as the right side entrance.

72. PW12 further deposed that somebody from the crowd had told them to save their lives as they shouted that they will not spare his uncle and his son and they also heard somebody shouting for putting their house on fire. When the mob was in the process of putting their house on fire, they were forced to make exit from the right side entrance/exit.

73. She further stated that when they had made exit, they had seen a mob consisting of thousands of persons armed with iron rods, stones and bricks etc. the mob had started pelting stones/bricks indiscriminately at them as well as at their house. Her uncle and his son were also dragged out in the above open plot on right side of their house and they were beaten mercilessly by the crowd. In order to save them, her aunt laid upon her uncle and she herself laid upon her cousin, but they could not succeed in saving them and in the process even she, her mother, her aunt and her cousin sister had all suffered severe injuries at the hands of mob. She and her aunt both suffered head injuries and they had stitches on their head and ribs of her aunt were also broken in the above beatings. Her mother had also suffered a fracture injury and she and her aunt both had subsequently remained hospitalized. She further deposed that her aunt had been pleading to the mob to spare her husband and son but nobody heard it. Somebody from the mob even tried to take out the gold bangle from her aunt's hand and in the process she was hit with some object and had suffered a fracture of the wrist and on hand. Her uncle and her cousin were both put on fire and were burnt alive by the mob in their presence.

74. PW12 further deposed that somebody from the crowd had then told them to at least save their lives and they were taken to the house of one Mr. Ohri living opposite their house and they remained there for hardly 10/15 minutes and then Mr. Ohri had

asked them to leave from the back door as he was fearing that the crowd may even put their house on fire. She also deposed that when her aunt was crying and pleading to the mob to spare her husband, she had seen the Sajjan Kumar, MP of the area, leading the crowd and instigating them to kill them and to burn their house. Some police men were though also present at the time of above incident but they did not come forward for their rescue from the mob.

75. PW12 further deposed that after leaving the house of Mr. Ohri, they took shelter in some under construction house at some distance as they were new to the area and the area was still not developed. The chowkidar of that site was quite helpful and they remained there during the night of 01/02.11.1984.

76. She also deposed that in the morning of 02.11.1984, they were taken to a nearby Gurudwara in Srinagar Colony of Delhi by some helpful persons and sometime thereafter, they were taken in an army truck to one Sehgal Nursing Home in South Delhi where they all were given treatment and though she and her cousin sister were discharged after the treatment, but her mother and aunt had to be hospitalized. From the Nursing Home they had gone to the house of some relatives of her uncle near the said Nursing Home.

77. She further deposed that after about one and half month from the incident, her aunt had shown her a magazine having a

photograph of MP Sajjan Kumar and she told her that he was the person who was leading the mob on the day of incident.

78. **PW13** Complainant/victim 'X' was partly examined on 03.12.2022 whereby she deposed that at the time of assassination of the then Prime Minister Smt. Indira Gandhi, they were residing in the area of Raj Nagar, West Delhi. In the evening of 31.10.1984, though the news of assassination of Smt. Indira Gandhi had come but the things were normal. She further deposed that at around 10/11 AM, people had suddenly started gathering and took the shape of mob and they started pelting stones on houses in the locality, which were constructed in scattered form. By around 12 noon, they started feeling insecure seeing the huge mob but then a CRPF vehicle arrived there and we thought that now we will be safe. The CRPF personnel went into some other house of sikh family in the area and then they heard the sound of firing from the said house and then the CRPF personnel went back.

79. PW13 further deposed that thereafter, the mob had suddenly surrounded their house and started pelting stones. The mob even broke open the door of drawing room of their house. The mob also took away the furniture and other articles kept in the drawing room like T.V. and record player. The mob also broke open the other door of drawing room connected to the house and the mob spread over in the entire house. Their house was also put on fire by the mob and out of fear, they all came outside the house. Besides her, her husband, her son, her sister-in-law (*nanad*), her daughter and her

own daughter 'C' were present in the house at that time.

80. PW13 also deposed that some one from the crowd had caught her from hair and had also held her right hand and in an attempt to remove my gold bangles, the mob had also fractured her right hand. Her gold chain was also taken away by some one. On reaching outside, she noticed that her husband and her son were lying down on the ground and they were being badly beaten by the crowd and had suffered serious injuries. In an attempt to save them from crowd, she laid upon her husband and her niece laid upon her son but due to this she and her niece had both suffered injuries on their heads at the hands of the crowd and her ribs also got fractured. Some persons from the crowd dragged her and her niece to the house of a neighbour and in the meanwhile the mob started pouring petrol on clothes of her husband and son to burn them alive. She further deposed that that one police official was also present there at that time and when she requested him to help them, he expressed his inability and told her that the women should go to roof of the house to save themselves but her husband and son are to be killed by the mob.

81. PW13 further deposed that the neighbour named Mr. Ohri in whose house they were taken also refused to give shelter to them out of fear of the crowd and he told them to go out and take shelter elsewhere otherwise his house will also be attacked by the mob. There was an under construction house on backside of the house of Mr. Ohri and the chowkidar of that house helped them in hiding in

the said house.

82. She also deposed that the next morning, they left that under construction house and took shelter in a nearby Gurudwara and then an army truck came there and the army personnel had taken them to Greater Kailash, S Block where her sister was residing. Her sister got them admitted in a nearby Sehgal Nursing Home for treatment.

83. On being asked during the course of her examination, the witness has stated that except her daughter who stayed at the house of her sister, the other three females i.e. the witness herself, her sister-in-law and her niece were got admitted as they had suffered substantial injuries. They remained at the house of her sister for around one year after the treatment.

84. PW13 further deposed that after more than one month thereof, while going through India Today magazine, she had seen the photograph of a person in the magazine and she felt that the said person was also there in the crowd on the day of incident. From the magazine, she also came to know that the said person was Sajjan Kumar, M.P. She further stated that she had mentioned in her affidavit filed before the Justice Ranganathan Commission also that she had doubt that the above person named Sajjan Kumar was instigating the crowd on the day of incident. She had even met subsequently the police commissioner Mr. Marwah and he had held a identification parade of some police officials before her but that police official who was present at the spot on the day of incident

was not there in the persons who participated in the identification parade. She had even narrated the above incident before Justice Aggarwal Commission and her statement in this regard was recorded by the Commission.

85. When PW13 was recalled for her further examination on 10.02.2023, the court observed that on the previous date i.e. 03.12.2022, the witness has deposed about filing of one affidavit before Hon'ble Justice Ranganathan Commission regarding the incident and she also deposed about narration of the incident before the Hon'ble Justice Aggarwal Commission through a statement recorded by the Commission [It is stated that it has wrongly been recorded as a Commission in the previous examination of the witness, whereas it was actually a Committee consisting of Hon'ble Justice J. D. Jain and Sh. D. K. Aggarwal].

86. Both the above documents available on the judicial record in original have been shown to the witness who was asked about her signatures appearing on these documents.

87. After seeing the affidavit exhibited as Ex.PW10/DA on record she stated that it is the same affidavit which she had tendered before the Hon'ble Justice Ranganathan Commission. She also identified her signatures appearing at the encircled portions marked as A at four different places on the said affidavit. The witness had also seen the statement exhibited as Ex.B/CC and stated that it is the same statement which she had given before the above Committee.

88. The witness has volunteered that though she personally appeared before the above Committee for making of the above statement, but she did not appear personally before the above Commission for tendering of her above affidavit and it was deposited/filed by her in some office probably located in Patiala House Court Complex, New Delhi.

89. During the course of her examination, PW13 was also shown the documents appearing on pages 25-27 and page 29 of the judicial file. The witness identified her signatures appearing on both the documents are her signatures. The complaint has been exhibited as Ex.PW13/A and copy of the affidavit has been exhibited as Ex.PW13/B and the signatures of witness on both these documents are at point A.

90. The witness was also shown the seizure memo dated 16.12.2016 prepared by IO Inspector Jagdish of SIT in respect to seizure of some medical documents of victims of this case and the witness on being asked has identified her signatures appearing at point A on the said memo and the same is exhibited as Ex.PW13/C. She also identifies her signatures appearing at point A on the medical documents of the victims of this case, including the witness, which are already Ex.PW1/B, Ex.PW1/C, Ex.PW1/D, Ex.PW3/C (Colly), PW2/C, PW2/D, PW2/E, Ex.PW2/F, Ex.PW2/G, Ex.PW2/H, Ex.PW2/J and also on some receipts of different clinics issued in respect to their treatment and she stated that she put the

said signatures on the above photocopies of documents when the same were handed over to the IO of SIT. The above receipts of the clinics have been exhibited as Ex.PW13/D (colly).

91. PW13 was also shown the document appearing at page 64 of the judicial file and she identified her signatures thereon at point A and also identified her signatures on photocopies of death certificates of her husband and son appearing on pages 65 and 67 respectively of the case file and further deposed that the photocopies of death certificate were handed over by her to the above IO of SIT vide the seizure memo appearing at page 64. The seizure memo has been exhibited as Ex.PW13/E and photocopies of death certificates as Ex.PW13/F (colly).

92. On 10.02.2023 while PW-13 was being examined by the Prosecution, learned Addl. PP for the State sought permission of the court to cross-examine her stating that he has to put certain leading questions to the witness on certain aspects of the case. Learned Defence Counsel relied upon the case titled as Varkey Joseph vs. State of Kerala, 1993 Legal Eagle (SC) 408 and submitted that the cross-examination of the witness and putting leading questions to her can be permitted only after declaring witness hostile. After considering the submissions made and the legal propositions, the court declared PW-13 hostile as regards the aspects on which she was required to be cross-examined by learned Addl. PP for the State and the Prosecution was thereafter permitted to put leading questions to the witness.

93. Thereafter, upon asked by Ld. Add. PP, she admitted that they shifted in Raj Nagar area just two/two and half months prior to the incident. She also admitted that some members of the mob were also armed with *lathies* and *sarias* when the mob attacked our house and that the attack on their house by the mob was at around 4/4.30 pm. She further admitted that her husband and son were burnt alive by the mob by pouring petrol in the adjoining plot no. 16 to their house and that the remains/ashes of my husband and son were subsequently collected from the above plot by my uncle S. Mahender Singh and brother-in-law S. S. Bedi and the remains were cremated.

94. PW13 also admitted that her statement with regard to the above incident in court is being recorded for the first time and that her daughter had also sustained head injuries in the above incident and she got some stitches on her head. She also admitted that during investigation, the IO of SIT Inspector Jagdish had shown her India Today magazine, edition dated 15.12.1984 and that she had seen the photocopy of the magazine appearing on pages 76-131 of the case file and further stated that it is the photocopy of the same edition of the above magazine which he had shown to her. She had also seen the photographs appearing at page 83 of the said magazine and she identify the photograph of accused Sajjan Kumar on the said page which is at serial no. 3 from the top. The certified copy of magazine has been exhibited as Ex.PW4/B (colly).

95. PW13 further admitted that she had told to Inspector Jagdish of SIT that the above Sajjan Kumar was the same person who was instigating the mob on the day of incident and it was at his instigation only that the mob had killed her husband and son and he was also instigating the mob to kill the Sikhs. She voluntarily added that he was saying so and it is also her conclusion that he was instigating the mob. She also volunteered that at that time she was not aware that his name was Sajjan Kumar.

96. PW13 also deposed that on the previous date of her examination-in-chief i.e. 03.12.2022, she could not depose about the facts which have been put to her in her cross examination conducted by the Ld. Additional PP on 10.02.2023 as on that day her entire focus was on narration of the incident and hence, it will not be correct to suggest that she did not depose the same as she could not remember it due to old age.

Police witnesses:-

97. **PW9** is Retd. ACP Sh. Radhey Shyam Meena from Delhi Police. He deposed that he remained posted as Inspector in Anti Riots Cell from 07.11.2012 to July, 2016 and thereafter, he was promoted as ACP and had remained posted as such in the same Cell till he retired from services.

98. He further deposed that as per the various directions/orders of MHA dated 12.02.2015, 20.02.2015 and 27.02.2015, the Police

Headquarters Delhi directed them to handover all the records of cases lying with Anti Riot Cell to the newly formed SIT related to 1984 riots. Accordingly, he had handed over records of the present case to officials of the SIT. PW9 further deposed regarding preparation of one handing over/taking over memo was also prepared by him in this regard, which he brought in original at the time of his deposition in court and placed the same on record, which bears his signatures at points A and the signatures of SI Bhagwat Dayal, the Record Keeper of SIT at points B on each page and the said memo has been exhibited as Ex.PW9/A. It was observed during deposition of PW9 that the memo is dated 09.03.2016 and the signatures of SI Bhagwat Dayal are of date 13.05.2016 and on being asked, the witness stated that the memo was prepared by him beforehand on 09.03.2016, though the records were actually handed over to SIT on 13.05.2016.

99. PW9 also deposed that the documents/records of this case which were handed over by him to the above Record Keeper of SIT are mentioned in the index portion of the said memo and the total documents handed over were 34 in numbers. Besides the above documents, no other document pertaining to this case was left with the Anti Riot Cell.

100. **PW10** Sh.Mam Chand is retired as Inspector from Delhi Police. He deposed that during the period between 1990 to 1996, he remained posted in the Riots Cell, Delhi Police as Inspector and on 12.02.1992, investigation of the present case was assigned to him on

directions of DCP, Riots Cell.

101. During investigation of the case, he first visited the spot of occurrence i.e 15, Raj Nagar falling within the area of PS Saraswati Vihar and made local inquiries from the spot to trace out the identities of the rioters. However, he was not able to find any clue regarding the identities of rioters. He also collected death certificates of the victims of this case namely S. Jaswant Singh and his son S. Tarundeep Singh. He also collected the case records and statements of some witnesses recorded by the IO of case FIR no. 511/1984, PS Punjabi Bagh, which was the old case registered regarding this incident.

102. PW10 further deposed that on conclusion of investigation, he prepared a closure/untrace report in the case after obtaining legal opinion in the matter from the prosecution branch and submitted it for approval of the senior officers.

103. He also deposed that the initial IO of this case was Insp. Ram Kishan, who is stated to have expired. He deposed that he can identify his handwriting and signatures as they both had worked together in the Riots Cell for a period of around 1 year. This witness also identified the signatures of Insp. Ram Kishan on the rukka dated 13.12.1991 available on page 19 of the case file which was shown to him at the time of his deposition and proved the same as Ex.PW10/A.

104. PW10 also identified the signatures of Insp. Ram Kishan on the site plan of the case available on page 35 of the case file at point A thereof but he stated that he is not sure if the above site plan was prepared in the handwriting of Insp. Ram Kishan himself. The site plan has been exhibited as Ex.PW10/B.

105. PW10 also was also shown the final untrace report available on pages 37 to 42 of the case file and the witness stated that this is the same final report, which he got prepared in this case earlier bearing his signatures along with date 04.02.1994 at point A on the last page of the said report. The same has been exhibited as Ex.AD/II (colly).

106. During the course of his further examination, PW10 was also shown one statement of the complainant 'A' recorded on 08.01.1992 appearing on pages 214-215 of the case file and the witness identified the signatures of Insp. Ram Kishan at point A on page 215 thereon, but he stated that he is not sure if the above statement is in the handwriting of Insp. Ram Kishan himself. The said statement has been marked as Mark-PW10/1.

107. **PW14** IO/Insp. Jagdish Kumar deposed that Special Investigation Team (SIT), 1984 Riots was constituted by Government of India vide Notification dated 12.02.2015 on the recommendations of the Hon'ble Justice G. P. Mathur Committee and he also proved the order in this regard as Ex.PW14/A. He further deposed that SIT was further declared as a police station by

a separate notification dated 09.07.2015 by the Lt. Governor, NCT of Delhi. This witness further proved the said notification dated 09.07.2015 in English as Ex.PW14/B and in Hindi is Ex.PW14/C. Investigation of the present case was marked to me by senior officer on 09.11.2016. He also deposed that the case file was handed over to him, which was received from the office of Anti Riots Cell of Delhi Police, which was nodal agency for the same.

108. PW14 further deposed that the case file was perused and in addition to other documents, it was also containing one rukka dated 13.12.1991 in the writing of Inspector Ram Kishan of Riots Cell, which has been exhibited as Ex.PW10/A, the FIR No. 458/1991 of PS Saraswati Vihar Ex.AD/V (colly), one affidavit dated 09.09.1985 of complainant 'A' addressed to Hon'ble Justice Ranganath Mishra exhibited as Ex.PW10/DA, one complaint of complainant addressed to SHO PS Punjabi Bagh exhibited as Ex.PW13/A, one certificate/preliminary investigation report issued by SI Dharam Singh exhibited as Ex.PW10/D1, one affidavit of complainant dated 07.11.1984 exhibited as Ex.PW13/B, one statement of complainant dated 06.09.1991 recorded by the committee of Hon'ble Justice J. D. Jain and Sh. D. K. Aggarwal exhibited as Ex.B/CC, one typed letter dated 09.10.1991 written by Sh. S. L. Chopra addressed to the Administrator, Union Territory of Delhi, Raj Niwas, Delhi for recommendation of registration of fresh case in respect to allegations of murders of Jaswant Singh and Tarundeep Singh and injuries inflicted on persons of their family members etc., which is exhibited as Ex.PW14/D, one typed letter dated 22.11.1991 written

by Joint Secretary (Home), Delhi Administration, Delhi addressed to the Commissioner of Police, New Delhi exhibited as Ex.AD/I, one rough site plan dated 08.01.1992 prepared by Inspector Ram Kishan exhibited as Ex.PW10/B, one scaled site plan dated 28.01.1992 prepared by Sh. Balbir Singh, Draftsman, which is exhibited as Ex.PW14/E, one untrace report prepared by Inspector Mam Chand exhibited as Ex.AD/II and one FIR No. 511/1984 dated 01.11.1984 PS Punjabi Bagh, which is exhibited as Ex.PW14/F.

109. This witness further deposed that thereafter, intimation regarding further investigation was given to the court of Ms. Sugandha Agarwal, Ld. CMM, Rohini Courts, Delhi on 21.11.2016 and the same exhibited as Ex.PW14/G bearing his signatures at point A. He also deposed that during further investigation, statements of witnesses, including victims were recorded and copies of medical papers produced by the complainant A and attested by her were seized vide seizure memo exhibited as Ex.PW13/C bearing his signatures at point X.

110. PW14 also deposed that the copies of such medical papers are exhibited as Ex.PW1/B, Ex.PW1/C, Ex.PW1/D, Ex.PW3/C (colly), Ex.PW2/C, Ex.PW2/D, Ex.PW2/E, Ex.PW2/F, Ex.PW2/G, Ex.PW2/H, Ex.PW2/J, Ex.PW13/D and three other copies, which have been exhibited as Ex.PW14/H, Ex.PW14/I, Ex.PW14/J, all bearing signatures of complainant A at point A. Further, copies of death certificates of deceased Jaswant Singh and Tarundeep Singh produced by complainant A were seized vide seizure memo

exhibited as Ex.PW13/E bearing his signatures at point X. Copies of death certificate of Jaswant Singh and Tarundeep Singh are exhibited as Ex.PW13/F (colly) bearing signatures of complainant A at point A.

111. PW14 further deposed that during further investigation, letter dated 24.11.2016 was written by him to Sh. Manoj Sharma, Group Business Head, The India Today Group and it was requested to provide the magazines India Today for the months of November 1984, December 1984 and January 1985. The letter is has been exhibited as Ex.PW14/K bearing his signatures at point A. Further, one letter dated 26.12.2016 was written by him to Dr. Puneet Jain, Group Chief Law and Compliance Officer, The India Today Group and it was requested to provide the complete certified edition of India Today of December 15, 1984 in hard copy, along with a certificate U/S 65B of the Indian Evidence Act for the same. The said letter has been exhibited as Ex.PW14/L bearing his signatures at point A. Further, another letter dated 19.01.2017 was written by him to Dr. Puneet Jain and it was requested to produce the required documents i.e. certified copies of India Today editions of December 15, 1984 along with certificate U/S 65B of Indian Evidence Act, the letter has been exhibited as Ex.PW14/M bearing his signatures at point A. Thereafter, Dr. Puneet Jain wrote a letter dated 23.12.2016 to PW-14 and two CDs were forwarded with this letter through Sh. Manoj Singh Negi, employee of India Today Group and Sh. Manoj Singh Negi produced the said two CDs along with above said letter of Dr. Puneet Jain before me and the said CDs were seized vide

seizure memo, which is Ex.PW14/N (on page 69) bearing his signatures at point A. The letter dated 23.12.2016 is exhibited as Ex.PW4/A and above said two CDs have been exhibited as Ex.PW4/1 and Ex.PW4/2.

112. PW14 further deposed that thereafter, on 25.01.2017, Sh. Manoj Singh Negi, employee of India Today came to the office of SIT and produced a letter dated 25.01.2017 exhibited as Ex.PW4/E along with one certificate U/S 65B of Indian Evidence Act of Dr. Puneet Jain, Group Chief Law and Compliance Officer, India Today Group exhibited as Ex.PW4/D and certified hard copies/printouts of fortnight editions of December 15, 1984 and December 31, 1984 of India Today Magazine running into total 104 pages exhibited as Ex.PW4/B (colly) (from pages 76-131) and Ex.PW4/C and the same were seized vide seizure memo, which has been exhibited as Ex.PW14/O bearing his signatures at point A. The certified edition of December 15, 1984 was containing photo of accused Sajjan Kumar on page 20 of the same.

113. Thereafter, this certified edition of December 15, 1984 of India Today magazine was produced before the complainant 'A' and she identified the photograph of Accused Sajjan Kumar and after seeing the same, she recognized the Accused Sajjan Kumar who was leading and instigating the mob.

114. PW14 also deposed that one letter dated 08.01.2019 was written by him to the Sub Registrar (Births & Deaths) for

verification of death certificates of Jaswant Singh and Tarundeep Singh and the same has been exhibited as Ex.PW14/P bearing his signatures at point A. Reply dated 14.01.2019 of the above said letter along with verified copies of death certificates of Jaswant Singh and Tarundeep Singh were received from the office of Sub Registrar, Headquarter, SDMC and the same have been exhibited as Ex.AD/IV (colly). Thereafter, three CAI Forms exhibited as Ex.AD/III (colly) were sent to Record Incharge, Tis Hazari Courts, Delhi requesting to collect the certified copies of case FIR No.511/1984 PS Punjabi Bagh. Thereafter, reply of the concerned official/Mauza Clerk dated 08.03.2017 was received in writing of the concerned official written on the back side of each CAI forms from points X-X1, Y-Y1 and Z-Z1.

115. PW14 further deposed that he had written letters dated 19.12.2016 addressed to Sehgal's Nursing Home exhibited as Ex.PW2/A, to Dr. A. K. Kapoor exhibited as Ex.PW1/A and to Dr. Jiwan S. Arora exhibited as Ex.PW3/A which are bearing his signatures at point A. In reply to the above said letters, reply dated 28.12.2016 of Ms. Varsha Sehgal exhibited as Ex.PW2/B, reply dated 30.12.2016 of Dr. Ashok Kumar Kapoor exhibited as Ex.PW1/E and reply dated 02.01.2017 of Dr. Jiwan Singh Arora exhibited as Ex.PW3/B, were received from the concerned doctors and the same were taken on record.

116. PW14 also deposed that thereafter, one application dated 06.04.2021 was moved by him in the court of Sh. Sandeep Gupta,

Ld. CMM, Rohini Courts, Delhi and through this application request was made for interrogation and arrest of the accused Sajjan Kumar. The same has been exhibited as Ex.PW14/Q. The Ld. CMM allowed the application vide order dated 06.04.2021, copy of which has been exhibited as Ex.PW14/R.

117. PW14 further deposed that on 06.04.2021, he along with Inspector Ashok Kumar visited the Tihar Jail No. 4 and after interrogation, Accused Sajjan Kumar was arrested vide arrest memo exhibited as Ex.AD/VI bearing his signatures at point A and the intimation of his arrest was given to his counsel Sh. Anil Kumar Sharma.

118. PW14 also correctly identified the Accused and further deposed that after recording of the statements of the witnesses and after completion of investigation, chargesheet was filed in the concerned court.

STATEMENT OF ACCUSED:-

119. The statement of the Accused under Section 313 Cr.P.C. was partly recorded on 09.10.2023 and his further statement was recorded on 01.11.2023. He claimed that the statements of witnesses were recorded as per the convenience of the investigating agency to support its false case.

120. Accused pleaded that it is a false and politically motivated in

order to target him and that the witnesses have falsely deposed against him being tutored ones. Accused further pleaded innocence and denied having committed any crime and also denied being a part of any such mob which resorted to violence and rioting in the area of Raj Nagar or any other area in Delhi or that he had instigated anyone to commit any offence.

121. Though Accused stated in his statement under Section 313 Cr.PC that he wants to lead evidence in his defence, however, on 30.11.2023, when the case was listed for DE he refused to examine any witness in his defence. Accordingly the opportunity to lead DE was closed vide order dated 30.11.2023.

ARGUMENTS, ANALYSIS & FINDINGS:-

122. I have heard the Arguments advanced by Sh.Manish Rawat – learned Add. PP for the State, Sh.Anil Kumar Sharma, Sh.S.A. Hashmi and Sh.C.M. Sangwan- learned Counsels for the Accused as well as Sh.H.S.Phoolka, Sr. Advocate for Complainant assisted by Ms.Kamna Vohra, Sh.Gurbaksh Singh, Ms.Surpreet Kaur and Sh.Mandeep Singh and also gone through the relevant case law cited in support of their respective submissions.

123. Learned Addl. PP for State and Ld. Senior Counsel Sh.H.S.Phoolka appearing on behalf of the Complainant/victims addressed arguments at length citing various judgments in support of their respective submissions. Written arguments have also been filed by learned Addl. PP for the State, learned Counsel for Accused

in support of their arguments.

Arguments by learned Addl. PP for the State:-

124. Learned Addl. PP for the State submitted that the present case is related to one of the incidents of riots which ensued after the assassination of Smt.Indira Gandhi, the then Prime Minister of India at her residence by her Sikh bodyguards. It is submitted that following her assassination on 31.10.1984, riots took place all over the country during the period 01st to 04th November, 1984 in which many Sikhs were killed in various part of the country including Delhi. Their houses were destroyed, looted and Gurudwaras were destroyed and set on fire.

125. It was submitted that the Complainant along with her husband Late Jaswant Singh, her son late Tarundeep Singh, her daughter (PW-11), her niece (PW-12) (daughter of Satwant Kaur), sister of Jawant Singh and her sister-in-law namely Satwant Kaur (sister of Jaswant Singh), were residing at Raj Nagar, South West Delhi. On 01.11.1984, a mob attacked the house of the Complainant 'X' (PW13) where the above noted persons were residing and at around 4-4:30 PM a mob led by Accused Sajjan Kumar pelted stones at their house, looted the belongings of the Complainant and her family members, set the house on fire and brutally beat her family members, besides killing her husband Jaswant Singh and her son Tarundeep Singh by setting them on fire at an adjacent vacant plot.

126. Learned Addl. PP further submitted that initially one FIR

No.511/84 (Ex.PW-14/F) at PS Punjabi Bagh under Sections 147/148/149/302/307/326/395/397/427/436/440/201 of IPC was registered and many incidents which happened in the area were clubbed in the said FIR. However, the investigation of this FIR was conducted only for offence under Section 412 IPC only. The Complainant PW-13 who was hospitalized due to injuries sustained by her in the aforesaid incident also gave a complaint dated 06.11.1984 (ExPW-13/A) to SHO PS Punjabi Bagh along with her affidavit dated 07.11.1984 (Ex.PW-13/B). A preliminary report Ex.PW10/D1 was also submitted by SI Dharam Singh and two statements of PW-13 under Section 161 Cr.PC dated 06.11.1984 (Ex.PW13/D1) and 10.03.1985 (Ex.PW13/D2) were recorded in the said case. However, on 10.03.1985, the Complainant was only called to identify the household articles which were recovered after the said incident and her said statement dated 10.03.1985 (Ex.PW-13/D2) was recorded only in this regard. Moreover, it has come on record in the evidence that she and her family members were new to the area and did not know the name and identity of the Accused, which is why at the time of recording of her statement dated 06.11.1984 (Ex.PW13/D1) she did not disclose the name of the Accused. When she saw the photograph of the Accused in the magazine after around 1-1½ months of the incident, she identified him as the one who was instigating the mob on 01.11.1984.

127. It was vehemently argued that the version of the Complainant has been consistent. It is further submitted that she did not know the Accused and her family had shifted a few months prior to the incident

in the area. Moreover, the trial in case FIR No.511/84 was conducted only for the offence under Section 412 IPC and the complainant was neither called as a witness during trial nor Accused Sajjan Kumar faced trial in the said case. The record of the trial in case FIR No.511/84 has admittedly been weeded out and this fact was also not disputed by the defence as they have admitted the documents Ex.AD/III (Colly). Further, the mere fact that Sections 147/148/149/302/307/395/397/427/188 IPC and Sections 25/27/54/59 Arms Act as mentioned in the three (03) CIA forms related to certified copies of FIR No.511/84, does not establish that the trial was also conducted for the said offences. In fact, that said sections are those which are mentioned in the FIR and this fact was also explained by PW-14 i.e. IO during his deposition.

128. The attention of the court was also drawn to the statements of the Complainant dated 10.03.1985 recorded under Section 161 Cr.PC (Ex.PW13/D2) which also finds mention of only Section 412 IPC, thus establishing that the investigation was conducted only in the said offence. He also referred to the letter dated 09.10.1991 (Ex.PW14/D) written by the Secretary of Justice Jain Aggarwal Committee, wherein it is mentioned that the incident in question was not investigated fully and not made the subject matter of the charge sheet filed in the said case.

129. It was further submitted that the said letter dated 09.10.1991 has not been challenged by the defence during cross-examination and thus it proves the case of the Prosecution that neither any investigation

nor trial was conducted in FIR No.511/84 regarding the incident in question which happened with the Complainant and her family members. Moreover, the Accused has also not led any evidence on record to establish that the trial in the same case was conducted for all the alleged offences against the present accused as well. He has also relied upon the deposition of Complainant PW13 and submitted in the course of her cross-examination dated 02.05.2023 she also clarified that she was never summoned nor examined by the court in FIR No.511/84 and further stated that she has come to know about the trial and decision in the said case only in the court today i.e. on 02.05.2023 i.e. when her above deposition was recorded.

130. Learned Addl. PP for the State also relied upon the statement of PW11 and PW12 and argued that both the said witnesses have also consistently deposed that the son and husband of the Complainant PW-13 were killed in their presence and that they and the Complainant sustained injuries at the hands of the mob during the said incident.

131. As regards the statement under Section 161 Cr.PC dated 12.05.1992 marked as Mark PW10/DB, it is submitted by learned Addl. PP for State that the said statement is purportedly recorded by ACP Rajeev Ranjan, however, the same was not admitted by the Complainant during investigation when her statement dated 03.04.2017 was recorded by the SIT. Moreover, at the time of her cross-examination recorded on 02.05.2023, PW-13 also deposed that *“I do not now remember if investigation of the above case FIR*

No.458/91 was conducted by ACP Rajeev Ranjan or that I joined the said investigation or he recorded my statement”

132. It is submitted that the said statement is apparently manipulated statement recorded by ACP Rajeev Ranjan and this is also apparent from the fact that there was no occasion for the Complainant to change her statement only after four months of her statement dated 08.01.1992 recorded by Inspector Ram Kishan wherein she specifically mentioned the role of Accused Sajjan Kumar. Further, PW-12 i.e. the niece of the Complainant also denied the suggestion in her cross-examination dated 13.07.2023 that her statement was recorded by ACP Rajeev Ranjan on 12.05.1992. She also denied that the statement of her aunt was also recorded by ACP Rajeev Ranjan or that they had gone to the office of Riots Cell of Delhi Police on that day.

133. Insofar as the untraced report Ex.AD-II which was accepted by the court vide order dated 08.07.1994 is concerned, learned Addl. PP strongly argued that no notice of the said report was sent by the concerned court to the Complainant and the acceptance of the untraced report without following proper procedure of law is not only on illegality but also caused grave injustice to the Complainant.

134. Learned Addl. PP for State further argued that the main incident of looting and burning of house of the Complainant, killing of her husband and son, injuries sustained by the Complainant and other victims have not been disputed by the defence as none of the Prosecution witnesses have been cross-examined on this aspect.

135. There is also no dispute as regards the identity of the Accused. Learned Addl. PP for the State further submitted that the deposition of the Prosecution witnesses, particularly, the Complainant PW-13, her daughters PW11 & PW13 have, by way of their testimonies, established that it was the Accused who was instigating and leading the mob at the time of the above named incident and despite their cross-examination, the testimonies of these witnesses have remained unimpeached which prove the charges against the Accused who is liable to be convicted for the alleged offences.

136. Learned Addl. PP urged that the Prosecution, has on the basis of evidence led on record proved the allegations against Accused beyond reasonable doubt.

Arguments on behalf of Complainant:-

137. Learned Sr. Counsel for the Complainant, Sh.H.S.Phoolka supplemented the arguments of the Prosecution and argued extensively while referring to the decisions of various courts, including foreign courts and tribunals in support of his submissions that in such like cases, the statements made by witnesses have been believed by the courts despite the fact that such witnesses failed to name the perpetrators of such atrocities in their earlier statements. In this regard, he relied upon the ruling of the Hon'ble Supreme Court of Bangladesh titled as *Government of the People's Republic of Bangladesh vs. Abdul Quader Molla, LEX/NDAD/0004/2013*, which relates to the mass killing of Bangladeshi citizens. He further relied upon the ruling of the court of Appeal of U.K. in a case titled as

Anthony Sawoniuk vs. The United Kingdom, Application No.63716/00 before the ECHR, [2000] 2 CR. Arr. R220, in support of his aforesaid submissions.

138. Reliance was also placed on a ruling of Hon'ble High Court of Delhi in case titled as ***Sajjan Kumar vs. CBI, 171 (2010) DLT 120*** where the order of the concerned court directing framing of charges against the same accused was upheld.

139. It is submitted that in another case, titled as State through ***CBI vs. Sajjan Kumar & Ors., 2018 SCC Online Del 12930***, the Division Bench of Hon'ble High Court of Delhi noted that the mass killing of Sikhs that occurred between 01st to 04th November, 1984 and rest of the country answered the description of 'crimes against humanity' and further observed that such cases are to be viewed in the larger context of mass crimes that require a different approach and much can be learnt from similar experiences elsewhere. With these observations, the Hon'ble High Court reversed the acquittal of Sajjan Kumar by the concerned court and convicted him for the alleged offences including offence of criminal conspiracy. The Appeal against the said judgment of the Hon'ble High Court is stated to be pending before the Hon'ble Supreme Court.

140. In support of his further arguments, Sh.Phoolka also placed reliance on the following:-

a) ***S.Gurlad Singh Kahlon vs. Union of India, WP(Crl.) No.2016 (orders dated 16.08.2017, 10.01.2018 & 11.01.2018).***

b) *Antonio Cassese and Ors., International Criminal Law – Critical Concepts in Law*, 2015 (1st Ed).

c) *Pieter N Drost, The Crime of State Penal Protection for Fundamental Freedoms of Persons and Peoples*, 1959.

d) *Prith Pal Singh vs. State of Punjab*, 2012(1) SCC 10.

e) *Dulichand vs. State*, 1997 (43) DRJ DB Delhi High Court.

f) *Narayan Chetanram Chaudhary vs. State of Maharashtra*, (2008) 8 SCC 457.

141. Learned Sr. Counsel for Complainant concluded his arguments by submitting that Complainant and her family members were victims of a gruesome crime which in fact shook the conscience of humanity and the guilty must be brought to the book. He relied upon various rulings in support of his submissions and highlighted that such crimes are in fact crimes against humanity and the guilty must not go unpunished.

Arguments on behalf of Accused:-

142. *Per contra*, Learned Defence Counsel argued that the judgments relied upon by Learned Sr. Counsel for Complainant have no application to facts of this case.

143. Ld. Counsel for the Accused further submitted that in fact in none of the cases cited either by learned Addl. PP for State or by learned Sr. Counsel for Complainant, it was held that the principles of

criminal jurisprudence should be given a go by. Rather, relying on the following judgment, it was contended that rules of evidence and criminal jurisprudence must be same in all cases and cannot be applied differently in different class of cases. In support of his arguments reliance was placed on ***Kailash Gour & Ors. v. State of Assam (2012) 2 SCC 34***, wherein it was observed as under:

“43. At any rate the legal proposition formulated by Bedi J. based on the past failures do not appear to us to be the solution to the problem. We say with utmost respect to the erudition of our Brother that we do not share his view that the reports of the Commissions of Enquiry set up in the past can justify a departure from the rules of evidence or the fundamental tenets of the criminal justice system. That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-à-vis cases in which it is not. The rules of evidence and the standards by which the same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice.

44. The prosecution it is axiomatic, must

establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless whether the crime is committed in the course of communal disturbances or otherwise. In short there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for any thing specially applicable to a particular case or class of cases. Beyond that we do not consider it necessary or proper to say anything.

45. We are conscious of the fact that three innocent persons including two young children have been done to death in the incident in question which needs to be deprecated in the strongest terms but unless proved to be the perpetrators of the crime beyond a reasonable doubt, the appellants cannot be convicted and sentenced for the same.”

144. Learned Counsel for the Accused also placed reliance on the judgment in ***Dilavar Hussain v. State of Gujarat, 1991 AIR 56***, wherein it was observed as under:

“3. All this generated a little emotion during submissions. But sentiments or emotions, howsoever, strong are neither relevant nor have any place in a court of law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises of why, where, when, how and who. Each knot of the chain has to be proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the, only conclusion which

must follow is that the accused is guilty. Although guilty should not escape. But on reliable evidence truthful witnesses and honest and fair investigation. No free man should be amerced by framing or to assuage feelings as it is fatal to human dignity and destructive of social, ethical and legal norm. Heinousness of crime or cruelty in its execution howsoever abhorring and hateful cannot reflect in deciding the guilt.

4. Misgiving, also, prevailed about appreciation of evidence. Without adverting to submissions suffice it to mention that credibility of witnesses has to be measured with same yardstick, whether, it is an ordinary crime or a crime emanating due to communal frenzy. Law does not make any distinction either in leading of evidence or in its assessment. Rule is one and only one namely, if depositions are honest and true... ”

145. Ld. Defence Counsel further advanced his arguments by dividing the entire investigative process of the case in three phases. It was contended that initially the case relating to killing of S. Jaswant Singh and his son Tarundeep Singh and that the injured person belonging to the family of the above noted deceased dated 01.11.1984 during the 1984 riots in Delhi was investigated by Delhi Police in FIR No. 511/1984 registered at PS Punjabi Bagh. The complaint PW13 filed an affidavit dated 09.09.1985 Ex.PW10/DA before the Hon'ble Mr. Justice Ranganathan Mishra Commission. It is submitted that as per the contents of the said affidavit of the complainant, she had lodged a report regarding the attack, the above noted killings and looting of goods, etc. in the said FIR i.e. FIR No.

511/1984 PS Punjabi Bagh. In the same affidavit, it is also mentioned that a copy of the FIR and preliminary investigation report of SI Dharam Singh, Police Post Anand Vas Shakurpur Colony, Delhi-34, has also been attached. The said preliminary report of SI Dharam Singh Police Post Anand is Ex.PW10/D1. It is mentioned in the said preliminary report that the preliminary investigation report revealed that :-

“S. Jaswant and Tarundeep Singh S/o Jaswant Singh died at the hands of a mob on 01.11.1984, her sister-in-law received multiple injuries and the house at 15 Raj Nagar was looted and then set on fire by the mob”.

146. The next contention of the Ld. Defence Counsel is that thereafter in the second phase, three separate chargesheets were filed in respect of FIR No. 511/1984 under Section 147/148/149/302/307/395/397/427/188 IPC and 25/27/54/59 Arms Act, PS Punjabi Bagh having Sessions' case No. 137/1985, 139/1985 and 140/1985. It is argued that all the three chargesheets were filed after separate investigation and the said cases were decided by the Court of Sh. S. P. Sharma, the then Ld. ASJ, Delhi, which is clearly borne out on perusal of the copies of forms for certified copies which were filed by the Prosecution itself and admitted by the accused and exhibited as Ex.AD/III (colly) (at page No. 188-193 of the Chargesheet). It is submitted that as per said certified copy/the forms, the aforesaid Sessions' cases were decided on 09.03.1987, 15.04.1987 and 10.03.1987 respectively.

147. In this regard, Ld. Defence Counsel also highlighted the cross examination of the complainant/PW13 that :-

“...From the date of incident i.e. 01.11.1984 till the date 09.09.1985 when I filed the affidavit already Ex.PW10/DA before the Hon’ble Justice Ranganathan Commission, I had only got one FIR lodged regarding the incident with the local police. I cannot now tell the number of that FIR got lodged by me, but the name of police station was Saraswati Vihar, as far as I remember. The FIR No. 511/1984 of PP Punjabi Bagh as recorded in para no. 2 of the above affidavit is the same FIR which I got recorded about the incident in question. It may be correct that the name of PS was Punjabi Bagh and was not Saraswati Vihar. (Vol. Since we were new in that area at the time of occurrence, we were not aware about the name of PS.) I did attach a copy of the above FIR along with my affidavit Ex.PW10/DA. It is correct that I mentioned in my above affidavit that the details of the attack, the killings and goods looted or burnt were given in the above FIR. I cannot say that allegations made in the above FIR were investigated or not or properly investigated or not by the police.”

148. After going through her aforesaid affidavit Ex.PW10/DA, the witness also admitted that there is reference to the preliminary report given by SI Dharam Singh in the said affidavit and said report was exhibited as Ex.PW10/D1, after it was identified by the complainant i.e. PW13.

149. Ld. Defence Counsel further argued that in the complaint

dated 06.11.1984 Ex.PW13/A which was given by the complainant to SHO PS Punjabi Bagh, the complainant has narrated the entire incident in great detail. In her cross examination recorded on 02.05.2023, the complainant admitted that :

“It is correct that in the above complaint, it was not stated by me that the mob was being led or instigated by the accused or even by some other person and description of the said person leading or instigating the mob is also not stated therein. ”

150. Relying on the aforesaid deposition of the complainant Ld. Defence Counsel vehemently urged that admittedly the initial complaint dated 06.11.1984 found no mention or even reference to the accused and no role whatsoever was attributed to the accused Sajjan by the complainant. Similarly, in the affidavit dated 07.11.1984 Ex.PW13/B wherein complainant stated that she had lodged a complaint with the police authority PS Punjabi Bagh vide FIR No. 511/1984, she had neither named Accused Sajjan Kumar nor attributed any role directly or indirectly to him.

151. During the investigation of the aforesaid case, on 10.03.1985 the complainant admittedly went to ‘Malkhana’ at PS Punjabi Bagh to identify the articles which were looted by the mob from her residence. She was cross examined in this regard and in her cross examination recorded on 02.05.2023, the complainant PW13 deposed as under :-

“It is correct that during my above visit to IO of case FIR No. 511/1984 of PP/PS

Punjabi Bagh and also during my visit in court in connection with release of articles, I did not name the accused Sajjan Kumar or I did not even disclose that I had seen his photograph in a magazine.”

152. It is, thus, submitted that though admittedly complainant joined the investigation of said case, but she did not name Accused Sajjan Kumar at any point of time in any of her statements recorded under Section 161 Cr.P.C.

153. The next contention of Ld. Defence Counsel is that as admitted by the complainant PW13 in her cross examination, she received compensation regarding death of her husband and her son in 1984 riots on the basis of the investigation of FIR No. 511/1984 PS Punjabi Bagh. However, she initiated no complaint against the Accused by naming him during the investigation of FIR No.511/84 PS Punjabi Bagh.

154. It is, thus, argued that all the above noted documents and deposition of the complainant PW13 clearly show that at the time of registration and investigation of case FIR No. 511/1984 PS Punjabi Bagh i.e. prior to filing of affidavit before the Hon’ble Mr. Justice Ranganathan Commission, the complainant made no allegation whatsoever regarding involvement of accused in the alleged incident of 01.11.1984 nor did she attribute any role to him. It is submitted that the complaint Ex.PW-13/A of case FIR No. 511/1984 PS Punjabi Bagh was thus, the correct version of the complainant and her later versions are nothing more, but an improvement of her

earlier stand and an attempt to falsely implicate the accused in the present case. It is submitted that the Accused had no connection whatsoever with the incident of 01.11.1984 and either with the killing of family members of the complainant or looting of her house or causing injury upon her as well as other family members of her as alleged. It is, thus, submitted that the case in hand is false and fabricated and full of embellishment and improvements only with a view to falsely implicate the accused.

155. Extending his arguments further, Ld. Defence Counsel submitted that the present FIR i.e. FIR No. 458/1991 was registered on the basis of affidavit of the complainant Ex.PW10/DA submitted before the Hon'ble Mr. Justice Ranganathan Commission. It is submitted that the name of Accused Sajjan Kumar appeared for the first time in the said affidavit wherein the complainant alleged that the leaders of the mob were not known to her, but later when she saw the photograph, it resembles the face of the person instigating the mob.

156. Ld. Defence Counsel submitted that the said affidavit does not mention anywhere as to when and where the complainant saw the photograph of the Accused.

157. Next, it was submitted that the complainant stated in her affidavit that when she saw the photograph of Accused Sajjan Kumar, it resembles the face of person instigating the mob. It is submitted that it is thus clear from the affidavit Ex.PW10/DA that the complainant knew Accused Sajjan Kumar and that is why she

could say that the face of the man who was instigating the mob resembles the face of Sajjan Kumar and that it further means that the person instigating the mob was not Accused Sajjan Kumar, but the said person resembled him.

158. Ld. Defence Counsel further argued that subsequently, the Hon'ble Mr. Justice Ranganathan Mishra Commission issued directions for registration of the instant FIR on the basis of the affidavit of the above named complainant, which is Ex.PW10/DA. The aforesaid Committee while examining the cases related to riots in Delhi in the month of October-November, 1984, directed the Administrator, Union Territory of Delhi for registration of fresh case in respect of the allegations levelled in aforesaid affidavit vide its communication Ex.PW14/D. Accordingly, the case in hand i.e. FIR No. 458/1991 was registered at PS Saraswati Vihar (now known as PS Subhash Place) under Sections 147/148/149/302/307/326/395/397/ 427/436/440/201 IPC.

159. It is further submitted that after the completion of investigation, the Investigating Agency filed an Untrace Report which is Ex. AD-II (at page no. 37 to 42 of the Chargesheet). It is also the own case of the Prosecution that vide order dated 08.07.1994, the concerned Ld. CMM accepted the said Untrace Report and ordered that :-

“On perusal of the file, it is clear that no evidence is collected by the IO during the investigation are not sufficient to initiate proceedings against any particular persons

in my opinion. The collected evidence are insufficient, hence, the case is sent as untrace till substantiate evidence come in light.”

160. Ld. Defence Counsel then pointed out that in the third phase, investigation in respect of killings of S. Jaswant Singh and his son Tarundeep Singh and the alleged injuries upon the person of the complainant and others was carried out by the SIT pursuant to the order of Government of India, MHA bearing No. 13018/13/2014 dated 12.02.2015 whereby the SIT was constituted on the recommendation of the Hon'ble Mr. Justice G. P. Mathur Commission. The copy of the said order is Ex.PW14/A and the Notification dated 09.07.2015 issued by the Govt. of NCT of Delhi declaring the office of SIT (1984 Riots) constituted vide order dated 12.02.2015 to be a Police Station having jurisdiction over the entire NCT of Delhi. The said Notification is Ex.PW14/B.

161. Ld. Defence Counsel vehemently argued that as per the terms of reference of the SIT, the case was examined by the SIT and after scrutiny, it was decided that the case be further investigated. It is the case of the prosecution that an intimation regarding further investigation of the case was given to the concerned court i.e. the Court of Ld. CMM, Rohini Courts, Delhi on 21.11.2016. Copy of the said intimation is Ex.PW1/G. It is urged by Ld. Defence Counsel that the investigating agency i.e. SIT sought no permission from the concerned Court for investigating the matter further and said further investigation could not have been carried out without the permission of the Court. Infact, the scope of further investigation as

per Section 173(8) Cr.P.C. is limited and is restricted to discovery of further oral and documentary evidence in continuation of the same incident and chain of events relating to the same occurrence. However, in the present case the complainant/witnesses were re-examined who change their earlier version which infact amounted to re-investigation of the case which is not permissible under law except with the order of the Court. Ld. Defence Counsel placed reliance on the following judgments in support of his arguments that the re-investigation of the case under the garb of constitution of SIT could not have been permitted without directions of the Court :-

- i) ***Hoor Begum Vs. Govt. of NCT of Delhi, 2011 (3) JCC 2131;***
- ii) ***Vinay Tyagi Vs. Irshad Ali & Deepak & Others, 2013 (5) SCC 762;***
- iii) ***Brahmanand Gupta Vs. Delhi Administration, 1990 (41) DLT 212*** and
- iv) ***Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujarat & Anr., 2019 AIR (SC) 5233.***

162. It has been further argued by learned Counsel for Accused that the deposition of the Prosecution Witnesses does not inspire confidence as the same are full of improvements and embellishments.

163. It is argued that the name of Accused Sajjan Kumar surfaced for the first time as Accused after about 32 years of the alleged incident by way of statement of complainant dated 23.11.2016 recorded.

164. Learned Defence Counsel argued that in her complaint dated 06.11.1984 addressed to SHO PS Punjabi Bagh i.e. Ex.PW-13/A, on the basis of which FIR No.511/84 was registered, although the Complainant stated about the details of the attack the killings, the looting of goods etc. by a mob, but she did not mention any of details regarding the Accused. In fact, it finds no mention of even any person leading the mob. Further the preliminary investigation report of SI Dharam Singh, Police Post Anand Vas Mark PW-10/D1 also finds no mention of the Accused.

165. Learned Defence Counsel further argued that the complainant PW-13 admitted the factum of lodging of her complaint in case FIR No.511/84 PS Punjabi Bagh in her cross-examination recorded on 02.05.2023, wherein she deposed as under:-

“From the date of incident i.e. 01.11.1984 till the date 09.09.1985 when I filed the affidavit already Ex.PW10/DA before the Hon’ble Justice Ranganathan Commission, I had only got one FIR lodged regarding the incident with the local police. I cannot now tell the number of that FIR got lodged by me, but the name of police station was Saraswati Vihar, as far as I remember. The FIR No. 511/1984 of PP Punjabi Bagh as recorded in para no. 2 of the above affidavit is the same FIR which I got recorded about the incident in question. It may be correct that the name of PS was Punjabi Bagh and was not Saraswati Vihar. (Vol. Since we were new in that area at the time of occurrence, we were not aware about the name of PS.)”

166. Learned Defence Counsel further argued that the Complainant PW-13 admitted in her cross-examination dated 02.05.2023, that her complaint Ex.PW-13/A finds no reference to the Accused. The relevant extract of her said cross-examination is as follows:-

“...It is correct that in the above complaint, it was not stated by me that the mob was being led or instigated by the accused or even by some other person and description of the said person leading or instigating the mob is also not stated therein.”

167. Moreover, in her affidavit dated 07.11.1984 Ex.PW-13/B though she stated about the beating and burning of her husband and her son and looting of property and setting of their house on fire, the complainant nowhere named the Accused as the perpetrator of the said offence, nor attributed any role to him.

168. The crux of the arguments of the Defence is thus that till the time of recording of her statement in case FIR No.511/84, the complainant did not identify any of the rioters including the Accused Sajjan Kumar. In fact, she even did not mention that the mob was led by anyone in particular and thus she neither named or attributed any role, directly or indirectly to the Accused.

169. The next submission of the learned Defence Counsel is that even in her statement dated 10.03.1985 Ex.PW-13/D2 which was recorded, when she went to PS Punjabi Bagh to identify her household articles, recovered after the incident in question, she

made no mention of the name of the Accused as being the leader of the mob.

170. It is vehemently argued that as per the Prosecution case the complainant saw the photograph of the Accused in 'India today' magazine's edition dated 15.12.1984 and despite that when she went to the PS Punjabi Bagh on 10.03.1985, she did not state anything about the involvement of the Accused in the alleged incident. Ld. Defence Counsel pointed out that this fact has been admitted by her in her cross-examination dated 02.05.2023.

171. Learned Defence Counsel further pointed out that the complainant PW-13 also admitted in the course of her cross-examination that she got compensation for the death of her husband and son in the riots and the said compensation was given on the basis of investigation in case FIR No.511/1985. She even admitted that most probably the death certificates of her husband and her son Ex.PW-13/F (Colly) were issued on the basis of investigation conducted in the said case.

172. The next contention of the Defence is that in her affidavit dated 09.09.1985 Ex.PW-10/DA filed before Justice Ranganath Mishra Commission, the complainant stated that the photograph in the magazine resembled the face of the man instigating the mob, however, she still did not in fact name the Accused as the person who was instigating the mob and merely stated that the photograph of Accused resembled the face of the offender. Further, the said affidavit finds no mention of the fact as to where and when she saw

the photograph of Accused Sajjan Kumar.

173. Ld. Defence Counsel further submitted that subsequently, in her statement recorded on 12.05.1992 Ex.PW-10/DB by Sh.Rajiv Ranjan, then ACP Riot Cell, she stated as under:-

“On the day of occurrence there was a bearded man in the mob playing a very prominent role. I do not know who this man was? However, after a few months I was going through a magazine in which a passport size photograph of Sh.Sajjan Kumar had appeared. His photograph resembled the bearded man in the mob. But I cannot say with any degree of certainty that the bearded man of the mob was Sajjan Kumar, because I am not absolutely definite about the identity of the bearded man. I do not have enough confidence to pin point any body. Even in the affidavit which you have mentioned to me, I have only expressed my apprehensions and not accused Sh.Sajjan Kumar. After a lapse of so many years the memory has become even more blurred and hazy....”

174. It was emphasized that subsequently, the present case i.e. FIR No.458/91 PS Saraswati Vihar (now known as PS Subhash Place) was sent as untraced for want of sufficient evidence by the concerned court vide order dated 04.07.1994.

175. It is submitted that the Complainant has thus being improving upon her earlier versions and her deposition in court in the present case is thus not worthy of reliance.

176. In support of his arguments, learned Defence Counsel relied upon ***Delhi Administration vs. Shakti Singh (Crl. Appeal No.86/1996)*** decided on 10.04.1996, where it is held as follows:-

“In the aforesaid premises, the statement of the witnesses for the first time made in the court that the respondents were part of the mob who had murdered and done other objectionable acts was rightly not accepted by the High Court to find the respondents guilty of so serious a charge as 302 IPC, which would have visited the respondents the sentence of at least life imprisonment.”

Rebuttal arguments by learned Addl. PP for State:-

177. Ld. Additional PP for the State countered the arguments of learned Defence Counsel by submitting that there is no force in the arguments that the same incident has been investigated and re-investigated multiple times. It is submitted that though the case FIR No. 511/1984 PS Punjabi Bagh was registered under Sections U/S 147/148/149/302/307/335/395/397/427 IPC, however, in the said case, many incidents which happened in the area were clubbed together and investigation was infact carried out only in respect of the offence punishable under Section 412 IPC.

178. Ld. Additional PP for the State further submitted that at that time the complainant was hospitalized due to injury sustained by her in the incident dated 01.11.1984 and she had only given written complaint dated 06.11.1984 Ex.PW13/A to SHO along with one affidavit dated 07.11.1984 Ex.PW13/B.

179. It is further submitted that not only the investigation, but the trial in the case FIR No. 511/1984 was also conducted for the offence under Section 412 IPC and neither the complainant nor Accused Sajjan Kumar was called during the trial of the said case. The record of the said case is also stated to be not traceable as it is weeded out which is apparent from the document Ex.AD/III (colly), i.e. the CAI form related to certified copy of said case.

180. It is argued by Ld. APP for State that submission of Ld. Defence Counsel that since the said CIA form related to the case FIR No. 511/1984 reflects that all the Sections i.e. 147/148/149/302/307/395/397/427/188 IPC and Sections 25/27/54/59 Arms Act are mentioned and it shows that the trial was conducted for all the offences, cannot be accepted.

181. It was further pointed out that the statement of the complainant recorded under Section 161 Cr.P.C. during investigation of the said case on 10.03.1985 which is Ex.PW13/D2 shows that no investigation was conducted in the case FIR No. 511/1984 for any other offences except Section 412 IPC, as it is the only provision mentioned on the top of the said statement.

182. Moreover, the Complainant was not called during the trial of the said case i.e. FIR No. 511/1984 as she has also deposed during the course of trial of the present case.

183. With regard to the Untrace report which was filed earlier in the present case and accepted by the then Ld. MM on 08.07.1994, it

has been submitted by the Ld. Additional PP for the State that the complainant and her family did not appear before the Court of Ld. MM concerned as no notice was issued to her before the Court passed the order dated 08.07.1994. It is submitted she also did not file any protest petition against the said report as she was not aware of the filing of the same. During the course of his arguments, reliance was placed by the Ld. Additional PP on the cross examination of complainant/PW13 recorded on 02.05.2023, wherein she deposed that she was never informed regarding filling of the Untrace report before Court.

184. In conclusion, it has been argued on behalf of the State that the case of Prosecution stands duly proved on record and the deposition of Prosecution witnesses are reliable, they being a truthful narration of the gruesome incident dated 01.11.1984, perpetrated by the Accused by leading the mob.

Analysis & Findings:-

185. I have considered the above noted arguments in the light of material on record.

186. In order to appreciate and decide the above submissions, it is necessary, in my opinion, to consider certain vital aspects of this case which are of great relevance.

187. At the outset, it is relevant to note that certain documents and facts have not been disputed by the Accused. By admitting the copy of the FIR No.458/91 PS Saraswati Vihar (Ex.AD/V), the Accused has

admitted the factum of registration of this FIR and by admitting Ex.AD-I i.e. letter dated 22.11.1991 addressed to the Commissioner of Police, it has also been admitted that the FIR No.458/91 PS Saraswati Vihar was registered in terms of the said letter as per the recommendation of Justice Jain and Sh.Aggarwal Committee.

188. It has also been admitted that vide order dated 08.07.1994, the Untrace report submitted by the then IO in the present case i.e. FIR No.458/91 PS Saraswati Vihar, was accepted by the court. Further by admitting the death certificates, Ex.AD/IV (Colly), Accused has also not disputed the factum of demise of the above noted family members of the Complainant PW-13.

189. It is also not out of place to mention that the defence has not disputed the incident of 01.11.1984. The Defence has also not disputed the fact that the husband and son of the Complainant were killed at the hands of the mob during this incident and that the Complainant PW-13, her daughter PW-11 and her niece PW-12 in addition to her sisters-in-law (since deceased) sustained injuries at the hands of the mob during this incident. It is, however, the plea of the Accused that he had no role to play in the above incident and that he has been falsely implicated in this politically motivated case in order to target him. He further pleaded that he was never a part of any such mob which resorted to violence and rioting in the area of Raj Nagar or any other area in Delhi nor he had instigated anyone to commit any offence.

190. It is further not in dispute that on 01.11.1984, case FIR

No.511/84 was registered at PS Punjabi Bagh. From the material on record it has surfaced that though this FIR was registered for offences under Sections 147 / 148 / 149 / 302 / 307 / 326 / 395 / 397 / 427 / 436 / 440 / 201 of IPC, however, the investigation of the said case was conducted for offence under Section 412 IPC. The relevant evidence on this aspect shall be dealt with in detail in latter part of this judgment.

191. Learned Defence Counsel has opposed the case of the Prosecution on various scores. However, primarily the contention of the defence is that the Accused did not instigate the mob and was in fact not even a part of the mob which committed the alleged offences on 01.11.1984. It has been urged that the Prosecution Witnesses examined during trial are not credible and trustworthy and the presence of the Accused and the alleged role played by him in instigating the mob to commit the alleged offences of killing and burning of family members of the Complainant 'X', looting of the household articles and burning of their house has not been proved by the Prosecution.

192. It has been vehemently argued that the Complainant (PW-13), whose testimony has been strongly relied upon by Prosecution to prove its case against the Accused, is not a credible witness and her deposition is unworthy of reliance.

193. The first issue which thus emerges for determination is **whether the Complainant PW-13 a reliable witness or whether her**

deposition is liable to be discarded, it being a manipulated and improved version?

194. In this regard, it would, at the outset, be important to refer to the complaint, Ex.PW13/A dated 06.11.1984 addressed to SHO PS Punjabi Bagh. In this statement itself, Complainant PW-13 stated that since she was in a state of shock and badly injured and because of the curfew and riots, she could not send her statement earlier. Undoubtedly, there is also other material on record to substantiate that PW-13 had sustained injuries during the occurrence dated 01.11.1984. This aspect would also be dealt with at length in the subsequent paragraphs.

195. Thereafter, her two statements under Section 161 Cr.PC were recorded, one on 06.11.1984 and the other on 10.03.1985. The same are Mark PW-13/D1 and Ex.PW-13/D2 respectively.

Insofar as the second statement i.e. statement dated 10.03.1985 i.e. Ex.13/D2 is concerned, the said statement is apparently with regard to the identification of the looted articles when she was called to the police station on the said date for identifying her belongings.

As regards statement dated 06.11.1984 Mark 13/D1, it has been urged that it finds no mention or even any reference to the Accused.

196. Before analyzing this argument, it is essential to bear in mind certain background facts. It has been brought on record by way of

evidence that the Complainant PW-13 and her family were new in the area and had shifted to Raj Nagar in the month of August, 1984 itself. In her deposition recorded on 10.02.2023, she stated that *“It is correct that we shifted in Raj Nagar area just two and half months prior to the incident.”* Similarly PW-11 also deposed that *“since we had newly shifted in the above said house....”*. Thus it has been established and has proved during trial that the Complainant had recently shifted to the area of Raj Nagar i.e. about 2½ months prior to the incident.

197. It has also come on record during trial that PW-13 Complainant had not seen photograph of Accused till about 1-1½ months after the incident dated 01.11.1984. Hence, there was no occasion to name the Accused in her Statement dated 06.11.1984, as she did not know him at that time. In her cross-examination by learned Defence Counsel conducted on 02.05.2023, PW-13 denied the suggestion that she knew the name of Accused Sajjan Kumar on the date of the incident or even thereafter as he was MP of her area or was a public figure featuring in print as well as in electronic media.

198. In view of the aforesaid deposition of the victim, the argument of learned Defence Counsel that she knew about the identity of the Accused at the time of the incident, she being an educated lady, having done her post graduation, and also employed as a teacher in a Government school till 1999, cannot be accepted. She further denied the suggestion that she was tutored by SIT to change her stand regarding the identity of the Accused or that she knew him

from the beginning or that she has been used for some political reason to target the Accused.

199. Moreover, it has also been proved from the evidence on record that the Complainant herself had sustained serious injuries during the incident in question, and was hospitalized as a result thereof.

200. In this regard, the depositions of complainant PW-13 and other two victims i.e. PW-11 and PW-12 are consistent and unrebutted. In order to prove the hospitalization of the complainant and the fact that she was treated for her injuries sustained by her at Sehgal Nursing Home, New Delhi, Prosecution examined PW-2 Dr.Versha Sehgal.

201. PW-2 was served with a letter Ex.PW-2/A dated 19.12.2016 during investigation of the present case and the copies of the treatment slip and cash receipts in respect of the complainant PW-13 were annexed therewith with a query as to whether the same were issued from her hospital and the treatment provided to the complainant. PW-2 proved the response given by her to the IO which is Ex.PW-2/B, wherein she stated that the photocopies submitted with the letter Ex.PW-2/A are of her hospital. Photocopies of the documents Ex.PW-2/C to Ex.PW-2/J were also put to the witness viz., PW-2 who stated that she is unable to identify the signatures appearing at point 'A' on the said documents. Learned Addl. PP submitted that Ex.PW2/C to Ex.PW2/J are the payments in respect of payments made for treatment and hospitalization of PW-13 ('A' as per chargesheet).

202. However, the prescription slips Ex.PW3/C (Colly) on pages 51 & 52 of the court file which are stated to be in respect of PW-13 have not been duly proved on record. PW-3 Dr.Jiwan Singh Arora deposed that the said prescription slips are in his own handwriting and the medicines prescribed vide the above slips are anti-inflammatory and antibiotics for an injury in the form open wound suffered by the patient. However, the year of issuance of the said prescription slips are not mentioned on the said slips Ex.PW3/C (Colly). PW-3 was also unable to recall as to in which year the said prescription slips were issued. Accordingly, the prescription slips Ex.PW3/C (Colly) stated by PW-13 i.e. Complainant 'A' as per chargesheet, cannot be said to be in respect of injuries suffered due to the incident dated 01.11.1984.

203. The exhibiting of the aforesaid medical documents was objected to by learned Defence Counsel on the ground that the same were photocopies. Learned APP for the State however, argued that the said documents i.e. Ex.PW-2/C to Ex.PW-2/J duly stand proved on record in view of the fact that PW-2 was not cross-examined by Ld. Defence Counsel. Moreover, the objection raised by learned Defence Counsel as to admissibility of documents Ex.PW-2/C to Ex.PW-2/J on the ground that the documents were photocopies, also does not survive in view of the fact that the originals of the said documents were produced by PW-13 during her deposition and she also deposed that the same were seized vide seizure memo Ex.PW-13/C.

204. Having considered the submissions made on the basis of record

of the case, I find myself in agreement with the submission of learned Addl. PP that the only objection of learned Defence Counsel as to the documents Ex.PW-2/C to Ex.PW-2/J on the ground that they were photocopies, does not survive in view of the fact that the original thereof were produced by the complainant PW-13. The defence did not dispute the documents otherwise as PW-2 was not cross-examined by the Accused. In absence of any cross-examination, the testimony of PW-2 is unrebutted and must be accepted as not disputed.

205. In this regard, the following observations of Hon'ble Supreme Court in case titled as *Mahavir Singh vs. State of Haryana*, **2014(140) AIC 78** are relevant and are reproduced as under:-

“It is settled legal position that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised.”

206. Similarly, in *Sarwan Singh vs. State of Punjab*, **AIR 2002 SC 3652**, it has been held that :-

“It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted.”

207. An objection was also raised by Ld. Defence Counsel as to exhibiting of documents Ex.PW-2/C to Ex.PW-2/J on the ground that

PW-2 failed to identify as to whose signatures appeared at points A and thus PW-2 could not identify as to who had issued the payment receipts.

208. This argument, in my opinion, also cannot be accepted in view of the fact that PW-2 clearly deposed that the said documents were issued from their Nursing Home. It has not been disputed that PW-2 Dr. Versha Sehgal was running Sehgal Nursing Home and her husband was running institute from the adjacent property. She identified documents Ex.PW-2/C to Ex.PW-2/J as having been issued from her Nursing Home/Institute, which testimony is unrebutted, as aforesaid. Thus the fact that after approximately 37 years of the incident when she stepped into the witness box on 09.03.2022 during trial, she was unable to identify as to which staff member had signed these documents is natural. Moreover, it must also be borne in mind that at the time of recording of her evidence in court, she was 86 years old and due to lapse of time she was unable to identify as to which of her staff member had signed the said payment receipts. However, the fact that documents Ex.2/C to Ex.2/J were issued from her Nursing Home has been established on record by way of her unrebutted testimony. Though the payment receipts Ex.PW2/C to Ex.PW2/J do not specifically prove the nature of injuries of PW-13, however from Ex.PW2/F, it is established that room charges @ Rs.200/- from 01.11.1984 to 04.11.1984 were paid to Sehgal's Neurological Research Institute, for hospitalization of Complainant 'A' i.e. PW-13. In other words, it is reflected from this document that PW-13 remained hospitalized during this period.

Ex.PW2/C also proves payment of Rs.2440/- on account of professional services rendered from 02.11.1984 to 04.11.1984 to victim 'A' (PW-13) by the said Institute.

209. Coming back to the Complainant PW-13, in her deposition before the court, the witness stated that after some days of the incident i.e. after more than one month thereof, while going through India Today magazine, she had seen the photograph of a person in the magazine and she felt that the said person was also there in the crowd on the day of incident. PW-13 further deposed that from the magazine, she also came to know that the said person was Sajjan Kumar, M.P. and she had stated in her affidavit Ex.PW-10/DA filed before Justice Ranganathan Commission also that the Accused was instigating the crowd on the day of incident.

210. It has been established on record that the Complainant was badly injured and in a state of shock when she submitted her complaint dated 06.11.1984 to SHO PS Punjabi Bagh. Further, on 10.03.1985 she had only been called to the PS to identify the looted articles and her statement Ex.PW-13/D2 was recorded to this effect. Moreover, being new to the area, she was also not familiar with the Accused and it is only when she saw his photograph in India Today magazine 15.12.1984 edition that she was able to connect the Accused with the incident dated 01.11.1984. It must also be borne in mind that the mob consisted of thousands of person; the mob was unruly and was engaged in the act of large-scale arson, looting and killings; the victims, including PW-13 were trying to

save themselves, their loved ones and their belongings. The case of the Prosecution that PW-13 could relate the Accused as the leader of the mob only after seeing his photograph after the incident thus appears to be natural.

211. During her cross-examination, she was also asked by learned Defence Counsel to go through the contents of her statement Ex.PW10/B recorded under Section 161 Cr.PC by ACP Rajiv Ranjan on 12.05.1992 in the present case i.e. FIR No. 458/91. On going through the said statement the witness admitted that she had correctly stated therein that she did not have enough confidence to pinpoint anybody. She however added “*..but the face of accused Sajjan Kumar had been running in her mind throughout and it means that though she was not exactly sure about identity of accused Sajjan Kumar, but his face had been in her mind.*”

212. It is also not out of place to mention that in her statement Ex.10/DB she also stated that photograph of Sajjan Kumar resembled the bearded man in the mob though she was not certain.

213. PW-13 further admitted in her cross-examination dated 02.05.2023 that she gave the name of the magazine India Today for the first time in her statement dated 23.11.2016 recorded by Inspector Jagdish of SIT. She denied the suggestion that the name of the magazine was stated by her at the instance of Inspector Jagdish and further clarified in her voluntary statement that earlier she had some doubt about the name of the magazine as two/three names of magazines were in her mind and she disclosed the same to

Inspector Jagdish and then after investigation, he turned up to her with India Today magazine containing photograph of the Accused and told her that it was published in the said magazine and that she identified the said photograph.

214. It is further pertinent to mention that during her cross-examination dated 02.05.2023, the Complainant voluntarily stated that *“for three/four days after the incident, I remained hospitalized in connection with treatment of my injuries and even thereafter, I was not in a condition to go through the newspaper or electronic media.”*

215. Thus upon consideration of the above material on record in its totality, it is apparent that the Complainant/PW-13 named the Accused at the first available opportunity i.e. in her affidavit dated 09.09.1985 Ex.PW-10/DA. It has also come on record that she was injured and not in a position to go through the newspapers even after treatment of injuries for some time. Hence, there was no occasion to name the Accused when she made the statement Ex.PW-13/D1 dated 06.11.1984. Further, though by 10.03.1985, she had seen the photograph of Accused, however, on 10.03.1985 she was only asked to identify the looted articles when she visited police station on that date and when her statement Ex.PW-13/D2 was recorded.

216. Thus the arguments of the Accused that she named him for the first time after 32 years of the incident or that the Complainant PW-13 is not a reliable witness, cannot be accepted.

217. It is also noteworthy that in her statement dated 06.09.1991 Ex.B/CC which was recorded before the Committee consisting of Hon'ble Justice J.D.Jain and Sh.D.K.Aggarwal, she reiterated the allegations against Accused stating that "मेरे पति सरदार जसवंत सिंह और बेटा तरुणदीप सिंह को बहुत ज़्यादा मारा जिस की वजह से वह दोनों बेहोश होकर घर के बराबर वाले खाली प्लॉट में गिर गए। उन को बचाने के लिए मैं अपने पति और मेरी ननद की लड़की तरुणदीप के ऊपर लेट गई। बाद में मैंने एक मैगज़ीन में सज्जन कुमार MP का फोटोग्राफ देखा था। मैं कह सकती हूँ कि यही वह शख्स था जो दंगाइयों को उकसा रहा था।"

218. Pertinently neither PW-13 was cross-examined with regard to this statement nor has this statement being challenged by the defence during trial.

219. Further, in view of the facts of the instant case, the judgment in case of *Delhi Administration vs. Shakti Singh* (Supra), relied upon by Accused, has no application to this case, it being clearly distinguishable on facts. In the said case, the court disbelieved the statements of Prosecution witnesses as they deposed for the first time before the court about the role of Respondents in the said case in commission of the alleged offences. The present case, however, stands on a different footing as it is not the plea of the Accused also that the Prosecution witnesses did not name him prior to appearing in the witness box before the court.

220. I am also not inclined to accept the submissions of learned Defence Counsel that the testimony of PW-13 cannot be relied upon since though PW-13 admittedly received the compensation for death

of her family members on account of registration of FIR No.511/84 PS Punjabi Bagh, still she did not initiate any action against the Accused at that time.

221. The credibility of Complainant PW-13, has further been assailed by the Defence on the ground that she did not witness the killing of her husband and son, inasmuch in her complaint Ex.PW-10/DA she had stated that she was '*told later*' that her husband and son were killed and burnt. However, on going through the material on record in its entirety, I do not find any force in this submission.

222. In her deposition before the court, PW-13 clearly deposed that her husband and son were badly beaten by the crowd and had suffered serious injuries. She also deposed that in an attempt to save them from crowd, she laid down upon her husband and her niece laid upon her son but due to this they both suffered injuries. She further deposed that some persons from the crowd dragged her and her niece to the house of a neighbour and the mob started pouring petrol on clothes of her husband and son to burn them alive. She further admitted upon being cross-examined by learned PP for the State and deposed that "*It is correct that my husband and son were burnt alive by the mob by pouring petrol in the adjoining plot no.16 to our house.*" She denied the suggestion of learned Defence Counsel that she had not seen the killing or burning of her husband and son or that she came to know about their killing and burning much later on.

223. The deposition of PW-13 regarding the burning and killing of her husband and son at the hands of mob is also corroborated by PW-11 and PW-12, who deposed that both Jaswant Singh and Tarundeep Singh were killed in their presence. PW-11 and PW-12 have not being cross-examined by learned Defence Counsel on this aspect.

224. PW-11, the daughter of the complainant also gave a vivid description of the incident by deposing as under:-

“My father and brother almost became unconscious as a result of the beatings given by the crowd and we were not in a position to help them. Some police official was also present there but even he did not make any attempt to help us. Some persons from the crowd had come and dragged and separated my mother and cousin from my father and brother and then my father and brother were put on fire and burnt alive by the crowd. (The witness has started weeping while narrating the above incident).”

225. At the time of the incident i.e. 01.11.1984, PW-11 was aged around 14 years and was a student of class 10th. The incident of her father and brother being burnt alive, could never fade from the memory of a 14 year old child and this court see no reason to disbelieve her testimony.

226. Similarly, PW-12 also deposed that *“My uncle and his son Tarundeep Singh were also dragged out in the above open plot on right side of our house and they were beaten mercilessly by the*

*crowd.” She further deposed that “In order to save them, my aunt laid upon my uncle and I myself laid upon my cousin Tarundeep Singh, but we could not succeed in saving them and in the process even me, my mother, my aunt and my cousin sister had all suffered severe injuries at the hands of mob.” She also deposed that “My aunt had been pleading to the mob to spare her husband and son but nobody heard it.” She further deposed that “My uncle and my cousin Tarundeep Singh were both put on fire and were burnt alive by the mob in **our** presence.”*

227. PW-7 further corroborated their depositions regarding the killing of Jaswant Singh and Tarundeep Singh by deposing that the remains of their dead bodies were gathered by him from outside their house from a pile of ashes and were brought by him to his residence to conduct their last rites as per Sikh customs.

228. Upon considering the material on record in its totality, I am unable to agree with the arguments of the defence that the Complainant PW-13 was not a eye witness to the burning and killing of her husband and son. The material on record must be considered in its totality and not on a piecemeal basis. The arguments of learned Defence Counsel that in her complaint to J. Ranganathan Mishra Commission of Inquiry Ex.PW-10/DA the Complainant stated that her husband and son were killed and burnt as she was “told later”, cannot be considered to be only circumstance to hold that Complainant was not present at that time on the spot nor can it lead to a conclusion that she did not witness

their killing or that she was informed about this incident later.

229. It would also be relevant to revert to the first complaint made by the Complainant PW-13 to SHO PS Punjabi Bagh on 06.11.1984, which is Ex.PW-13/A. It is borne out from the record and is also mentioned in the complaint itself that after the incident the Complainant was in a state of shock and badly injured and because of curfew and riots, she could not send her statement earlier. In the said statement the Complainant PW-13 narrated the incident in great detail and alleged that her husband Jaswant Singh and son Tarundeep Singh who were badly wounded were lying prostrate in the vacant plot were set on fire by the mob while she, her sister-in-law and daughter were dragged by some kind people to a neighbouring house who sheltered them. She further stated in her complaint Ex.PW-13/A that her husband Jaswant Singh and her son Tarundeep Singh were last seen by her in the vacant plot adjacent to their house at Raj Nagar lying badly injured and set on fire by the mob. SI Dharam Singh in his preliminary inquiry report in case FIR No.511 PS Punjabi Bagh Ex.PW-10/D1 also mentioned that Preliminary investigation have revealed that S.Jaswant Singh and Tarundeep Singh died at the hands of a mob on 01.11.1984 and the complainant and her sister-in-law received multiple injuries and the house at 15, Raj Nagar was looted and then set on fire by the mob.

230. Further in her affidavit dated 07.11.1984 Ex.PW-13/B also the Complainant clearly stated on oath that her husband and son were beaten by the mob on 01.11.1984 along with other family

members of her family and that her husband and son were beaten to death and their bodies were set on fire by the mob.

231. Thereafter, in her statement dated 06.09.1991 recorded by Justice D.K. Aggarwal Ex.B/CC also the Complainant reiterated that her husband and son were badly beaten due to which they become unconscious and fell in the adjoining plot near their house. She stated that in order to save them, she and her niece laid down upon her husband and her son respectively. Some persons from the mob however pulled her, her daughter and her niece and they were taken to the house of their neighbour Sh.Ohri. She further stated that her husband and son were burnt by pouring kerosene or petrol.

232. Taking note of the preliminary inquiry report and certificate of SI Dharam Singh of PP Anand Vas directions were subsequently issued vide Ex.PW-14/D to the Administrator, Union Territory of Delhi to register a fresh case in respect of the murders of the husband and son of the Complainant and the injuries inflicted upon her and her family in addition to the incident of looting and burning of their house. The Committee also took note of the fact that despite the above information being within the knowledge of the police and examination of the Complainant under Section 161 Cr.PC during investigation of case FIR No.511/84 PS Punjabi Bagh, the incident was neither investigated fully nor was made the subject matter of the chargesheet filed in the case. It was also observed that the Complainant and other injured persons were also not made witnesses by the prosecution. Accordingly, vide letter Ex.AD-I, the

Commissioner of Police was requested by the concerned Joint Secretary (Home), Delhi Administration, Delhi to register a fresh case in respect of the above noted family of the Complainant and regarding incidents of injuries on their persons and the lootings and burning of their house leading to registration of case FIR No.458/91.

233. Thus, from the above material on record, it is apparent that mere use of the word “told later” in the complaint Ex.PW-10/DA, cannot be made sole basis for coming to the conclusion that she did not witness the killing of her husband, her son.

234. From, the material on record, the presence of not only the Complainant PW-13, but also her daughter PW-11 and her niece PW-12 at the place and time of killing and burning of her husband and son stands duly established.

235. As regards the fact that the Complainant make no mention about the Accused in her complaint Ex.PW-13/A addressed to SHO PS Punjabi Bagh, this also cannot also be said to be fatal to the case of the Prosecution, as argued by learned Defence Counsel. Though, it is a matter of record that the said complaint Ex.PW-13/A finds no mention of the involvement of the Accused in the instant incident, however, at the same time, it is pertinent that it is the case of the Prosecution that the Complainant saw the photograph of the Accused after about 1½ – 2 months of the incident and it is only then that she was able to recollect that Accused was instigating the mob at the time of the incident dated 01.11.1984. In her affidavit

Ex.PW-10/DA, the Complainant stated that the mob and her leaders were not known to her, however, later when she saw the photograph of Sajjan Kumar, it resembled the face of the man who was instigating the mob. It has been established that PW-13 had recently shifted to the area of Raj Nagar and was new to the area. In these circumstances, the fact that she did not know or recognize the Accused, is natural. The agony and trauma suffered by the Complainant on seeing her husband and young son being burnt must be kept in mind, moreover, when she herself suffered severe injuries in the incident and also suffered loss of her house and belongings which were set on fire by the mob. It would, in these circumstances, be apposite to accept that due to this reason PW-13 could not identify who the person instigating the mob was, and on seeing his photograph she was able to relate that it resembled the person who was instigating the mob. The sheer size of the unruly mob, which was on spree of destroying and burning houses, looting and arson and killing and beating persons, the fact that PW-13 had recently shifted to the area are also relevant factors and must be borne in mind while weighing her testimony.

236. Besides this, the contention of the learned Defence Counsel that in her statements Ex.PW-13/D1 & Ex.PW-13/D2, she made no mention of the presence of the Accused as being part of the mob, has also been duly explained on record as discussed above.

237. Insofar as the acceptance of the Untrace report on 08.07.1994 in the present case i.e. FIR No.458/91 PS Saraswati Vihar is

concerned, the Prosecution has been able to establish that no notice was issued by the then Ld. MM to the Complainant before passing the order dated 08.07.1994. Further, although the report under Section 173 Cr.PC, Ex.AD-II (Colly) finds mention of the fact that a notice had been issued to the Complainant by the IO, however, no such notice has been proved on record. This assumes relevance in view of the fact that the Complainant PW-13 as well as PW-12 consistently deposed that no notice was received by them and they were not aware of the fact that case FIR No.458/91 had resulted in closure on 08.07.1994.

238. In fact PW-12 deposed that they did not file protest petition or objections or appeal as they were not aware of the closure of the same.

239. It is further proved from the deposition of PW-12 that statement Ex.PW-10/DC dated 12.05.1992, on the basis of which the said closure/Untrace report was filed, was also not made by her. In the course of her deposition, PW-12 categorically denied having made the statement Ex.PW-10/DC.

240. The Complainant PW-13 however on seeing the statement Ex.PW-10/DB, she deposed that “...*she cannot tell when and where her above statement might have been recorded.*” She further added that “...*though in her above statement she correctly stated that she did not have enough confidence to pinpoint anybody, but the face of accused Sajjan Kumar had been running in her mind throughout...*”

241. In view of the statement of PW-13, it is possible that had the concerned Ld. MM issued a notice to her before accepting the Untrace report, the Complainant would have opposed the acceptance of such Report by the court. The acceptance of the Untrace/closure report by the court without even issuing notice to Complainant is not only contrary to established legal norms, but also resulted in grave failure of justice. The learned MM could not have acted merely on the basis of a statement recorded the police without even a notice to the Complainant.

242. In this regard, it would be useful to refer to the landmark ruling of the Hon'ble Apex Court titled as ***Bhagwant Singh vs. Commissioner of Police & Anr., 1985 INSC 103*** and in the said case the question of determination before the Hon'ble Apex Court was as under:-

“The short question that arises for consideration in this writ petition is whether in a case where First Information Report is lodged and after completion of investigation initiated on the basis of the First Information Report, the police submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceeding without issuing notice to the first informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased.”

The Hon'ble Apex Court while dealing with this issue observed as under:-

“Now, when the report forwarded by the officer-

in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would

certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognized by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”

243. The said decision of the Hon’ble Apex Court was followed in a subsequent decision in **Gangadhar Janardan Mhatre vs. State of**

***Maharashtra*, reported as (2004) 7 SCC 768.**

244. Similarly in ***Vishnu Kumar Tiwari vs. State of Uttar Pradesh (through Secretary Home, Civil Secretariat Lucknow & Anr.)*** reported as (2019) 8 SCR 1114, the Hon'ble Supreme Court again relied upon the case of ***Bhagwant Singh vs. Commissioner of Police & Anr.*** (Supra) and ***Gangadhar Janardan Mhatre vs. State of Maharashtra*** (Supra) and held as under:-

“26. It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.”

245. It is further noteworthy that the statement of the Complainant 'X' dated 12.05.1992 (Ex.10/DB) of which the Untrace report was accepted by the learned MM, was recorded after about four (04) months of her statement dated 08.01.1992 (Mark PW10/1), wherein she had clearly named the Accused Sajjan Kumar as the leader of the mob and perpetrator of alleged offences. There appears to be no

reason as to why the Complainant 'X' would change her statement merely after 4 months and state on 12.05.1992 that she is unsure about identity of the Accused. Notably in her statement dated 12.05.1992 Ex.PW10/DB she also stated that her memory has become hazy and blurred, whereas in her statement recorded on 08.01.1992 she stated clearly that she identified Accused Sajjan Kumar with certainty after seeing his photograph in a magazine. In these circumstances, the filing of the Untrace report on the basis of her statement dated 12.05.1992 must be viewed as nothing but an attempt to shield the culprit.

246. The deposition of the Complainant before court in the course of trial is correct and honest narration of the incident as it occurred on 01.11.1984. From the testimony of PW-13 it is established that on 06.11.1984 when she gave her complaint Ex.PW-13/A to SHO PS Punjabi Bagh, she was in a state of shock and badly injured, due to which she could not narrate the complete facts. At that point of time, she was also not aware of the identity of the Accused as she was admittedly new to the area and had never seen the Accused earlier. It is only when she was going through magazine after 1½ – 2 months of the incident, that upon seeing the photograph of the Accused, she was able to recollect that it is Accused Sajjan Kumar who was leading and instigating the mob on 01.11.1984. The version of the Complainant and her narration of the incident is natural and believable. She even admitted that in her statement Ex.PW-10/DB she correctly stated that she did not have enough confidence to pin point anybody as instigator of the mob but the

face of the Accused was running in her mind throughout. The Complainant who witnessed the brutal killing of her husband and son can certainly not be expected to forget the face of the person who was instigating the mob to carry out the said killings and lootings and her deposition in court fortifies her stand that it is Accused who was not only present during the alleged incident but also instigating and leading the mob which resulted in commission of the aforesaid offences.

247. The testimony of PW-13 must also be read keeping in view certain observations of the Hon'ble High Court of Delhi in case titled as ***State through CBI vs. Sajjan Kumar, 2018 SCC Online Del 12930.***

The said case against the same accused also emanated out of a similar incident of violence and rioting pursuant to the assassination of the then Prime Minister Smt. Indira Gandhi. The said proceedings commenced with registration of a case bearing FIR No. RC-SI-1/2005/S0024 at PS Delhi Cantonment on the allegations that Accused Sajjan Kumar, besides other accused persons who faced trial in the said case, committed offences punishable under Sections 120B read with Sections 147/148/302/395/427/436/449/153A/295 & 505 IPC and substantive offences thereof.

248. While discussing the role of Accused Sajjan Kumar, who was arrayed as A-1 in the said case, Hon'ble Division Bench of High Court of Delhi took note of certain extraordinary circumstances and factual position and observed as follows:-

“...That there was an abject failure by the police to investigate the violence which broke out in the aftermath of the assassination of Smt.Indira Gandhi is apparent from the several circumstances that have already been highlighted hereinabove.”

249. In the subsequent paragraphs of the said judgment, the Hon’ble Delhi High Court further noted as under:-

“...That many cases remained to be properly investigated was acknowledged recently by the Supreme Court in its order dated 11th January 2018 in W.P.(Crl.)9/2016 (S.Gurlad Singh Kahlon v. Union of India) by which it was considered appropriate to constitute a three-member Special Investigating Team (‘SIT’) to proceed to investigate as many as 186 cases in which further investigation had not taken place. By a recent order dated 4th December, 2018, the Supreme Court has permitted a two-member SIT to probe the matter.”

250. In para 387 of the same judgment, it was further observed that:-

“The Court would like to note that cases of the present kind are indeed extraordinary and require a different approach to be adopted by the Courts. The mass killings of Sikhs between 1st and 4th November 1984 in Delhi and the rest of the country, engineered by political actors with the assistance of the law enforcement agencies, answer the description of 'crimes against humanity' that was acknowledged for the first time in a joint declaration by the governments of Britain, Russia and France on 28th May 1915 against the government of Turkey following the large scale killing of Armenians by the Kurds and

Turks with the assistance and connivance of the Ottoman administration....”

251. In the same judgment, the Hon’ble High Court relied upon the ruling of the Supreme Court of Bangladesh in ***Abdul Quader Milla*** (*Supra*) which considered the appeal of the Government against the acquittal of the accused of mass killing of Bangladeshi citizens. It was noted that the trial in this case commenced 38 years after the incident. The Hon’ble High Court quoted the judgment of the Supreme Court of Bangladesh observing that these observations resonate with the fact situation in the appeals before the court. It was further noted as follows:-

“The Court of Appeal in United Kingdom in Anthony Sawoniuk (Supra) was dealing with the issue of framing criminal proceedings 56 years after the alleged crime. The Jury had convicted the Appellant on two counts of murder and on account of killing of Polish Jews during the Nazi era. The Appellate Court rejected the contention of the accused and refused leave to appeal before the European Court of Human Rights ('ECHR'). Thereafter, the ECHR, by its judgment dated 29th May 2001, upheld his conviction. This obligation to prosecute crimes against humanity, no matter the lapse of time, has also been echoed by International Criminal Law-Critical Concepts in Law, 2015 (1st Ed) wherein it was opined that "no amount of time can be 'too long to satisfy the needs for truth and some measure of accountability, nor can come arbitrary legal time limit be set. The argument that some wounds are too old to be exposed has little moral integrity... the wounds are still there for all to see.”

252. The failure of the police personnel to act and to come to provide any aid to public persons, even upon seeing the plight of the Complainant and the other victims on 01.11.1984, has been brought out in the present case also from the depositions of the following witnesses, the relevant portions of which are reproduced as under:-

(i) PW-11, daughter of the Complainant who was aged about 14 years at the time of the incident deposed as follows:-

“My father and brother almost became unconscious as a result of the beatings given by the crowd and we were not in a position to help them. Some police official was also present there but even he did not make any attempt to help us.”

(ii) Similarly, PW-12, who deposed that:-

*“Her uncle and her cousin Tarundeep Singh were both put on fire and were burnt alive by the mob in their presence.
.....Some police men were though also present at the time of said incident but they did not come forward for their rescue from the mob.”*

(iii) PW-13 herself stated that a mob had started gathering in their area at around 10-11 AM and they started feeling insecure seeing the huge mob. Thereafter, a CRPF official arrived there and they thought they would be safe. She further deposed that the CRPF personnel went into some other house of sikh family in the area and they heard the sound of firing from the said house and then the CRPF personnel went back.

(iv) As regards the inaction on the part of the police

officials, PW-13 stated that some persons from the crowd dragged her and her niece to the house of a neighbour and in the meanwhile the mob started pouring petrol on clothes of her husband and son to burn them alive. She further deposed that one police official was also present there at that time and when she requested him to help them, he expressed his inability and told her that the women should go to roof of the house to save themselves but her husband and son were to be killed by the mob.

(v) She further deposed that no action was taken against the police officials who did not help them during the incident despite the fact that she subsequently met concerned Police Commissioner Mr.Marwah as the police official who was present at the spot on the date of the incident was not there who participated in the Test Identification Parade (TIP) of erring police officials.

253. From the above discussion and particularly the deposition of the Complainant, it is clearly discernible that she neither had the occasion nor the trust to confide in the police officials even though she joined the investigation of case FIR No.511/84 PS Punjabi Bagh. This can certainly be said to be a natural reaction keeping in view her prior experience of complete inaction and lack of any sympathy towards the victims by the police during the horrific incident of 01.11.1984. The Complainant, could apparently gather courage when a notice was published in newspapers following constitution of Justice Rangnath Misra Inquiry Commissioner as is reflected from Ex.PW-10/DA. It is thus on 09.09.1985 that the Complainant, in response to the notice published in the 'The Panth Prakash Weekly',

revealed the name of the Accused to the said Inquiry Commission headed by Justice Rangnathan Misra by way of her communication Ex.PW-10/DA.

254. Learned Defence Counsel has also assailed the case of the Prosecution on the ground that other than the Complainant and her family members, no other independent witness has been either cited or examined to support the version of the Complainant PW-13. In this regard, Learned Counsel for Accused argued that in absence of there being any independent and unrelayed witness, the deposition of the Complainant as well as PWs 11 & 12 cannot be relied upon for lack of corroboration from any independent source.

255. I have considered this submission. However, as discussed in the preceding paragraphs, from the deposition of PW-11, PW-12 & PW-13, it has been brought out during trial that the other residents of the locality did not even come forward to the aid and assistance of the victims at the time when their house was being burnt and their loved ones were being brutally beaten and killed. In fact one of the neighbours namely Mr.Ohri even refused to give shelter to the Complainant and the other victims in his house as he feared that if he would help them, his house would also be attacked by the mob. The victims were thereafter constrained to take shelter in an under construction house from where they went to a nearby Gurudwara and were subsequently rescued by an army truck.

256. That being so, the fact that the Prosecution has neither cited nor

examined any other person from the locality, cannot be said to be the circumstance which should be read in favour of the Accused. The fact that the residents of the locality hesitated to rescue and provide aid to these victims at the time of the occurrence, is sufficient to conclude that they would also not have come forward to support their version before the court. Hence, this argument of the defence must be rejected and the deposition of the Prosecution witnesses, including the Complainant and the other two victims, which have otherwise been found to be credible, cannot be discredited for the reason that they are not corroborated by the deposition of any other independent witness.

257. Even otherwise, it is settled law that evidence must be weighed and not counted and in several instances, convictions have been based on sole testimony of a witness, who was found to be reliable and trustworthy. In this regard, reliance may be placed on the ruling in case of ***Manjit Singh v. State of Punjab* (2013) 12 SCC 746**, wherein it was observed as follows:

“24. ...it is quite clear that it is not the number and quantity, but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non- examination of other witnesses.”

258. Similarly, in ***R. Shaji v. State of Kerala* (2013) 14 SCC 266**, it was observed as follows:

“39. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but

the quality of their evidence which is important, as there is no requirement in the law of evidence stating that a particular number of witnesses must be examined in order to prove/ disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise. The legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. It is thus, the quality and not quantity, which determines the adequacy of evidence, as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced over and above this, does not carry any weight.”

259. Further in case titled as ***Vadivelu Theval v. State of Madras*** AIR 1957 SC 614, Hon’ble Apex Court observed as under:

“10. ...On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions maybe safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent characters...

Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted

upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous characters...”

260. In ***Sunil Kumar v. State* (2003) 11 SCC 367**, it was held as under:

“9. ...This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist for corroboration. It is for the Court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

10. ...Merely because of the fact that there were some minor omissions, which are but natural, considering the fact that the examination in court took place years after the occurrence the evidence does not become suspect. Necessarily there cannot be exact and precise reproduction in any mathematical manner. What needs to be seen is whether the version presented in the court was substantially similar to what was stated during investigation. It is only when exaggerations fundamentally change the nature of the case, the court has to consider whether the witness was telling the truth or not....”

261. Likewise in ***Chacko v. State of Kerala (2004) 12 SCC 269***, it was held as under:

“7. Coming to the question whether on the basis of a solitary evidence conviction can be maintained, a bare reference to Section 134 of the Evidence Act, 1872 would suffice. The provision clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of a single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained...”

Further in ***State of Madhya Pradesh v. Laakhan (2009) 14 SCC 433***, it was observed as under:

“10. Even the evidence of a solitary witness can be sufficient to record conviction if the same is wholly reliable. No particular number of witnesses is necessary to prove any fact, as statutorily provided in Section 134 of the Evidence Act, 1872. It is the quality and not the quantity of the evidence that matters. The court cannot take a closed view in such matters.”

262. In ***Duli Chand v. State, 1997 (43) DRJ***, it was observed as follows:

“The contradictions in evidence have, however, to be appreciated in the light of aforesaid peculiar facts and circumstances prevalent at the relevant time. We may also notice that there is no legal bar in basing conviction on the sole

testimony of a witness who may be relative of the deceased so long as the testimony of such a witness is credible and there are no material contradictions on vital aspects. In that event it would not be essential to necessarily look for corroboration of the testimony of the relations of the deceased.”

263. In ***Namdeo v. State of Maharastra***, reported as 2007 AIR SCW 1835 Hon’ble Supreme Court made a similar observation which is as follows:

“It is no doubt true that there is only one eye witness who is also a close relative of the deceased, viz. His son. But it is well-settled that it is quality of evidence and not quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis of Courts is always on quality of evidence.

So far as legal position is concerned, it is found in the statutory provision in Section 134 of the Evidence Act, 1872 which reads:

134. Number of witnesses. No particular number of witnesses shall in any case be required for the proof of any fact.”

There is thus not an iota of doubt that while appreciating the evidence led before a court during trial, it is the quality of evidence and not the quantity of evidence which is material and that conviction can be based even on the sole testimony of a witness, if found credible and worthy of reliance.

264. The testimony of the Complainant has also been assailed on the

ground that her affidavit Ex.PW-10/DA where the Complainant firstly named the Accused as the perpetrator of the offence, does not find mention as to when and where the Complainant saw the photograph of the Accused. Rather, in the said affidavit, the Complainant has stated that the name of the persons instigating the mob resembled the face of the Accused Sajjan Kumar and it is for the first time in 2016 that the Complainant mentioned that she had seen the photograph of the Accused in India Today magazine.

265. Learned Defence Counsel further argued that it is PW-14 Inspector Jagdish, who had in fact tutored the Complainant and it is upon his instigation that she stated the name of India Today magazine for the first time when her statement was recorded during investigation by the SIT. The answer to this argument lies in the cross-examination of PW-13 herself. The victim, PW-13, in the course of her deposition recorded on 10.02.2023, admitted that during investigation Inspector Jagdish Kumar had shown her India Today magazine, edition dated 15.12.1984. She further admitted that she had told Inspector Jagdish that Sajjan Kumar was the same person who was instigating the mob on the day of incident and it was at his instigation **only** that the mob had killed her husband and son and that he was also instigating the mob to kill the Sikhs.

266. Thereafter, PW-13 was cross-examined at length by learned Defence Counsels on 02.05.2023. A perusal of the record would show that her cross-examination commenced in the morning and continued even in the post lunch session and I find on reading her testimony in

its totality that despite her lengthy cross-examination, her deposition remained unimpeached.

267. I may, however, hasten to add that although the witness voluntarily stated during her cross-examination recorded on 02.05.2023 that earlier she had some doubt about the name of the magazine as 2-3 names of magazines were in her mind, however, she further stated that she disclosed this fact to Inspector Jagdish and he came to her with India Today magazine containing the photograph of the Accused and she identified the said photograph. It is thus apparent from the above voluntarily statement of PW-13 that she truthfully narrated before the court that she did not recollect the name of the magazine in which she had seen the photograph of the Accused as 2-3 names of magazines were in her mind and she disclosed the same to Inspector Jagdish and then after investigation, he turned up to her with India Today magazine containing photographs of the Accused and told her that it was published in the same magazine and she identified the said photograph of the Accused.

268. The version of the victim/PW-13 to this effect appears to be natural and truthful. The same is also corroborated by the deposition of PW-14 IO Inspector Jagdish, who deposed as follows:-

“....Thereafter, this certified edition of December 15, 1984 of India Today magazine was produced before the Complainant A and she identified the photograph of Accused Sajjan Kumar and after seeing the same, she recognized the Accused Sajjan Kumar who was leading and instigating the mob.”

269. It is not the case of the Accused that the Complainant had any personal enmity with him nor is there any material on record to show that the Complainant and the other victims deposed falsely before the court upon being tutored on account of any political considerations or otherwise. Rather, all the witnesses have consistently denied the suggestions that they have been used as tools by SIT or other group for political reasons to get the Accused falsely implicated in the above noted incident.

270. In ***Pappu Tiwary vs. State of Jharkhand*, 2022 LiveLaw (SC) 107**, Hon'ble Apex Court while analyzing the statement of an eye witness held as follows:-

“... The test which is applied of proving the case beyond reasonable doubt does not mean that the endeavour should be nick pick and somehow find some excuse to obtain acquittal.”

271. In conclusion, in the present case, after considering entire evidence on record and in the light of above discussion, I find that the deposition of the Complainant PW-13 is truthful, reliable and worthy of credit. It may be true that there may be minor variations here and there which are natural, but the deposition of the Complainant definitely has a ring of truth to it and this court sees no reason to disbelieve her. From the testimony of PW13, the presence and the role of Accused in leading the mob which committed the alleged offences on 01.11.1984 has been duly proved on record beyond doubt.

272. The next issues which arises for consideration on the basis of arguments advanced by the defence as well as the Prosecution is as follows:-

Whether PW-11 & PW-12 can be considered to be reliable witnesses?

273. From the evidence on record, the presence of not only the Complainant (PW-13) but also of PW-11 & PW-12 on the date, time and place of the occurrence has been proved. As already stated above and as is also apparent from the cross-examinations of PWs 11 & 12, the Defence has not disputed the incident of looting and burning of the house of the Complainant, the killing of her husband and son and causing of injuries to Complainant and victims PW-11 & PW-12 at the hands of the mob on 01.11.1984.

274. Victim 'Z'/PW-12 deposed that on 01.01.1984 when she was living at the house of her maternal uncle namely Late S. Jaswant Singh at 15, Raj Nagar, Delhi, the mob had attacked their house and her uncle and aunt/mamiji peeped through the windows of the room and had seen that the mob had broken the window glasses of their drawing room and had also looted and taken away the articles kept in the drawing room like Sofa-set, TV etc. She further deposed that the mob had entered their house from both sides i.e. the front side as well as the right side entrance and that some body from the crowd had told them to save their lives as they shouted that they will not spare her uncle and his son and they also heard somebody shouting for putting their house on fire.

275. Pertinent it is that during recording of her testimony the demeanor of the witness was noted by the court and it has come on record that while deposing, she started weeping as she recollected and narrated the incident dated 01.11.1984.

276. Coming back to her deposition, PW-12 further deposed that she saw a mob consisting of thousands of persons armed with iron rods, stones and bricks etc. which had started pelting stones/bricks indiscriminately at them as well as at their house. She also deposed that her uncle and his son Tarundeep Singh were also dragged out in the open plot and beaten mercilessly by the crowd and in order to save them, her aunt laid upon her uncle and she herself laid upon her cousin Tarundeep Singh, but they could not succeed in saving them and in the process, she her mother, her aunt and her cousin sister had all suffered severe injuries at the hands of the mob.

277. PW-12 further deposed that she and her aunt both suffered head injuries and they had stitches on their head and ribs of her aunt were also broken due to the said beatings. Her mother also suffered a fracture injury and she and her aunt both had remained hospitalized subsequently. She also deposed that her uncle and her cousin Tarundeep Singh were both put on fire and were burnt alive by the mob in their presence.

278. From her cross-examination, it is apparent that the defence did not cross-examine her either on the incident in question or as regards

the injuries sustained by her and other members of her family as deposed by her in her examination-in-chief. Though, in the cross-examination, the defence has been able to bring out some aspects indicating certain improvements in her deposition by confronting with her previously recorded statements, however, to my mind, the same cannot be said to be sufficient to discard her deposition.

279. The deposition of PW-12 has to be read keeping in mind that at the time of incident she was about 21 years of age. Moreover, she witnessed the gruesome incident where her uncle and her cousin were set on fire by a mob which also attacked her other family members resulting of causing of serious injuries upon their person.

280. The defence, as aforesaid, did not cross-examine her as regards the said injuries which have also been duly proved by way of the documents exhibited by PW-1 particularly Ex.PW-1/B. It is necessary to mention at this juncture that though during the recording of deposition of PW-1 an objection was raised by learned Defence Counsel as exhibiting of the said document only for the reason that it was a photocopy and on no other ground. However, original of the said certificate Ex.PW-1/B was later produced during the trial by PW-13 and hence the objection solely on the ground of exhibiting of a photocopy does not survive in view of the above.

281. In so far as the objection regarding the alleged delay on the part of the PW-12 in naming the Accused is concerned, it would be useful to again revert to her deposition recorded in court particularly her

cross-examination dated 13.07.2023. In the course of her said cross-examination she clarified that she personally did not take any steps to prosecute the culprits of the riots as her aunt was pursuing the matter. She also stated that after the incident she was not living with her aunt and had been living separately and that her aunt used to tell her occasionally regarding the steps taken by her and developments in investigation or proceedings. She denied the suggestion that she was summoned in the year 1984 itself. She further voluntarily stated that no police officer even met her in connection with the case FIR No.511/84 PS Punjabi Bagh.

282. In so far as FIR No.511/84 PS Punjabi Bagh is concerned, the witness clarified that she was not summoned by the police to join the investigation of the said case. The Accused has also not lead any evidence on record to prove otherwise.

283. As regards the closure report in the present FIR, she stated that she is not aware whether the case FIR No.458/91 resulted in closure on 08.07.1994. She further denied that her statement was recorded by ACP Rajiv Ranjan in the said case on 12.05.1992.

284. Similarly, PW-11 i.e. the victim 'Y', daughter of the deceased S.Jaswant Singh, narrated the incident of 01.11.1984 stating that the mob had attacked their house from both sides and had looted the household articles and put the house on fire. She also deposed that the females of the house were told by the crowd to save themselves if they could, but they told them that they were not going to spare her father

and brother. In order to save them, her mother and her cousin laid down upon them however, nothing helped. She further deposed that the ribs of her mother were broken and even she, her cousin and her *bua* were hurt badly.

285. She further deposed about hospitalization of her mother and *bua* subsequently on account of the said injuries and also deposed that she herself suffered injuries on her head for which she was given some stitches also.

286. The injuries sustained by PW-11 also stand established by way of certificate Ex.PW-1/C. Learned Defence Counsel, as aforesaid, only raised an objection regarding exhibiting of the photocopy of Ex.PW-1/C and did not cross-examine PW-1 on any other count. Further since the original of Ex.PW-1/C was subsequently produced during the course of trial by PW-13, the objection raised by learned Defence Counsel as regards the mode of proof of the said document also does not survive. Further, though PW-11 was cross-examined by learned Defence Counsel however, her deposition remained unimpeached. She reiterated the incident dated 01.11.1984 and further stated that at that time she was about 14 years of age and that is why she was kept away from all the proceedings undertaken by her mother and relatives as regards the said incident. She also denied the suggestion that the police officials of PS Punjabi Bagh had called her in connection with the investigation of the FIR No.511/84.

287. PW-11 further deposed in her cross-examination that till the

constitution of SIT, she did not personally make any statement or approach any authority in connection with the above incident. She was also questioned as regards the closure report in case FIR No.458/91 of which she was not aware. She reiterated that her statement Mark PW11/DA as well as her deposition before the court are true and nothing false has been stated therein.

288. From the above depositions of both the said witnesses i.e. PW-11 as well as PW-12, this court finds that there is no doubt about their presence at the place and time of the incident in question. Further, the delay if any on the part of PW-11 and PW-12 in naming the Accused has been sufficiently explained. It is a matter of record and not in dispute that both the said witnesses were aged about 14 and 21 years of age respectively at the time of the incident and thus they cannot be expected to take independent steps or initiate separate proceedings against the Accused, more particularly in view of the fact that her mother/aunt i.e. the Complainant was already pursuing her remedies.

289. Both PW-11 & PW-12 are thus found to be reliable and trustworthy witnesses, who have not only corroborated the deposition of PW13, but have also proved the case of the Prosecution by giving a detailed description of the incident in question by way of their consistent depositions.

Whether the present trial is barred under Section 300(1) Cr.PC and Article 20(2) of the Constitution of India?

Whether 'further' investigation carried out by SIT in fact amounts to 're-investigation' of the case? If so, whether it was necessary for the Investigating Agency to obtain permission of the Court before proceeding further?

290. Ld. Defence Counsel has further raised an argument regarding legality of this further investigation and his argument that the present investigation done by SIT actually amounts to re-investigation of the case.

291. It is not in dispute that the investigation by SIT was undertaken only as per the directions contained in the Order No. 13018/13/2014-Delhi-1 (NC) dated 12.02.2015 of the Govt. of India, MHA and even this SIT was constituted by the same order. The terms of reference for conduction of investigation by SIT have already been re-produced in preceding paragraphs and it is crystal clear therefrom that the SIT was duly empowered to re-investigate all appropriately serious criminal cases which were filed in the NCT of Delhi in connection with 1984 riots and had since been closed. Further, the SIT was also empowered to examine afresh the records of such cases identified by them from the concerned police stations and also the files of the Committee consisting of Hon'ble Mr. Justice J. D. Jain and Hon'ble Mr. Justice D. K. Agrawal. It was also empowered to take all such measures under law for a thorough investigation of the criminal cases and to file charge sheet against the accused in the concerned court where sufficient evidence has been found after investigation undertaken by it.

In considered view of this court, the investigation conducted by SIT in this case does not amount to re-investigation and rather, it amounts to further investigation only. During the course of this investigation, the IO had not only recorded the statement of complainant and of the witness 'Z', i.e. niece of complainant, again, but even the statement of the other witness 'Y', who is daughter of the complainant, has been recorded for the first time during the course of such investigation. Besides the above, statements of some other witnesses were also recorded and some documentary evidence was collected by the IO during the course of this further investigation and hence, it cannot simply be termed as re-investigation of the case and can only be treated as further investigation.

292. The arguments of Ld. Defence Counsel that re-investigation of the case could not have been done without seeking prior permission of the Court also cannot be accepted since the order dated 12.02.2015 (Ex.PW14/A) vide which SIT was constituted and the notification dated 09.07.2015 (Ex.PW14/C) was never challenged by the Accused Sajjan Kumar at any point of time. Moreover, intimation was given to the concerned Court by the SIT regarding further investigation of the matter. It is also borne out from the record that in addition to recording the statements of victims in detail, SIT also obtained other fresh evidence pursuant to further investigation in the matter and thus, the arguments of the Ld. Defence Counsel that no substantial evidence was collected by the SIT, is not sustainable.

293. IO/PW-14 deposed that during the course of investigation three (03) CAI forms i.e. forms for certified copies Ex.AD/III (Colly) were sent to Record Room Incharge, Tis Hazari Courts, Delhi with a request for certified copies of case FIR No.511/84 PS Punjabi Bagh. The reply of the concerned official dated 08.03.2017 was received which was written on the back side of each of the CAI forms from points X to X1, Y to Y1 and Z to Z1. It has been argued by the Prosecution that on the basis of the aforesaid reports on the admitted documents i.e. CAI Forms Ex.AD/III, it stands proved that the requisite record pertaining to case FIR No.511/84 which culminated in three separate Session Cases being SC No.140/85, SC No.137/85 and SC No.139/85, were destroyed. The relevant entry made by the concerned official Record Room (Sessions), Tis Hazari Courts, Delhi on the CAI Forms Ex.AD/III (Colly) may be reproduced, which reads as under:-

“in SC No.140/85

Sir,

*As per record, the required file has been
destroyed by weeding out cell on 09.06.05.*

sd/-

*Record Keeper
Record Room (Sessions)
Tis Hazari Courts,
Delhi”*

“ in SC No.137/85

Sir,

*As per record, the required file has been
destroyed by weeding out cell on 10.06.05.*

*sd/-
Record Keeper
Record Room (Sessions)
Tis Hazari Courts,
Delhi”*

“ in SC No.139/85

Sir,

*As per record, the required file has been
destroyed by weeding out cell on 09.06.05.*

*sd/-
Record Keeper
Record Room (Sessions)
Tis Hazari Courts,
Delhi”*

294. It is also noteworthy that the above noted CAI Forms only mentions the FIR No. 511/84 PS Punjabi Bagh along with Sections under which the FIR was registered. However, in absence of the copy of judgment or other record relating to the trial of the aforesaid three Sessions Cases, the argument of the learned Defence Counsel that the Accused Sajjan Kumar was also tried in the said case for the aforesaid offences, does not stand proved.

295. In this regard , IO/PW-14 was also cross-examined at length by learned Defence Counsel. Upon being questioned as to how many times the case with respect to killings of S.Jaswant Singh and his son S.Tarundeep Singh or goods looted from their house was investigated prior to decision of SIT, the IO responded as follows:-

“This case in respect of killing of S.Jaswant Singh and his son S.Tarundeep Singh was investigated only one time by the Anti Riots Cell and not before that.”

296. He further denied when asked by learned Defence Counsel that prior to investigation of Riots Cell, this case regarding killings of the above said two persons was also investigated by PS Punjabi Bagh in case FIR No.511/84.

297. In his further deposition, IO/PW-14 deposed that the case diary establishes that the case FIR No.511/84 went on trial. However, he voluntarily stated that the above trial was only for offence under Section 412 IPC against the Accused Babban Singh and Hari Singh etc. and Accused Sajjan Kumar was not tried in the said case for any offence. He further admitted that three separate chargesheets were filed in the said FIR but denied the suggestion that the said three cases were tried for the offences under Sections 147/148/149/302/307/395/397/427/188 IPC and 25/27/54/59 Arms Act. The IO also stated that the judgments of the above three trials held in FIR No. 511/84 PS Punjabi Bagh were also found to have been weeded out.

298. From the above deposition of the IO and the report of the Incharge, CA, Tis Hazari Courts, Delhi on the CAI forms Ex.AD/III (Colly) categorically establishes that the record pertaining to trial in three Sessions Cases in case FIR No.511/84 Punjabi Bagh was weeded out. Further, IO has denied that Accused was also tried for all the offences.

299. Even otherwise, it was open for the Accused to serve a notice for production of documents under Section 91 Cr.PC (now Section 94 BNSS) upon the Investigation Agency and to call for the records pertaining to the trial of case FIR No.511/84 PS Punjabi Bagh from the VRK Branch of the Prosecution in order to substantiate his plea that he had already been tried for the alleged offences in the said case. However, neither any such notice was served on the Investigation Agency nor the Accused produced any certified copy or even photocopy of judgment of case FIR No.511/84 PS Punjabi Bagh to substantiate the arguments that he has already been tried for the same offences in the said case.

300. It also must be borne in mind that in view of the report of the Incharge (Record Room), Tis Hazari Courts, Delhi on CAI forms Ex.AD/III (Colly), the Prosecution had established that the record of trial pertaining to FIR No.511/84 had been weeded out. In these circumstances, the onus to prove that the Accused had been tried for the same offence in the said FIR had shifted upon defence and in absence of any documentary evidence whatsoever or even notice under Section 91 Cr.PC to the Prosecution to produce any such document from VRK Branch, if available, the Accused, in my opinion, has failed to discharge this onus.

301. Moreover, the Prosecution witnesses namely PW-13 has also clarified that she was never summoned or examined by the court in case FIR No.511/84 PS Punjabi Bagh, though she admitted that she had joined the investigation of the case and had also visited PS

Punjabi Bagh in connection with release of her articles. She denied the suggestion that she intentionally appeared as a witness in the said case and voluntarily added during her cross-examination recorded on 02.05.2023 that in fact she came to know about about trial or decision in case FIR No. 511/1984 '*only in the court today*'.

302. PW-11 also upon being questioned by defence during her cross-examination stated that she is not aware if the trial of the case FIR No.511/84 PS Punjabi Bagh resulted in acquittal.

303. Insofar as PW-12 is concerned, she deposed in her cross-examination that she was not summoned by the police to join the investigation of case FIR No.511/84 PS Punjabi Bagh. She further deposed that "*I am not aware and hence, I cannot say if the above case of PS Punjabi Bagh resulted in acquittal of the charge sheeted accused persons.....*"

304. From the aforesaid evidence on record, it thus stands established that the Accused was neither charge sheeted nor tried in case FIR No.511/84 PS Punjabi Bagh. Also the mere fact that the statement of the Complainant was recorded as a witness under Section 161 Cr.PC in the said case cannot said to be a bar for registration of this case as no trial took place in case FIR No.511/84 PS Punjabi Bagh qua the allegations being faced by the Accused in the present case. In fact, as stated by the IO, the above trial was only for offence under Section 412 IPC against the Accused Babban Singh and Hari Singh etc. and Accused Sajjan Kumar was not tried in the said case for any offence. Hence, the registration and filing of charge

sheet in the present case against the Accused and the trial in the present case for the alleged offences by this court cannot be said to be barred under any law or to be prejudicial to the Accused in any manner whatsoever.

305. It is further pertinent to note that letter Ex.PW14/D dated 09.10.1991 of Justice J.D.Jain and Justice D.K. Aggarwal Committee addressed to The Administrator, Union Territory of Delhi mentioned in Paras No. 4 and 5 of this letter as under :-

“4. The Committee is surprised to note that despite all the above information being within the knowledge of the police and examination of the deponent under Section 161 Cr.P.C. during the course of investigation of the Case, the incident was neither investigated fully nor was made the subject matter of the charge-sheet filed in the case. xxxxAxxxx or other injured persons were also not made witnesses for the prosecution. As a matter of fact, no investigation with regard to the allegations of the deponent was made and cognizable offences of heinous nature were altogether ignored by the investigating agency.

5. Under the circumstances, the Committee recommends that a fresh case may be registered in respect of the murders of Jaswant Singh and Tarundeep Singh multiple injuries inflicted on other members of the family and the looting and burning of their house and other property under Section 147, 148, 149, 302, 307, 395, 397, 458 & 440 I.P.C. and investigated by an

independent agency other than the local police.”

306. Thus the above-mentioned Committee apparently took the decision of recommending registration of a fresh case in respect of murder of family members of complainant and regarding looting and burning of their house, taking note of the fact that no investigation was conducted in respect of the allegations made by the Complainant, though were very much within the knowledge of police. Further, the Complainant PW-13 in her cross examination dated 02.05.2023, also reiterated that she was never summoned or examined by the Court in case FIR No. 511/1984. She denied the suggestion given by the Defence that though she was summoned to appear as witness in the above case, but she intentionally did not appear as a witness in the said case and it was because her stand throughout had been that she did not identify any participant of the above mob. She volunteered that *“I have come to know about trial or decision in above case FIR No. 511/1984 only in the court today.”*

307. The IO PW14 also clarified in his cross examination by voluntarily stating that the trial in the said case was against Baban Singh and Hari Singh etc. and Accused Sajjan Kumar was not tried in the said case for any offence. He also deposed that he wrote to the VRK branch for records of the case, but the same was not available and judgments of the said three trials were also weeded out.

308. Though it is the contention of the accused that prosecution

did not summon the record of the trial of case FIR No. 511/1984 from VRK Branch, however, in the light of the admitted document i.e. Ex.AD/III (Colly), the above noted cross examination of the complainant PW13 deposition of and the IO PW14, it stands established that the investigation and trial of the said case was not conducted in respect of all the offences under which case was registered and was only confined to the offence under Section 412 IPC.

309. There is also no reason to disbelieve the testimony of complainant whose deposition remained unimpeached despite a lengthy cross examination by Ld. Defence Counsel and she reiterated that she was never summoned during the trial of the said case.

310. I further find myself in agreement that the submission of the Prosecution that since the Accused did not challenge the constitution of SIT at any point of time, it is now not open to the Accused to challenge the investigation conducted in accordance with the terms of reference to the said SIT after giving intimation thereof to the concerned Court.

311. At this juncture, it may also not be out of place to refer to the order on charge dated 04.12.2021. In the said order, the arguments of the defence with regard to its objection regarding filing of the present chargesheet for the incident in question and trial of the case for the alleged offences being barred under Section 300(1) Cr.P.C. and Article 20(2) of the Constitution of India have been dealt with

at length by this Court. It was held after discussion of the objection/arguments of the Ld. Defence Counsel that the filing of the present chargesheet and the present trial is not barred by law. Admittedly, the order on charge dated 04.12.2021 has not been challenged by the Accused till date and the findings of the court in respect of the above objections have thus, even otherwise, attained finality.

312. It is also relevant to mention that though this plea was raised initially by the Accused at the stage of final arguments, however, after some submissions, learned Defence Counsel had conceded, in all fairness, that his above objections having been heard and decided, the case of the Prosecution cannot be challenged on this score.

313. I may also add that it stands proved from deposition of complainant PW13 that she never received any notice regarding filling of the Untrace report in the present case i.e. FIR No.458/91 PS Saraswati Vihar, nor was she aware about the acceptance thereof. Although it is mentioned in the last paragraph of the Untrace report Ex.AD/II (colly) that an intimation regarding the Untrace report is being sent to the complainant, however, there is no document on record to establish that any such intimation was even sent to her. It is also apparent that the Ld. MM accepted the Untrace report on 08.07.1994 without assigning any notice to the Complainant before accepting the Untrace report. It would be of relevance to revisit the deposition of PW13 in this regard, particularly her voluntary

statement recorded during her cross examination dated 02.05.2023 wherein she has deposed that :-

“It is correct that during the period from 1994 till 2016 when SIT was formed, I did not protest against above final report or closure of the case and I did not approach any authority with my grievances. (Vol. It is so because, I had no knowledge about filing or acceptance of above closure report ...)”

314. She had also deposed on the same day during her cross examination that :-

“No intimation by the IO or any court was given to me about filing of the above closure report. It is wrong to suggest that I was intimated by the IO about filing of the said report and even intimation about the said report was given to me by the court, but I intentionally did not appear in the court to protest against the said report. It is also wrong to suggest that I did not appear before the court to protest it as I have no grievance to the filing of above closure report.

It is wrong to suggest that I was intimated by the IO about filing of the said report and even intimation about the said report was given to me by the court, but I intentionally did not appear in the court to protest against the said report. It is also wrong to suggest that I did not appear before the court to protest it as I have no grievance to the filing of above closure report. I am not aware if the above closure report was accepted on 08.07.1994.”

315. Hence, in the light of the above discussion, both these objections of Defence must fail.

Whether the Prosecution has been able to prove the charges against the Accused?

316. As mentioned above, Accused Sajjan Kumar is facing trial in this case for the following charges:-

<i>Sections (IPC)</i>	<i>Brief description</i>
147	Rioting
148	Rioting, armed with deadly weapon
149	Every member of unlawful assembly guilty of offence committed in prosecution of common object
302 r/w S.149	Committing murder, being member of an unlawful assembly
308 r/w S.149	Attempt to commit culpable homicide, being member of an unlawful assembly
323 r/w S.149	Voluntarily causing hurt, being member of an unlawful assembly
395 r/w S.149	Committing dacoity, being member of an unlawful assembly
397 r/w S.149	Robbery, or dacoity, with attempt to cause death or grievous hurt, being member of an unlawful

	assembly
427 r/w S.149	Mischief causing damage to the amount of fifty rupees or upwards, being member of an unlawful assembly
436 r/w S.149	Mischief by fire or explosive substance with intent to destroy house, etc., being member of an unlawful assembly
440 r/w S.149	Mischief committed after preparation made for causing death or hurt, being member of an unlawful assembly

317. From the testimonies of PW-11, PW-12 & PW-13, who have deposed consistently and have been held to be credible witnesses of the Prosecution, it has been established that the members of the mob were armed with lathis, bricks and iron rods.

318. PW-11, daughter of the deceased S. Jaswant Singh deposed as follows:-

“I was hit on my head with a brick and rod and my father and brother were battered in a very bad manner by the crowd.”

319. She also deposed that in order to save her father and brother respectively, her mother (PW-13) and cousin (PW-12) had even laid upon them in an attempt to save them from the crowd. She further deposed that the ribs of her mother were broken and even she, her cousin and her *bua* were also hurt badly.

320. The medical certificate in respect of PW-11 was exhibited as Ex.PW-1/C. It has been discussed in the preceding paragraphs that PW-1 was not cross-examined by the defence and the deposition of PW-1, being unrebutted must be accepted. In this regard, reliance may again be placed on case titled as *Mahavir Singh vs. State of Haryana* (*Supra*). The only objection of the defence was with regard to mode of proof of this document i.e PW/1/C for the reason that the original of the same was not produced at the time of examination of PW-1. However, the original medical records were subsequently produced by the Complainant PW-13 when she stepped into the witness box and it has already been observed that the sole objection of the defence as to the non production of the original medical documents, thus does not survive.

321. Accordingly, as per Ex.PW-1/C, which is the medical certificate of PW-11, it has been established that PW-11 sustained multiple injuries including head injury which required many stitches and various other blunt injuries and contusions all over her body.

322. Similarly, the medical certificate Ex.PW-1/B of PW-12, reflects that she was brought to the hospital for treatment of multiple injuries including deep wounds on scalp which required fifteen (15) stitches and that she had various contusions all over her body.

323. As regards the deceased sister-in-law of the Complainant the medical certificate Ex.PW-1/D reflects that she had sustained

multiple grievous injuries including fracture of left hand, deep cuts on scalp requiring stitches and various contusions all over her body.

324. PW-1 Dr.Ashok Kumar Kapoor deposed that the certificates Ex.PW1/B, Ex.PW1/C & Ex.PW1/D “*were issued by me in my own handwriting*”. The objection with regard to admissibility of the said documents on the ground that they were photocopies as discussed above, does not survive in view of the fact that the originals of the said documents were produced by PW-13 in the course of trial. The Prosecution has thus by way of unrebutted testimony of PW-1 Dr.Ashok Kumar Kapoor has been able to establish the fact that PW-12 sustained deep wounds requiring as many as fifteen (15) stitches on her scalp and that PW-11 also sustained multiple injuries including head injuries requiring many stitches and contusions all over her body. Similarly, Ex.PW1/D proves the injuries sustained by the deceased sister-in-law of the Complainant.

325. PW-12 & PW-13 deposed that the mob comprising of thousands of persons were armed with iron rods, stones, bricks etc. PW-12 further deposed that the mob started pelting stones/bricks indiscriminately on them as well as their house. She also deposed that she along with her mother, her aunt and her cousin had suffered severe injuries at the hands of the mob and that she and her aunt also suffered head injuries and had stitches on their head and the ribs of her aunt were also broken in these beatings.

326. PW-13 herself also deposed about the mob being armed with

lathis and 'sarias' when the mob attacked their house at around 4/4:30 PM. During her deposition recorded on 10.02.2023, she also deposed that her daughter has also sustained head injuries in the above incident and got stitches on her head.

327. All the above noted witnesses deposed that the mob attacked their house and looted household articles like Sofa, T.V. etc and also set their house on fire.

328. Significantly, and as also noted earlier, the defence has not disputed the incident which occurred on 01.11.1984 and there is no cross-examination of any of the above-mentioned witnesses i.e. PW-11 & PW-12, on these aspects i.e. the factum of attack by the mob at the house of Complainant PW-13, the looting and burning of their house and household articles, the brutal beatings given to her and her family members and also the beatings and burning of her husband S.Jaswant Singh and her son Tarundeep Singh.

329. A reading of the evidence led during trial cumulatively thus establishes beyond reasonable doubt that the victims sustained injuries, so much so that PWs 11 & 12 even required various stitches for such head injuries sustained by them. The said injuries having been caused with blunt objects like bricks, *lathis* and iron rods etc. have been proved to have been inflicted with an intention or knowledge and under such circumstances that if their death was caused as a result thereof, then the Accused and other members of the mob would have been guilty of the offence of culpable homicide

not amounting to murder.

330. PW-13 also deposed that she sustained injuries at the hands of the mob when she attempted to save her husband from the mob by laying upon him and thus it stands proved that the Complainant suffered multiple injuries upon her person in the said incident. The presence of Accused as a part of and as leader of the mob has been established on record.

331. From the above discussion and upon considering the evidence, both oral and documentary led on record in the course of trial, I am of the considered opinion that the Prosecution has been able to bring home the guilt of the Accused. It has been established that the Accused was instigating the mob, which was armed with deadly weapons i.e. lathis and *sarias* etc. and that the mob being an 'unlawful assembly' within the meaning of Section 141 IPC used force and violence in prosecution of the common object of looting, committed the offence of rioting armed with deadly weapons. Further, the fact that the members of the 'unlawful assembly' were armed with iron rods, *lathis*, bricks etc. also proves that alleged offences were committed after having made preparations for committing such offences.

332. It has further been established that Accused Sajjan Kumar, being a member of such unlawful assembly, is guilty of having committed the murder of S.Jaswant Singh and S.Tarundeep Singh, the husband and son of the Complainant PW-13, during the incident

of rioting which occurred on 01.11.1984.

333. Besides this, the above named Accused, being a member of the aforesaid unlawful assembly which used force and violence by use and means of deadly weapons, committed the offence of attempt to commit culpable homicide punishable under Section 308 IPC as it has been established that the victim namely 'Z' suffered deep injuries on her head requiring as many as fifteen (15) stitches 'Y'/PW-11 also sustained head injuries which required many stitches besides various other blunt injury and contusions all over her body.

334. Complainant PW-13 is also proved to have suffered injuries at the hands of the aforesaid mob of which the Accused was a part of. Though she deposed that she suffered grievous injuries while trying to save her family members, but in absence of any medical certificate to this effect, the injuries suffered by PW-13 have not been proved to be grievous in nature. However, her deposition that she sustained injuries during the incident has not been challenged in cross-examination.

335. From the evidence on record, it has further been established that the said unlawful assembly or mob comprising of thousands of persons armed with deadly weapons like '*lathis*', '*sarias*' etc. resorted to looting, burning and destruction of property and the mob in furtherance of said common object attacked the house of the Complainant PW-13, looted the household articles and destroyed her

house by setting it on fire.

CONCLUSION:-

336. In conclusion, in the light of the above discussion and the evidence on record considered in its totality, I am of the opinion that Prosecution has been able to prove its case against the Accused beyond reasonable doubt. Thus, Accused ***Sajjan Kumar S/o Ch.Raghunath Singh*** is hereby convicted for offences punishable under Sections 147/148/149 IPC and for offences punishable under Sections 302/308/323/395/397/427/436/440 read with Section 149 IPC.

337. Let a copy of this judgment be provided to the Accused free of cost. A copy of the judgment be also provided to learned Addl. PP for the State.

338. The case is now directed to be listed on **18.02.2025** for arguments on the point of sentence.

**Announced in open court
on 12th day of February, 2025**

**(Kaveri Baweja)
ASJ/Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 12.02.2025**