

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

Reserved on: 6th September, 2018
Decided on: 31st October, 2018

+ **CRL.A. 574/2015 & CrI.M.A.No. 8003/2015**

ZULFIKAR NASIR & ORS. ... Appellants
Through: Ms. Rebecca John, Sr. Advocate with
Mr. Harsh Bora, Ms. Ratna
Appender & Ms. Megha Bahl,
Advocates.

versus

STATE OF UTTAR PRADESH & ORS. ... Respondents
Through: Mr. Kaushal Yadav, PP with Mr.
Ram Kishor Singh Yadav, AOR and
Mr. Zaki Ahmed Khan, Mr. Nandlal
Kumar Mishra, Mr. Sanjay Bhardwaj
& Mr. Vikas Bhadauria, Advocates
for State of UP.
Mr. Gopal Krishna & Mr. B.P.
Sharma, Advocates for Respondent
Nos.2, 12 & 15.
Mr. Aamir Khan, Advocate for
Respondent Nos.3, 6, 7 & 8.
Mr. L.D. Mual, Mr.R.P.Duggal, Mr.
Virender K. Mual & Mr. Yoginder
Singh, Advocates for Respondent
Nos. 4, 9, 10, 11 & 13.
Mr.S.A.A Abdi, Advocate for
Additional SPP.
Ms. Vrinda Grover & Mr. Soutik
Bannerjee, Advocates for
Intervenor/NHRC.

+ **CRL.A. 629/2015 & Crl. M. A. Nos. 7952/2015 & 18326/2016**

BABUDDIN & ANR.

..... Appellants

Through: Mr. Mushtaq Ahmad, Advocate.

versus

STATE OF UTTAR PRADESH & ORS.

..... Respondents

Through: Mr. Kaushal Yadav, PP with Mr. Ram Kishor Singh Yadav, AOR and Mr. Zaki Ahmed Khan, Mr. Nandlal Kumar Mishra, Mr. Sanjay Bhardwaj and Mr. Vikas Bhadauria, Advocates for State of UP.

Mr. Gopal Krishna & Mr. B.P. Sharma, Advocates for Respondent Nos.2,12 & 15.

Mr. Aamir Khan, Advocate for Respondent Nos.3,6,7 & 8.

Mr. L.D. Mual, Mr.R.P.Duggal, Mr. Virender K. Mual & Mr. Yoginder Singh, Advocates for Respondent Nos. 4, 9, 10, 11 & 13.

Mr. S.A.A. Abdi, Advocate for Additional SPP.

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CRL.A. 884/2015

STATE OF U P

..... Appellant

Through: Mr. Kaushal Yadav, PP with Mr. Ram Kishor Singh Yadav, AOR and Mr. Zaki Ahmed Khan, Mr. Nandlal Kumar Mishra, Mr. Sanjay Bhardwaj & Mr. Vikas Bhadauria, Advocates for State of UP.

Mr. S.A.A. Abdi, Advocate for
Additional SPP.

versus

SURESH CHAND SHARMA & ORS. Respondents

Through: Mr. Gopal Krishna & Mr. B.P.
Sharma, Advocates for Respondent
Nos.1,11 & 14. Mr. Aamir Khan,
Advocate for Respondent Nos.2,5,6
& 7.

Mr. L.D.Mual, Mr.R.P.Duggal, Mr.
Virender K. Mual & Mr. Yoginder
Singh, Advocates for Respondent
Nos. 2, 8, 9, 10 & 12.

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

J U D G M E N T

Dr. S. Muralidhar, J.:

1.1 Hashimpura is a *mohalla*, i.e. a small area of Meerut city, about 82.5 kms north-east of Delhi, in Uttar Pradesh. Meerut's population in terms of the 2011 census was approximately 3.5 million. Around 36% of the population are Muslims. Many of them earn meagre sums as artisans and labourers to keep themselves and their families going.

1.2 On 22nd May 1987, in the evening hours, Hashimpura witnessed a tragedy that would leave a deep festering wound. Around 42 to 45 men, old and young, all Muslim, were rounded up by the Provincial Armed

Constabulary (PAC), packed into a truck and taken away. Each of them was shot by the PAC personnel with .303 rifles in cold blood and the bodies despatched to a watery grave - some in the Gang *nahar* (canal) and the remaining in the Hindon river. Five of them survived to recount the horrific tale. Of the 38 that were killed, the dead bodies of just 11 of them were able to be identified later by their relatives. The remaining bodies were not recovered.

1.3 In May, 1987 communal riots took place in Meerut District. As a result, the police, paramilitary and military forces had been posted at *mohalla* Hashimpura for riot control and security. This included the 'C-Company' of the 41st Battalion of the PAC. On 21st May 1987, the brother of an Army Major was killed in the *mohalla* adjacent to Hashimpura and two rifles belonging to the PAC personnel 'were looted by certain anti social elements'. This led to the registration of FIR No. 204/1987 at PS Civil Lines, Meerut under Sections 147, 148, 149, 302, 307, 347, 436 and 336 of the Indian Penal Code (IPC). The criminal case arising therefrom is still pending before the Chief Judicial Magistrate (CJM) Meerut.

1.4 On 22nd May 1987 post noon, around 644 men, all Muslim, belonging to *mohalla* Hashimpura were arrested under Sections 107, 116 and 151 Cr PC. They were first rounded up under a *peepal* tree in Hashimpura and divided into two groups. The first group comprised elderly men and young boys and the second comprised young men. They were to be sent to the PS Civil Lines and Police Lines in Meerut in the trucks of the PAC, the Army, the CRPF and the local police on the directions of the District

Administration. The 42 to 45 males rounded up by the PAC and taken away in a truck and killed belonged to the first group.

1.5 The criminal justice process in connection with the murders commenced with the registration of two first information reports (FIRs). FIR No.110/1987 was registered at PS Link Road, Ghaziabad on 22nd May, 1987 and FIR No.141/1987 was registered at PS Murad Nagar, Ghaziabad on 23rd May, 1987. The investigation of both cases was handed over to the Crime Branch, Criminal Investigation Department (CB-CID), Uttar Pradesh.

1.6 The CB-CID filed a charge sheet in the criminal court in Ghaziabad in 1996, nine years after the event. 18 officers of the PAC were arraigned as accused in the first charge sheet. The 19th accused was arraigned in the supplementary charge sheet. Under the orders of the Supreme Court, passed in 2002 and 2007, the trial of the cases was transferred to Delhi. Charges were thereafter framed by the trial court on 24th May, 2006 against all the accused under Sections 147, 148, 149, 120B and 364/302/307/201 all read with 149 IPC. 19 years had elapsed by this time. During the pendency of the trial three of the accused died. The trial meandered for over eight years ending in a judgment dated 23rd March 2015 whereby all the 16 remaining accused were acquitted. That was 28 years after the commission of the crime.

1.7 Aggrieved by the acquittal, three appeals have been filed in this Court - two by the victims and their families and one by the State of U.P. This Court permitted the National Human Rights Commission (NHRC) to

intervene. Accepting the plea of the NHRC, this Court permitted additional evidence to be recorded by the trial Court, even while these appeals were kept pending.

1.8 By this judgment in the said appeals, we proceed to reverse the judgment of the trial Court and hold the 16 accused guilty of the offences with which they were charged viz., criminal conspiracy, kidnapping, murder, causing evidence of the crime to disappear. In arriving at this conclusion, we have also relied on the additional evidence recorded, which was not available to the trial Court. We hold that this was targeted killing by armed forces of the unarmed, innocent and defenceless members of a particular community.

1.9 We are conscious that for the families of those killed, this is perhaps too little, too late. They have had to wait for 31 years for justice. The monetary compensation they have received cannot make up for the lives lost. This case points to the systemic failure that results, not infrequently, in a miscarriage of justice.

The unfolding of events

2. Surender Pal Singh (since expired) was the Commander of the C-Company of the 41st Battalion of the PAC. The 18 other members of the C-Company (arrayed as Respondents 1 to 19 in CrI.A.884/2015) were the accused in the two FIRs.

3. The trigger to the events leading to the registration of the two FIRs have been noticed earlier. To continue the narration of events that transpired at

Hashimpura on 22nd May 1987 in the evening at around sunset, the PAC officials/*jawans* wearing *khaki pilli* (dusky yellow) coloured uniforms, armed with rifles with *sangeens* (bayonets) gathered about 42 to 45 able bodied elderly men and young men and made them board a yellow coloured truck with PAC written on it in white paint. It is stated that about 18 to 20 PAC *jawans* also got into the same truck having registration No. URU-1493, which belonged to C-Company of 41st Battalion PAC.

4. The said truck, driven by Constable Mokam Singh, moved away from *Mohalla* Hashimpura towards the Delhi road. After moving for some time the truck stopped to allow more PAC officials to board. It then began moving again. After about 1 to 1½ hours of the journey, the truck reached the *patri* of *Gang nahar* in Murad Nagar. After travelling for about 1½ kilometres on the *patri*, the truck was brought to a halt. The lights of the truck were then switched off.

5. After stopping the truck, the accused personnel of the PAC started bringing down the persons from the hold one by one. The first person to be brought down - Mohd. Yasim, a resident of Hashimpura *mohalla*, was shot with the rifle of one of the PAC *jawans* and his body was thrown into the *Gang nahar*. The next one, Ashraf, was similarly brought down, fired at and killed and his body was thrown into the canal. The third person brought down was Zulfiqar Nasir (Appellant No.1 in CrI A No. 574 of 2015) who was also a prosecution witness (PW-1) in the trial. He too was shot by the accused and thrown into the canal. PW-1 deliberately stopped breathing,

feigning death. He managed to survive by concealing himself in the bushes around the water and later escaping on foot from the canal.

6. At the time when PW-1 was concealing himself, those inside the truck began shouting '*bachao bachao*'. Upon this, the accused present at the spot began firing indiscriminately at the persons inside the truck. Those inside the truck who were thus injured included Mohd. Usman (PW-3), Muzib-ur-Rehman (PW-4) and Babuddin (PW-11 and Appellant No.1 in Crl.A.629/2015). Leela Dhar (A-12), himself an accused, was part of the PAC jawans who also suffered an injury at this time by a ricocheting bullet. After this the accused persons began throwing the bodies of those they had shot into the waters of the canal. In this process 15 to 16 bodies were thrown into the Gang *nahar*. These included three who miraculously survived: Mohd. Naeem (PW-2), Mohd. Usman (PW-3) and Muzib-ur-Rehman (PW-4).

7. Noticing the headlights of an approaching vehicle, the accused persons stopped firing. The truck URU-1493 was driven back to the main road. After about 30 minutes, the truck again stopped at the *pul/culvert* of the Hindon Canal near Makanpur village. The accused persons got out of the truck and opened the rear portion (*dala*). They again brought down the remaining abducted persons and fired at them one by one. 15 to 20 persons, who were thus killed, were thrown into the canal. Babuddin (PW-11) who was also similarly shot at and thrown into the canal, miraculously survived.

The two incidents

8. There were, therefore, two separate incidents that took place on the evening of 22nd May, 1987. The first incident took place at the Gang *nahar* in Murad Nagar. This further involved two distinct stages: one being the shooting of three persons i.e. Mohd. Yasim, Ashraf and Zufiqar Nasir and their bodies being thrown into the Gang *nahar* and the other the indiscriminate firing upon those inside the PAC truck and throwing 15 to 20 of the abducted persons who had been shot into the Gang *nahar*.

9. The second incident was that which took place at the Hindon Canal *pul/culvert* where the remaining abducted persons were pulled down from the truck, shot at point blank range and their bodies thrown into the Hindon canal.

10. According to the prosecution, from the above two incidents, it could be reasonably inferred that close to 42 to 45 persons were abducted and barring five who survived i.e. Zulfiqar Nasir (PW-1), Mohd. Naeem (PW-2), Mohd. Usman (PW-3), Muzib-ur-Rehman (PW-4) and Babuddin (PW-11), the remaining were killed by the PAC jawans/officers.

Those identified

11. Out of the 38 deceased, the following 11 persons could be identified by their respective relatives:

<i>Name of Deceased</i>	<i>Witness to Abduction of Deceased</i>
Mohd. Iqbal s/o Dil Sher Khan	PW21, Zaibunissa (wife of Mohd. Iqbal) and Alua (brother of Mohd. Iqbal) as per Ex.PW23/A

Islamuddin s/o Hafizuddin	PW19, Iqbal (brother of Islamuddin)
Javed s/o Zahir Ahmed	PW22, Abdul Hamid (uncle of Javed), and PW77 Hazara (aunt of Javed), PW78 Zarina (mother of Javed) (also see Ex.PW23/A)
Ayub s/o Zaeed	Aziz and Mohd. Ilyas, as per Ex./PW23/A
Naeem s/o Noor. Mohd.	PW20, Mohd. Saleem (brother of Naeem) and Salim Abdul Aziz (neighbour of Naeem), as per PW23/A.
Alauddin s/o Hafizuddin	Azidam (mother of Alauddin) and Gaffar (neighbour) as per Ex.PW23/A
Akil s/o Azimuddin	PW23, Shakeel Ahmad (brother of Akil) and Shakeel, as per Ex.PW23/A.
Jamshed s/o Zainuddin	Zainuddin (father of Jamshed) and Arif as per Ex.PW23/A.
Rizwan s/o Inamulla	Naseem (mother of Rizwan) and Afroz (sister of Rizwan) as per Ex.PW23/A
Munne s/o Alladia	Nanua and Mohd. Ilyas as per Ex.PW23/A
Hafizuddin s/o Munshi	Qutubuddin and Dilshad, as per Ex.PW23/A.

12. Many of the dead bodies recovered were labelled as ‘unknown persons’. Their post-mortems were nevertheless conducted. However, the dead bodies were never shown to the families of the deceased/missing persons. This meant that there was no identification of the aforementioned dead

bodies. The only identification that was carried out was through photographs of the dead bodies and the clothes worn by the dead persons at the time of discovery which was noted as Identification Memo Nos. Ex. PW-23/A and PW-62/A. Some of the deceased/missing persons were identified by the witnesses from the photographs exhibited by Praveen Jain (PW-86).

Those whose bodies were not recovered

13. The bodies of the following 22 abducted persons could never be found:

<i>Name</i>	<i>Witnesses to Abduction</i>
Naim s/o Abdul Hamid	PW22, Abdul Hamid (father) PW77, Hazara (mother)
Mohd. Yasin (please see paragraph 12 on Page 9)	PW1 Zulfikar Nasir PW2, Mohd. Naeem PW25, Mohd. Akhlaq (son)
Nizamuddin s/o Abdul Shakul	PW31 Gaffar (brother) and PW30, Shakeel Ahmed, and also as per Ex.PW23/A
Qadir Ahmed	PW48, Jamil Ahmed (son) PW55, Dr. Zahiruddin Ansari
Khadir	PW49, Mehmuddan (wife)
Hazi Shamim Ahmed s/o Wali Mohd.	PW50, Laik Ahmed (brother) PW51, Mehrunissa PW55, Dr. Zahiruddin Ansari
Hazi Mustqeen	PW52, Rahis Ahmed (son) PW60, Tanveer (son) PW58, Abdul Alim PW62, Sher Ali, Tailor
Qamruddin (please see paragraph 11 on page 9)	PW1 Zulfikar Nasir PW2, Mohd. Naeem PW53, Jamalludin (son)

	PW54, Parvez Ahmed
Sadrudin s/o Mohd. Ali Ullah	PW63, Fariduddin (brother) PW55, Dr. Zahiruddin Ansari
Mehtab s/o Jaffar	PW61, Jaffar (father)
Zahir Ahmed	PW78, Zarina (wife)
Mohd. Haneef	PW87, Mohd. Isa (cousin)
Azim	PW11 Babudeen
Kausar Ali	PW4, Muzib-ur-Rehman PW11, Babudeen
Hansalauddin	PW11 Babudeen
Arif	PW1 Zulfikar Nasir
Sarfaraz	PW1 Zulfikar Nasir
Mehboob Ali	PW1 Zulfikar Nasir
Hanif	PW1 Zulfikar Nasir
Mohd. Azeem	PW4, Muzib-ur-Rehman (nephew of Mohd. Azeem)
Mohd. Kauser	PW4, Muzib-ur-Rehman (nephew of Mohd. Kauser)
Ashraf	PW1, Zulfikar Nasir

Transfer of cases

14. To continue the chronological narration, on 24th May, 1987 the investigation of both FIRs was transferred to the CB-CID, Uttar Pradesh. As already noted the chargesheets were filed in 1996. Between 1997 and 2000, the learned Sessions Judge, Ghaziabad issued warrants against accused persons about 23 times but was unsuccessful.

15. In September 2002, unhappy with the progress of the investigation, the families of the deceased filed Transfer Petition (Crl.) No. 321/2002 in the

Supreme Court of India seeking transfer of the trial from the Sessions Court, Ghaziabad to the corresponding Court in Delhi. By orders dated 22nd September, 2002 in Transfer Petition (Crl.) 321/2002 and 11th July, 2007 in Transfer Petition (Crl.) 285/2006, the Supreme Court transferred both criminal cases to the District and Sessions Judge, Delhi (hereafter the ‘trial Court’).

The trial

16. The trial Court framed charges against 19 accused on 24th May, 2006 for the offences under Sections 147, 148, 149, 120B and 364/302/307/201 all read with 149 IPC. Each of them pleaded not guilty and claimed trial. Three of the accused, Surender Pal Singh [Accused No.1 (‘A-1’)], Kush Kumar (A-5) and Om Prakash Sharma (A-18) expired during the pendency of the trial.

17. The recording of evidence of PW-1 Zulfiqar Nasir commenced on 22nd July, 2006. It is only on 23rd May 2014, that the statements of the accused were recorded under Section 313 Cr PC. Thereafter on 21st March 2015, the trial Court passed the impugned judgment.

Impugned judgment of the trial Court

18. The trial Court, in the impugned judgment, delineated the following ‘facts in issue’:

“1. That on 21.05.1987 there was a deadly assault on Provincial Armed Constabulary in Meerut and two rifles of PAC personnel were looted by certain anti-social elements and on the same day Sh. Prabhat Kumar Kaushik was murdered in

Mohalla Suraj Kund adjacent to *Mohalla* Hashimpura in Meerut.

2. That upon incident dt. 21.05.1987 a meeting of District Administration Officers including police officers took place and consequent upon that, a search for illegal arms in *Mohalla* Hashimpura Meerut was launched. Curfew was already clamped in the city of Meerut and mission for search and arrest was carried out by the District police, PAC and army.

3. About 644 persons belonging to *Mohalla* Hashimpura and adjoin *Mohalla* were arrested u/s 101/151/116 Cr.P.C and arrangements were made to send the arrested persons to police station Civil Lines and Police Lines Meerut with the help of trucks of police PAC and army.

4. That about 42 persons arrested from *Mohalla* Hashimpura were put in a PAC truck and the said truck, instead of police station or police line, was taken to Gang Nahar Murad Nagar.

5. That at Gang Nahar Murad Nagar, the PAC officials fired at the arrested persons making them get down from the truck and some were fired at in the truck itself and that the PAC *Jawans* after shooting the persons one by one kept on throwing them in Upper Ganga Canal with the impression that they were all dead.

6. That apprehending the exposure of crime, the PAC *Jawans* diverted the truck from Gang Nahar to Hindon river and completed the process of killing and throwing in Hindon waters near village Makanpur, the remaining persons rounded up from *Mohalla* Hashimpura.

7. That in the incident, the persons namely Zulfiqar, Naeem, Arif, Mohd. Usman, Muzibar Rehman and Babuddin survived the assault and remaining about 35 persons were killed by the official .303 rifles of the PAC officials.

8. That accused Leeladhar sustained injuries during indiscriminate firing in the truck taken place at Gang Nahar Murad Nagar.

9. That the truck which was used in the incident was of 41st Battalion PAC with registration no. URU-1493.

10. That the said truck had come from Pilokhadi Chowki and was driven by accused Mohkam Singh.

11. That the accused persons facing trial led by the Platoon Commander accused Surender Pal Singh (since deceased), were the PAC officials present on above mentioned truck who committed the alleged crime.”

19. The witnesses who had deposed as regards facts 1, 2, 3, 4, 5 and 6 were Zulfiqar Nazir (PW-1), Mohd. Naeem (PW-2), Mohd. Usman (PW-3), Muzib-ur-Rehman (PW-4) and Babuddin (PW-11). The trial Court noted that the following witnesses also deposed in relation to the above facts:

“PW-19 Iqbal, PW-20 Mohd. Saleem, PW-21 Mst. Zebunnisa, PW-22 Abdul Hamid, PW-23 Shakeel Ahmed, PW-30 Shakeel Ahmed, PW-31 Gaffar, PW-48 Zameel Ahmed, PW-49 Mst. Mehmuddin, PW-50 Laik Ahmed, PW-51 Mst. Mehrunisha, PW-52 Rahis Ahmed, PW-53 Jamalludin, PW-54 Parvej Ahmed, PW-55 Zahiruddin Ansari, PW-57 Sakhawat Ali, PW-58 Abdul Alim, PW-60 Tanvir, PW-61 Mohd. Zafar, PW-62 Sher Ali, PW-63 Faridudin, PW-64 Anwar Ahmed, PW-66 Sirajuddin, PW-67, Abdul Gaffar, PW-68 Abdul Hamid, PW-77 Mst. Hazara, PW-78 Mst. Zarina and PW-87 Mohd Isha”

20. The said witnesses had categorically deposed that on 22nd May, 1987 they were present in their houses in *mohalla* Hashimpura when a search

was conducted by the officials of different armed forces like PAC, Police and Army and hundreds of persons were taken away by them.

21. Further, Praveen Jain (PW-86) (who working as Chief Photographer of the 'Sunday Mail' at the time) was present at the spot on 22nd May, 1987. His photographs (Ex. PW86/A1 to A15) with their negatives (Ex. PW86/B) also corroborated the above facts.

22. The trial Court further observed that there were no witnesses examined to prove the deadly assault on the PAC and the looting of the two rifles by anti-social elements as claimed by the prosecution. There was also no witness to the alleged killing of Mr. Prabhat Kumar Kaushik (the brother of the Army Major) in *mohalla* Suraj Kund adjacent to *mohalla* Hashimpura. However, several witnesses deposed categorically that curfew had been imposed in Meerut. The trial Court held that although there was no evidence to show that the residents of Hashimpura were arrested under Sections 107, 151 and 116 Cr PC, there was sufficient evidence to show that curfew was already imposed in Hashimpura and several hundred persons from several *mohallas* including Hashimpura were rounded up and brought near the *peepal* tree in Hashimpura by the local police, the Army and the PAC.

23. The conclusions arrived at by the trial Court regarding facts 1, 2 and 3 were as under:

“As a result of combined reading of the above mentioned prosecution witnesses, it can be said that a search operation was conducted by police, PAC and army in Mohalla

Hashimpura and adjoining areas on 22.05.1987 and several persons were detailed/arrested and taken to different places like police station or police line etc.”

24. As regards facts 4, 5 and 6, the witnesses that spoke about it were Zulfiqar Nazir (PW-1), Mohd. Naeem (PW-2), Babuddin (PW-11). The trial Court held that they had given detailed accounts of the entire incident starting from Hashimpura to the incident at Hindon river, Ghaziabad. The said testimonies were consistent and corroborated each other. The further witnesses who spoke about the incident that took place at Gang *nahar*, Murad Nagar included Inspector Rajender Singh Bhagor (PW-33), Mohd. Usman (PW-3), Muzib-ur-Rahman (PW-4) and N.U Ansari (PW-56). They had interacted with PW-1 and conveyed news of the incident to Syed Shahabuddin, who was a Member of Parliament (MP) at the time. PWs 6, 7 and 8, Digambar Tyagi (PW-12) and Inspector Virender Singh Yadav (PW-13) were the other important witnesses as regards the above facts.

25. The trial Court further held that “so far as the facts regarding abduction of about 42 persons from *mohalla* Hashimpura in the PAC truck is concerned, the testimonies of PW-1, PW-2, PW-3, PW-4 & PW-11, who all are survivors and were present in the said truck, is quite specific and categorical.”

26. According to the trial Court, the testimonies of several of the injured eye-witnesses showed that the improvements made over them by the concerned witnesses in Court were in the form of “further explanation and the same are not contrary to the earlier statement given to police”. The contradictions and improvements claimed by the defence counsel were

minor in nature, so far as the description of the truck and the accompanying officials being related to the PAC was concerned.

27. As regards the incident at Gang *nahar*, Murad Nagar, the testimonies of PWs 1, 2, 3, 4 and 11 were “quite clear, specific, explicit and descriptive”. As regards the incident at Hindon River near Makanpur village, the evidence of the aforementioned PWs corroborated by PWs 13, 14, 36, 45 and 80 stood proved on record. The conduct of the other witnesses was found to be truthful, genuine and reliable. Thus facts 4, 5 and 6, were also held by the trial Court to be duly proved.

28. As regards the fact No.7, the trial Court observed that there were doubts as to the identities of the deceased. The names of 22 persons were, however, not proved. In many of the cases details about parentage and addresses were also not made available. The dead bodies continued to be marked as those of unknown persons. Likewise, the medical reports were also of unknown persons. The trial Court, on a combined reading of the PWs reached the following conclusions:

"Firstly, the persons namely Zulfikar Nashir (PW-1), Mohd. Naeem (PW-2), Mohd. Usman (PW-3), Muzibur Rehman (PW-4) and Babuddin (PW-11) were shot at by the PAC staff during the incident but they survived.

Secondly, the person namely Quamaruddin was present in the same truck, he was shot at by the PAC officials, he was found by the police in injured condition and he subsequently expired. His death and identification stands duly proved.

Thirdly, the persons namely Mohd. Yasin, Hazi Mustkin and Mohd. Azim were present in the same truck and shot at by the PAC officials but it cannot be said conclusively that they were

dead or not as neither their dead bodies could be recovered nor they were otherwise located.

Fourthly, the persons namely Ashraf, Arif, Kaushar Ali and Hansalluddin were also there in the same truck but neither their dead bodies have been recovered nor the complete details about their identification/parentage/address have been established during trial.

Fifthly, some other dead bodies were recovered during investigation but the same were either not identified or it could not be established that they were in the same truck.

Lastly, it is also there in evidence that several persons are missing but there is no proof that they were in the same truck or not."

29. The trial Court noted that the medical evidence had established that all dead persons received gunshot injuries. The cause of the deaths was shock and haemorrhage as a result thereof. As regards the weapon of offence, the trial Court concluded that the occupants of the truck were killed by PAC officials with their official .303 rifles. However, none of the witnesses had identified Mokam Singh as the driver of truck URU1493. There was also no reliable evidence to show the involvement of the said truck in the incident. It was not clarified how the name of Mokham Singh figured in the list Ex.PW91/A, if according to PW-70, Ishtikar Ahmad was the driver who had been issued the concerned truck and had taken it to Meerut.

30. The trial Court held that the facts deposed by Gulesh Ali (DW-1) were general in nature and did not establish any fact in favour of the accused. As regards the facts in issue 8 to 11, it was held that it was not clear on what basis the names of 19 accused persons had been selected by the prosecution. There were no disclosure statements or recoveries effected

from any of the accused persons; no weapons of offence had been connected with them. No record of arms and ammunition were proved during trial. Further, no witnesses from the Army or local police who were present and participating in the search operation with the PAC were examined. The four facts in issue i.e. 8 to 11 were, therefore, held by the trial Court not to have been proved. In other words, it was not proved that the truck URU 1493 was used in the incident.

31. The trial Court held as under:

“Since there is lack of direct evidence against the accused persons, the case in hand has virtually converted into a case of circumstantial evidence against the accused persons facing trial despite the fact that there are several eye witnesses to the whole incident. Most of the basic facts except the identity of the culprits have been duly proved and established on record as discussed above but the evidence required to connect the accused persons with the crime is actually missing.”

32. The trial Court further concluded:

“Virtually, there is no clinching evidence on record without infirmities on the circumstance relating to identity of the truck and accused persons. The accused persons cannot be convicted on the basis of scanty, unreliable and faulty investigation which has gaps and holes. Not a single circumstance relied upon by the prosecution inspire confidence to establish the guilt of the accused persons.”

33. Consequently, all the accused persons were acquitted of the offences with which they were charged. The trial Court, nevertheless, recommended the payment and disbursal of compensation to the victims and kin of the deceased. This Court in a series of orders in CrI. A. No. 571/2015 (*Zulfikar*

Nasir v. State of UP) facilitated the disbursement of the compensation to the families and legal representatives of the victims in accordance with law.

NHRC's application

34. The NHRC's application for impleadment in Crl. A. No. 574 of 2015 was allowed by this Court by an order dated 10th December 2015. NHRC also filed an application being Crl. M. A. No. 18056 of 2015 in Crl. A. 574/2015 with the following prayers:

“A. Direct further inquiry to be made and direct the State of Uttar Pradesh or any other relevant authority to place before this Hon'ble Court:

(i) registers, duty register, attendance registers, log-books and other documents relating to the names, duty roster, posting and connected relevant details of PAC personnel comprising the Platoon operating under the command of Subedar Surender Pal Singh on 22nd May 1987 on riot control duty at Mohalla Hashimpura, Meerut District Uttar Pradesh of the 41st Battalion, 'C Company, Provincial Armed Constabulary, Uttar Pradesh.;

(ii) the Report of the CB-CID Inquiry into the incident.

(iii) the Report of the Commission of Inquiry headed by Retd. Justice Gyan Prakash to inquire into the killings, which was "submitted to the State of U.P in 1994.

B. To allow the Applicant to lead additional evidence in FIR No. 110/87 Police Station Link Road and FIR No. 141/87 Police Station Murad Nagar, with respect to the aforesaid documents, and

C. Pass any other or further orders as it may deem appropriate in the facts and circumstances of the case and in the interest of justice.”

35. The background to the above application was noted in the order dated 20th February 2018 passed by this Court as follows:

“10. In this application, it is asserted by the NHRC that in the trial, the CB-CID deliberately suppressed material evidence concerning PAC personnel who were arrayed as the accused. This included documents relevant to the trial which were within the power and control of the PAC. It is in this context that the aforementioned prayers have been made.

11. At the hearing on 17th February 2016, learned counsel for the NHRC had pointed out that on 2nd February 2016 NHRC had addressed a letter to the State of U.P. giving details of the documents which were required to be furnished by it.

12. On 31st March 2016 learned counsel for the State of U.P. informed the Court that two of the documents requested by the NHRC were available with him. The Court then required the State of U.P. to file a reply to the application and also make available the other relevant documents along with the reply.

13. Pursuant thereto on 17th May 2016, an affidavit was filed by the Deputy Secretary, Department of Home, Government of U.P. in response to the NHRC's communication dated 2nd February 2016. The first document enclosed with the said affidavit was a copy of the report dated 3rd August 1994 by the Police Commissioner, Lucknow (UP). The second annexure was a report dated 30th August 1987 of the inquiry Committee headed by Mr. Gian Prakash. The third annexure was a letter dated 15th March 2016 sent by the Commandant PAC, Ghaziabad to the Government of U.P. inter alia stating that all the documents which were relevant for the trial had already been submitted to the trial Court on 27th October 2012 and as of that date there was no other document left with the PAC to be submitted.

14. The matter came up before this Court thereafter on 4th August 2016 where it was pointed out by learned counsel for

the NHRC that the State of U.P. had not placed the complete documents on record. Reliance was placed on the report of the inquiry conducted by Superintendent of Police, CB-CID dated 22nd June 1989. The Court then directed that the State of U.P. would ensure that a copy of the said report would also be placed on record. Learned Additional Public Prosecutor appearing for the State of U.P. undertook to file an affidavit explaining the entire matter in terms of the dates and steps taken with regard to maintenance, preservation as well as weeding out of the records as detailed in para (i) of the application.

15. In compliance with the order dated 24th November 2016 an affidavit has been filed by the Superintendent of Police, CB-CID Meerut Ghaziabad placing on record the 'note' of Mr. S.K. Rizvi, the then Superintendent of Police, Crime Branch, Lucknow (UP), and another letter of the Deputy Inspector General, Crime Branch, CID, Lucknow dated 22nd June 1989.

16. The matter then came up again before the Court on 15th December 2016. This was followed by another affidavit of Kamlesh Bahadur, Additional SP dated 4th January 2017. Paras 2 and 3 of the said affidavit are as under:

"2. That during the course of investigation a list containing 89 names of officers and constables of 'C' Company 41 Battalion, PAC, Ghaziabad, was provided by the Commandant of said Battalion. They were stated to be on duty on 22nd May 1987. A copy of the list is annexed hereto and marked as Annexure R-1/1.

3. That as per the procedure, PAC has to keep a General Diary Register, for recording the daily movements of personnel, vehicles and other activities of the company. As per the General Diary of 'C' Company 41 Battalion, PAC, Ghaziabad on 22nd May 1987, the truck in question and the private respondents before this Hon'ble Court were posted at Pilokhari chowki, P.S. Lisari Gate, Meerut under the orders of the then SSP of Meerut, U.P.

Further as per the General Diary Entries the said personnel departed from company Head Quarter at Police Line, Meerut in official vehicle, truck bearing registration No. URU-1493 at 07:50 AM and reported back at the company head quarter at 09:00 PM on 22.05.1987. A copy of General Diary of 22.05.1987 is annexed hereto and marked as ANNEXURE-R-1/2."

17. Annexure R-1/2A annexed to this affidavit is a copy of the GD dated 22nd May 1987. This was a photocopy of the said document. This was followed by another affidavit dated 18th January 2017 of Ritesh Kumar Singh in which it was again asserted that the police records of the local police, Meerut for the period from 1st January 1987 to 31st December 1987 already stood weeded out.

18. On 2nd March 2017 after going through the above affidavit, the Court in para 20 of the said order directed as under:

"20. For the sake of clarity, the State of UP shall file a consolidated affidavit setting out the complete details as were ordered to be brought on record by our orders dated 4th August, 2016 and 6th October 2016. The affidavit shall clearly show the record of which authority has been weeded out, the orders and particulars of the authority so directing, the dates of the weeding out. This affidavit shall be filed within four weeks from today."

19. Pursuant thereto, an affidavit has been filed by Ritesh Kumar Singh, Deputy S.P. Meerut on 29th March 2017. It was inter alia pointed out that General Diary (GD) for the period 1st January 1987 to 31st December 1987 of the local police, Meerut containing the information about deployment of the police force within the respective police stations has been weeded out under the order of the SSP, Meerut. It is clarified that the documents sought were in respect of names of personnel of "C" Company 41 Battalion, PAC, Ghaziabad who were stated to be on duty on 22nd May 1987, and GD recording that the daily movement of personnel, vehicles and other

activities. It was further clarified that only the local record of the police of Meerut was weeded out. It was asserted that as far as record of "C" Company 41 Battalion, PAC Ghaziabad for the year 1987 is concerned, "the same is already forming the part of trial court and was never weeded out." Again in para 7 of this affidavit it was stated that "as far as record of PAC is concerned the same is available on record."

36. In its order dated 20th February, 2018, this Court while allowing the aforesaid application of the NHRC, directed as under:

“30. Keeping in view all the above factors, the Court directs as under:

(i) The prosecution is permitted to lead additional evidence in respect of the GD register extracts which are at pages 5741 to 5746 of the trial Court record;

(ii) On the date on which the matter is listed before the trial Court pursuant to this order, the prosecution will furnish to the trial Court a list of witnesses which it seeks to examine in relation to the additional evidence to be led in respect of the above document(s); the prosecution will also keep ready its application for permission to lead secondary evidence, which application will be heard and decided by the trial Court on the day fixed by this Court and in any event not later than three days thereafter.

(iii) The prosecution will not seek adjournment on any ground whatsoever and it will be ready to examine the witnesses on the date fixed by the trial Court for that purpose. It is made clear that on the date fixed by the trial Court the State will be represented by its counsel and will not seek adjournment on the ground that its counsel is not being formally appointed as such by the State Government. All the steps necessary for the State to nominate the counsel to appear on its behalf in the trial Court should be completed by the date fixed by the trial Court for commencement of the recording of the additional evidence.

(iv) The right of the accused to cross-examine the prosecution witnesses in accordance with law will be permitted. The accused will also be permitted to lead defence evidence relevant to the additional evidence of the prosecution in accordance with law.

(v) The recording of the additional evidence by the trial Court, inclusive of recording of the statements of the accused under Section 313 Cr PC and the defence evidence, if any, should be completed within a period of three months from the date fixed by this Court of the listing of the matter before the trial Court;

(v) Both the prosecution and the accused will cooperate with the trial Court to ensure that the above time schedule is strictly adhered to. The record of additional evidence including the further statement of the accused under Section 313 Cr PC as well as the defence evidence and the trial Court record should be made available to this Court not later than 2nd July 2018;

(vi) The matter will be listed before the District & Sessions Judge (West), Tis Hazari Courts, Delhi on 19th March 2018 who may either himself record the additional evidence or assign it to any Additional Sessions Judge (West District) for implementation of the above steps.”

37. Pursuant to the above order, the additional evidence was recorded by the trial Court. The entire trial Court record was thereafter returned to this Court with the additional evidence.

38. This Court has heard the submissions of Ms. Rebecca John, learned Senior counsel for the Appellants in CrI. A. 574 of 2015, Mr. Mushtaq Ahmed, learned counsel for the Appellants in CrI. A. 629 of 2015 and Mr. Kaushal Yadav, PP with Mr. Ram Kishor Singh Yadav, AOR and Mr. Zaki Ahmed Khan, Special counsel for the State of U.P. The accused were

represented by Mr. Gopal Krishna, Mr. B.P. Sharma, Mr. Aamir Khan, Mr. L.D. Mual, Mr.R.P.Duggal, Mr. Virender K. Mual and Mr. Yoginder Singh, Advocates. The Court has also heard the submissions of Ms. Vrinda Grover, learned counsel for the NHRC.

Key issues in the present appeals

39. The findings of the trial Court as regards the 'facts in issue' 1 to 7 identified by it, have not been challenged by the accused. These can be summarised as under:

- (i) A search operation was conducted by police, PAC and army in *mohalla* Hashimpura and adjoining areas on 22nd May 1987. Several persons were detained/arrested and taken to different places including the PS or police lines etc.
- (ii) The testimonies of the injured witnesses PWs 1, 2, 3, 4 and 11, who were survivors present in the said truck, was 'quite specific and categorical' regarding the abduction of about 42 persons from *mohalla* Hashimpura in the PAC truck.
- (iii) As regards the incident at *Gang nahar*, Murad Nagar, the testimonies of PWs 1, 2, 3, 4 and 11 were "quite clear, specific, explicit and descriptive". The incident at Hindon River near Makanpur village, stood proved by the evidence of the aforementioned PWs corroborated by PWs 13, 14, 36, 45 and 80.
- (iv) PWs 1, 2, 3, 4 and 11 were shot at by the PAC but they survived.

- (v) Qamaruddin who was present in the same truck, was shot at by the PAC. He was found in an injured condition and subsequently expired. His death and identification stood proved.
- (vi) The medical evidence proved that all the dead persons had received gunshot injuries. The cause of death was shock and haemorrhage as a result thereof.
- (vii) The occupants of the truck were killed by PAC officials with their official .303 rifles.

40. The findings of the trial Court which were against the prosecution to some extent were the following:

- (i) Mohd. Yasin, Hazi Mustkin and Mohd. Azim who were present in the same truck were shot at by the PAC officials. However, it could not be conclusively established that they were killed as their dead bodies could not be recovered.
- (ii) Ashraf, Arif, Kaushar Ali and Hansalluddin were in the same truck. Neither their dead bodies could be recovered nor their identification/parentage/address established during trial.
- (iii) Some other dead bodies, recovered during investigation, could not be identified. It could not be established that they were in the same truck. Several persons were missing but there was no evidence to show that they too were in the same truck.

41. The findings of the trial Court which went against the prosecution and in favour of the accused were as follows:

- (i) None of the PWs had identified Mokam Singh as the driver of truck URU1493. There was also no reliable evidence to show the involvement of the said truck in the incident. With PW-70 stating that the driver of the truck was Ishtikar Ahmad, it was not clear how Mokham Singh figured in the list Ex.PW91/A.
- (ii) The evidence required to connect the accused persons with the crime is missing. There is no clinching evidence relating to identity of the truck and accused persons.

42. Consequently, the scope of the present appeals is confined to examining the correctness of the findings of the trial Court in respect of the identity of the truck and of the accused persons. In other words, the key issues concern fixing the identity of both the truck in which the 42 abducted persons were taken and of the persons belonging to the PAC who were involved in such abduction and the subsequent killing of around 38 of such abducted persons.

Analysis of the evidence and additional evidence

43. It is necessary first to reconstruct the events of 21st and 22nd May, 1987. The narrative is that the city of Meerut was in the grip of communal violence as on the day just prior to the date of the incident, i.e. 21st May, 1987, there was a communal riot in the *mohalla* adjacent to *mohalla* Hashimpura. This resulted in the death of one Mr. Kaushik, who was the

brother of an army Major. It is also believed that two service rifles of personnel belonging to the PAC were snatched away by the rioters. With a view to maintaining law and order, a search operation was undertaken on the following day i.e. 22nd May, 1987 at *mohalla* Hashimpura. 644 persons were arrested under Sections 107/151/116 of the Cr PC. These people were divided into two groups. The first comprised elderly men and young boys; the second comprised young men. The second group of young men were taken in trucks belonging to PAC and the Army away from Hashimpura. They were taken to PS Civil Lines and Police Lines, Meerut and released several days later.

44. About 42 to 45 persons from the first group, i.e. comprising the elder men and young boys, were gathered by officials/*Jawans* of the PAC wearing khaki *peeli* (dusky and yellow) coloured uniforms and armed with rifles which had bayonets (*sangeens*). They were first rounded up under a *peepal* (banyan) tree.

45. Photographs of persons being rounded up and the group being kept under the tree have come on record, due to the efforts of Mr Parveen Jain (PW-86), an independent photographer and journalist. The photographs exhibited by him, with negatives having been marked as Ex.PW-86/A-1 to A-15 corroborate the eye witnesses testimonies of the surviving injured i.e. Zulfiqar Nasir (PW-1), Mohd. Naeem (PW-2), Mohd. Usman (PW-3), Muzib-ur-Rehman (PW-4) and Babuddin (PW-11). Some of these photographs taken by PW-86 were shown to these survivors, who have identified the persons known to them from the said photographs.

46. The said 42 to 45 men and young boys were made to board a yellow colour truck with 'PAC' written on it. Around 18-20 PAC personnel got into the same truck. The truck then began moving away from the *mohalla* towards the Delhi-Road, and after travelling for some time, the truck stopped. It again started moving, purportedly after some more PAC officials boarded the truck and sat in the front cabin.

47. At this juncture it is necessary to examine the evidence of the witnesses who have spoken of these events. PWs 1 to 4 and 11 were all part of the 42 to 45 men and young boys who were made to board this yellow coloured truck with PAC written on it. They have spoken consistently about this fact and without contradiction. The question as to the other persons who were made to board has arisen because the bodies of as many as 22 persons were never found. These were all the sons and fathers or husbands of many of the witnesses who have deposed. Only 11 bodies could be discovered and they were identified by their near relatives, not by showing the dead bodies to the relatives, but by showing their photographs and worn clothes, which were seized and marked as identification memos Ex.PW-23/A and PW-62/A.

48. Another issue that has arisen is as to who were the persons from the PAC, who boarded that particular truck. Here the injured witnesses PWs 1 to 4 and 11 state that these were all uniformed PAC personnel. The truck which was used was URU-1493.

49. According to the Respondents/accused, there is no proof of deployment of the C-Company of the 41st Battalion at *mohalla* Hashimpura, which is 4 kms away from the Police Outpost Pilokhadi within the territory of P.S. Nisari Gate where the unit C-Company was posted according to GD Entry No. 6. It is contended that the prosecution has not proved in any manner that the C-company was sent to *mohalla* Hashimpura within the limits of PS Civil Lines and, therefore, the story of the prosecution about 42 men being taken by the accused Respondents, who were deployed 4 kms away, in the said truck 'becomes highly doubtful'.

50. With this Court having directed additional evidence to be recorded, the GD Entry Register dated 22nd May, 1987 of the C-Company Post, Police Lines, Meerut, was brought on record which was marked through PW-72, as Ex.PW-72/A. The picture has become much clearer than it was, when the case was being tried before the learned trial Court. Entry No.6 in the said register is at 7.50 a.m., and this records the departure of the accused persons from Police Lines, Meerut. Apart from setting out the name of the Commander, Surender Pal Singh (since deceased), it is clear that he was accompanied by the 18 named accused. PW-72 further deposed that in terms of the said GD No.6, the said personnel of the PAC who had gone out in truck URU-1493 were having with them 17 rifles with 856 rounds and one revolver with 30 rounds. It was further confirmed that the driver of the truck was Constable Mokam Singh.

51. That the truck visited on that date various areas including Hashimpura *Mohalla*, is clear from the truck running register (Ex.PW-70/A) and its

entries were confirmed by Ram Chand Giri (PW-70), the then Sub-Inspector (SI) in the Motor Transport Section of the 41st Battalion (PAC), Ghaziabad. The entry in the running register states that the truck was on riot duty and the recording in the 'in-meter' and 'out-meter' is also indicated. That the truck bearing number URU- 1493 was used on that date by the accused Respondents is also corroborated by Ex.PW-91/A which contained the list of officers posted with the C-Company of the PAC. This also showed that the driver of truck URU-1493, when it was used on 22nd May, 1987, was Mokam Singh.

52. The return of the truck is recorded by Entry No.15 at 9 p.m., when the personnel of the PAC returned to their post at Police Lines, Meerut. Therefore, there is no merit in the contention of the accused that the deployment of the truck URU-1493 along with the PAC personnel at *Mohalla* (Hashimpura) was not proved. What also stands proved is that the said personnel of the PAC had with them as many as 17 rifles of .303 bore with 850 rounds and one revolver with 30 rounds. The photographs of PW-86 also show the presence of the PAC personnel with rifles.

53. To continue the narration of what happened on 22nd May, 1987, we revert to the depositions of PWs 1 to 4 and 11, all of whom were inside the truck on that date. It is plain that the truck moved for about 1 to 1-1/2 kms along the *Patri* of *Gang nahar*, Murad Nagar, before it was brought to halt and the lights of the truck were switched off. The evidence of PWs 1 to 4 and 11 speak clearly about the bringing down and shooting to death of Mohd. Yasin and Ashraf, one after the other, by the uniformed personnel of

the PAC. The third person to be brought down was PW-1, who was also shot and thrown into the Gang *nahar* along with the bodies of Mohd. Yasin and Ashraf.

54. Apart from the evidence of PW-1 himself, the other injured persons have also spoken about the persons inside the truck shouting '*bachao bachao*' and the armed personnel outside the truck then beginning to fire at them indiscriminately. Bullet injuries were suffered not only by PWs 3, 4 and 11, but also Leela Dhar, one of the accused persons. Around 15 to 16 bodies were this time thrown into the canal and among the persons thrown there, on the presumption that they were dead, were PWs 2, 3 and 4.

55. One of the points raised by learned counsel for the accused was the lack of identification of the accused by these injured witnesses. Here the explanation offered by the prosecution appears to be a plausible one. PWs 1 to 4 and 11 have explained how whilst they were sitting inside the hold of the truck, the rounded up persons were forced to keep their heads down and in case anyone raised their heads, he was rebuked and given a blow with a rifle butt. This meant that they could not actually look up and see the faces of the PAC personnel, who were also inside the hold of the truck.

56. A second factor was that it was getting dark, making it impossible for them to know precisely the facial features of the PAC personnel, all of whom were in uniform and wearing helmets as well as carrying rifles.

57. The presence of the accused in the truck now stands proved, not only by the entries in the GD Register, but even in the replies given by these

accused when their additional statements under Section 313 Cr PC were recorded in the trial court on 16th April, 2018. Although at the time of the recording of their earlier Section 313 statements on 23rd May, 2014, some of them denied being in the truck No. URU-1493, or even their presence in Meerut, when the supplementary statements were recorded on 16th April, 2018 after the GD Register entry was exhibited, all of them admitted to not only having been in the truck URU-1493 on that day, but also their presence in Meerut on the date of the incident.

58. As far as the halting of the truck briefly, the learned counsel for the accused have referred to the evidence of Gulesh Ali (DW-1), who was posted as a Mess Munshi at the C-Company, 41st Battalion and posted at Meerut Police Lines on 22nd May, 1987. According to him, on that date he went to the Pilokhadi Chowki to check the availability of *aata* (flour). While returning, he returned with the staff posted at the Pilokhadi Chowki in the truck. On their way back, the truck stopped at Hashimpura *Mohalla* and there, Subedar Surender Pal Singh (since deceased) and the other PAC officials made 42 to 45 persons sit in a truck which was taken to Meerut Police Lines. DW-1, however, tried to afford four of the accused, viz., Niranjn Lal, Samiullah, Mahesh Prasad and Jai Pal an *alibi* by saying that they along with DW-1 got down from the truck at Meerut Police Lines and went back to their tents.

59. It is clear from the evidence of DW-1 that the truck did go to *Mohalla* Hashimpura and 42 to 45 persons were indeed made to board it by Surender Pal Singh and other PAC personnel. The portion of his testimony which

talks of four of the accused alighting from the truck does not appear to have support of any other witness or corroborating evidence. None from the Meerut Police Lines has been examined to corroborate the claim that four of the accused in fact returned to the Meerut Police Lines that evening before 9 pm itself. On the other hand, the GD Entry at 9 pm makes it appear that all of the accused returned in the truck URU-1493 at that time. Thus, there is evidence of a clinching nature which proves beyond reasonable doubt that on the evening of 22nd May, 1987, the accused persons of the PAC were present in the truck URU-1493.

60. There is some doubt created as regards the time of these incidents. According to the accused, since the truck returned at 9 pm on that date, there could have been no incident as described by the eye witnesses, all of whom are not clear whether the incident took place after 10 or 10.30 pm.

61. The Court here would like to refer to the fact that these witnesses were deposing after several years of the incident. Some margin of appreciation as regards the exact time of the night had to be given to their testimonies, particularly in trying to differentiate during the night time during such upheaval, between say, 9 pm or 8.45 pm and possibly 10/10.30 pm. It is quite possible that it was already dark by 8/8.30 pm when the first incident and the dumping of bodies in the Gang *nahar* took place. In any event, there is no contradiction here. If at all there might be some inconsistency, even then it is not so material so as to discredit the evidence of PWs 1 to 4 and 11. The Court has carefully perused the evidence of PWs 1 to 4 and 11 in this regard and finds them to be completely trustworthy and truthful.

Most importantly, PW-11 has spoken clearly and cogently and nothing much has emerged in his cross-examination to discredit his testimony.

62. The factum of the firing inside the truck is proved by several pieces of evidence. Reference has already been made to the fact that one of the accused persons, i.e. Respondent No.11, Leela Dhar himself suffered a bullet injury because of the firing inside the truck. Dr. Subodh Tyagi (PW-43) was posted as a Medical Officer in the casualty ward of the SVBP Hospital, Meerut on 23rd May, 1987. He produced the casualty admission register (Ex.PW-43/A) and the relevant medical report of the accidental register (Ex.PW-43/B), wherein there is an entry on 23rd May, 1987, noting that Leela Dhar, PAC No.51769, suffered two injuries: one on the outer side of the right eye and the other on the right side of the chest.

63. This Court has also perused the MLC of Leela Dhar (Ex.PW-43/B), which shows that he was brought by Subedar S.P. Singh i.e. since deceased Surender Pal Singh, who was at that time the Company Commander of the C-Company. The said entry also mentions that Respondent No.11 sustained an injury caused by firearm; that the injury was half a day old (he was brought to hospital on 23rd May, 1987 at 10.30 am). While Leela Dhar in his original statement under Section 313 Cr PC, recorded on 23rd May, 2014 denied that he was posted at Meerut, however, when his first supplementary statement was recorded i.e. after the recall of PW-43, and the proving of Ex.PW-43/B, Respondent No.11 admitted that he had sustained an injury but that it had been caused by 'a petrol bomb'. In his further supplementary statement under Section 313 Cr PC dated 16th April, 2018, Leela Dhar

admitted to having been posted in Meerut on 22nd May, 1987. In the return entry in the GD register, which mentions that all the PAC personnel returned at around 9 pm, the fact that Leela Dhar had been injured was not even mentioned. It is, therefore, clear that he was trying to protect the Respondent co-accused. The injuries to Leela Dhar could have been caused by a stray bullet ricocheting from the body of the truck.

64. A further piece of evidence is the photographs taken by Inspector Badan Singh Yadav (PW-42), who was the Investigating Officer ('IO') between 20th July, 1988 and 13th June, 1989 (Mark- Ex.P-42/P-1 to P-13) which show that there was a hole in the body of the truck, which was covered by a metal patch. Then we have the FSL examination report (Ex.PW-38/C), which revealed that a 6x6 inch metal patch was welded at the back side of the truck to cover the hole in its body. The FSL report also notes that there were two dents/depressions in the body of the truck – one was on the front left side and another behind the driver's seat. It was opined that these depressions/dents could be caused by hitting of a projectile.

65. The failure to find blood residue in the truck is explained by the failure of the investigating agency failed to seize it soon after the incident and send it for FSL examination. The truck came to be examined only on 4th January, 1988 (Ex.PW-38/C), which was about eight months after the incident.

66. There were eye witnesses in the Motor Transport Section (MTS) of the PAC Battalion, who had witnessed the washing of the truck and who had named Surender Pal Singh as being responsible for that. Yet, these eye witnesses were not examined. Nevertheless, the fact that there was a hole in

the body of the truck on which a 6x6 inch patch was welded, with the two dents/depressions in the body of the truck, along with the relevant GD entries, is sufficient to establish that it was truck URU-1493 which was involved in the transportation of 42 to 45 persons rounded up and abducted by the PAC.

67. We have the evidence of Mr V.N. Rai (PW-74), who was posted as the SP, Ghaziabad at the time, stated that on the night of the incident, he inspected the MT Section of 41st Battalion, he found the ground there to be wet and that a truck had recently been washed there. Then we have Mr Kamendra Prasad (PW-75), the Additional SP Ghaziabad and Mr Yashpal Talwar (PW-76). Their depositions prove that the truck used in the commission of the act was brought to the 41st Battalion of PAC in Ghaziabad on the night of 22nd May, 1987. The truck was washed thoroughly to avoid detection. Mr Kamendra Prasad (PW-75), stated that on visiting the Headquarters of 41st Battalion PAC, it became clear that the vehicle had been washed in the MT Section.

68. Mr Yashpal Talwar (PW-76), the then Adjutant (Deputy SP) of the 41st Battalion, PAC posted in Ghaziabad at the time spoke about finding a puddle near the MT Section on the night of 22nd May, 1987. He further stated that as a result of the washing of the truck, 'reddish water' had collected there. The then District Magistrate ('DM'), Ghaziabad, Mr Naseem Zaidi (PW-59) also spoke likewise.

69. The medical and forensic evidence satisfactorily prove that the deceased were fired upon with the rifles issued to the accused persons. The medical

evidence has demonstrated that from the body of one of the deceased, a .303 bullet was recovered. The forensic evidence more than adequately demonstrates that this matched with the rifles issued to the accused. There has been no satisfactory explanation forthcoming from the side of the accused for the presence of a .303 bullet in the body of one of the deceased.

70. As many as six doctors had conducted the post-mortems and confirmed that the deceased died due to gunshot injuries. No doubt the bodies were decomposed since they were recovered from the canal after a gap of three to four days. Only a few of them could be identified, and even then, for some reason, the police did not show these bodies to the families and close friends of the victims. They were made to identify the dead bodies only from photographs and clothes recovered. What, however, stands firmly established is that the deaths were homicidal and the deaths were on account of gunshot injuries.

71. Therefore, both the first incident of killing and throwing of the bodies into the Gang *nahar* as well as the second incident involving the killing and dumping of the bodies into the Hindon Canal is proved beyond reasonable doubt by the prosecution. The involvement of the accused in this crime is more than adequately established through the contemporaneous evidence in the form of GD Registers establishing that none of the accused has actually denied their presence at Meerut or that they were using the truck URU-1493. The identity and involvement of the said truck in the incident is also established beyond reasonable doubt.

72. The evidence also clearly establishes the prior meeting of minds of the accused and their careful planning in executing the killings of the victims. Their guilt for the offence of criminal conspiracy punishable under Section 120-B IPC, and pursuant thereto committing the offence of abduction punishable under Section 364 IPC and murder punishable under Section 302 IPC and thereafter destroying the evidence of such crime thus committing the offence punishable under Section 201 IPC thus stands proved beyond reasonable doubt. The Court is, however, not satisfied that the offences punishable under Section 147, 148, and 149 are made out against the accused in the present case.

Scope of the appellate power of the High Court

73. At this stage, it requires to be noticed that one of the submissions on behalf of the accused is that this Court must be slow to reverse an acquittal. Reliance is placed on the decisions in *Kanu Ambu Vish v. The State of Maharashtra (1971) 1 SCC 503*, *Tota Singh v. State of Punjab (1987) 2 SCC 529*, *Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606*, *Muralidhar @ Gidda v. State of Karnataka (2014) 5 SCC 730*.

74. In *Bishan Singh v. The State of Punjab (1974) 3 SCC 288*, the Supreme Court explained the legal position thus:

"22. It is well settled that the High Court in appeal under Section 417 of the Cr PC has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it is expressly stated in the Code, but in exercising the power conferred by the Code and

before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; & (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses."

75. In ***B.N. Mutto v. Dr. T.K. Nandi (1979) 1 SCC 361***, the Supreme Court observed thus:

"It stems out of the fundamental principle of our criminal jurisprudence that the accused is entitled to the benefit of any reasonable doubt. If two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede the existence of a reasonable doubt. But, fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of a duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore, essential that any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons. [Salmond J. in his charge to the jury in *R. v. Fantle* reported in 1959 *Criminal Law Review* 584.]"

76. In ***Muralidhar @ Gidda v. State of Karnataka (supra)*** after discussing the earlier decisions the legal position was summarised as under:

“(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

77. As far as the case on hand is concerned, it requires to be recalled that in exercise of the appellate power under Section 319 Cr PC, this Court had in the present case directed additional evidence to be recorded. The additional evidence so recorded brought forth important facts about the presence and culpability of the accused which was not available at the time of the trial. So this is not a case of mere re-appreciation of the existing evidence before

the trial Court. This Court has been called upon to evaluate not just the evidence already present in the trial Court but the additional evidence as well which unmistakably points to the guilt of each of the Respondent/accused persons. In this context, this Court does not accept the plea of the accused that the recall of Ranbir Singh Bishnoi (PW-72), through whom the GD Register was marked as an exhibit at the time of recording of the additional evidence, has not improved the case of the prosecution. In fact it has supplied the vital links in the chain of circumstances which were not available earlier when the matter was in the trial Court. Consequently, in the present case, in coming to a conclusion different from that of the trial court in regard to the guilt of the accused, this Court has kept in view the legal position explained in the above decisions.

Are these custodial deaths?

78. At this stage, the Court would like to discuss the aspect of custodial deaths. As rightly pointed out by learned counsel for the NHRC, there is a growing legal recognition that 'custody' extends beyond the mere spatial construct of prisons or lockups. This was recognized by the Supreme Court, in the judgment of Justice Krishna Iyer, way back in 1980 in *Niranjan Singh v. Prabhakar Rajaram Kharote AIR 1980 SC 785* where it was observed as under:

“When is a person in custody, within the meaning of s.439 Cr. P.C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential

profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of s. 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibbling and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law...”

79. In *Sunita Devi v. State of Bihar (2005) 1 SCC 608*, the Supreme Court held as under:

“14. The crucial question is when a person is in custody, within the meaning of Section 439 of the Code? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its order by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold to an officer with coercive power is in custody for the purpose of Section 439. The word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have determined him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law.

15. Since the expression "custody" though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in setting in which it is used and the provisions contained in Section 437 which

relates to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterized as "in custody" in a generic sense. The expression "custody" as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the Court of the Magistrate."

80. The Law Commission of India (LCI) in several of its reports has emphasized that there must be an inclusive, realistic definition of the term 'custody' and that such definition should acknowledge the various methods of deprivation and restraint of liberty. The LCI has in its 113th report on 'Injuries in Police Custody' (1985), the 152nd report on 'Custodial Crimes' (1995), the 185th report on the 'Review of the Indian Evidence Act' (2003) and the 273rd report on 'The Implementation of the UN Convention against Torture' (2017), emphasised this aspect.

81. Consequently, in the present case although the victims were not taken to an enclosed place by the PAC, they were unlawfully detained, kept in a PAC truck and taken to two places and asked to keep their heads down and not allowed to move. This is sufficient for this Court to conclude that they were kept in unlawful custody by the accused purporting to discharge their official functions when in fact they were clearly acting illegally. The deaths of the victims, in the present case, are custodial deaths.

Approach of constitutional courts

82. What the approach of the Courts should be in matters concerning custodial deaths has been explained in several decisions of the Supreme Court. In *Raghubir Singh v. State of Haryana (1980) 3 SCC 70*, the Supreme Court acknowledged the growing instances of custodial deaths and observed as under:

“We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturous poignancy when violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case, Police lock-ups if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.”

83. In *State of Madhya Pradesh v. Shyam Sunder Trivedi (1995) 4 SCC 262* it was observed as under:

“Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.”

“.....the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice

delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged.”

84. The difficulty in proving custodial crimes was acknowledged by the Supreme Court in *Munshi Gautam v. State of M.P (2005) 9 SCC 631* where it observed as under:

“In cases of police torture or custodial death direct ocular evidence of the complicity of the police personnel is rarely available and that this reality must be taken into account by the Court when appreciating the evidence and that the courts are required to have a change in their outlook, approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.”

Role of the investigating agency in the present case

85. In the present case also, as noticed earlier, the documents in control of the State of Uttar Pradesh which were crucial to the case were not immediately made available to the investigating agency. It required an application by the NHRC and orders of the Court to get access to those documents. This has been discussed in detail in the order dated 20th February, 2018 of this Court. How the State of UP managed to have the records of a pending criminal trial weeded out is indeed a mystery. Despite an order dated 6th October, 2017 of this Court asking the State of UP to explain the reasons for destruction of the record and dates on which the

record was called for by the trial Court, the affidavit dated 18th January, 2018 of the State of UP gave no such reasons.

86. In *Tehseen S. Poonawalla vs. Union of India (2018) SCC Online SC 696*, the Supreme Court issued a number of directions to facilitate effective investigation by the police of incidents of mob lynching. The Supreme Court further directed:

“Wherever it is found that a police officer or any officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.”

87. In the present case it has required persistent efforts first by the NHRC and then by this court to unearth evidence which could prove the culpability of the accused. Fortunately for this Court, the injured eye-witnesses have spoken in one voice and although they have not been able to identify the accused, they have spoken clearly about how the incident occurred.

88. In *D.K. Basu v. State of West Bengal AIR 1997 SC 610* the Supreme Court acknowledged the magnitude of the problem and laid down detailed guidelines concerning custody of any accused. Importantly it was noted that the problem concerning views of the powers of the police was not confined to the Police Force themselves but several other Governmental Authorities and paramilitary forces. It was observed as under:

“29. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. Ends cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

30. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.

31. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), The Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, R.A.W., Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential

Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well. *In Re Death of Sawinder Singh Grover*, (to which Kuldip Singh, J.) was a party) this Court took suo moto notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge a FIR and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay a sum of Rs. 2 lacs to the widow of the deceased by way of ex gratia payment at the interim stage. Amendment of the relevant provisions of law to protect the interest of arrested person in such cases too is a genuine need.”

89. In *K. H. Shekarappa v. State of Karnataka (2009) 17 SCC 1*, the Supreme Court observed as under in the context of custodial crimes:

“2. Though several constitutional and statutory provisions have been enacted to safeguard the personal liberty and life of citizens, incidents of torture and death in the police custody are ever on the rise. In spite of condemnation of such acts by this Court and the High Courts, certain police officials conduct themselves in a manner resulting into gruesome torture and death of suspects in the police custody. There is no manner of doubt that these are the most heinous crimes committed by persons, who claim to be the protectors of the citizens. What is distressing to note is that the incidents of torture and death in the police custody take place under the shield of uniform and authority, in the four walls of a police station or in the lock-up, where the victims are totally helpless.”

90. In the above case, the Court was dealing with an incident of violence in police custody where two persons lost their lives and several others were injured. The medical evidence clearly showed that the death was homicidal

and that the deceased had succumbed to the injuries inflicted upon them while in custody. The Court invoked Section 106 of the Evidence Act and observed as under:

“50. The fact that the deceased and the injured were arrested and brought to the police station is not in dispute. It is not in dispute that the deceased and the injured were brought to the police station on their two feet. The testimony of the medical officers, who had performed autopsy on the dead bodies of the two deceased would indicate that both the deceased were brought dead to the hospital. When the deceased, who were brought to the police station, were alive and were produced dead before the medical officer, it is for the Appellants to explain as to in which circumstances they had died. The deceased were in the custody of the Appellants, who were police officials. During the time when they were in police custody they had expired. Therefore, it was within the special knowledge of the Appellants as to how they had expired. In view of the salutary provisions of Section 106 of the Evidence Act, 1872, it was for the Appellants to offer explanation regarding the death of the two deceased.”

91. In the present case the victims were last seen alive when they were taken away in the truck by the PAC. The next thing heard of them was when their dead bodies were recovered from the canals.

92. In *Prithipal Singh v. State of Punjab (2012) 1 SCC 10* the Supreme Court was dealing with a case of police atrocity involving the abduction and custodial killing of Jaswant Singh Kalra, a human rights activist, by the Punjab Police. After referring to the earlier decisions, the Supreme Court upheld the conviction of the accused police officers, and observed as under:

“44. Both the courts below have found that the accused/Appellants have abducted Shri Jaswant Singh Khalra. In such a situation, only

the accused person could explain as what happened to Shri Khalra, and If he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered. All the accused/Appellants failed to explain any inculpatory circumstance even in their respective statements under Section 313 Code of Criminal Procedure. Such a conduct also provides for an additional link in the chain of circumstances. The fact as what had happened to the victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given some explanation. In such a fact-situation, the Courts below have rightly drawn the presumption that the Appellants were responsible for his abduction, illegal detention and murder.”

93. Finally it was held as under:

“48. Police atrocities are always violative of the constitutional mandate, particularly, Article 21 (protection of life and personal liberty) and Article 22 (person arrested must be informed the grounds of detention and produced before the Magistrate within 24 hours). Such provisions ensure that arbitrary arrest and detention are not made. Tolerance of police atrocities, as in the instant case, would amount to acceptance of systematic subversion and erosion of the rule of law. Therefore, illegal regime has to be glossed over with impunity, considering such cases of grave magnitude.

In view of the above, we do not find any reason to interfere with the well reasoned judgment and order of the High Court. The facts of the case do not warrant review of the findings recorded by the courts below.”

94. Recently this Court in *Avinash Kumar v. State* 246 (2018) DLT 35 whilst dealing with an appeal against conviction of six policemen belonging to the special staff (North East) of the Delhi Police for the murder of a person who was taken into custody by them while in custody observed as under:

“1.5 Recently in October 2017 the LCI submitted its 273rd Report on Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation. It devoted an entire chapter to 'Compensation for custodial torture/death' and after extensively reviewing the case law, concluded that the defence of sovereign immunity is not available to the officials of the enforcement machinery of the state to avoid liability for custodial torture and deaths. It reiterated the recommendation in its 113th and 152nd Reports that Section 114B be inserted in the IEA to ensure that in case a person in police custody sustains injuries, "it is presumed that those injuries have been inflicted by the police, and the burden of proof shall lie on the authority concerned to explain such injury."

1.6 The past five reports of the National Human Rights Commission show that the instances of deaths in police custody have not witnessed a marked decline. None of the legislative changes recommended by the LCI have been made yet. The problem still stares at us in the face.”

95. The present case is yet another instance of custodial killing where the legal system has been unable to effectively prosecute the perpetrators of gross human rights abuses. The prolongation of the trial for over two decades, compounded by the endemic systemic delays, have frustrated the attempts at securing effective justice for the victims.

Lapses in investigation

96. Counsel for the victims/Appellants as well as counsel for the NHRC have pointed out the lapses in the investigation of the present case. Indeed there have been serious lapses that have hampered the fair progress of the

investigation of the present case. Some of these have been summarised in the written submissions of the Appellants/complainants as under:

- "1. Failure to conduct TIP of the accused, the truck, their weapons, their helmets etc.
2. Failure to seize the truck on 22.05.1987, particularly when senior officials were informed of the incident and had gone to the MT Section, Ghaziabad. This allowed the truck to be washed clean of any evidence including chemical residue, blood, grazing caused by bullet marks by the accused persons and valuable evidence of the highest quality was allowed to be compromised.
3. Failure to seize the bloody colour water found at the MT Section, PAC Battalion, Ghaziabad.
4. Failure to examine eye-witnesses from the MT Section, PAC Battalion, Ghaziabad, who witnessed the washing of the truck and who named Surinder Pal Singh.
5. Failure to seize the weapons of offence immediately after the incident, which led to destruction of forensic evidence.
6. Failure to seize the Kot register/arms issuance register, containing details of arms and ammunition issued to the accused, and details of arms and ammunition deposited back.
7. Failure to seize the uniforms of the accused which would have contained blood stains, since they were picking up the victims and throwing them into the river.
8. Failure of the Magistrates, while recording 164 statements, to ascertain whether the survivors were under any pressure, and to extract the best possible information from them.
9. Failure to properly inspect the two scenes of crime - Makanpur village or near Hindon canal, both of whom would have borne testament and would have corroborated the

statements of the victims/eye-witnesses. It would also have led to the seizure of the cartridges/shells.

10. Failure to conduct a prompt and robust investigation resulting in the filing of a charge sheet within a short period of time.”

97. While the above lapses, if avoided, may have helped to effectively prosecute the accused, they do not necessarily benefit the accused as was pointed out by the Supreme Court in *Dhanaj Singh @ Shera v. State of Punjab (2004) 3 SCC 654* in the following words:

“5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.*)

6. In *Paras Yadav v. State of Bihar* it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in *Ram Bihari Yadav v. State of Bihar* if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh*. As noted in *Amar Singh* case it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the

ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.”

98. On behalf of the accused in the present case, it is sought to be contended that since this was a case with very little evidence and the occurrence took place, “where nobody was present or could have witnessed the incidence” there was no justification for contending that the Investigating Officers (IOs) did not act fairly.

99. The above submission overlooks the fact that there have been eye witness accounts of at least five injured witnesses which have been discussed hereinbefore. The trial Court too in the present case did not disbelieve these witnesses. What was observed by the trial Court is that the identity of the accused was not established. However, the trial Court did not have the benefit of the additional evidence which emerged during the pendency of the present appeals and which was brought on record as additional evidence under the orders of this Court. This additional evidence now convincingly establishes that the accused persons were very much present with the truck URU-1493 in which the victims were abducted and taken away.

100. Consequently, the Court finds no merit in the above submissions on behalf of the accused. Indeed this is a case where it has been actively attempted to destroy the evidence by the police themselves. In any event, they appear to have actively played a role in this destruction as can be

inferred by the obvious lapses in the investigation, particularly the failure to seize the truck on the very first day, thereby allowing the accused to wash it clean of the evidence including chemical residue, blood, bloodstains etc. Clearly the offence under Section 201 IPC stands attracted and stands proved from the statements of PWs 59, 73, 74 and 75, all of whom were public servants. The identity of the truck and the accused PAC personnel has been duly established.

A case of targeted killing

101. A disturbing aspect of the present case is the targeted killings of persons belonging to one minority community. It was submitted on behalf of the accused that the prosecution in the present case has not proved motive for the commission of the crime and since the 42 persons allegedly abducted were total strangers, the accused had no grudge or animosity against them and further that “no sane and prudent person much less than members of the disciplined force like the accused/Respondents would commit such gruesome crime.”

102. What the above submission overlooks is the fact that all the victims belonged to a minority community. This was a case of a targeted killing revealing an institutional bias within the law enforcement agents in this case.

103. A study conducted by Centre for Study of Developing Societies and Common Cause which resulted in a report titled “Status of Policing in India 2018: Study of Performance and Perceptions” noted that Muslims

comprised only 2.5% of the Police Force. 64% of Indian Muslims, who were interviewed, were either highly or 'somewhat' fearful of the police. The reasons for this fear were stated to be the failure of the police to act as a neutral law enforcement agency. The report notes as under:

"In addition to the physical police brutality, institutional discrimination is another component of policing that cannot be denied. Discrimination manifests itself in a variety of ways and may be motivated by intolerance towards traditionally marginalised groups, religious communities, caste and class background, and gender. For instance, around the time of communal riots, it has been widely perceived that the police does not act as a neutral law enforcement agency and perceptible discrimination is alleged in the use of force, preventive arrests, treatment of detained persons at police stations, reporting of facts and investigation, detection and prosecution of registered cases. This kind of social marginalisation is likely to have negative consequences and affect social harmony in society...."

104. The present case involved the abduction of 42 to 45 persons belonging to the minority community and killing of 38 of them soon after the incident of riots in which two rifles of the PAC were allegedly taken away by the rioters. It points to the disproportionate reaction by the PAC in targeting the members of the minority community. The Court is therefore unable to accept the submission on behalf of the accused that the motive for the commission of the crime was not proved.

Role of law enforcement agencies

105. The manner in which the law enforcement officials have frustrated the cause of justice by weeding out important records and not gathering

evidence in good time in the present case raises considerable doubts about the ability of a law enforcement agency to carry out an impartial and independent investigation when the persons accused of the crimes are members of the agency itself. Notwithstanding the decision of the Supreme Court in *Prakash Singh v. Union of India (2006) 8 SCC 1* urging the insulation of the police machinery from political/executive interference, no effective steps have been taken to put in place a mechanism for such impartial investigation particularly when it involves the members of the police forces themselves.

106. In *Niranjan Singh v. Prabhakar Rajaram Kharote (supra)* the Supreme Court expressed the following anguish:

“We conclude this order on a note of anguish. The complainant has been protesting against the State's bias and police threats. We must remember that a democratic state is the custodian of people's interests and not only police interests. Then how come this that the team of ten policemen against whom a magistrate after due enquiry found a case to be proceeded with and grave charges including for murder were framed continue on duty without so much as being suspended from service until disposal of the pending sessions trial? On whose side is the State? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government responsive to appearances of justice, would have placed police officers against whom serious charges had been framed by a criminal court under suspension unless exceptional circumstances suggesting a contrary course exist. After all a gesture of justice to courts of justice is the least that a government owes to the governed. We are confident that this inadvertence will be made good and the State of Maharashtra will disprove by deeds Henry Clay's famous censure:

The arts of power and its minions are the same in all countries and in all ages. It marks its victim

denounces it; and excites the public odium and the public hatred to conceal its own abuses and encroachments."

107. Those observations were made more than 38 years ago but nothing much appears to have changed on the ground. Then we have the guidelines issued by the NHRC both in 2003 and then revised in 2010 on the procedure to be followed in cases of deaths caused by police action. The Ministry of Home Affairs ('MHA') issued on 4th July, 1985 guidelines concerning the code of conduct for the police in India. Guideline No.1 states "The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of citizens as guaranteed by it." Guidelines 5, 7 and 13 are relevant in the context of the present case and read as under:

"5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

7. The police should realize that the efficient performance of their duties would be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.

13. As members of a secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices

derogatory to the dignity of women and disadvantaged sections of society.”

108. It appears that the suggestions of the Law Commission of India in its 180th Report (2003) regarding insertion of Section 114-B, incorporating the Guidelines laid down in *D.K. Basu v. State of West Bengal* (*supra*), have also not been acted upon till date. The remedial measures suggested by the Supreme Court in *Tehseen S. Poonawalla v Union of India* (*supra*) in the context of mob lynching, which could apply equally in instances like the present one where there has been a targeted killing, are also required to be acted upon urgently if justice is to be ultimately delivered in these kinds of cases:

(viii) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely notice of any court proceedings and he/she shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing.

(ix) The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.”

Right to know the truth

109. In the above context, this Court would also like to refer to the right of the victim to know the truth and “The right for the truth to be known as an integral facet of right to justice”. In this context, reference may be made to

the documents put out by the Union Nations Working Group on Enforced or Involuntary Disappearances titled ‘General Comment on the Right to Truth in relation to enforced disappearances’. The preamble to this document dated 20th July, 2010 states as under:

“At the international level, the right to the truth relating to enforced disappearances or missing persons is recognized in a number of instruments. Article 32 of the Protocol I to the Geneva Conventions establishes “the right of families to know the fate of their [disappeared] relative”. Article 24 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance states:

“Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.”

The existence of the right to the truth as an autonomous right was acknowledged by the Working Group on Enforced or Involuntary Disappearances (WGEID) in its very first report (E/CN.4/1435, 22 January 1981, § 187). It has also been recognized by various other international bodies at the universal and regional levels (for relevant case law, see in particular the “Study on the right to the truth”, report of the UN Office of the High Commissioner for Human Rights, E/CN.4/2006/91, 8 February 2006); by intergovernmental bodies, including the Human Rights Commission and now the Human Rights Council (see 2 resolutions 2005/66 of 20 April 2005 of the Commission; decision 2/105, 27 November 2006; resolution 9/11, 18 September 2008; and 12/12, 1 October 2009 of the Council).

The existence of the right to the truth in international law is accepted by State practice consisting in both jurisprudential precedent and by the establishment of various truth seeking mechanisms in the period following serious human rights crises, dictatorships or armed conflicts (see the “Study on the right to the

truth”, op. cit.). Those mechanisms include the launching of criminal investigations and the creation of “truth commissions” designed to shed light on past violations and, generally, to facilitate reconciliation between different groups.

The right to the truth is both a collective and an individual right. Each victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society as a “vital safeguard against the recurrence of violations”, as stated in Principle 2 of the Set of Principles for The Protection And Promotion Of Human Rights Through Action To Combat Impunity (E/CN.4/2005/102/Add.1)

Principle 3 of this document specifies that the State has a correlative “duty to preserve memory”:

“A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.”

Principle 4 establishes the “victim’s right to know” as an individual right:

“Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”

110. In the present case, the relatives of the victims who died as a result of the brutal and bone-chilling action of the PAC remained in the dark about

not only the fate of the victims themselves, but also about the steps taken to investigate the case and unearth the truth. Indeed, their 31 years of waiting for justice may have eroded their faith in the State machinery. The victims who disappeared on 22nd May, 1987 never returned. Even those dead bodies which were fished out from the canal were not returned to their families. In the context of such disappearances, the ‘General Comment’ recommends in paragraph 6 as under:

“6. The right to know the truth about the fate and the whereabouts includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture. The remains of the person should be clearly and indisputably identified, including through DNA analysis. The State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation.”

111. It is expected that the State will take the necessary steps to put in place a working mechanism that can address the above concerns and make law enforcement agencies accountable and answerable.

112. Pursuant to the directions issued by the trial Court, compensation was ordered to be disbursed to the victims. It has required several orders passed by this Court in the companion appeal to ensure that the victims or their legal representatives actually received that compensation.

113. It is pointed out by counsel for the NHRC that in the present case, many of the victims are dependant women whose husbands were killed, who are either illiterate or ignorant of the State procedure. Therefore, merely having a scheme for compensation under Section 357-A of the Cr PC would not serve the purpose unless the persons entitled to compensation are made aware of their rights and are able to access the compensation scheme.

114. Accepting the suggestion of the learned counsel for the NHRC, this Court recommends that every State Legal Services Authority should designate a Nodal Officer to address the needs of the victim families in the case of custodial killings or State excesses. The procedure put in place should ensure that such victims or the families are able to access and seek relief under the scheme and that such relief should not be limited to monetary compensation but other range of reliefs respecting the rights to basic survival and dignity of such families.

Summary of conclusions

115. To summarize the conclusions:

- (i) The key issues in the present appeals concern fixing the identity of both the truck in which the 42 to 45 abducted persons were taken and of the persons belonging to the PAC who were involved in the killing of around 38 of the abducted persons. (para 42)

- (ii) Entry No.6 in GD Entry Register dated 22nd May, 1987 of the C-Company Post, Police Lines, Meerut, marked through PW-72, as Ex.PW-72/A records the departure of the accused persons from Police Lines, Meerut at 7.50 am. Apart from setting out the name of the Commander, Surender Pal Singh (since deceased), it shows that he was accompanied by the 18 named accused. The said GD entry No.6 shows that the said personnel of the PAC who had gone out in truck URU-1493 were having with them 17 rifles of .303 bore with 856 rounds and one revolver with 30 rounds. It further confirmed that the driver of the truck was Constable Mokam Singh. (para 50)
- (iii) The truck running register (Ex.PW-70/A) makes it clear that the truck visited on that date various areas including Hashimpura *mohalla*. Ex.PW-91/A which contained the list of officers posted with the C-Company of the PAC shows that the truck bearing number URU-1493 was used on that date by the accused Respondents. This also showed that the driver of truck URU-1493, when it was used on 22nd May 1987, was Mokam Singh. (para 51)
- (iv) The presence of the accused in the truck stands proved, not only by the entries in the GD Register, but even in the replies given by these accused when their additional statements under Section 313 Cr PC were recorded in the trial court on 16th April, 2018. (para 57)
- (v) There is thus evidence of a clinching nature which proves beyond reasonable doubt that on the evening of 22nd May, 1987, the accused persons of the PAC were present in the truck URU-1493.(para 59)

- (vi) The factum of the firing inside the truck is proved by several pieces of evidence. (para 62) The fact that there was a hole in the body of the truck on which a 6x6 inch patch was welded, with the two dents/depressions in the body of the truck is sufficient to prove that it was truck URU-1493 which was involved in the transportation of 42 to 45 persons rounded up and abducted by the PAC and the subsequent killings of around 38 of them. (para 66)
- (vii) The medical evidence has demonstrated that from the body of one of the deceased, a .303 bullet was recovered. The forensic evidence more than adequately demonstrates that this matched with the rifles issued to the accused. There has been no satisfactory explanation forthcoming for the presence of a .303 bullet in the body of one of the deceased. (para 69)
- (viii) As many as six doctors had conducted the post-mortem and confirmed that the deceased died due to gunshot injuries. No doubt the bodies were decomposed since they were recovered from the canal after a gap of three to four days. Only a few of them could be identified, and even then, for some reasons, the police did not show these bodies to the families and close friends of the victims. They were made to identify the dead bodies only from photographs and clothes recovered. What, however, stands firmly established is that the deaths were homicidal and the deaths were on account of gunshot injuries. (para 70)

- (ix) Both the first incident of killing and throwing of the bodies into the Gang *nahar* as well as the second incident involving the killing and dumping of the bodies into the Hindon Canal is proved beyond reasonable doubt by the prosecution. (para 71)
- (x) The involvement of the accused in this crime is more than adequately established through the contemporaneous evidence in the form of GD Registers establishing the fact that none of the accused has actually denied their presence at Meerut or that they were using the truck URU-1493. The identity and involvement of the said truck in the incident is also established beyond reasonable doubt. (para 71)
- (xi) The evidence also clearly establishes the prior meeting of minds of the accused and their careful planning in executing the killings of the victims. Their guilt for the offence of criminal conspiracy punishable under Section 120-B IPC, and pursuant thereto committing the offence of kidnapping punishable under Section 364 IPC and murder punishable under Section 302 IPC and thereafter destroying the evidence of such crime thus committing the offence punishable under Section 201 IPC stands proved beyond reasonable doubt. (para 72)
- (xii) Although the victims were not taken to an enclosed place by the PAC, they were unlawfully detained, kept in a PAC truck and taken to two places and asked to keep their heads down and not allowed to move. This leads this Court to conclude that they were kept in

unlawful custody by the accused purporting to discharge their official functions when in fact they were clearly acting illegally. The deaths of the victims, in the present case, are custodial deaths. (para 81)

- (xiii) The present case is yet another instance of custodial killing where the legal system has been unable to effectively prosecute the perpetrators of gross human rights abuses. The prolongation of the trial for over two decades, compounded by the endemic systemic delays, have frustrated the attempts at securing effective justice for the victims. (para 95)
- (xiv) A disturbing aspect of the present case is the targeted killings of persons belonging to one minority community. (para 101) The present case involved the abduction of 42 to 45 persons belonging to the minority community and killing of 38 of them soon after the incident of riots in which two rifles of the PAC were allegedly taken away by the rioters. It points to the disproportionate reaction by the PAC in targeting the members of the minority community. The Court is therefore unable to accept the submission on behalf of the accused that the motive for the commission of the crime was not proved. (para 104)
- (xv) This Court recommends that every State Legal Services Authority should designate a Nodal Officer to address the needs of the victim families in the case of custodial killings or State excesses. The procedure put in place should ensure that such victims or the families are able to access and seek relief under the scheme and that such

relief should not be limited to monetary compensation but other range of reliefs respecting the rights to basic survival and dignity of such families. (para 114)

Final directions

116. For the aforementioned reasons, this Court sets aside the impugned judgment of the trial Court acquitting the Respondents/Accused Nos. 2 to 17 in CrI A. 574/2015 and hereby convicts each of them for the offences under Section 120-B and Sections 302, 364, 201 all read with Section 120-B IPC.

117. This case involves the killing of around 38 innocent persons in cold blood by members of an armed force viz., the PAC. The gravity of the crime is obvious. At the same time, the Court is aware that this case has been pending for over three decades for reasons not entirely attributable to the accused. Their acquittal by the trial Court 28 years after the event is reversed by this Court, 31 years after the event. The present age of the accused persons has also therefore to be accounted for. The Court also notes that substantial sums by way of compensation have been disbursed to the victims and their families.

118. Keeping in view all of the above factors, this Court sentences each of the aforementioned 16 accused to life imprisonment for the offence punishable under Section 302 read with Section 120B IPC which, in this case, will mean the remainder of the person's natural life.

119. For the other offences, the sentence awarded to each of the 16 accused is as under:

- (i) For the offence punishable under Section 120B IPC, to imprisonment for life;
- (ii) For the offence punishable under Section 364 IPC read with Section 120B IPC, to rigorous imprisonment (RI) for 10 years and fine of Rs. 10,000 and in default of payment of fine to six months' simple imprisonment (SI);
- (iii) For the offence punishable under Section 307 IPC read with Section 120B IPC, to RI for 5 years and fine of Rs.10,000 and in default of payment of fine to six months' SI; and
- (iv) For the offence punishable under Section 201 read with Section 120B IPC, to RI for 3 years and fine of Rs. 10, 000 and in default of payment of fine to six months' SI.

The above sentences are directed to run concurrently.

120. CrI. A. Nos. 574, 629 and 884 of 2015 are accordingly allowed. The pending applications are disposed of. The bail bonds and surety bonds furnished by Respondents 2 to 17 in CrI A. 574 of 2015 stand cancelled and they shall surrender on or before 22nd November 2018, failing which the SHO concerned will immediately take them into custody for serving out the sentences awarded to each of them.

121. The trial Court record be returned forthwith together with a certified copy of this order.

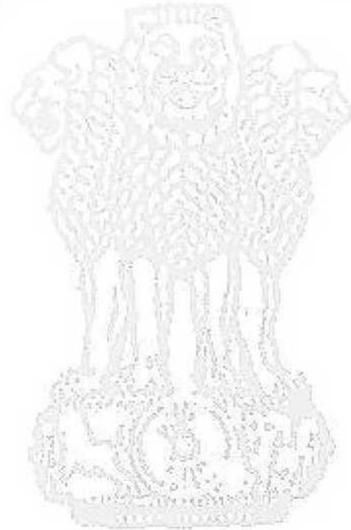
S. MURALIDHAR, J.

VINOD GOEL, J.

OCTOBER 31, 2018

shailender/rd/mw

HIGH COURT OF DELHI



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