

IN THE COURT OF MR. DHARMESH SHARMA PRINCIPAL
DISTRICT & SESSIONS JUDGE : NEW DELHI PATIALA HOUSE
COURTS : NEW DELHI

Criminal Appeal No.89/2021
CNR No. DLND01-007756-2021

In Re:

(1)

Gopal Ansal,
S/o Chiranji Lal
R/o House No. 1, 6 Aurangeb Road, New
Delhi-110001

Through:
Shobhit Charla,
S/o Sh. Sunil Charla
R/o House No. 112, Golf Links,
Lodhi Road, H.O. South Delhi,
New Delhi, Appellant

Versus

State Respondent

AND

Criminal Appeal No. 90/2021
CNR No. DLND01-007742-2021

In Re:

(2)

Sushil Ansal
S/o Late Sh. Chiranji Lal Ansal R/o
26, Feroz Shah Road,
New Delhi-110001 Appellant

Versus

State of NCT of Delhi

..... Respondent

AND

Criminal Appeal No. 91/2021

CNR No. DLND01-007741-2021 In Re:

(3)

P.P. Batra

S/o Late Sh.M.L. Batra,

R/o A-38, Shakti Apartments,

Rohini, Sector-9, Delhi

....Appellant

Versus

State of Delhi

(NCT of Delhi)

.... Respondent

AND

Criminal Appeal-92/2021

CNR No. DLND01-007766-2021 In

Re:

(4)

Dinesh Chandra Sharma S/o Late

Sh. Jagram Sharma R/o 1/1609,

Mansarovar Park,

Delhi

..... Appellant

Versus

State, Govt. of NCT of Delhi

..... Respondent

AND

Criminal Appeal-94/2022
CNR No. DLND01-008026-2021

In Re: (5)

Anoop Singh Karayat
S/o Late Sh. Durga Singh Karayat R/o
M 74B, GF, Malviya Nagar,
New Delhi-110 017

..... Appellant

Versus

State (NCT of Delhi) Respondent

Dates of filing of appeals before the Court of Sh.
Anil Antil, the then Ld. ASJ-04, Patiala
House Courts, New Delhi

: 10.11.2021, 10.11.2021
09.11.2021, 11.11.2021
09.11.2021 respectively.

Date of institution on transfer of appeals
to this Court

: 29.04.2022

Dates of hearing arguments

: 06.05.2022 to 08.07.2022

Date of pronouncement of judgment

: 18.07.2022

APPEARANCES:

Sh. Hari Haran, Ld. Senior Counsel along-with Shri Vijay Aggarwal Sh. Nitin Pachori, Sh. Deep Narayan Sarkar and Ms. Aakriti Goel, Advocates for appellant Gopal Ansal.

Sh. Siddharth Aggarwal, Ld. Senior Counsel along-with Shri Kumar Vaibhav, Sh. Gautam Khazanchi, Sh. Vaibhav Dubey, Ms. Sukanya Joshi and Ms. Somya Gupta, Advocates, for appellant Sushil Ansal.

Sh. Manu Sharma, Ld. Counsel for appellant P.P. Batra.

Sh. Sudarshan Rajan, Ld. Counsel for appellant Dinesh Chandra Sharma. Sh. Tarun

Chandiok, Ld. Counsel for appellant Anoop Singh Karayat.

Shri Vikas Pahwa, Ld. Senior Counsel along-with Ms. Raavi Sharma, Advocate for complainants with complainants Ms. Neelam Krishnamoorthy and Sh. R.Krishnamoorthy.

Sh. A.T. Ansari, Ld. Addl. PP for the State.

JUDGMENT:

1. This common Judgment shall decide the above-noted five Criminal Appeals filed by the appellants under Section 374 (3) of the Code of Criminal Procedure, 1973 assailing impugned Judgment dated 08.10.2021, whereby the appellants have been convicted on various count of offences under Section 409/201 read with Section 120-B of the Indian Penal Code, 1860, which has been followed by an order on sentence dated 08.11.2021, passed by the Court of Dr. Pankaj Sharma, the then Ld. Chief Metropolitan Magistrate, New Delhi District, Patiala House Courts, New Delhi. The five appeals raise common question of law and facts and can be conveniently disposed of together.

FACTUAL BACKGROUND:

2. The genesis of the instant FIR Ex. 41/A dated 17.05.2006 lies in the devastating fire incident at Uphaar Cinema, New Delhi on the fateful day of 13th June, 1997 during the screening of movie 'Border', which took away 59 human lives including women and children besides leaving large number of persons injured in various degrees, which led to

registration of FIR No. 432/1997 at PS Hauz Khas under section 436/427/304/337/338/285/287 of the IPC. The CBI took over investigation on registration of RC3 (S)/97/SIC.IV/CBI/ND under section 304/304A/337 IPC and section 14 of the Cinematograph Act and on completion of investigation, the CBI submitted a charge-sheet on 15.11.1997 Ex. PW-37/B against sixteen accused persons including appellants Sushil Ansal, Gopal Ansal and H.S. Panwar (since deceased) in the present matter. Suffice to point out that the accused persons, namely Sushil Ansal, Gopal Ansal and H.S. Panwar were convicted on various counts of offences vide judgment dated 20th November, 2007

Ex.PW-37/H and the conviction has been upheld up to the Hon'ble Supreme Court, which case would be referred as the Main Uphaar case for our convenience in this judgment.

3. In so far as the main Uphaar case is concerned, it appears that after framing of charges on 27.02.2001 against the accused persons including Sushil Ansal, Gopal Ansal and H.S. Panwar in the main Uphaar case, and recording of prosecution evidence commenced from 23.05.2001 and during the course of trial while examining PW-33 T.S. Sharma Asstt. Divisional Officer, Fire Station, Moti Nagar, Delhi on 19th July, 2002 which continued the following day i.e., 20th July, 2002, the learned Public Prosecutor noticed that some important documents which were seized by the IO in original during the course of investigation and which were filed along with the charge-sheet and formed part of the judicial record were missing from the record of the

case while some other documents had been tampered with and / or mutilated by tearing of a portion of the documents and/or defaced or made illegible by sprinkling black ink. The CBI moved two applications on 13th/14th January, 2003 to record part statement of IO R.S.Khatri and to summon additional witnesses and on 20.01.2003 a handwritten application Ex. PW-2/A was moved by Shri Y.K.Saxena, Ld. Special PP (PW-2) setting out the details of about nine documents that were either missing/tempered or mutilated and sought permission of the Court to lead secondary evidence; and another undated list was filed on 20.01.2003 Ex.PW30/DB about eight documents missing/torn. Anyhow, the said prayer was allowed by the Ld. Presiding Officer of the Court vide order dated 31.01.2003 Ex. PW37/E and the prosecution was permitted to lead secondary evidence in regard to the missing and tampered documents. Upon which, an affidavit dated 06.02.2003 was filed by IO R.S.Khatri Ex. PW-10/A, placing on the judicial record photocopies of the missing documents.

4. The First salvo against the appellants was fired when an application under section 439 (2) Cr.P.C was moved on behalf of the Association of Victims of Uphaar Tragedy (for short 'AVUT'), a registered association formed by the family members/relatives of those who lost their precious life and got injured in the gory incident of fire on 13th June, 1997, seeking cancellation of bail of the accused persons alleging that the accused persons in a planned manner were instrumental in tempering/mutilating or destroying the relevant judicial record with

the clear motive of escaping their culpability from the commission of offence and with a view to subvert the course of justice, which application was dismissed by the then Ld. Trial Court vide order dated 29.04.2003. Aggrieved thereof, on 20.05.2003 the AVUT preferred Crl. Main 2380/2003 before the Hon'ble High Court of Delhi praying for cancellation of bail of three accused persons, viz., Sushil Ansal, Gopal Ansal and H.S. Panwar.

5. It appears that during the pendency of said criminal petition, there were placed on the record 'the Fact Finding Report' conducted by Ms. Mamta Sehgal, Ld. ASJ, New Delhi dated 03.04.2003 Ex. PW-5/C, and consequent thereto disciplinary action conducted against the Court Ahlmad/record keeper i.e., appellant Dinesh Chandra Sharma by the Inquiry Officer viz., Shri S. C. Malik, the then Ld. ASJ in terms of Rule

14 of the CCS (CAA) Rule 1965, who vide Inquiry report dated 30.04.2004 Ex. PW-5/B held the Court Ahlmad/record keeper appellant Dinesh Chandra Sharma guilty of absolute carelessness and negligence, which report was eventually accepted by the then Ld. District & Sessions Judge, Delhi, who vide order dated 25.06.2004 PW-5/A terminated the services of the appellant/delinquent Dinesh Chandra Sharma for gross misconduct. Upon receipt of the said reports, the petitioners 'AVUT' moved another Crl. Main 2229/2006 under section 482 Cr.P.C seeking direction for registration of a Criminal Case (FIR) on the basis of inquiry report and the order passed by Ld. District & Sessions Judge owing to the conduct of the Court Ahlmad of the Court. Hon'ble Mr. R.C. Jain,

Judge High Court of Delhi in Crl. Main 2229/2006 in CRLM.(M) 2380/2003 vide order dated 5th MAY 2006 directed the Special Branch of Delhi Police to register a case under appropriate provisions of law in regard to the incident of Removal/ Tampering/ Mutilation of the documents from the judicial record of the Trial Court and also directed that investigation be entrusted to an officer not below the rank of Assistant Commissioner of Police who would conduct the investigation expeditiously and endeavour to conclude the same within a period of three months from the date of the order. However, later on, Hon'ble High Court of Delhi modified its order on the moving of application by the State vide order dated 25.05.2006 and directed instead the Economic Offences Wing (EOW) to investigate the case. Accordingly, the instant FIR was lodged on the complaint dated 13.05.2006 Ex. PW-29/A of Mr.

R. Krishnamurthy, General Secretary, 'AVUT' in terms of the order dated 05.05.2006 passed by Hon'ble High Court of Delhi. As per the FIR, the said tampering and disappearance of material evidence was owing to a criminal conspiracy hatched by the appellants Sushil Ansal, Gopal Ansal, H.S. Panwar with Dinesh Chandra Sharma, Ahlmad/Record Keeper to subvert the free and fair trial at the cost of denting the truth. It was claimed that criminal action has been launched by 'AVUT' to bring the culprits to book so as to send a signal of deterrence to those who attempt to fiddle with the process of law so as to maintain sanctity and fairness of a criminal trial and uphold majesty of rule of law.

INVESTIGATION CARRIED OUT BY POLICE:

6. After the registration of the present FIR, investigation was entrusted to ACP Mr. Vijay Malik(PW-29) and later the investigation was carried out by ACP Amit Roy, SIT/EOW, Crime Branch, Delhi(PW- 38). The gist of the first charge sheet/ Final report filed on 12.02.2007 was that during investigation, it was revealed that the case No. RC3 (S)SIC.IV(CBI) was pending trial in the court of Ms. Mamta Sehgal, Ld. Additional Sessions Judge, Patiala House. On 19.07.2002, while the deposition of PW R.C. Sharma was being recorded, a letter dated 28.11.1996 written by Mr. Vimal K. Nagpal, Vice President (Service) Ansals Properties and Industries Ltd. to Delhi Fire Services Ex. PW- 37/F was found missing from the judicial file. Thereafter, under the directions of the Ld. Trial Court judicial file of the case was subjected to scrutiny and Ld. Prosecutor Mr. Y. K. Saxena(PW-2) submitted a report dated 20.01.2003 mentioning therein that the following documents were found Missing/ Torn and Obliterated:-

i. Seizure memo dated 18.07.1997 for seizure of documents prepared by IO, SIT, Crime Branch, Delhi Police-left side lower corner of second page of the seizure memo is torn;

ii. Correspondence page no. 123 of file of Delhi Fire Services regarding Uphaar Cinema, Green Park, New Delhi was found half torn from lower portion the file was seized by the IO, SIT, Crime Branch vide seizure memo dated 12.07.1997;

iii. One Register of Occurrence Book of Control Room Headquarters, Delhi Fire Services seized by the IO during

the investigation – pages 363 to 400 are missing. The relevant page is 379 which pertains to departure for inspection of H.S. Panwar, Fire Officer, (an accused in the case) Delhi Fire Services on 12.05.1997;

(iv). One Occurrence Book register of Bhikaji Cama Place Fire Station, New Delhi containing pages 1 to 400. Pages 95 to 104 are missing and on pages 109 to 116 ink has been spread. The relevant pages are 96 to 113 which contains the inspection of Uphaar Cinema from the safety point of view and movements of fire officers to attend fire calls;

(v). Casual Leave Register maintained at Headquarter Delhi Fire Services for the period 1995-1996. Page nos. 45 to 50 are missing. Relevant page is page no. 50 which deals the casual leave status of accused H.S. Panwar on 22.12.1996;

(vi). Four cheques dated 26.06.1995, 23.05.1996, 30.11.1996 & 20.02.1997 signed by accused persons Mr. Sushil Ansal and Mr. Gopal Ansal as authorized signatory of Green Park Theaters and Associated Pvt. Ltd and Ansal Theatres and Club Hotels Pvt. Ltd alongwith seizure memos of these cheques; and

(vii). File containing minutes of MD's meeting and correspondence containing 40 pages. Its page nos. 1, 9, 12, 14, 18 & 19 are missing. The relevant pages are 1 to 17.

7. The charge sheet went on to narrate the aspect of Fact Finding Enquiry conducted by Ms. Mamta Sehgal. Ld ASJ, PHC, ND with regard to Missing/ Obliterated documents, holding the appellant Dinesh Chandra Sharma, the then Ahlmad responsible being custodian of the judicial records, and further holding of a regular Departmental Enquiry vide order No. 94206/F-962/Vig., dated 10.12.2003; and vide order dated 25.06.2014 Ex.PW-5/C the appellant Dinesh Chandra Sharma was terminated from his services. During the course of

investigation, certified copies of all the Missing/ Torn and Obliterated documents were collected from the Registry of the Supreme Court Court after observing all legal formalities. Thereafter, concerned PWs related to the Missing/ Torn and Obliterated documents were examined including Mr. Raj Singh Khatri, IO of main Uphaar CBI case and Spl. PP Mr. Y.K. Saxena. Their examination revealed that the said Missing/ Torn and Obliterated document were exhibited on the basis of photocopies of the same by the PWs being secondary evidence with the approval of the Ld. Trial Court in terms of provisions of Section 65 of The Evidence Act. During the examination, all the PWs pertaining to said Missing/ Torn and Obliterated documents the same PWs corroborated their earlier statements made in the Trial Court and had got exhibited the photocopies of the said Missing/ Torn and Obliterated documents being secondary evidence.

8. During course of investigation, some of the Court staff members who remained associated with the case file of Uphaar Tragedy case during the trial since 15.11.1997 were examined. During the course of investigation were examined, Mr. Y. K. Saxena, Spl. PP CBI, Inspr. Raj Kumar, CBI, Pairvi Officer for the case and Const. Virender Singh, Naib Court in the Trial Court from CBI. Smt. Neelam Krishnamurthy and Mr. R. Krishnamurthy besides Mr. Dayal, Mr. Deepak Katpalia, Mr.

P.P. Batra, Mr. Laxmi Narain Soni, Mr. Vijay Katiyal were also interrogated and they all stated that they had nothing to do with Missing/ Torn and Obliterated documents and they used to go only to assist their

Advocates in the pairvi of the case. During the course of investigation, Call Data Records for the relevant period i.e. 2002 to 2005 of mobile no. 9811027522 of accused Dinesh Chandra Sharma was obtained from Hutchinson Cellular Company and it was found that accused had made several calls to Mr. P.P. Batra, Steno in the Legal Cell of Ansal Properties & Industries Ltd. and Mr. P.P. Batra, who was also interrogated. During the investigation, sufficient evidence came on record against accused Mr. Dinesh Chandra Sharma, accordingly, he was arrested in this case on 22.11.2006. Accused Mr. Dinesh Chandra Sharma was granted bail by the Court of Ld. ACMM on 04.12.2006. An application was moved to the Ld. Sessions Court for cancellation of bail and the Ld. Sessions Court canceled his bail on 23.12.2006 and he was directed to surrender on the 8th January, 2007 before the court of Ld. ACMM. Subsequently, accused Dinesh Chandra Sharma appealed in the Hon'ble High Court of Delhi against the said orders for cancellation of bail but the Hon'ble High Court of Delhi did not admit his bail application. Accordingly, accused surrendered on 08.01.2007 and continued to be in judicial custody till he got bail.

9. It was further the case of the prosecution that accused Dinesh Chandra Sharma during investigation disclosed that he took charge of judicial record in the pending cases including that of Uphaar tragedy case from his predecessor Ahlmad Mr. Sunil Kumar Nautiyal (PW-8) but he did not check each and every document; and that after dismissal from service, he met accused Mr. P.P. Batra who worked in the

legal division of Ansal Properties and he requested Mr. Batra for some job. Mr. Batra gave him the address of A-Plus Securities at Saket Delhi where he got a job of Supervisor for Rs. 15,000/- per month with A-Plus Security & Training Institute, A-96, Saidulazab, MB Road, New Delhi and worked for about 8 months and left this job as his father asked him to help him in running a school. It was the prosecution case that inquiries made at the office of A-Plus Security & Training Institute Pvt. Ltd., A- 96, MB Road, Saidulazab, Delhi revealed that fluid was applied over the name of one of the employees in monthly wages and remuneration register from November 2004 to June 2005; and on questioning, accused Anoop Singh, Chairman of A-Plus Security, stated that they had applied fluid over the name of Dinesh Chandra Sharma when they came to know that Dinesh Chandra Sharma was linked with Uphaar tragedy case; and that accused Mr. Anoop Singh and other Directors Mr. Shiv Raj Singh and Mr. Anokhe Lal Pal also told that monthly payment of Rs. 15,000/- to accused Dinesh Chandra Sharma was given in cash by Brig. (Rtd.) Mr. D.V. Malhotra, General Manager, Star Estate Management Ltd. However, no documentary proof of such payments could be obtained and on interrogation Brig. D.V. Malhotra, General Manager, Star Estate Management Pvt. Ltd denied such allegation of making cash payments towards monthly wages of accused Dinesh Chandra Sharma while he worked with A-Plus Security. It is further prosecution case that investigation revealed that Mr. P.P. Batra along with other staff had also been frequently visiting and doing pairvi of the Uphaar case on behalf of

Mr. Sushil Ansal and Mr. Gopal Ansal in the Trial Court in case FIR No. RC3 (S)/97/CBI/SIC.-IV/ND and used to interact with Mr. Dinesh Chandra Sharma.

10. In the said background, the investigation concluded that the possibility of Dinesh Chandra Sharma tampering with the record at the instance of Mr. P.P. Batra acting in the interest of his employer Mr. Sushil Ansal and Mr. Gopal Ansal could not be ruled out and such view got strengthened from the nature of some documents which were either missing or tampered. Initially, the charge-sheet was filed against accused Dinesh Chandra Sharma on 12.02.2007, and thereafter, first supplementary charge-sheet containing CFSL report and some document was filed on 23.5.2007. Thereafter, the second supplementary charge-sheet dated 17.01.2008 was filed whereby Mr. Sushil Ansal; Mr. Gopal Ansal; Mr. H.S. Panwar; Mr. P.P. Batra; Mr. D.V. Malhotra; and Anoop Singh were arrayed as accused persons. All these persons were summoned by Ld. ACMM vide order dated 15.02.2008, which was assailed before Hon'ble High Court of Delhi by Mr. Sushil Ansal, Mr.

D.V. Malhotra, Mr. Gopal Ansal and Mr. P.P. Batra. However, their petitions were dismissed with cost of Rs. 25,000/- each vide order dated 03.09.2009.

11. Shri Sanjay Khanagwal, the then Ld Chief Metropolitan Magistrate, New Delhi, vide order dated 31.05.2014 framed the Charges against the accused persons, the present appellants, and it would expedient to reproduce the same for better appreciation of the evidence

led on the record: -

“I, Sanjay Khaganwal, Chief Metropolitan Magistrate, Patiala House Courts, New Delhi do hereby charge you (1) Sushil Ansal, (2) Gopal Ansal, (3) H. S. Panwar, (4) Dinesh Chandra Sharma, (5) P. P. Batra, (6) D. V. Malhotra and (7) Anoop Singh as follows :

That during the period started from filing of the charge sheet in case RC No. 3/97/SIC IV/New Delhi on 15.11.1997, wherein accused Sushil Ansal, Gopal Ansal and H. S. Panwar were charge sheeted amongst other accused persons for offence alleged under section 304 and 304A IPC. Till 13.01.2003 when the fact of missing documents came into the knowledge of the trial court of said case you all already entered into criminal conspiracy for committing, the various offences like criminal breach of trust by a public servant by missing / destruction / tampering / obliterating and spreading the ink over the documents which are vital for the trial of the case to give advantage to accused Sushil Ansal, Gopal Ansal and H. S. Panwar during the trial of the above mentioned case, which was being tried in the court of Ms. Mamta Sehgal, Ld ASJ, PHC, New Delhi.

You, accused Dinesh Chandra Sharma in the capacity of the Government servant entrusted with the judicial record and having dominion over the file and documents of the above mentioned case had committed an act of criminal breach of trust regarding those documents. Thereby all the accused aimed at causing, disappearance of evidence of offence punishable with imprisonment which may extend to 10 years, or giving false information to screen the offender of the above mentioned case, Accused P. P. Batra acted as connecting link between Gopal Ansal, Sushil Ansal, H. S. Panwar and Dinesh Chandra Sharma. He remained in constant touch with Dinesh Chandra Sharma on his mobile phone and land line phone installed in the office of Ansal Properties and Industries Limited. Through accused P. P. Batra, Sushil Ansal, Gopal Ansal and H. S. Panwar remained in touch with accused Dinesh Chandra Sharma for the execution of the said agreement to commit various offences.

In pursuance to the said agreement after the dismissal from the job accused Dinesh Chandra Sharma was provided a job through P. P. Batra on the directions of Sushil Ansal and Gopal Ansal with A-Plus Security Agencies. D. V. Malhotra who was the General Manager of SEML actively participated and paid a sum of Rs. 15,000/- per month to the A-Plus Securities Agencies for paying salary to the Dinesh Chandra Sharma for the work he has done for the accused Sushil Ansal, Gopal Ansal and H. S. Panwar. Anoop Singh, the Chairman of A Plus Securities Agencies employed him secretly and paid him salary of Rs. 15,000/- per month more than the existing rate of salary and also tamper with the data showing Dinesh Chandra Sharma as employee in the said firm by applying fluid on the record of A Plus Securities Agencies over the name of accused Dinesh Chandra Sharma and the amount paid to him. Over this fluid the name of other employee was mentioned. All this was done to keep the conspiracy secret and out of the reach of the investigation agency. Thereby, all of you in furtherance of your common intention in pursuance of said agreement committed an offence punishable u/s 120B IPC and within my cognizance.

Secondly, in furtherance of the above mentioned criminal conspiracy accused Dinesh Chandra Sharma who was entrusted with the having dominion over the case file of case no. RC No. 3/97/SIC IV/New Delhi on 15.11.1997 in his capacity as a public servant Ahlmad of court committed criminal breach of trust by destructing / missing / tampering / obliterating / spreading over the ink on the documents of the said case file so entrusted to him and thereby all of you have committed an offence punishable u/s 409 IPC r/s Section 120B IPC.

Thirdly, in furtherance of above mentioned agreement of criminal conspiracy Dinesh Chandra Sharma, knowingly or having reasons to believe that in the said case offence alleged against the accused Sushil Ansal, Gopal Ansal and H. S. Panwar is an offence punishable with imprisonment which may extend to ten years and caused the evidence connecting with the said offence to disappear / missing / tampering / obliterating / spreading over the ink over the

documents or knowingly gave false information with the intention to screen the offender Sushil Ansal, Gopal Ansal and H. S. Panwar from legal punishment and thereby committed an offence punishable u/s 201 IPC r/w 120B IPC and within my cognizance.

Fourthly, during the above mentioned period you Sushil Ansal, Gopal Ansal, H. S. Panwar, Dinesh Chandra Sharma, P. P. Batra, D. V. Malhotra and Anoop Singh abetted in the above mentioned manner of commission of the offence falling u/s 409/201 IPC by accused Dinesh Chandra Sharma and thereby committed the offence punishable u/s 109 IPC r/w Section 120B IPC and within my cognizance.

And I hereby direct you all be tried by this court on the above mentioned offences.

All the accused persons pleaded not guilty for the charges and claim trial.”

12. The impugned order dated 31st May, 2014 on framing of charge was assailed by the appellants Anoop Singh, Gopal and Sushil Ansal in separate criminal revisions, which were ultimately got dismissed in CrI. Rev.P 262/2016; 263/2016 & 264/2016 by Hon’ble Mr. Justice Sidharth Mridul, Judge High Court of Delhi vide order dated 12.05.2017.

PROSECUTION EVIDENCE:

13. In order to prove its case, the Prosecution examined as many as 43 witnesses. The witnesses can be categorized or sub-categorized as under:

13.1 COMPLAINANT PARTY:

PW-30 was Sh. R. Krishanmoorthy, the General Secretary of the Association of Victims of the Uphaar Tragedy (AVUT). He

testified about keenly watching progress of the trial during the hearing and trial of the main Uphaar Case and deposed about filing of application before the Court concerned for cancellation of bail granted to Gopal Ansal, Sushil Ansal and H.S. Panwar. He deposed about taking the matter to the Hon'ble High Court and thereafter filing the complaint dated 13.05.2006 Ex.PW-29/A leading to the registration of the present FIR. He was cross-examined by Ld. Counsel for accused Dinesh Chandra Sharma, Gopal Ansal and P.P. Batra while Ld. Counsel for accused Anoop Singh did not subject the witness to any cross-examination.

13.2 WITNESSES FROM THE COURT STAFF:

Three main witnesses for the prosecution with regard to the care and custody of the relevant judicial record were examined viz., PW- 4 Jagannath, who was Stenographer in the court of Smt. Mamta Sehgal, the then Ld. ASJ, Patiala House Court, New Delhi; PW-6 was Shyam Lal, Senior Assistant (Retired), who was previous Court Ahlmad in the court of Sh. Brijesh Sethi, the then Ld. MM, Patiala House Court and the charge-sheet of the present case was filed on 15.11.1997; and PW8 Sh. Sunil Kumar Nautiyal, was Sr. Judicial Assistant / Court Reader in the court of Ms. Mamta Sehgal, ld Trial Court from 27.04.2000 to 27.04.2001. I shall delve into their testimony later on in this judgment in some detail. Each of the three were put to a long and searching cross- examination.

Three more witnesses from the District Courts were: PW-5 Usha Gogia, Branch In-charge (Vigilance Branch) Tis Hazari Court, Delhi, who produced the file of the original order dated 25.06.2004 passed by Sh. J. P. Singh, the then Ld. District & Sessions Judge, Delhi, whereby the services of the delinquent official/appellant Dinesh Chandra Sharam were terminated, Certified copy of which is Ex. PW-5/A apart from containing original departmental inquiry report dated 30.04.2004 prepared by Sh. S. C. Malik, Inquiry Officer and the then Ld Addl. District & Sessions Judge, Ex PW-5/C. PW7 was Sh. Sanjay Kumar Dubey, Judicial Assistant (Administrative Branch-II) (Personal File), Tis Hazari Court, Delhi, who brought the summoned record i.e. personal files of Dinesh Chandra Sharma, Gajraj Singh and Sunil Nautiyal containing the original of appointment letter of Dinesh Chandra Sharma, joining letter of Dinesh Chandra Sharma, charge report prepared by Sunil Kumar Nautiyal for handing over the pending case file of the documents to Dinesh Chandra Sharma containing 10 pages, joining report of Dinesh Chandra Sharma dated 30.04.2001, handing over charge / relinquish report by him to his successor Dinesh Chandra Sharma on 22.05.2001 and handing over / relinquish report dated 01.05.2000 by then Ahlmad Gajraj Singh in the court of Ms. Mamta Sehgal, the then Ld. ASJ, and the relevant documents were proved as Ex. PW-7/A (OSR) to Ex. PW-7/F (OSR). PW9 was Sh. Sudhir Kumar, Judicial Assistant, the then Reader in the court of Ms. Rich Gusain Solanki, who deposed that while posted as LDC in the Vigilance Branch, Tis Hazari

Courts, Delhi in the year 2006, he had handed over the photocopies of appointment letter and joining letter of Dinesh Chandra Sharma, charge report prepared by Sunil Kumar Nautiyal for handing over the pending case file documents of documents containing 10 pages, joining report of Dinesh Chandra Sharma dated 30.04.2001, handing over charge by Sunil Kumar Nautiyal to his successor Dinesh Chandra Sharma on 22.05.2001 and handing over / relinquishment report dated 01.05.2000 by Gajraj Singh, the then Ahlmad in the court of Ms. Mamta Sehgal, Ld ASJ to the IO ACP PW-38, who seized the said documents vide seizure memo Ex. PW9/A bearing his signature at Point A and the said documents were already marked Ex. PW7/A to Ex. PW7/F.

13.3 WITNESSES FROM THE DELHI FIRE OFFICE: PW-1 Sanjay

Singh Tomar was, Divisional Officer, Delhi

Fire Service, Fire Station, Shankar Road, New Delhi. In his examination-in-chief, he stated that he deposed about the seizure memo dated 02.08.1997 Ex. PW-1/A by which certain record of Delhi Fire Service (HQ), Connaught Lane, New Delhi, were seized in his presence in connection with RC3 (S)/97/SIC.IV, New Delhi viz., Nine OB registers of Bhikaji Cama Place, Fire Station and Safdarjung Fire Station were handed over to CBI. He deposed that he had handed over a bunch of documents running into page nos. 1 to 400 but on the day of deposition in the Court page nos. 95 to 104 were missing while Page nos. 109 to 116 were rendered illegible, which bunch of documents

were Mark PW1/A (Colly.). He was subjected to a long searching cross-examination by the Id counsel for the appellants except Dinesh Chandra Sharma, PP Batra and Anuj Singh.

PW-11 was Sh. A.K. Bhatnagar, was another official from Delhi Fire Services, who deposed that he had handed over the Occurrence Book Ex.PW-10/E containing 1 to 400 pages maintained at Delhi Fire Services Control Room (Headquarter) to CBI and on being told that certain pages were missing in the occurrence book, the book was shown to him and he testified that page 363 onwards were missing. He affirmed that each and every page of occurrence book was a printed page and properly numbered, having same pattern and design and he affirmed that he was shown Ex.PW-10/D during his deposition in the main Uphaar Case. He was cross-examined on behalf of accused P.P. Batra, Dinesh Chandra Sharma, Sushil Ansal and also Anoop Singh but Id Counsel for other accused persons did not elect to cross-examine the said witness.

PW-13 was Sh. R.C. Sharma, posted as Deputy Chief Fire Officer at Delhi Fire Service Headquarter, Connaught Place, New Delhi in the year 1997. He deposed that although first enquiry was conducted by Sh. Naresh Kumar, DC South, regarding the incident of fire, he was also associated in the investigation of the Uphaar Case and he deposed that he had handed over certain files regarding the incident containing some 30 pages on the notings side and more than 100 pages on correspondence side. He deposed that he was examined in the main

Uphaar Case and he was shown certain torn documents. On being shown the documents, he identified certified copy of letter written to Delhi Fire Services from Sh. Vimal Kumar Nagpal, Vice President (Services), Ansal Properties and Industries Ltd. dated 28.11.1996 and he affirmed that this document was handed over by him to the CBI. The certified copy of the said document was identified as Ex.PW-10/C (Colly). He further deposed that the document Ex.PW-10/C was bearing signatures of accused H.S. Panwar at point 'A' who was then Divisional Fire Officer posted at Delhi Fire Services at Bhikaji Cama Palace. He was cross-examined by Ld. Counsel for the accused Gopal Ansal and Sushil Ansal besides Dinesh Chandra Sharma while the Counsel for other accused persons did not prefer to cross-examine the witness. However, this witness was re-examined at the request of Ld. Addl. PP for the State and copy of his statement running into 20 pages in the main Uphaar Case was marked as Ex.PW-13/A.

13.4 WITNESSES FROM BANK WITH REGARD TO
FINANCIAL POWERS OF THE APPELLANTS SUSHIL &
GOPAL ANSALS:

PW-3 Mukesh Chand Khullar was Assistant Manager in Punjab National Bank, Rajender Nagar (Fire Station Branch), New Delhi. He deposed that on the instructions of the Senior Manager of the Bank, he went to the Office of CBI and handed over a cheque of Rs. 50 lakhs, certified copy of which is EX. Pw-3/A issued from the current account of Green Park Theater Association Pvt. Ltd. in the name of Sushil Ansal seized vide memo Ex. PW-3/B. PW-3 was cross-examined

by Ld.counsel for the appellant P. P. Batra while others chose not to cross-examine him.

PW-21 Avtar Singh, was an officer from Punjab & Sind Bank, Green Park, New Delhi in the year 1997 and was associated in the investigation of the case by the CBI. He deposed that in his presence two documents were seized by the CBI vide seizure memo, upon which he had appended his signatures. He deposed that on being shown documents he testified that page Nos. 1, 9, 12, 14, 18 and 19 were missing and 34 pages were intact filed along-with 3rd supplementary charge-sheet Ex.PW-21/A. He deposed about six pages which were Marked Ex.PW-10/P, PW-10/Q, PW-10/R, PW-10/S, PW-10/T and PW-10/U. In his cross-examination conducted on behalf of accused Gopal Ansal, he was confronted with his previous statement under Section 161 Cr.P.C., which is Ex.PW-20/DA.

PW-22 was Sh. M.L. Dhuper, who was officiating Chief Manager, Punjab National Bank, Tolstoy Mark, New Delhi in the year 1997. He deposed that during investigation in main Uphaar Case, he had handed over two cheques to an officer from CBI and he was also examined as a witness during the trial of the main Uphaar Case. He affirmed his signatures on the seizure memo marked Ex.PW-10/K and deposed about the cheques bearing No. 805578d dated 30.11.1996 issued by Gopal Ansal, Authorized Signatory of Ansal Theater & Clubotles Pvt. Ltd. in favour of Music Shop for an amount of Rs. 1,50,000/- and also a second cheques bearing No. 805590 dated 12.02.1997 issued by Gopal

Ansal, Authorized Signatory of Ansal Theater & Clubotles Pvt. Ltd. in favour of M/s. Chancellor Club for an amount of Rs. 2,96,550/. The copy of deposition recorded in the main Uphaar Case was also marked Ex.PW-22/A. He was cross-examined by the Ld. Counsel for accused Gopal Ansal while others did not elect to do so.

PW-34 was Sh. Ishwar Bhat, from Syndicate Bank, who deposed that in the year 1997 he was posted as Assistant Manager, Syndicate Bank, Green Park Extension Branch, New Delhi and on 27.08.1997 he handed over a cheque bearing No. 183618 dated 23.05.1996 drawn on Syndicate Bank, Green Park Extension, New Delhi in favour of Chief Engineer (Water) for an amount of Rs. 9,711/- duly signed by Gopal Ansal, Authorized Signatory M/s. Green Park Theaters and Associated Pvt. Ltd. He was shown the certified copies of the cheque and the seizure memo on the record marked Ex.PW-10/O and PW-10/N and copy of his deposition recorded in the main Uphaar Case was marked Ex.PW-34/A.

13.5 WITNESSES ON CALL DATA RECORD & MTNL: PW-27 was Sh.

Ajay Kumar, Nodal Officer, Bharti Airtel

Ltd., who deposed that he had been working in the Bharti Airtel since 2007 and earlier he was working with Sh. R.K. Singh, who left the company in 2015 and his whereabouts were not available with the Company. He deposed that he had seen the seizure memo dated 12.07.2006 as well as letter written by Sh. R.K. Singh and addressed to ACP Amit Roy, which were Marked Ex.PW-27/A and PW-27/B. This witness was put to a grueling cross-examination by the Ld. Counsel for

accused P.P. Batra, Dinesh Chandra Sharma and Sushil Ansal and I shall delve into the same later on in this Judgment.

PW-35 was Sh. R.K. Singh, the then Nodal Officer, Bharti Airtel Ltd., who deposed that on 10.07.2006 he was working as Nodal Officer at Bharti Airtel Ltd. and on the request of the IO, he wrote a letter giving requisite information vide his letter Ex.PW-27/B and the said letter was taken into possession by the IO vide seizure memo Ex.PW-27/A. This witness was subjected to lengthy cross-examination by the learned Counsel for accused P.P. Batra and Gopal Ansal, while the learned Counsel for the accused Dinesh Chandra Sharma adopted the cross- examination done on behalf of accused Gopal Ansal and others did not choose to cross-examine the witness.

PW-36 was Sh. Anu Anand, Assistant Manager, Bharti Airtel Limited. He stated that in the month of September-2006 he was working as Executive-Legal & Regulatory in erstwhile Hutchinson Essar Mobile Services Ltd. and pursuant to written request vide letter dated 11.08.2006 received from Sh. Amit Roy, ACP, Crime Branch, New Delhi he had provided certified copy of the Call dat records (for short 'oo. s') of mobile numbers 9811675434, 9811027522, 9811026904 and 9811313863 for the period May 2002, June 2002, August 2002, September 2002 and November 2002 vide his forwarding letter Ex.PW- 36/A. He further deposed about the certified copy of CDR of mobile No. 9811675434 for the month of August, September, November 2002 that were Ex.PW-36/B to Ex.PW-36/D respectively, and the certified copy of

CDR of mobile No. 9811026904 for the month of May and November of year 2002 that were marked Ex.PW-36/E to PW-36/F. He further deposed about the CDR for the mobile No. 9811313863 for the month of May 2002 that was marked Ex.PW-36/G and likewise the certified copy of CDR of mobile No. 9811027522 for the month of May, June, August, September and November for the year 2002 were on the record that were marked Ex.PW-36/H to PW-36/L respectively for each of the said months. This witness was put to a long and searching cross-examination by the learned Counsel for accused P.P. Batra as well as accused Gopal Ansal, upon which I would delve later on in this judgment.

PW-32 was Sh. Satish Chandra Verma, SDE (FRS), KBN, Janpath, New Delhi, who produced the original history register with regard to landline numbers 23352269, 23352270 and 23352518 allotted in the name of M/s. Ansal Properties and Industries Ltd. He deposed that telephone No. 23352269 was opened on 15.12.1994 in the name of Ansal Properties and Industries Ltd., 118, UF, Prakash Deep Building, 7 Tolstoy Marg, New Delhi and on 12.08.1995 this number was shifted to the premises bearing No. 1110, Ansal Bhawan, 16 K.G. Marg, New Delhi. He deposed that later on 15.04.2002 the name of the subscriber was changed from Ansal Properties and Industries Ltd. to M/s. Ansal Properties and Infrastructure Ltd. and this number was disconnected w.e.f. 23.04.2007 for non-payment of telephone bill. The relevant record was marked Ex.PW-32/A. As regards telephone No. 23352270 he deposed that it was opened on 15.12.1994 in the name of Ansal

Properties and Industries Limited at aforesaid address at Tolstoy Marg, New Delhi and on 12.08.1995 this number was shifted to the premises No. 1110, Ansal Bhawan, 16 K.G. Marg, New Delhi and name of the subscriber was changed to M/s. M/s. Ansal Properties and Infrastructure Ltd., the document with regard to which was marked Ex.PW-32/B. He further deposed that telephone No. 23352518 was opened on 01.12.1994 and likewise on 07.04.2005 the name of subscriber was changed to M/s. Ansal Properties and Infrastructure Ltd., which number was disconnected on 26.06.2014, vide document Ex.PW-32/C.

PW-33 was Sh. G.S. Bakshi, Chief Section Supervisor from the office of MTNL, who produced the summoned record pertaining to telephone No. 23352269, 23352270 and 23352518 initially allotted the Ansal Properties and Industries Ltd. and later changed to the name of M/s. Ansal Properties and Infrastructure Ltd. Various documents in this regard were marked Ex.PW-33/A to PW-33/E.

13.6 WITNESSES FROM THE PROSECUTION BESIDES POLICE/CBI:

PW-2 was Mr. Y. K. Saxena Special Public Prosecutor for the CBI during the trial of the main case bearing no. RC-3/97/SIC- IV, CBI, New Delhi and deposed that on noticing some documents were either removed, tampered with by sprinkling blue ink on the pages of some of the documents and some of the documents were torn, he moved an application in his handwriting dated 20.01.2003 as Special P.P, CBI, New Delhi, the said certified copy of the petition were running in two

pages Ex.PW-2/A containing the details of such torn, missing or tampered with putting ink therein at Sr. No. 1 to 9. His cross- examination could not take be conducted due to his demise.

PW-10 was Sh. Rai Singh Khatri, ACP, who retired from services w.e.f 31.12.2014 and deposed that he had been on deputation in the CBI from 01.01.1988 to 31.03.2002 and conducted investigation in the case FIR no. 432/1997, PS Hauz Khas pertaining to the Uphaar Tragedy, which was taken over by CBI in the year 1997 and RC No. 3(S)/97/SIC-IV/New Delhi was registered by CBI on 26.07.1997 as per the order of Government of India, and the investigation was marked to him. He stated that during the course of investigation, collected all the original documents Delhi Police, Licensing Branch, CPWD, MCD, Delhi Fire Service, Uphaar Cinema Management and Hospitals; and that on completion of charge sheet, the same was filed in the Court of Sh. Brijesh Sethi, Ld. M.M. on 15.11.1997. He deposed that he came to know from Sh. Y. K. Saxena, Ld. Special PP that some documents annexed with charge-sheet were found missing and some of were torn and some documents were sprinkled with ink, and total of nine documents were found to be affected in the said manner. He deposed that on the instruction of Ld. Special P.P, he arranged the documents which were relevant for the purpose of trial from his set of charge-sheet and documents in CBI office and filed the same in the court of Ms. Mamta Sehgal, the then Ld. ASJ along with affidavit sworn by him, Ex. PW10/A (collectively) bearing his signature at Point A. Original of Ex.

PW10/A (colly.) was seen from the main case file of main Uphaar Case and returned and the documents D-20, D-84, D-89, D-91, D-92, D-24, D-25, D-26 and D-28 were put to the witness and Court Observations were recorded about what was wrong with each of the document in the nature of document missing, torn or mutilated, and such documents are marked Ex. PW-10/B to PW-10/U upon which I shall delve into in some details in the judgment.

PW-12 was Sh. Ashok Gupta, working as Inspector in CBI in the year 1997 and an Assistant to the Investigating Officer Sh. R.S. Khatri, Chief Investigating Officer (PW-10). He deposed that during the investigation he had seized two cheques from Punjab National Bank and one page from Syndicate Bank and he stated that during his deposition, the original seizure memos Ex.PW-10/K and PW-10/N besides three cheques Ex.PW-10/L, PW-10/M and PW-10/O were found missing. He was cross-examined only by learned Counsel for the accused Dinesh Chandra Sharma while other accused persons were afforded opportunity but they did not elect to cross-examine the witness.

PW-14 was Retired SI Bal Kishore, who deposed that he was posted as an ASI, SIT Section, Crime Branch, New Delhi and he was associated in the investigation of main Uphaar Trial on 18.07.1997. He deposed that on 18.07.1997 he along-with Inspector R.S. Jhakar from Crime Branch went to the Ansal Bhawan, Kasturba Gandhi Marg and seized 10 documents from S.S. Gupta, working at the office of Ansals vide seizure memo Ex.PW-14/A and during his deposition, Court

observation was made that left side lower portion of second page of the seizure memo was torn. He also testified that the certified copy of the photocopy of complete seizure memo was got exhibited during the course of main trial marked Ex.PW-10/B (Colly). The witness was not cross-examined by the Ld. Counsel for accused Anoop Singh, Dinesh Chandra Sharma and the accused P.P. Batra. However, the witness put to rigorous cross-examination by accused Gopal Ansal and Sushil Ansal. PW-15 was Inspector Ishwar Singh from Special Cell, Delhi Police, who deposed that on 17.05.2006 he was posted as SI at CBT Section, EOW Crime Branch, Malviya Nagar, New Delhi. He deposed that on that day he received rukka Marked 'X' from Sh. Vijay Malik, ACP, CBT Section, EOW, Crime Branch and on his instructions he took the same to PS Tilak Marg where the present FIR was recorded. Ld. Counsel for the accused persons did not elect to cross-examine the said witness.

PW-16 was DSP Prithvi Singh (retired), who deposed that on 26.07.1997 Inspector Satpal Singh, Inspector SIT Crime Branch handed over him certain documents along-with their common seizure memo including seizure memo dated 18.07.1997 prepared by Inspector R.S. Jhakar. He deposed that the documents and seizure memo as received from Inspector Satpal Singh were intact in all respects and later he handed over the same to Inspector R.S. Khatri, who was the Chief Investigating Officer in the main Uphaar Case. The witness was shown the seizure memos Ex.PW-14/A and during his deposition Court observation was

made that the lower left side portion of the second page of the seizure memo was torn off. The witness also identified the photocopy of the un- torn seizure memo Ex.PW-1/B. Lastly, certified copy of his deposition in the main Uphaar Case running into nine pages was marked Ex.PW- 16/A. Ld. Counsel for accused P.P. Batra and Anoop Singh did not cross-examine the witness and the cross-examination, however, was done by the Ld. Counsel for accused Gopal Ansal, Sushil Ansal and Dinesh Chandra Sharma.

PW-17 was ACP Satyapal Singh (retired), who was posted as Inspector Crime Branch in the year 1997 and was member of Special Investigating Team constituted for conducting investigation in the main Uphaar Case. He deposed that on 12.07.1997 he had taken into possession the file of Delhi Fire Services pertaining to Uphaar Cinema, Green Park, New Delhi, which consisted of 30 pages of note sheets and 128 pages of correspondence files which was numbered C-1 to C-128. He deposed that he had also taken possession of emergency occurrence book of Delhi Fire Services for the period from 30.05.1997 to 15.06.1997 and that there were 400 pages in the book but pages upto 1 to 292 were written and remaining pages were blank. He deposed that the said documents were seized from Sh. R.C. Sharma, Deputy Fire Chief Officer, Delhi Fire Services (Headquarter), Connaught Place, New Delhi and all the documents were intact in all respects at the time of seizure. The witness was shown documents C-123 in the correspondence file viz. letter written by Vimal K. Nagpal, Vice

President (Services), Ansal Properties and Industries Ltd. addressed to the Divisional Officer, Delhi Fire Services, Bhikaji Cama Palace, New Delhi and the witness acknowledged that the page was in torn condition but it was intact in all respect and had also his initials when it was seized, and the certified copy of the photocopy of the un-torn document was marked Ex.PW-10/C (Colly) and after seeing the same the witness stated that true copy of the original un-torn document bears his initials and page number C/123 was written by him at point 'A'. Certified copy of torn page viz. C-123 was marked Ex.PW-10/C (Colly) having his initials at point 'A'. The witness further stated that since he was transferred to the CBI, he handed over the aforesaid documents Prithvi Singh, DSP, CBI on 26.07.1997. The witness further stated that on the same day he had also handed over one original seizure memo prepared by Inspector R.S. Jhakar regarding seizure of 10 documents from S.S. Gupta along-with 10 documents which were seized from the said seizure memo to Prithvi Singh, DSP that were intact in all respects and he had obtained a receipt as well from Sh. Prithvi Singh. On being shown the original seizure memo dated 18.07.1997 (D-20) prepared by Inspector R.S. Jhakar running into 10 pages, the witness stated that it was same seizure memo which was handed over by him to Sh. Prithvi Singh and the left half lower portion of the second page of the seizure memo was in torn condition. The certified copy of the said torn seizure memo already on the record was identified as Ex.PW-14/A and the secondary evidence led during the trial of main Uphaar Case, such memo was exhibited as

Ex.PW-10/B. The witness was cross-examined by Ld. Counsel for accused Gopal Ansal and Sushil Ansal besides Dinesh Chandra Sharma while other Counsel for the accused persons did not elect to cross-examine the witness.

PW-18 was Inspector Harish Chand, who deposed that he was posted at EOW, Crime Branch, Qutub Institutional Area, New Delhi and on 22.11.2006 he was a member of Team headed by IO ACP Amit Roy, on which date they arrested accused Dinesh Chandra Sharma from his house No. 1/1609, Mansarovar Park, Shahdara, Delhi in the presence of two public witnesses, namely Jitender Kumar Sharma and Shyam Sunder and he deposed signing the arrest memo and personal search memo of accused Dinesh Chandra Sharma. He further deposed that IO interrogated the accused Dinesh Chandra Sharma in his office in his presence and recorded his disclosure statement Ex.PW-18/A and the accused Dinesh Chandra Sharma *inter alia* disclosed that after dismissal from services he had secured a job at A-Plus Security and Training Centre, A-96, Saidullajab, New Delhi and pursuant thereof accused Dinesh Chandra Sharma took them to the office of A-Plus Security and Training Centre and search was conducted. He deposed that one Anoop Singh was present at the office who produced two registers Ex.PW-18/B and Ex.PW-18/C, one register of employment and remuneration of employees for the period from August-2003 to February-2005 containing 97 pages and the second register was also of employment and remuneration of the employees for the period from March-2005 to April-

2006 containing 98 pages. He further deposed that first register on page Nos. 77, 82, 87 and 93 at a particular entry a white fluid was applied on such entries and overwritten by name Ram Karan. He further deposed that in the same register revenue stamp against said entry at page 83, 88 and 94 were found missing and in the second register at page Nos. 2, 8, 14 and 21 white fluid had been applied on a particular entry overwritten with the name Ram Karan. He further deposed that in the same register revenue stamp against said entry at page 15 was found missing and on page 22 white fluid was applied on the revenue stamp.

PW-19 was Sh. M.S. Phartyal, DSP, CBI, who was posted as SI in CBI in the year 1997 and was associated with the investigation of main case Uphaar Case along with Chief Investigating Officer Sh. R.S. Khatri. He deposed that during the course of investigation, he had seized attendance register of the Managers of Uphaar Cinema and had also seized one file containing minutes of the MDs meeting and other correspondence containing 40 sheets. He deposed that the documents were seized in the presence of public witness Sh. Avtar Singh, an officer from Punjab & Sind Bank, situated near Uphaar Cinema, Green Park. He deposed that during the course of his deposition in the main Uphaar Case, which is Ex.PW-19/A, he was shown file containing minutes of MDs meeting and six pages were found missing viz. Page Nos. 1, 9, 12, 14, 18 and 19, which were then reconstructed and led as secondary evidence and Marked Ex.PW-10/P, PW-10/Q, PW-10/R, PW-10/S, PW- 10/T and PW-10/U. The copies of the remaining 34 pages that were

filed along-with the third supplementary charge-sheet were also identified and Marked Ex.PW-21/1 (colly). This witness was put to long and searching cross-examination by the Ld. Counsel for accused Gopal Ansal whereas the Counsel for the other accused persons did not elect to cross-examine this witness.

PW-20 was N.S. Virk, DSP in CBI (since retired), who testified that on 27.08.1997 he had taken into possession an original cheque bearing No. 955725 dated 26.06.1995 issued by Sushil Ansal, Authorized Signatory of M/s. Green Park Theaters Associated Pvt. Ltd. In favour of Sushil Ansal for a sum of Rs. 50 Lacs, which was seized from Sh. M.C. Khullar, Assistant Manager, PNB, Shanker Road, Rajender Nagar, He proved the seizure memo Ex.Pw-3/B in this regard. This witness was cross-examined by the Ld. Counsel for accused Sushil Ansal as well as Dinesh Chandra Sharma while other counsel did not elect to cross-examine him. However, in his cross-examination he was confronted with his statement under Section 161 Cr.P.C. which is Ex.PW-20/DA.

PW-26 was Inspector Tribhuvan, who on 30.07.1997 during the investigation in the main Uphaar Case was posted as Inspector in CBI, SCI IV, New Delhi and he stated that he had seized one Register titled as OB (Occurrence Book) of the Control Room, Delhi Fire Services, HQ containing 1 to 400 pages from Sh. A.K. Bhatnagar vide seizure memo Ex.PW-11/A. He further deposed that during his deposition in the main Uphaar Case, some of the pages from Occurrence Book were found missing and he approved the photocopy of the page No. 379 from

amongst the missing pages to be true copy of its original. The OB (D-89) was shown from the record where pages Nos. 363 to 400 were missing and first page of the OB was signed by Sh. A.K. Bhatnagar, Ex.PW- 10/E. He also identified the certified copy of the photocopy of page No. 379 already Ex.PW-10/E and he further deposed that on 05.08.1997 he had taken into possession one Casual Leave Register maintained at the Headquarter of Delhi Fire Services for the period 1995-96 pertaining to availed casual leaves by the officer with a rank of Station Officer to Deputy Chief Fire Officer, which was running from page No. 1 to 92 and seized from Sh. Surender Kumar, Deputy Chief Fire Officer vide seizure memo certified copy of which is Ex.PW-10/G. He deposed that during the deposition of main Uphaar Case some of the pages of the Casual Leave Register were found missing and page 50 from amongst the missing pages had been proved to be true copy of its original. It is pertinent to mention here that original casual leave register D-92 was shown from the record of main Uphaar Case and page 1 and 77 to 92 were blank whereas page No. 45 to 50 were missing. He deposed that first and last page were found signed by Sh. Surender Kumar and certified copy of the photocopy of page No. 50 was already Ex.PW- 10/H. His deposition running into 7 pages in the main Uphaar Case filed along-with third supplementary charge-sheet was Marked Ex.PW-26/A. This witness was subjected to a short cross-examination by the Ld. Counsel for accused Sushil Ansal, Gopal Ansal and Dinesh Chandra Sharma.

PW-28 was Sh. Deepak Gaur, who was posted as Sub-Inspector with SBI, SIC-IV, New Delhi and was associated in the investigation with Chief Investigating Officer Sh. R.S. Khatri. He deposed that on 02.08.1997 on instructions of Chief Investigating Officer R.S. Khatri, he took possession of the documents described in the seizure memo, certified copy of which is Ex.PW-1/A from Sanjay Kumar Tomar, SO, DFS, Headquarters. He deposed that when he had appeared as witness in the trial of main Uphaar Case and during his deposition on 29.03.2003 he was shown OB register of Bhikaji Cama Palace Fire Station, New Delhi pertaining for the period from 13.12.1996 to 18.01.1997 as described in Sr. No.3 in the seizure memo Ex.PW-1/A and that the said register was originally containing 400 pages, he found that page No. 95 to 104 were missing and page No. 109 to 116 were smeared or sprinkled with blue ink so as to make them illegible. On being shown the original register mark D-91, the witness reiterated the aspect of missing and smearing of the pages and rather confirmed certified copies thereof Ex.PW-10/F (Colly) and PW-28/A (colly). His deposition recorded in the main Uphaar Case on 29.03.2003 running into 3 pages was marked Ex.PW-28/B. The witness was cross-examined by Ld. Counsel for accused Dinesh Chandra Sharma as well as Sushil Ansal and Gopal Ansal.

PW-29 Vijay Malik, who was posted as ACP, CBT Section, EWO Crime Branch, New Delhi on 17.05.2006 and stated that complaint forming basis of the present FIR Ex.PW-29/A was marked to him and he

made his endorsement on the same and gave rukka to SI Ishwar Singh for getting the FIR registered. He deposed that after registration of the FIR, carbon copy of the FIR and rukkk was handed over to him and later investigation was marked to Amit Roy, the then ACP.

PW-37 was Inspector Rajesh Sah. He deposed that in the month of January-2014, he was posted at Sub-Inspector at EOW, Mandir Marg, New Delhi and on the directions of DCP, EOW he went to the Hon'ble Supreme Court to obtain certified copies of the original record of the main Uphaar Case, which was then summoned by the Hon'ble Supreme Court and he met the concerned Section Officer in Central Agency Section of the Hon'ble Supreme Court of India and certified copies were applied, which were made available on 03.02.2014 running into 1776 pages. He deposed about the documents that were seized from the Central Agency of the Supreme Court viz. copy of the application having original endorsement of the Incharge of Copying Agency of the Supreme Court Ex.PW-37/A; copy of the charge-sheet in the main Uphaar Case as also supplementary charge-sheet Ex.PW-37/B; copy of framing of charge dated 27.02.2001 in the main Uphaar Case Ex.PW-37/C; copy of order on sentence dated 23.11.2007 in the main Uphaar Case Ex.PW- 37/D; copy of order sheet dated 31.01.2003 allowing secondary evidence Ex.PW-37/E; copy of order sheet dated 31.03.2003 Ex.PW-37/F; copy of order sheet dated 23.12.2004 exhibiting marked documents by the Ld ASJ holding trial, which is Ex.PW-37/G and the trial Court judgment in the main Uphaar Case dated 20.11.2007 Ex.PW-37/H.

PW-38 was Sh. Amit Roy, DCP, who deposed that he was posted as ACP, EOW, New Delhi and after taking over investigation on 02.06.2006, he took several steps to collect evidence in the matter including inspecting the judicial record, interrogating witnesses and deposed primarily about the investigation conducted by him upon which I would delve later on in this judgment. PW-38 DCP Amit Roy was subjected to a long and grueling cross-examination by the learned Counsel for all the parties except for appellant Sushil Ansal.

PW-41 was SI Alka Sharma. She deposed that on 17.05.2006 she was posted as an ASI and serving as Duty Officer. She stated that at about 4.10 p.m. SI Ishwar Singh had produced rukka of this case already Ex.PW-29/A send by Vijay Malik, ACP (CBT Section), EOW, Crime Branch for registration of the FIR, carbon copy of which is marked Ex.PW-41/A. She deposed that FIR was recorded vide DD No.13A and after making endorsement, carbon copy was given to SI Ishwar Singh.

13.7 **EXPERT WITNESSES:**

PW-23 was Sh. C.H. Gandhi, Government Examiner, who deposed that in the year 2007 he was working as Deputy Government Examiner, Questioned Documents, Directorate of Forensic Science, MHA, Government of India, CFI Complex, Ramanthapur, Hyderabad. After deposing his qualification and work experience, he deposed that on the requisition of the Addl. DCP, EOW, Crime Branch vide letter dated 02.08.2007 he had examined certain questioned documents and standard documents and expressed his opinion thereupon in three sheets vide

report dated 19.04.2007 duly signed by him as well as his colleague Sh.

S.C. Gupta and returned to the Delhi Police vide forwarding letter dated 30.04.2007. The report was marked Ex.PW-23/A and the forwarding letter was marked Ex.PW-23/B. He further deposed about coloured printouts of Video Spectral Comparator (VSC) 5000 i.e. Q.1 to Q.8, QA to QH, running into 16 pages Ex.PW-23/C, which questioned writings were emanating from the two registers marked Ex.PW-18/C and PW- 18/D and he deposed about the observations and opinion formed by him in the report Ex.PW-23/A. He further deposed that he had examined the questioned documents vis-a-vis the specimen writings marked as E-1 to E-12, S-1 to S-6 and S-16 to S46 on 50 sheets Ex.PW-23/E (colly) and also deposed about his supplementary opinion Ex.PW-23/F, which were then forwarded to CBI along-with forwarding letter dated 16.08.2007 Ex.PW-23/G. The witness also produced copy of the supplementary opinion during his examination, which was allowed subject to just exceptions and Marked Ex.PW-23/H. This witness was subjected long and grueling cross-examination by the Ld. Counsel for the accused Gopal Ansal and Anoop singh while the others chose not to cross- examine the witness.

13.8 WITNESSES ABOUT ANSALS BUSINESS_ **AFFAIRS:**

PW-24 was Vivek Gandhi. He was working as Vice President, HR & Administration, Ansal Properties & Infrastructure Ltd. in the year 2007. He deposed that one P.P. Batra was an employee of the

Company and he confirmed that he had issued a letter dated 17.09.2007 in this regard Ex.PW-24/A to the officer from CBI. However, in so far as appointment letter dated 14.11.1995 marked 'X' is concerned, the witness stated that he might have given the same to the IO Amit Roy during the course of investigation. This witness was cross-examined by the Ld. Counsel for the accused P.P. Batra and also Dinesh Chandra Sharma besides Sushil Ansal. During cross-examination by the Ld. Counsel for accused P.P. Batra, the witness was confronted with a diary Marked 'DA' and he was asked as to authenticity of such diary, which was containing the names of the officials of Ansal Properties and Investment Ltd. and showing various landline numbers or connections but the witness could not give any cogent reply with regard to the same.

PW-25 was Ms. Kanak Gaur, Junior Technical Assistant, Government of India, Ministry of Corporate Affairs, who produced the certified copy of the certificate of incorporation, details of Directors, Annual return of the period 2004-05 with Annexure-1, Annexure-2, Form 32 regarding appointment of Rajeev Chopra as Addl. Director and Cessation of Aditya Wadhera as Director, consent of Rajeev Chopra and resignation of Aditya Wadhera, which 21 pages were marked Ex.PW- 25/B (colly). She also produced the certification under Section 65-B of the Indian Evidence Act issued by Sh. A.K. Singh, Assistant Registrar of Companies, NCT of Delhi with regard to the aforesaid documents which is Ex.PW-26/C.

PW-31 was Sh A.K. Singh, Assistant Registrar of Company,

NCT of Delhi and Haryana. He produced his authorization to depose in the present matter Ex.PW-31/A and he produced the summoned record with regard to State Estate Management Pvt. Ltd., certificate of incorporation, CIN number of the company, registered office address of the company and the documents filed by the company with the Registrar of Companies Ex.PW-31/B. He also produced the certified copies of the details of the Director appointed by the Company, which documents running into two pages are Ex.PW-31/C. He also produced certified copies of the annual return for the AGM 24.09.2005 filed by the company State Estate Management Limited on 02.11.2005 Ex.PW-31/D (for 12 pages). He brought certified copies of the Form No. 32 of the State Estate Management Ltd. and written consent of Sh. Rajeev Chopra dated 31.01.2006, whereby he consented to act as Director of the company and resignation letter dated 13.01.2006 of Sh. Aditya Wadhera as Director of the said company, which are Marked Ex.PW-31/E (colly). He also produced certificate to the effect that Star Estate Management Pvt. Limited later changed its name to State Estate Management Ltd. vide document Ex.PW-31/F. As some of the documents have been downloaded from the Website of the Ministry of Corporate Affairs, certificate under Section 65-B of Indian Evidence Act was marked Ex.PW-31/G.

PW-39 was Sh. Anokhe Lal Pal, who deposed that in the year 2004 he was Director in A-Plus Security and Training Institute Pvt. Ltd., running from A-96, M.B. Road, Saidullajab, New Delhi. He deposed

that at that time Anoop Singh was Chairman of the said company and his son Shiv Raj Singh was also Director of the company. He failed to recognize if Dinesh Chandra Sharma was working at that time in that firm. This witness was treated as hostile one and cross-examined by the Ld. Addl. PP for the State. Infact he was re-called for re-examination also and he deposed about his resignation letter Ex.PW-31/L and produced the annual return Ex.PW-31/M, balance sheet Ex.PW-31/N and annual return Ex.PW-31/O and balance sheet Ex.PW-31/P admitting his signatures upon the same.

PW-40 was Sh. Shiv Raj Singh. He was Director in A-Plus Security in the year 2004. He also stated that he was not aware if any person by the name of Dinesh Chandra Sharma was working in their company. He also failed to recount if M/s. Star Estates Management Ltd. was their client and he failed to remember anyone in the name of

D.V. Malhotra was working in the company. On being treated as hostile witness, he was cross-examined by the Ld. Addl. PP for the State and he denied the suggestion that accused Dinesh Chandra Sharma was given a job on the asking of D.V. Malhotra, Incharge Security and deployed for banking and transport works (Field Works) in the company for a monthly salary of Rs. 15,000/-. He denied the suggestion that on coming to know that Dinesh Chandra Sharma was a suspended employee of Court, they removed him from the job. He also denied the suggestion that after having known the said fact, Anoop Singh applied white fluid over the name of Dinesh Chandra Sharma mentioned in the Wages and

Renumeration Register and also wrote the name of Ram Karan Singh over the white fluid. He denied making any statement to the police in this regard, which was marked Ex.PW-40/A.

PW-42 was Sh. Amitav Ganguly. He deposed that he had joined M/s. Ansal Properties and Industries Ltd., as Addl. Vice President in April-2003 and he left the said company on 31.08.2015. He deposed that the name of the company was changed to Ansal Properties & Infrastructure Ltd. He further deposed that during his tenure he had applied for transfer of telephone numbers belonging to M/s. Ansal Properties and Industries Ltd. in the name of new company and he proved the applications in this regard that are Ex.PW-33/A and PW-33/B besides certificate of incorporation of the new company, copy of which is Ex.PW-33/C

PW-43 was Sh. Arvind Kumar. He deposed that in the year 2003, he was running a Automobiles Workshop at A-96, Ground Floor, MB Road, Saidullajab, New Delhi. He failed to remember the incident but he did state that he was called by the police officials from his Workshop to A-Plus Security and Services Institute Private Ltd., where two registers Marked Ex.PW-18/C and PW-18/D were seized through seizure memo Ex.PW-18/B, bearing his signatures.

14. STATEMENTS OF ACCUSED PERSONS UNDER SECTION 313 Cr.P.C.

On close of the prosecution evidence, all the incriminating facts and circumstances were put to the accused Dinesh Chandra Sharma

in terms of section 313 Cr. P.C and suffice to state that the accused pleaded innocence and claimed that he has been falsely implicated in this case. However, due to suspension of physical hearing on account of Covid-19 second wave qua, all the incriminating facts and circumstances were put to the remaining accused, namely Sushil Ansal, Gopal Ansal,

P.P. Batra and Anoop Singh, by way of questions sent to them to their respective emails and they after going through it furnished their replies in the prescribed format and sent it through pdf file which was received on official email ID of the Court and its physical copy was obtained and filed with the record. During the course of final arguments, physical signatures were obtained on the said statement.

15. DEFENCE EVIDENCE:

In Defence Evidence, four witnesses were examined:

DW-1 Sh Surender Kumar was, JJA (Civil Writ Branch), Hon'ble Delhi High Court, Shershah Suri Marg, New Delhi, who produced the summoned record i.e. the original record pertaining to Writ Petition (C) No. 4567/1997 titled as Association of Victims of Uphaar Tragedy Vs. Union of India & Ors., including its Annexures A, B and C. Certified copies of the same were taken on record running into 68 pages including its Annexures are marked as Ex. DW-1/A (colly). The Original record was seen and returned. Ld.APP conducted no cross-examination.

DW-2 Sh. Rajender Prasad was Senior Court Assistant, Section 8, Hon'ble Supreme Court of India who produced the original

petition pertaining to appeal no. 600-602/2010 titled as *Association of Victims of Uphaar Tragedy v. Sushil Ansal and anr.* However, in terms of order no. 56/SCR/2013, the Annexures filed with these appeals had been weeded out on expiry of one year. Ld. Addl. PP conducted no cross-examination.

DW-3 Sh. Prakash Chandra was Supervisor, MTNL, Commercial Branch, Chanakaya Puri, Delhi who produced CDR and CAFs related to landline phone numbers i.e. 6887052, 4677285, 6888953, 4677755, 6888041, 6858508. However, he stated that due to the governing policy relating to retention of record pertaining to CDRs/ CAFs the same had been destroyed after expiry of one year calculated from the date of installation. He further testified that the digit “2” was prefixed before the said landline numbers in the year 2002. He also produced the subscriber post -connection details in respect of the above mentioned numbers running into 16 pages along with a covering letter on behalf of Commercial Officer, MTNL, Chanakaya Puri, Delhi and sample license agreement applicable 2007 onwards (4 pages) that were taken on record and marked as Ex. DW3/A (Colly.). Ld. Addl conducted no cross-examination. PP.

DW-4 was Ms. Veena Satewal, Branch Incharge, Record Room (Sessions), PHC, Delhi and she produced the original file of FIR bearing no.432/97 PS Hauz Khas that was later re-registered as RC No. 3(S)/97/SIC/IV, New Delhi U/s 304/337/338/285/287/436/427 IPC. The certified copy of the examination in chief and cross-examination of PW-

29 V.S. Randhawa was marked Ex.PW4/A. From the original record of FIR bearing no.432/97 PS Hauz Khas later re-registered as RC No. 3(S)/97/SIC/IV, New Delhi U/s 304/337/338/285/287/436/427 IPC, she produced the ordersheet as maintained in the original record from 08.01.2003 to 29.04.2003 and order sheet dated 05.05.2003, that was marked Ex. DW4/B (Colly.). No cross-examination was conducted by Ld. Special PP.

16.

IMPUGNED JUDGMENT:

¶ Ld. CMM/Trial Court vide the impugned judgment dated 8th October-2021, which is a detailed order running into about 225 pages came to the conclusion that the accused Dinesh Chandra Sharma was having lawful custody of the judicial file of the main 'Uphaar Case' and it was during his custody that the fact of missing/obliterating/tampering / defacement of judicial record came to the notice of the Ld. Special Public Prosecutor. It was held that although the documents, which were found missing or tampered with had been proven in the main 'Uphaar Case' through secondary evidence by the prosecution, the fact remained that the accused persons fiddled with the trial with the objective of obfuscating it and thereby secure acquittal for the co-accused persons, namely Sushil Ansal, Gopal Ansal and H.S. Panwar. It was held that the documents in question were germane in proving the fact that day to day management of the affairs or running of 'Uphaar Cinema' was in the hands of accused Sushil Ansal and Gopal Ansal, who were holding key

meetings, taking crucial policy decisions and even enjoying vast financial powers; and thus the questioned documents exposed the lies of the accused persons *torpedoing* their defence that they had relinquished charge of the management of 'Uphaar Cinema' in the year 1988. It was also held that the documents in question were raising an inference of negligence, recklessness and fabrication on the part of H.S. Panwar, who during the course of his duties was responsible for the inspection of 'Uphaar Cinema' and ensure adequate fire safety measures.

12 It was further held that the traffic or exchange of calls as between the mobile numbers of co-accused Dinesh Chandra Sharma and P.P. Batra, the latter happened to be a Stenographer in the Ansal Properties and Industries Ltd., would raise an inference that they were in constant touch with each other for serious discussion and not for routine information regarding the *pairvi* case. It was observed that apparently criminal conspiracy was hatched to destroy the evidence that too of crucial nature by selectively tearing, tampering or defacing the record at the time when the said documents were about to be produced in evidence. It was observed for a fact that co-accused Sushil Ansal opposed the plea of Ld. SPP for leading secondary evidence *qua* the questioned/destructed documents on his application Ex.PW-2/A that also raise an adverse inference of his role in the entire episode; and that there can be no denying the fact that co-accused P.P. Batra acted as connecting link and continued to be in touch with co-accused Dinesh Chandra Sharma through telephone, mobile and landline for protecting

his masters co-accused Sushil Ansal and Gopal Ansal. It was further observed that *quid pro quo* to co-accused Dinesh Chandra Sharma for doing desired work remained shrouded in secrecy until the police found out that he had been given a job with A-Plus Securities after his dismissal from service and although police was not able to find any proof of illegal gratification in the nature of money or kind to the co-accused Dinesh Chandra Sharma, the whole circumstances raised an inference that after his dismissal from service, offering of job was a part of rehabilitation plan pursuant to criminal conspiracy or in other words price for the work which had been done by the co-accused Dinesh Chandra Sharma for the other accused persons, namely Sushil Ansal, Gopal Ansal and H.S. Panwar.

16.3. It was thus held that oral, written and circumstantial evidence brought on the record clearly demonstrated that the co-accused Sushil Ansal, Gopal Ansal and H.S. Panwar were direct beneficiary for the said act of destruction of the documents and after dismissal of the co-accused Dinesh Chandra Sharma from the services, he was provided a job with A-Plus Securities through the use of influence of Col. D.V. Malhotra of Star Assets Management Ltd. at the instance of co-accused

P.P. Batra so as to prevent Dinesh Chandra Sharma from disclosing anything to anyone and to keep the conspiracy under the wraps. Ld. Trial Court discarded the plea that co-accused P.P. Batra had nothing to achieve or he did not get any benefit from the said acts of destruction of evidence as he was a connecting bridge between co-accused Dinesh

Chandra Sharma and Sushil Ansal and Gopal Ansal through which the entire series of acts or omission with regard to o destruction of evidence took place.

¶ So far as the role of accused Col. D.V. Malhotra and Anoop Singh Karayat is concerned, it was observed that they came into picture after the act of destruction of evidence and dismissal of the accused and no background check of accused Dinesh Chandra Sharma was conducted by A-Plus Securities and no explanation was offered as to why his candidature was accepted for the job for double the salary as per the existing norms, obviously to give effect to the conspiracy. It was held that Col. D.V. Malhotra and Anoop Singh Karayat acted on the later part of the conspiracy which was to the extent of providing job to Dinesh Chandra Sharma for the work he has done for the Ansal Brothers. A-Plus Securities and Training Institute was providing security cover and allied services to Star Estates Management Ltd Mark Z2 which is a sister concern of M/s Ansal Properties & Industries Ltd sharing the same registered office i.e. 115, Ansal Bhawan, 16, K.G. Marg, New Delhi and M/s. Ansal Properties & Industries Ltd holds 98% share in the Star Estates Management Ltd as per annual return Ex.PW31/D dated 24.09.2005. It was held that by providing job to accused Dinesh Chandra Sharma, these two persons became part of the conspiracy as conspiracy was not extinguished upon the destruction of documents but it continued till the time the destructor received his part of the consideration; and that it was amply clear that money was flowing from Ansal to Dinesh

Chandra Sharma on monthly basis in the garb of salary. These facts taken in totality prove the unity of object and purpose of the conspirators by adopting different roles and plurality of means. The entire gamut of circumstances show existence of an implied agreement between the conspirators and their combination persisted until the completion of its performance which in the present case was providing a job to Dinesh Chandra Sharma for double of remuneration. It would be expedient to reproduce the conclusion drawn by the Ld. Trial Court:-

“A devastating fire took place in Uphaar cinema on June 13, 1997 where several human lives were the victim and the accused persons of said crime namely Sushil Ansal, Gopal Ansal and H.S. Panwar (since deceased) in conspiracy with other accused persons while facing trial in said case destructed critical documents which were capable of proving their complicity in the said crime, making this time the justice dispensation system as victim. They tampered/obliterated/torn/defaced some hand picked documents of the said case through a meticulous planning in order to escape punishment by scuttling trial process and as such fiddled with our judicial system with great impunity. The manner in which process of law was subjected to desecration by accused persons is no less than defiling the justice administration system. The high handedness of the accused persons for securing benefit in the trial sans documents by any means demonstrate the scant regard which they have for the justice delivery system which is the bedrock of our democracy. The brazen attitude of the accused persons is reflective from their conduct as after destruction of evidence they vehemently opposed the prosecution plea for adducing secondary evidence. They left no stone unturned to prevent advent of secondary evidence. Accused Gopal Ansal, Sushil Ansal, H.S. Panwar (since deceased) with P.P. Batra, Dinesh Chandra Sharma attacked on the very purity and sanctity of the justice system. Their misconception that they will get away with their nefarious design from punishment has been exposed to the world at

large.

¶ In the ultimate analysis , all the accused persons, namely Sushil Ansal, Gopal Ansal, P.P. Batra, Anoop Singh and Dinesh Chandra Sharma were convicted for the offence of criminal conspiracy under section 120B IPC; and all the accused persons, namely Sushil Ansal, Gopal Ansal, P.P. Batra, Anoop Singh and Dinesh Chandra Sharma were further convicted for the offence of criminal conspiracy to commit criminal breach of trust by a government official of the entrusted property for offence under section 409 read with section 120B IPC; and lall the accused persons were further convicted for criminal conspiracy for causing disappearance of evidence under section 201 read with Section 120B IPC; and lastly all the accused persons were convicted under section 109 of the IPC read with section 120-B of the IPC.

SENTENCE WAS AWARDED AS UNDER:

¶ The Ld. Trial Court vide order on sentence dated 8th November, 2021, handed over the following punishment to the convicts for committing offences under section 120-B of the IPC:

1. Convict Sushil Ansal was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,00,000/- (Rupees One Crore) for offence u/s 120-B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.
2. Convict Gopal Ansal was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,00,000/- (Rupees One Crore) for offence u/s 120-B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

3. Convict P. P. Batra was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 120B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

4. Convict Dinesh Chandra Sharma was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 120B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

5. Convict Anoop Singh Karayat was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 120B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for Six months.

For the offence u/s 409/120-B IPC as under:

1. Convict Sushil Ansal was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,00,000/- (Rupees One Crore) for offence u/s 409 read with 120-B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

2. Convict Gopal Ansal was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,00,000/- (Rupees One Crore) for offence u/s 409 read with 120-B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

3. Convict P. P. Batra was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 409 read with 120B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

4. Convict Dinesh Chandra Sharma was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 409 read with 120B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a

period of Six months.

5. Convict Anoop Singh Karayat was sentenced to Seven Years (07 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 409 read with 1120B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for Six months.

FOR THE OFFENCE U/S 201/120-B IPC:

1. Convict Sushil Ansal was sentenced to Three Years (03 Years) Simple Imprisonment and fine of Rs.25,00,000/- (Rupees Twenty Five Lakhs) for offence u/s 201/120-B IPC. In default of payment of fine, the convict was directed further undergo Simple Imprisonment for a period of Six months.

2. Convict Gopal Ansal was sentenced to Three Years (03 Years) Simple Imprisonment and fine of Rs.25,00,000/- (Rupees Twenty Five Lakhs) for offence u/s 201/120-B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

3. Convict P. P. Batra was sentenced to Three Years (03 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 201/120-B IPC. In default of payment of fine, the convict was further directed to undergo Simple Imprisonment for a period of Six months.

4. Convict Dinesh Chandra Sharma was sentenced to Three Years (03 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 201/120-B IPC. In default of payment of fine, the convict was to further undergo Simple Imprisonment for a period of Six months.

5. Convict Anoop Singh Karayat was sentenced to Three Years (03 Years) Simple Imprisonment and fine of Rs.1,00,000/- (Rupees One Lakh) for offence u/s 201/120-B IPC. In default of payment of fine, the convict was directed to further undergo Simple Imprisonment for a period of Six months.

17. GROUND FOR APPEAL:

In each of the criminal appeal filed in terms of Section 374 of the Cr.P.C by the appellants have espoused several factual and legal grounds to assail the impugned judgment convicting the appellants dated 8th October, 2021 as well as order on sentence dated 8th November, 2021. For the sake of brevity, instead of re-producing the various grounds taken in the criminal appeals, this Court records the detailed submissions advanced by the Ld. counsels for the appellants, which go as under:

17.1 LEGAL SUBMISSIONS ON BEHALF OF APPELLANT SUSHIL ANSAL:

17.2 Sh. Siddharth Aggarwal, Ld. Senior Advocate for the appellant Sushil Ansal commenced his marathon arguments in the matter and it was urged that as per the charge framed against the appellants on 31.05.2014 by the Ld. Trial Court, the starting point of hatching of criminal conspiracy was after filing of charge sheet on 15.11.1997 and he urged that it concluded on 13.01.2003 when the fact of missing documents came to fore before the Court while recording the statement of prosecution witnesses. It was vehemently urged that in any case in terms of application dated 20.01.2003 Ex.PW-2/A filed by the CBI and list of missing documents filed on 21.01.2003 read vis-a-vis affidavit of Inspector Raj Singh Khatri Ex.PW-10/A dated 06.02.2003, it would go to suggest that out of 12 broad documents initially reported to be

missing, tampered or mutilated or otherwise splashed with ink so as to make it illegible but till 21.01.2003 or for that matter 06.03.2003 in terms of affidavit Ex.PW-10/A, it was never the case of the CBI that there had been any tampering with the judicial record and at the most it was a case where some documents that were missing since the same were not “readily available” as per the aforesaid applications. In this regard, it was pointed out that the documents D-24, D-25, D-26 which were cheques reflected in the application of the CBI dated 20.01.2003 Ex.PW-2/A were in fact traced by the Ahlmad on 10.06.2003 and a report to that effect had been made to the then Ld. Presiding Officer.

173. Mr. Aggarwal, Ld. Sr. Advocate while making comparative analysis of letter dated 20.01.2000, list of missing documents filed on 21.01.2003 vis-a-vis affidavit dated 21.01.2003 urged that upto 13.01.2003 the offence, if any, had already been committed and some documents were found later on but all this time there is no incriminating evidence as to how the documents went missing, which were later on found or retrieved and despite knowing these documents were missing, no one by that stage till passing of order dated 31.01.2003 on the application of the CBI had any iota of suspicion that appellant Sushil Ansal was behind the tampering of the judicial record. It was urged that it is not explained that despite the fact that documents D-24, D-25 and D-26 were traced, why the appellant Sushil Ansal has been blamed and then charges are framed with regard to such documents and in fact it was pointed out that the appellant has been convicted for all the eight missing

documents if one goes by the initial application of the CBI dated 20.01.2003 Ex.PW-2/A

174. Ld. Senior Advocate then proceeded to point out a new dimension which occurred during the interregnum and it was pointed out that 'Association of Victims of The Uphaar Tragedy' (AVUT) moved an application dated 20.05.2003 for cancellation of bail granted to the accused persons Sushil Ansal, Gopal Ansal and H.S. Panwar and it was urged, referring to the allegations levelled in the said application, that 'AVUT' orchestrated a kind of vendetta crusade against the accused persons on whimsical grounds of tampering with the judicial record, which application was dismissed by the Ld. Trial Court vide order dated 29.04.2003 Ex. PW-5/DA; and AVUT then approached the Hon'ble High Court of Delhi and their petition vide paragraph (12) alleged as under:-

“That the abovementioned case is pending trial and the prosecution have examined more than 105 witnesses in the case. Suddenly during the course of the trial extraordinary circumstances have emerged which tend to interfere and subvert the administration of judicial process by the accused persons, namely Sushil Ansal, Gopal Ansal and H.S. Panwar who have deliberately and intentionally with ulterior motives, tampered with the evidence which is dealt in detail in the subsequent paragraphs. Strong circumstances clearly demonstrate their role in tampering with the evidence which is seen to have been done over a period of time in a planned manner so as to be able to succeed in playing a fraud upon the Court and to obstruct the trial Court to reach a logical conclusion at the end of the trial, based upon the evidences which reveal their nexus to the tragedy. Their acts tantamount to a crystal clear case of the abuse of process of Court besides commission of the offences under Section

201 of Indian Penal Code and Section 12 of the Contempt of the Courts Act.

175. Attention of the Court was invited to another paragraph viz.,

(15) in the said petition, which reads as under:-

“The sequence of events is true striking to fail to catch the watchful eye of the Ld. Trial Court. The disappearance of documents has taken place just before the prosecution was to produce witnesses for proving the same. The progress of trial and production of witnesses can only be so closely monitored by persons who are affected by the trial. Only those documents have disappeared which have direct bearing on the culpability of the offences of the three accused persons, namely Gopal Ansal, Sushil Ansal and H.S. Panwar. The needle of suspicion would invariably point to these accused persons for tampering with the evidence produced before the Ld. Trial Court, as they are direct beneficiaries of the disappearance of these documents. It is a different matter that their culpability may still be nailed by resort to secondary evidence but an attempt to interfere with the course of justice by tampering with the documents produced in a criminal trial has obviously been made. This is a direct subversion of the judicial process and amounts to an unfair advantage have been taken by the said accused persons of the concession of bail that was granted to them earlier. In such a situation, the Hon'ble Supreme Court in the case of State v. Sanjay Gandhi (1978) 2 SCC 411 has held as under:

“...refusal to exercise that wholesome power” (cancellation of bail) in such cases....will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process”.

176. Reading the aforesaid paragraphs, it was urged that there was held enquiry if any of the 13 other accused persons could have been benefited from the tampering of the judicial record in any manner and there was no iota of evidence against the trio of accused Sushil Ansal, Gopal Ansal besides H.S. Panwar that they had any hand in episode of

the relevant documents gone missing.

177. It was vehemently urged by Mr. Aggarwal, Ld. Senior Advocate for the appellant Sushil Ansal that Hon'ble Judge, High Court of Delhi in Crl. M (M) 2380/2003 and Crl M. 2229/06 in Crl. M (M) 2380/2003 decided on April 21, 2006 although dismissed the revision as against the impugned order dated 29.04.2003 whereby application for cancellation of bail to the three accused persons was dismissed. However, certain significant observations were made and though FIR was ordered to be registered, the investigation should have been done in a holistic manner by the Economic Offences Wing of Delhi Police and reference in this regard was made to complaint lodged by AVUT dated 15.05.2006 Ex.PW-29/A. It was urged that FIR was registered as per the directions of the Hon'ble High Court of Delhi and the status of AVUT as the complainant is questionable and in the said complaint the observations of the Hon'ble High Court of Delhi were quoted vide paragraph (5). It was pointed out that the main charge sheet in the present case was initially filed against accused/appellant Dinesh Chandra Sharma only and in the first supplementary charge-sheet the prosecution relied upon reports from the 'General Examination of the Questioned Documents viz., GEQD/ FSL' and other five accused persons were then arraigned for prosecution in the second charge-sheet. Going through the contents of the supplementary charge-sheet, it was vehemently urged that there was never a case of breach of trust in terms of Section 409 IPC but purely a case of conspiracy without showing any other substantive

charge. It was urged that appellant Dinesh Chandra Sharma was the only 'public servant' and the concept of custody, which is enshrined under Section 409 of the IPC, is entrustment coupled with sole custodian of the record that stood demolished on appreciation of testimony of PW-4 Jagannath, PW-6 Shyam Lal and PW-8 Sunil Kumar Nautiyal. It was urged that the allegation in the chargesheet that accused Dinesh Chandra Sharma was the sole custodian of the pending trial case files was wrong as it was proven during the course of trial that there was available services of a regular Assistant Ahlamd besides Stenographers and the Court Reader so much so that files used to go to the Reader a day in advance and it was also pointed out that relevant documents viz., Inspection Register, Leave Registers and / or register for application for certified copies were never produced or proven on the record.

178. Ld. Senior Counsel submitted a Chart giving details of the dates of hearing before the Ld. Trial Court from May-2002 to January- 2003 and it was pointed out that crucial month was July-2002 in which

11 different dates of hearings were held and that while prosecution alleges that the accused Dinesh Chandra Sharma was the sole custodian of the Court record in the present case, Assistant Ahlmad Virender Singh, two Stenographers, Court Reader R.S. Verma, Naib Court, Peon and another Ahlmad, who shared Ahlmad room with Dinesh Chandra Sharma were not examined and only one Stenographer Jagannath in the Court was examined as PW-4, who completely demolished the case of prosecution. Mr. Siddharth Aggarwal, Ld. Counsel took me through the

testimonies of PW-4 Jagannath, PW-5 Shyam Lal and PW-8 Sh. Sunil Kumar Nautiyal, who were Court officials in the Court of Ld. Trial Court vis-a-vis statement of PW-38 IO Amit Roy and it was vehemently urged that no worthwhile investigation was done by the IO, so much so that he did not even visit the Ahlmad Room and did not even make any inquiry from the Assistant Ahlmad and other Ahlmads / Record keepers who were sharing the rooms where the judicial record was kept / stored.

179. It was also urged that during the trial, the accused/appellant Dinesh Chandra Sharma moved an application for summoning of his leave record & attendance registers for the relevant period indicating that during the relevant time he had taken as many as 50 days leaves which was vehemently opposed by the prosecution and the Ld. Trial Court in a cryptic manner vide dated 24.07.2021 dismissed the application that such documents were not relevant resulting in grave miscarriage of justice to the appellant Dinesh Chandra Sharma. It was urged that irrespective of the fact that whether the said order dated 24.07.2021 was challenged or not, by the appellant Dinesh Chandra Sharma, what it establishes is that there were other persons also who were handling physical custody of the judicial record, who not only had the capabilities but also the opportunities in different degrees to get benefited by tampering with the judicial record, assuming that tampering did take place. It was pointed out that even P.P. Batra had also moved an application seeking to summon the service records of appellant Dinesh Chandra Sharma but the said application was dismissed vide order dated 10.08.2021.

It was vehemently urged that ingredients of section 409 were not satisfied in this case, and therefore, the charge and conviction under the said provision can not be sustained in law. In this regard, reference was invited to decisions in :- Janeshwar Das Aggarwal v. State of UP, (1981) 3 SCC 10; State of Maharashtra v. Mohan Radhakrishna Pednekar, 1992 (2) Mh. L.J. 459; In Re. M.D. Kuppaswami & Anr., 1965 SCC Online Mad 315 and Sardar Singh v. State of Haryana, (1977) 1 SCC 463. It was argued by Sh. Siddharth Aggarwal, Ld. Senior Counsel for the appellant Sushil Ansal that there was no explanation in the testimony of PW38 IO Amit Roy as to why he had sought the CDR with regard to Mb. No. 9811027522 twice on 29.09.2006 vide letter Ex PW36/M and again on 04.10.2006 vide letter Ex PW36/N. Referring to the CDR of the aforesaid mobile number Ex PW36/H, it was urged that there were several question marks about the genuineness and authenticity of the same and leading to the inference that there was manual intervention. It was pointed out that there were total 180 calls in the month of May 2002, starting from 01.05.2002 and a perusal of the CDR would show that some of the calls were not recorded in a chronological manner with regard to date and time and there were discrepancies galore with regard to the timings of some of the calls. The same was compared with the CDR Ex PW36/N in which only 20 calls pertaining to the month of May 2002 were recorded and it was urged that it was not cleared as to for which of the CDRs the certificate u/s 65B of the Indian Evidence Act Ex PW36/O was applicable.

Likewise, the Court was taken through the CDR data for the month of August, which were not recorded in a chronological manner and some calls exhibiting jumping of dates as well as timing so much so much so that the spelling of “Duration” was wrongly spelt as ‘Duretion’ and it was vehemently urged that there was no explanation by the IO as to why the CDRs for July 2001 were not retrieved.

1711. It was vehemently urged that even if assuming that appellant P.P. Batra had been in constant touch with appellant Dinesh Chandra Sharma, there could be no inference of law that they were hatching criminal conspiracy. It was urged that the prosecution had relied upon three landline numbers viz. 3352518, 3352270 and 3355269, which were originally attributed to belonging and functional from the premises of APIL and during the trial, two more landline numbers emerged viz., 3353316 and 3353062. It was urged that assuming for the sake of evidence that the said landline numbers were functional/operational from the office of APIL, only 08 (eight) calls were made from landline numbers to Mb. No. 9811027522 and surprisingly the Ld. Trial Court referred to landline number 3738104, which the Ld. Trial Court culled out from the diary marked “Z” for identification in the testimony of PW24, which was not permissible in law. It was vehemently urged that not a single call had been attributed to appellant Sushil Ansal with the appellant P.P. Batra and merely because he was one of the employees out of thousand of employees working in APIL, no inference can be drawn of criminal conspiracy between the two and in

this regard reference was made to the decisions in Babubhai v. State of Gujarat, (2014) 5 SCC 568, Crl. Appl. No. 1307/19 in Ravinder Singh @ Kaku v. State of Punjab, Hon'ble Supreme Court, DOD 04.05.2022, Kundan Singh v. State, 2015 SCC OnLine Del 13647 and Mohd. Rashid Kunju v. State of Maharashtra, 2015 SCC OnLine Bom 710.

1712 Referring to the charge framed against appellant Sushil Ansal, it was vehemently urged that there was no iota of evidence led by the prosecution with regard to the contractual relationship between A- Plus security and APIL and the reliance by the Ld. Trial Court on mark "Z-2" was untenable u/s 73 of the Indian Evidence Act, which is only available to the Court, where documents are proved in accordance with law. It was urged that no legally admissible evidence was led that appellant Dinesh Chandra Sharma was working with A+ security and the register produced and examined by GEQD in its report Ex PW23/A would show that the name of the appellant was sometime written or mentioned as 'Dinesh Sharma' or 'Dinesh Kumar Sharma' or 'Dinesh Sha'. It was urged that at the most some person having such name was employed during the period November 2004 to June 2005 but there is no evidence as to how appellant Dinesh Chandra Sharma was identified to be the said person and mere evidence by the prosecution that such facts were revealed and unearthed by Dinesh Chandra Sharma during interrogation u/s 27 of the Indian Evidence Act was untenable in law.

1713 Going back and forth on the crucial issue of criminal conspiracy between the parties, it was urged that assuming the appellant

P.P. Batra was employed as Stenographer with 'APIL' and assuming for the sake of convenience that he had been appearing to observe the proceedings on behalf of his employers during the main trial, there is no tangible proof that mobile no. 9818031897 was belonging to him and in this regard the Ld. Sr. Counsel took me through the testimony of PW-27 Ajay Kumar, Nodal Officer from Bharti Airtel who deposed about the CDRs supplied by him vide letters given to IO dated 10.07.2006 Ex. PW 27/B and Seizure Memo dated 12.07.2006 Ex. PW 27/A and it was vehemently urged that the said letters as also the statement by PW-27 are hit by Section 162 of the Cr.P.C as the Customer Application Form (CAF) was never seized or produced so as to substantiate that the said mobile no. 9818031897 belonged to appellant P.P. Batra and it was pointed out that even if the letter Ex. PW 27/B is taken into consideration, which clearly indicates that the mobile no. 9818031897 was activated w.e.f. 09.10.2002 whereas the appellant D. C. Sharma had joined as Ahlmad in the Ld. Trial Court on 30.04.2001 and the entire issue of missing documents had come to light by 31.01.2003. It was vehemently urged that the no mobile set in question was seized or retrieved from the appellant P. P. Batra either.

1714 Likewise, the admissibility of statement of PW-35 R.K. Singh, Nodal Officer from Bharti Airtel was also questioned tooth and nail, and reference was made to decision in Kali Ram v. State of Himachal Pradesh, 1973 (2) SCC 808 and Tori Singh v. State of Uttar Pradesh, 1962 (3) SCR 589. It was vehemently urged that no conditions

were set out by the prosecution to produce the secondary evidence and even the authenticity of Certificate under Section 65-B of the Indian Evidence Act produced by PW-35 was questionable. It was vehemently urged that the findings given by the Ld. Trial Court that during the relevant time there was no requirement of filling up or submission of 'Customer Application Form' for availing a prepaid connection was wrong and perverse. Reference was made not only to Memo no. 842/73/97 VAS Govt. of India, Ministry of Communication and Information Technology, Telecom Commission dated 11.07.1996 and other Circulars issued in this regard on 22.11.2001 and 24.07.2002 and latest Notification on 07.10.2008, but also to decision in Abhishek Goyanka v. Union of India decided by Three Hon'ble Judges Bench of the Supreme Court of India dated 27th April, 2012 in WP (C) No. 285/10 whereby prescribed norms were found to be well in place for filling up and submissions of CAF even in case of prepaid connection.

17.15 Coming to the mobile no. 9811027522, purportedly belonging to the appellant Dinesh Chandra Sharma which fact was conceded by him in his statement under Section 313 Cr.P.C, taking me through the testimony of PW-36 Anu Anand, it was pointed out that the letter dated 29th September 2006 issued by the witness with regard to the aforesaid two mobile numbers did not contain the CDRs for the month of July 2001. In fact, it was pointed out that the details of CDRs were sought twice and on both occasions the CDRs for the month of July 2001 pertaining to mobile no. 9811027522 were not provided. It was

vehemently urged that it was not clear as to for which occasion the Certificate under Section 65-B (4) of the Indian Evidence Act Ex. PW 36/O was given, in relation to the first time or the second time, and therefore, it was vehemently urged that the genuineness and authenticity of CDRs with regard to mobile no. 9811027522 was never proved.

1716 Sh. Siddharth Aggarwal, Ld. Sr. Counsel for the appellant Sushil Ansal vehemently urged that the register of employment and remuneration purportedly seized vide seizure memo dated 25.11.2006 Ex.PW-18/B had not been recovered directly by virtue of disclosure statement of accused Dinesh Chandra Sharma dated 25.11.2006 Ex.PW- 18/A and a bare perusal of the seizure memo would show that same was seized by the police in the presence of appellant Anoop Singh and thus it was vehemently urged that the recovery of register under Section 27 of the Indian Evidence Act was not indicated in this case. Reference was invited to decisions in Mohmed Inayatullah v. The State of Maharashtra, (1976) 1 SCC 828; Himachal Pradesh Administration v. Shri Om Prakash, (1972) 1 SCC 249; Jaffar Hussain Dastagir v. State of Maharashtra, 1969 (2) SCC 872; and the celebrated decision in the case of State v. Navjot Sandhu @ Afsan Guru, Criminal Appeal No. 80/2003 decided on October 29, 2003 by the Hon'ble High Court of Delhi reported in 2003 (71) DRJ 179 and it was vehemently urged that issue of employment of appellant Dinesh Chandra Sharma was already in public domain and nothing new was discovered, for which reference was invited to statement of PW-40 Shiv Raj and PW- 39 Anokhe Lal

recorded under Section 161 Cr.P.C. on 30.11.2006 and 05.12.2006 respectively.

17.17. Referring to the application dated 20.01.2003 Ex.PW- 2/A filed by the CBI indicating about certain missing documents, which were said to be not readily available it was urged that prosecution has canvassed that item Nos. 1 and 2 and 6 (1) were attributed to appellant Sushil Ansal. It was vehemently urged that in so far as cheque No. 955725 dated 26.06.1995 for Rs. 50 Lacs drawn on PNB, Rajender Nagar Branch (D-24) Ex.PW-3/A is concerned, the prosecution seeks to substantiate that the plea of the appellant Sushil Ansal that at the time the incident had occurred he had already resigned and he was not Director or In-charge of day to day control and affairs of the business of running of Cinema Hall was proven by the fact he had signed the said cheque on 26.06.1995 and the fact that same was signed by him was never denied by him and no cross-examination was done on the part of the appellant to challenge issuance of said cheque in his favour and there was no possible advantage to him for getting the said cheque missing, which was in any case was traced out on 10th June-2002. Secondly, the document D-84 at page 16 which is Ex.PW-33/F would merely show that it was on the Letter Head of 'APIL' which was not signed by the appellant but by another officer and no possible benefit could have been derived from orchestrating alleged tampering of such document with the alleged connivance of appellant Dinesh Chandra Sharma and no cross- examination was done on this point as well.

1718 Lastly, the document D-20 is concerned, which was a seizure memo, the same was not even challenged in the testimony of PW-78 R.S. Jakhar as also PW-81 Prithvi Singh. The long and short of the argument was that the observations that the charge framed against the appellant Sushil Ansal and the final judgment passed by the Ld. Trial Court were erroneous based on conjectures and surmises that the appellant Sushil Ansal had derived any benefit for getting these documents tempered or misplaced. Sh. Siddharth Aggarwal, Ld. Senio Counsel for the appellant Sushil Ansal vehemently assailed the findings on certain vital facts given by the Ld. Trial Court in the impugned judgment dated 08.10.2021. It was urged that finding that there was evidence that appellant Dinesh Chandra Sharma had made calls to accused Sushil Aansal and Gopal Ansal at their land-line numbers as also P.P. Batra and Vinay Katiyal from his mobile No. 9811027522 is preposterous; and that there was no evidence that accused Dinesh Chandra Sharma approached P.P. Batra after dismissal from his service and accused P.P. Batra got him job through D.V. Malhotra at A Plus Securities; and the finding that P.P. Batra was working for M/s. Ansal Brothers and had sufficient motive to indulge in criminal conspiracy was untenable in law; and the finding that letter by PW-27 Ajay Kumar, the Nodal Officer from Bharti Airtel dated 10.07.2006 Ex.PW-27/B was not hit by Section 162 Cr.P.C. for the same being admissible under Section 91 Cr.P.C. is untenable in law; and it was vehemently urged that the Ld. Trial Court forgot the charges framed against the appellant failing to

appreciate that conspiracy as per charge, if any, had commenced from the time of filing of the charge sheet 15.11.1997 and continued till the fact of missing documents came to the light on 12th or 13th January, 2003. It was also vehemently urged that if the prosecution is believed, the services of appellant Dinesh Chandra Sharma were available so as to tamper with the documents in order to avoid the punishment to the appellants Sushil Ansal and Gopal Ansal and the Ld. Trial Court failed to appreciate that if that was the case the appellants were convicted under Section 304-A of the IPC and in that eventuality offence under Section 201 IPC can be visited with sentence reduced to 1/4th of the maximum sentence provided under Section 304-A of the IPC. Lastly, it was urged that no permission under Section 196(2) of the Cr.P.C. was taken to initiate proceedings under Section 409 IPC. In his submissions reliance was placed on the decisions in the case of G. Gnanam v. Masilamani, 1993 MWN (Crl.) Mad. 239; Bashir Ul Haq v. State of W.B., AIR 1953 SC 293; Bhanwar Singh v. State of Rajasthan, AIR 1968 SC 709 and Madanlal v. State of Punjab, 1967 SC 1590.

**18. LEGAL SUBMISSIONS ON BEHALF OF APPELLANT
DINESH CHANDRA SHARMA:**

18.1. Sh. Sudarshan Rajan, Ld. Counsel for appellant Dinesh Chandra Sharma was mercifully brief and he vehemently urged that as per application dated 20.01.2003 Ex.PW2/A filed by the CBI 9 items were found to be missing including relevant as well as irrelevant documents and is admitted case that item No. 6, 8, 9 in the application

were later on found/traced and placed on the record by the appellant on 10th June, 2003. It was urged that departmental Inquiry dated 30.04.2004 inter alia observed that documents in question had already been reconstructed and the appellant Dinesh Chandra Sharma was found guilty of mis-conduct in the nature of carelessness and negligence for his failure to preserve the file in a safe and sound condition and there was no iota of evidence that Court record was tampered with criminal intent.

18.2 Taking this Court through the disclosure statement of appellant Dinesh Chandra Sharma, it was urged that there was no iota of evidence against the appellant Dinesh Chandra Sharma that he had indulged in tearing, tampering and/or mutilating the judicial record, nor any circumstances were revealed or elicited by the IO PW-38 as to how the documents were lost or misplaced. It was urged that findings in the charge-sheet dated 12.02.2007 that appellant Dinesh Chandra Sharma was sole custodian of the judicial record was wrong as no substantive charge under Section 409 IPC could possibly be slapped on the appellant Dinesh Chandra Sharma and in a case which is rested on circumstantial evidence, every hypothesis of innocence should have been ruled out by examining each of the persons, who were connected with the custody of the judicial record during the relevant time. In support of contention that no offence under Section 409 IPC had been substantiated by the prosecution, reliance was placed on the decisions in the case of Hanumant v. State of M.P., AIR 1952 SC 343; Syad Akbar V. State of Karnataka, (1980) 1 SCC 30; Sujit Biswas v. State of Assam,

(2013) 12 SCC 406, State v. T. Narayanan, SCC Onlie Del. 128; Radha Pisharassiar Amma v. State of Kerala, (2007) 13 SCC 410; Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200; and Jaswant Rai Manni Lal Akhney v. State of Bombay, AIR 1956 SC 575.

18.3. It was also vehemently urged by Mr. Sudharshan Rajan, learned Counsel for the appellant Dinesh Chandra Sharma that there is no evidence that any benefit was derived by the appellant Dinesh Chandra Sharma and nothing is proved that tampering and/or mutilation of judicial record took place with an element of *mens rea* and reliance has been placed on the decision in the case of L. Chandraiah v. State of

A.P. (2003) 12 SCC 670. Mr. Sudarshan Rajan ld counsel took me through the testimony of PW-2, PW-6 and PW-8 and it was vehemently urged that it was clearly brought out in their testimony that there were several members of the Court, who were in the care and custody of the judicial record and any one of them could have tampered or mutilated the record for some ulterior motives and PW-6 conceded that it was practically and humanly impossible to check the record on a daily basis or as and when it is received back by the Ahlmad/Record Keeper from the Reader or from Stenographer in the Court, as the case may be. It was urged that the testimony of PW-8 was not inspiring confidence who made several improvements in his testimony over and above the version given by him to the IO in his statement under section 161 of the Cr.P.C. It was urged that dismissal of the appellant from services was no proof of dishonest or criminal intention behind the documents going missing.

Lastly, the genuineness and authenticity of the CDRs were vehemently challenged and it was urged that mere being touch with co-accused P.P.Batra, no inference of any criminality can be raised and there was no iota of evidence that the appellant ever contacted or was contacted by other co-accused persons/appellants.

**19. LEGAL SUBMISSIONS ON BEHALF OF
APPELLANT GOPAL ANSAL:**

19.1 Sh. Hari Haran, Ld. Senior Counsel for the appellant Gopal Ansal urged that the impugned order on charge dated 31st May, 2014 was challenged before the Hon'ble High Court of Delhi in the matter, and the Hon'ble Judge made certain observations in paragraph (99) which were contrary to the proposition of law in the case of State (Through Superintendent of Police, CBI/SIT) v. Nalini & Ors., (1999) 5 SCC 253, and the skewed observations by the Hon'ble High Court of Delhi was taken out of context by the learned trial Court and relied upon in passing the impugned judgment. It was vehemently urged that observations made by the Hon'ble High Court of Delhi in Crl. Rev.P No. 262,263 & 264 of 2016 dated 12th May, 2017 was in no way reflecting directly upon the conduct of trial and it was only a prima facie view on the basis of material placed before it and the proposition of law would be entirely different in case of appreciation of evidence after recording evidence. Reliance was placed on a decision in the case of Kunhayammed & Ors. v. State of Kerala & Anr., (2000) 6 SCC 359.

192

Mr. Hari Haran, Ld. Sr. Advocate then took me through the provisions of Section 120-A and 120-B of the IPC and their interpretation side by side Section 10 of the Indian Evidence Act and it was vehemently urged that the prosecution miserably failed to prove the charge of conspiracy, which in any case came to an end as soon as it was discovered that some documents had gone missing, tampered with or mutilated during examination of witness on 19th and 20th July, 2002. In this regard, the Court was taken through the testimony of PW-33 T.S. Sharma and PW-49 R.C. Sharma and in his submissions learned Senior Advocate relied on decisions Natwarlal Sakarlal Mody v. The State of Bombay, 1961 SC OnLine SC 1; State of Kerala v. P. Sugathan & Anr., (2000) 8 SCC 203; Ajay Aggarwal v. UOI & Ors., (1993) 3 SC 609; & Mirza Akbar v. The King Emperor, 1940 SCC OnLine PC 27.

193

Sh. Hari Haran, Ld. Sr. Counsel for the appellant Gopal Ansal strenuously urged that there is no iota of evidence led by the prosecution so as to connect any role of the appellant Gopal Ansal with the other co-accused persons with regard to issue of vital document gone missing, mutilated or tampered with; and that there is no evidence of any kind of call records between the appellant and P.P. Batra and merely because appellant P.P. Batra was employed with Sushil Ansal that would not be enough to rope the present appellant in the alleged crime. It was vehemently urged in relation to testimony of PW-27 Ajay Kumar that phone number of appellant P.P. Batra bearing No. 9818031897 was activated on 09.10.2002, which date was beyond the

period of conspiracy and it was urged that surprisingly the Ld. Trial Court ignored such glaring facts and committed a complete *hara-kiri* in making certain assumptions based on surmises and conjectures.

194 It was then urged that prosecution was duty bound to prove motive behind the documents gone missing and referred to the testimony of PW-14, PW-16 and PW-17 and it was urged that the contents of the seizure memo Ex.PW-10/B were never proved by calling the scribe or author in the witness box and the witnesses examined on the aspect of D-20 i.e. the seizure memo dated 18.07.1997 just produced the documents which were allegedly gone missing or tampered with and the contents of the said documents could have been proved in the manner done by the prosecution. Reference was made to decision in the case of Om Prakash Berlia & Anr. v. Unit Trust of India & Ors., 1982 SCC OnLine Bom. 148 and also Sudir Engineering Company v. Nitco Roadways Ltd., 1995 SC OnLine Del. 251. Ld. Senior Advocate emphasized in relation to testimony of PW-16 Prithvi Singh vis-a-vis documents D-20, D-25 and D-26 that such documents were merely deposited to by the persons in presence of whom the same were seized and no one was produced so as to prove the contents of documents, and therefore, it does not lie in the mouth of the prosecution to say that contents of the documents were such which were placing the accused persons in some sort of difficulty or the other resulting in their conviction.

195 Lastly, Mr. Hari Haran, Ld. Sr. Advocate for appellant

Gopal Ansal took me through the impugned judgment dated 08.10.2021 and it was urged that the appellant has been convicted several times under Section 120-B of the IPC. It was urged that there was no question of applicability of offence under Section 409 of the IPC and the offence, if any, in relation to the main case was under Section 201 IPC, which if proved invited sentence only up to the period of two years and in such case the punishment under Section 120-B of the IPC could not have been more than one fourth of the maximum sentence provided under Section 304-A of the IPC. Reliance was placed on decision in the case of State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru (2005) 11 SC 600.

**20. LEGAL SUBMISSIONS ON BEHALF OF
APPELLANT P.P.BATRA:**

20.1 Mr. Manu Sharma, learned Counsel for the appellant P.P. Batra commenced his long arguments by inviting the attention of this Court to page 262 of the impugned judgment dated 8th October, 2021, wherein the Ld. Trial Court delineated four facts and circumstances that were assumed against the appellant P.P. Batra in finding him guilty of criminal conspiracy with others. It was urged that though the appellant P.P. Batra was indeed working as Stenographer with APIL, there was no shred of evidence that he was a *pairvi* officer since many persons were visiting and assisting the accused persons during the relevant time in the course of trial in the main Uphaar tragedy case. It was urged that mobile No. 9818031897 was attributed to the appellant P.P. Batra without any

iota of evidence on the record and in this regard huge challenge was mounted upon the reliability, authenticity and genuineness of the CDRs Ex. PW-36/A and the letter dated 12.07.2006 Ex. PW-27/B as well as certificate under section 65B of the Indian Evidence Act Ex. PW-36/O. It was urged that Ld. Trial Court committed grave error in assuming that certain land-line numbers, which were installed in the Ansal Building, had been in use by the appellant P.P. Batra during the relevant time whereas in the defence a diary Ex. DA was put and proved that would show that the land-line numbers were being used by different individuals and none of the land-line numbers in APIL were being used by his client.

20.2 Mr. Manu Sharma took me threadbare to the CDRs annexed with the forwarding letter dated 11.08.2006 Ex. PW-36/A and pointed out there were several disturbing and unexplained features viz., call records being replica of each other, no synchronization of time and date; and that there were times switch and at certain places mobile number recorded was having 11 digit numbers and registering of the successive call records was in a way that it was not even sync with duration of the call.

20.3 Mr. Manu Sharma also urged that it was not explained by the Investigating Officer as to why the CDRs for the month of July-2002 were not obtained and although forwarding letter Ex. PW-36/M was proved, reference letter by which information was supplied was not proved, for which there was no explanation by IO PW-38 Amit Roy in his cross-examination. It was pointed out that PW-36 in his cross-

examination rather gave an interesting story about how the data was retrieved and it clearly suggested that there was manual intervention in formulating the CDRs and referring to the decision in the case of Ravi Kant Sharma v. State of Delhi, 2011 SCC Online Del. 4342. It was urged that time and date chronology can never get disturbed, and if it is done, then it would be an *indicia* of tampering with the original data/record. It was urged that the manual interference destroyed the integrity of the data and the Police tutored PW-36 in all probabilities as he was not even working in the concerned service provider and yet he remembered the minute details of the case. It was urged that Ex.PW- 27/A and Ex.PW-27/B were hit by Section 162 Cr.P.C. and cannot be relied upon. Reference was made to decision in the case of Kali Ram v. State of Himachal Pradesh, 1973 (2) SCC 808 and it was urged that it was clear case of padding by the police, that cannot be allowed, for which reference was made to decision in the case of Kishore Chandra v. State of Himachal Pradesh, (1991) Suppl.(1) 590. It was then urged that observation by the Ld. Trial Court that appellant P.P. Batra had made evasive replies cannot raise an adverse inference against him and in this regard reference was placed on decision in the case of Nagraj v. State, (2015) 4 SCC 739. It was urged that no questions could have put/confronted about to the accused under Section 313 Cr.P.C. which were inherently inadmissible in evidence, for which reference was made to decision in the case of Hamid v. State of Maharashtra.

1992(2)MHLJ 491. It was then urged that CDR with regard to mobile No. 9818031897 cannot be relied upon and that certificate under Section 65-B of Indian Evidence Act fails the test laid down in the case of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1

204 In reference to finding No. 3 vide paragraph (262) of the impugned judgment, it was urged that although the appellant P.P. Batra was an employee since 1994 @ Rs. 4000/- per month as per appointment letter Ex.PW-24/A, however, his mere association as an employee cannot be circumstance alone so as to prove his culpability. It was pointed out that in the initial charge-sheet filed by the prosecution there were five employees of 'APIL' who were under the radar of Police and he was a low ranking individual while other four were quite superior in the hierarchy. It was urged that as per the prosecution even another employee, namely Vijay Katyal had made few calls to the other co-accused Dinesh Chandra Sharma and only 34 calls were attributed by appellant Dinesh Chandra Sharma to appellant P.P. Batra and there is no shred of evidence that appellant P.P. Batra made any call from the Landlines number to the other co-accused appellant Dinesh Chandra Sharma.

205 Pointing out that appellant P.P. Batra was not an accused in main Uphaar Tragedy Case, reference was invited to decision in Murlidhar v. State of Rajasthan, (2005) 11 SCC 133; Rakhal Chandraer Dass v. Emperor, 1930 SCC Online Cal.153; Pran Krishna Chakravarti vs Emperor, 1934 SCC Online Cal. 300 and

State v. Nailini, (1999) 5 SCC 253, case in which it was held that mere association of the accused with others is not enough so as to bring him within the fold of Section 10 of the Indian Evidence Act. It was then urged that admission on the part of co-accused / appellant Dinesh Chandra Sharma in his statement under Section 313 Cr.P.C. that he had exchanged few calls with appellant P.P. Batra cannot be read against the appellant P.P. Batra and be a circumstance to convict him for which reference was made to decision in the case of Hanumant Govind Nargunddkar vs State of MP, 1953 Cr. LJ 129. It was pointed out that no CDRs were procured by the IO after the retirement or termination of appellant Dinesh Chandra Sharma from the services and PW-18 conceded that he had not carried out any investigation post arrest of the accused Dinesh Chandra Sharma. It was thus urged that the complete chain of circumstances had not been fully established.

206 Lastly, it was vehemently urged that the Investigating Agency has done a completely “brazen and audacious stomach churning exercise” where they have collected no evidence, fabricated evidence viz. CDRs and have falsely implicated the appellant P.P. Batra in the present case and attention of the Court was invited to testimony of PW- 38 who was so audacious in denying anything wrong with the CDRs that must be quite unpalatable. Reliance was placed on the decision in the case of Muralidhar v. State of Rajasthan, (2005) 11 SCC 133; Mukhtar Ahmed Ansari v. State, (2005) 5 SCC 258; Raja Ram v. State of Rajasthan, (2005) 5 SCC 272.

21. LEGAL SUBMISSIONS ON BEHALF OF
APPELLANT ANOOP SINGH KARAYAT:

21.1 Mr. Tarun Chandiok, Ld. Counsel for the appellant Anoop Singh Karayat was mercifully brief. He urged that if the prosecution case is believed, the alleged criminal conspiracy, as per the charge framed by the Ld. CMM was hatched during the period 15.11.1997 to 13.01.2003 and pursuant to which, the documents in question were tampered with or pilfered or mutilated but then during the said period the appellant Anoop Singh Karayat was neither the accused nor a prosecution witness nor a *pairvi* officer during the trial of the main Uphaar Case and it was urged that the impugned judgment dated 8th October, 2021 is absolutely *perverse qua* the present appellant since it would be impossible to assume that the present appellant was a party to any criminal conspiracy during the aforesaid period considering that the co-accused/co-appellant Dinesh Chandra Sharma was dismissed from the services vide order dated 25.06.2004, who then remained unemployed for five months and then allegedly given employment with A-Plus Securities in November- 2004. It was vehemently urged that by no stretch of imagination the present appellant could have been convicted for the offence under Section 409/201 IPC as also section 109 read with Section 120 of the IPC. It was urged that there is no *iota* of evidence brought by the prosecution on the record to suggest that the appellant Anoop Singh Karayat knew of the conspiracy or if he knew, whether he had taken any part in terms of Section 10 of the Indian Evidence Act.

21.2 It was further pointed out that in the initial charge-sheet filed on 12.02.2007, the present appellant was rather cited as a prosecution witness. It was vehemently urged that the present appellant has been implicated unnecessarily in the instant matter as he gained nothing by providing any job to the co-appellant Dinesh Chandra Sharma and it was the prosecution case that such job was given or facilitated by Col. D.V. Malhotra (since deceased). It was vehemently urged that merely because the present appellant allegedly applied fluid on the register of employment Ex.PW-18/C and PW-18/D, the aspect of criminal conspiracy cannot be extended, which assuming for the sake of convenience executed between the period 15.11.1997 to 13.01.2003. In short, it was urged that there is no evidence that there was any agreement between Ansal Properties and Infrastructure Ltd. and A-Plus Securities and the agreement 'Mark G-2' was only a photocopy, which was never admitted or proven on as per law and despite the fact that the present appellant admitted that he had applied fluid, the Investigating Agency unnecessarily referred the matter to CFSL just to procure some evidence or the other, and even the GEQD opinion was running wild without imagination. It was urged that mere association of the present appellant even far fetched with the co-appellant Sushil Ansal and Gopal Ansal cannot make the present appellant an accomplice in the alleged criminal conspiracy. Lastly, it was pointed out that there is no evidence that the salary, if any, given to Dinesh Chandra Sharma was in excess of existing rate and moreover even assuming that he was employed after five

months of his dismissal in November-2004 it should be noted that no investigation was pending against appellant Dinesh Chandra Sharma. In his submissions, learned Counsel for the appellant Anoop Singh Karayat relied on decisions in Firouzuiddin Basheeruddin & Ors. v. State of Kerala, (2001) 7 SCC 596; Hanumant, son of Govind Narundkar v. State of Madhya Pradesh, 1952 SCR 1091 Mirza Akbar v. The King Emperor, 1940 SCC Online PC 27; Saju v. State of Kerala, (2001) 1 SCC 378; and United States v. Falcone ETAL, 1940 SCC Online US SC 134.

22. ARGUMENTS ADVANCED BY LD. ADDL. PP FOR THE STATE:

22.1. Mr. A.T. Ansari, Ld. Addl. PP for the State urged that the charge in the main Uphaar case were framed vide order dated 27.02.2001 Ex. PW37/C and from that day till 04.04.2002 only 12PWs could be examined and since it was apparent that appellants, in particular appellants Sushil Ansal and Gopal Ansal besides H.N. Panwar were successful in delaying the progress of the trial, and aggrieved of snail pace of the trial the Association of Victims of Uphaar Tragedy went to the Hon'ble High Court of Delhi, which resulted in order dated 04.04.2002 in the case titled AVUT vs GNCTD, 2002(63) DRJ 461(DB), whereby directions were issued to expedite the trial and decide the same in a time bound manner. It was urged that circumstances brought on the record raise a strong inference that just in a span of three

and a half months, one of the nine documents was found to be torn when the witness was being examined on 20.07.2002 and referring to page Nos. 221 to 225 besides 232 of the impugned Judgment dated 8th October, 2021, it was urged that the call exchanges started between the appellant Dinesh Chandra Sharma and other appellants persons w.e.f. 13.05.2002 and the documents were probably destroyed within a span of 2-4 months of the last call and then vide order dated 31.01.2003, the Ld. Trial Court allowed the prosecution to lead secondary evidence. It was vehemently urged that the period of such calls, number of such calls, the call patterns and the duration of the calls speaks for themselves that soon after the order dated 04.04.2002 was passed by the Hon'ble High Court of Delhi, the appellants entered into a criminal conspiracy to tamper with the judicial record so as to derail the proceedings.

222 Pointing out that the appellants were very evasive in their replies to the incriminating questions put to them under Section 313 Cr.P.C. with regard to patterns and duration of the calls; and that the response of appellant P.P. Batra to question Nos. 69 and 96 were evasive and he only assailed the admissibility of the CDR but there was no denial that mobile number 9818031897 ever belonged to him. It was urged that evasive reply by the appellant can be taken into consideration by the Court to supply or extend any missing link.

223 Ld. Addl. PP for the State then went on to address the “moot question” as to why the appellants resorted to destruction of the record and why only nine documents out as many as 150 documents

running into 20000 pages were segregated. It was pointed out that in the main Uphaar Case, there were eight accused persons who were from the management of the Uphaar Cinema, two were from Delhi Fire Services, two were from Delhi Vidyut Board, one accused was from PWD while one from MCD. It was urged that documents were hand picked since it was the defence of the appellants Sushil Ansal and Gopal Ansal that they had relinquished the Directorship of Ansal Properties and Industries Pvt. Ltd. since 1988 and it was their defence that during the relevant time when the tragedy happened, they were neither in control of its affairs nor were looking after day to day management of the company. Ld. Addl. PP for the State then referred to certain paragraphs in the judgment of the main Uphaar Case decided by the Hon'ble Supreme Court titled as Sushil Ansal vs. State (Through CBI), (2014) 6 SCC 173, whereby it was held that both Sushil Ansal and Gopal Ansal were “occupiers” of the Uphaar Cinema and there was cast a duty to care upon them towards the patrons who came to watch exhibition of Cinematographs. Ld. Addl. PP urged that appellants Sushil Ansal and Gopal Ansal besides H.S. Panwar entered into a criminal conspiracy with appellant Dinesh Chandra Sharma and these nine documents were handpicked in order to demonstrate that they were not handling the day to day affairs of the business of the Uphaar Cinema.

22.4. In this regard Ld. Addl. PP also referred to the judgment delivered by the Hon'ble High Court of Delhi in the main Uphaar Case titled as Sushil Ansal v. State of Delhi. Through CBI, 2008 SCC

OnLine Del.1380 and referred to paragraph (9.37) wherein the diary of Ansal Group for the year 1997 Ex.PW-9/D-15 was proven and it was found that it described a common corporate management practice which included Sushil Ansal and Gopal Ansal as Chairman and Director of the Group respectively.

22.5. Ld. Addl. PP took this Court through the contents of each of the missing/pilfered documents, which were otherwise proved through the prosecution leading secondary evidence and in reference to the judgment in the main Uphaar case delivered by the High Court and Supreme Court, he urged that the said missing/pilfered documents only afforded an advantage to the appellants Sushil & Gopal Ansal besides appellant H.S.Panwer. It was urged that when such documents were put to appellants Sushil Ansal and Gopal Ansal in their examination under Section 313 Cr.P.C., objections were taken, and therefore, the Court passed a detailed order dated 23.12.2004 Ex.PW-37/G whereby it marked all the documents as exhibits which was challenged by the appellant Sushil Ansal before the Hon'ble High Court of Delhi but the same was declined vide order dated 01.03.2005. It was urged by the Ld. Addl. PP for the State that magical production or reproduction of the cheques by the accused Dinesh Chandra Sharma was useless because by that time the documents i.e. the cheques and seizure memo had already been reconstructed and secondary evidence had already been led. It was pointed out that the seizure memos as well as the issuance of such cheques had been proved by PW-19, PW-91 and PW-93 and it was

pointed out that the re-examination of these three witnesses was vehemently opposed by co-accused R.M. Puri and D.V. Malhotra.

22.6 Mr. A.T. Ansari, Ld. Addl. PP for the State referred to plethora of case law. On the aspect of appreciation of evidence, he referred to decision in Ganesh K. Gulve & Ors. v. State of Maharashtra, AIR 2002 SC 3068, and it was argued that while appreciating the evidence the Court has to bear in mind the set up and environment in which the crime is committed, level of understanding of the witnesses, the over jealousy of some of near relations to ensure that everyone even remotely connected with the crime be also convicted. It was urged that everyone has a different way of narration of the same facts. Reference was made to decisions in Kehar Singh & Ors. v. State (Delhi Administration), (1988) 3 SCC 609; Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra, (1970) 1 SCC 696; Yash Pal Mittal v. State of Punjab, (1977) 4 SCC 540; State through Superintendent of Police. CBI/SIT v. Nalini & Ors., (1999) 5 SCC 253; V.C. Shukla & Ors. v. State (Delhi Administration), (1980) 2 SCC 665; Edmund S. Lyngdoh & Ors. v. State of Meghalaya & Ors., (2016) 15 SCC 572; and State of Maharashtra v. Mohd. Yakub & Ors., (1980) 3 SCC 513.

22.7. On the plea taken by Mr. Hari Haran, Ld. Senior Counsel for the appellant Gopal Ansal that prosecution has not explained as to when did the criminal conspiracy came to an end, it was urged by the Ld.

Addl. PP for the State that since common object of the conspiracy was never achieved, *it never came to an end* and must be taken to have been continuing up to the decision of the SLP by the Hon'ble Supreme Court. In any case, it was urged that no objection was ever raised by the appellants at the initial stage of the trial with regard to exact period of conspiracy not being described in the charge and there has been no prejudice to the appellants in terms of Section 218 and 465 of the Cr.P.C. It was urged that this Court must appreciate that once conspiracy was framed, anyone could board or alight from the Train but then the train has to reach a particular destination.

22.8 It was urged by the Ld. Addl. PP for the State that report Ex.PW-27/B is not hit by Section 162 Cr.P.C. as said evidence was produced by the witness and obtained by the Investigating Officer in terms of Section 91 Cr.P.C. and the data was obviously verified from the Master Server and it is pointed out that Section 162 Cr.P.C. cannot be read *de hor* of Section 91 and reference was made to the decision in Central Bureau of Investigation v. V. Vijay Sai Reddy, (2013) 7 SCC

452. It was pointed out that during the relevant time practice of filling-up of Customer Application Form for availing pre-paid connection was not in vogue and there was a report submitted by Government of India in the case of Avishek Goenka v. UOI, (2012) 5 SCC 275 that 96% of the SIM cards had been sold without any verification and it is only by virtue of subsequent regulations that there came about a mandate to fill up customer application form.

22.9. Mr. Ansari, Ld. Addl. PP for the State referred to the testimony of PW-39 Anokhe Lal Pal recorded on 11.02.2020 and pointed out that the witness deliberately put signatures by writing out his full name in long in order to wriggle out his complicity and connection with the Ansals with regard to document Mark Z-2. It was urged that A-Plus Security was subsidiary of 'APIL' and the document Marked Z-2 was admissible under Section 90 of the Indian Evidence Act, and it was vehemently urged that criminal conspiracy was continuing till the time employment was given to the appellant Dinesh Chandra Sharma not only as a reward for his work done for the Ansals but also to ensure that he does not spill the beans. It was urged that the Ld. Trial Court was well within its powers to compare the signatures on the photocopy Mark Z-2 with the admitted documents on the record.

23. DECISION ON THE CRIMINAL APPEALS:

I have accorded my thoughtful and anxious consideration to the marathon legal submissions spanning over several days in post lunch sessions advanced by the Ld. counsels for the parties including the Ld Addl. PP for the State assisted by Ld. Senior counsel for the complainant party. I have meticulously perused the oral and documentary evidence brought on the judicial record during the trial. I have gone through the judicial record of each of the criminal appeals and the plethora of case law cited at the Bar.

24. FAIR TRIAL TO ALL THE STAKEHOLDERS:

24.1 First thing first. It needs to be appreciated that the prime objective of the criminal justice delivery system is to accord justice to all the stakeholders—the accused, the complainant/victim, the society as well as the prosecution. Integral to such objective is a fair trial to the accused and a fair chance to prove the case to the prosecution. This finds echo in a reiteration by the Supreme Court of India in Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263, in which it was emphasized thus:

“34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a —fair trial, the Court should leave no stone unturned to do justice and protect the interest of the society as well.”

24.2. In the instant criminal appeals, I have endeavoured to discharge such duties to the best of my capabilities and understanding of law as under:

(PROOF BEYOND REASONABLE DOUBT)

24.3. It is well settled that while in criminal cases, the doctrine of presumption of innocence casts the burden on the prosecution to prove

its case against the accused persons beyond reasonable doubt, it is trite that doubt to the guilt of the accused should be substantial and not flimsy or fanciful. Such doubt need not reach certainty, but it must carry a high degree of probability. In the case of State of U.P. v. Krishna Gopal, (1988) 4 SCC 302, it was observed that “though this standard is a higher standard, there is, however, no absolute standard. What degree of

probability amounts to —proof is an exercise particular to each case”.

Quoting from “the Mathematics of Proof-II : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342), it was observed that :

“The one piece of evidence may confirm the other. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice”
(*underlined emphasized*)

25. In the light of the aforesaid proposition of law, let us evaluate the oral and documentary evidence brought on the record by the prosecution. This Court has attempted to bifurcate the various issues that came up for consideration and dealing with each one of them separately vide Chapter 'A', 'B', 'C' onwards and ultimately this Court would render its final decision.

CHAPTER (A)

THE MOVEMENT OF THE FILE & CHAIN OF CUSTODY :

25.1. It is admitted position that the charge-sheet of the main Uphaar case was filed on 15.11.1997 in the Court of Sh. Brijesh Sethi, the then Ld. MM and the case was committed to the court of Ld. ASJ Sh.

L. D. Malik on 04.01.1999. PW6 Sh. Shyam Lal was the Ahlmad of the court of Sh. Brijesh Sethi, the then Ld. MM and he categorically testified that he checked the list of documents including charge-sheets, seizure memo etc. and found that all the said documents were intact and that neither any document was found missing nor ink was found sprinkled on any document nor any document was found torn. He testified that handed over the case file complete in all respect after the order of committal to Sh. Gajraj Singh, the then Ahlmad of the Court of Sh. L. D. Malik, the then Ld. ASJ. PW6 Sh. Shyam Lal categorically testified that he had not taken assistance from the Assistant Ahlmad at that time and he spent the whole day in scrutinizing the documents of the said case, prepared the index of documents and paginated the same and handed over the same to Sh. Gajraj Singh in his Court and obtained a receipt of

handing over of the said case file, which incidentally was not produced. Although he denied the suggestion that neither he did not count nor check the pages of the charge sheet, he did say that that the document along-with charge-sheet were in a plastic bag and without opening it, he had handed over the same to the Ahlmad of committal Court. But then on being re-examined by the Id APP for the State, he corrected himself and reiterated that he checked the entire record including the bag.

25.2. Barring such blemish, there can be no challenge to the finding by the Ld. Trial Court that the testimony of PW-6 Sh. Shyam Lal demonstrated the fact that during the time the file of the main Uphaar case was with Ld. MM before its committal, no discrepancy in any document was noticed; and such assumption got fortified from the fact that nothing wrong with the documents was found while conducting compliance of section 207 Cr.P.C before the Committal Court whereby the copies of the charge-sheet alongwith Annexures / documents were provided to each of the sixteen accused persons. Despite a long and grueling cross-examination of PW-6, the defense was unable to gain any ground favouring the appellant Dinesh Chandra Sharma.

Now, it is further in evidence that Sh.Gajraj Singh was the Ahlmad of the court of Ld. ASJ who received the case file from PW6 Shyma Lal after due verification and he was succeeded by Mr. Sunil Kumar Nautiyal. It is in evidence that Sh. Gajraj Singh prepared a handing over / relinquishment report dated 01.05.2000 Ex.PW7/F and the said file came to be entrusted into the custody of PW8 Sh. Sushil

Kumar Nautiyal, who testified that sometime in the year 2000, he was transferred to the court of Ms. Mamta Sehgal, the then Ld. ASJ and taken charge of the files alongwith their documents pertaining to the cases pending in that Court from concerned Ahlmad Sh.Gajraj Singh. PW-8 Sushil Kumar Nautiya further testified that on 27.04.2001, he was transferred to the court of Sh. Sanjay Garg, the then Ld. MM, PHC; and appellant Dinesh Chandra Sharma joined in his place on 30.04.2001 through joining report Ex.PW7/D. It is in evidence that PW-8 Sushil Kumar Nautiyal prepared a charge report for handing over the pending case files to Dinesh Chandra Sharma running in 10 pages, which is Ex.PW7/C (Colly.), and he further deposed that the charge was handed over to Dinesh Chandra Sharma on 22.05.2001 vide handing over/ relinquishment report, which is Ex.PW7/E. PW-8 Sushil Kumar Nautiya further testified that the judicial record of the Uphaar case including the document & registers were duly received by Dinesh Chandra Sharma who appended his signatures on the list Ex.PW7/C at point A, which incidentally included the files which were kept with Sh. R.S. Verma, the then Reader in that Court who appended his signatures at point B on Ex.PW7/C. PW8 Sushil Kumar Nautiyal categorically stated that once he had handed over the charge of his office to his successor he ceased to be the custodian of the files. The testimony of PW8 Sushil Kumar Nautiya brings out the fact that he received the judicial files in ordinary course of official business as per handing over memo from Sh. Gajraj Singh and during his tenure which is from 01.05.2000 to 22.05.2001, no

shortcoming of any sort was noticed in the judicial record of the main Uphaar case file. Appellant Dinesh Chandra Sharma joined duties on 30.04.2001 vide Ex.PW7/D and PW8 relinquished the charge on 22.05.2001 and during this time, no question regarding missing / obliterating/ tampering/ defacing was raised by Dinesh Chandra Sharma to PW8 or to the learned Presiding Officer that clearly suggests that the custody of files moved smoothly and safely.

~~21~~ Another witness who testified about the manner in which the judicial record used to be handled in the Court was PW4 Jagan Nath, who was posted as Stenographer in the court of Ms. Mamta Sehgal, the then Ld. ASJ. He testified that case files used to be in the custody of Sh.Gajraj Singh and after his transfer and his successor Mr. Sunil Nautiyal and after him, it remained in custody of Dinesh Chandra Sharma. PW-4 Jagan Nath deposed that whenever the case was fixed for hearing, the Reader of the Court used to receive the files from Ahlmad in routine in the evening a day prior to the date of hearing and after completion of the proceedings, the judicial files used to sent back to the Ahlmad probably in the evening or the following day. *It is a matter of our common judicial experience and procedure* that the Ahlmad who is custodian of the record prepares peshi (*i.e., arrangement of judicial files which come up for hearing as per the cause list of the day*) one day in advance and entrusts the judicial record/ files to the Reader on the same day or one day in advance; and after conclusion of hearing on the day, the order-sheets or the evidence recorded during the day along with

judicial files are returned to the Ahlmad after the judicial work is over.

25 We have no reasons to assume that the said procedure was not being followed in the ordinary course of business or that there was any noticeable deviation. Indeed, in the interregnum the files do remain with the stenographer too for typing of the order sheets, which pages/loose sheets are then inserted in the judicial record sometimes by the stenographer, or the Reader, or sometimes by the Ahlmad, or even the Assistant Ahlmad, as may be provided. Our judicial experience day in and day out shows that much depend on the cohesion, rapport and co-operation as amongst the Court staff members. I find myself in complete agreement with the observation by the Id Trial Court the testimony of PW4 Jagan Nath inspires confidence that the Court Reader received the files from the Ahlmad and after the completion files were sent back to the Ahlmad, though in the interregnum the custody of the files remained with Reader, in overall context by all necessary implication it simply meant was that the judicial files remained in the constructive custody of the Ahlmad all the time since no sooner that he receives the files, he is required to check about it being complete in all respect. Likewise, the same work ethics are required when the judicial files remain with the stenographer for typing an order or two. Indeed it is very onerous task, but then that is what the duty calls for. Hence, there is no merit in the plea by the defense that the investigation officer PW-38 did not check the place of occurrence of the offence or any other persons including the peons/chowkidars or all the staff posted in the Court concerned.

It is pertinent to mention that the then Ld. District & Sessions Judge, Delhi vide order dated 25.06.2004 Ex. PW-5/A in the disciplinary inquiry against the delinquent/appellant Dinesh Chandra Sharma, while holding him guilty of misconduct in not maintaining the record properly, made the following observations vide paragraph (23):

“Admittedly the charged official has not made any report regarding any deficiency in the file after the same was received by him. As per rules the charged official was required to check the records so received by him from his predecessor and in case there was any deficiency in the records he should have reported the same immediately. Obviously this has not been done by the charged official and in these circumstances the burden of proving that he was not handed over the complete charge by his predecessor Ahlmad or that there was any deficiency i.e. missing of documents, tearing of documents and ink soiled documents, had shifted to the charged official which he failed to discharge. The plea of the official that he did not know about the missing of the documents, in my view, is a sheer lame excuse which cannot absolve him of the charges.”

25.7. It must be pointed out that the conduct of appellant Dinesh Chandra Sharma was reflected in the testimony of PW-8 Sunil Kumar Nautiyal, who testified that after getting relieved from the Court of Ms. Mamta Sehgal, the then Ld. ASJ/trial Court, he along-with Gajraj Singh were called by the learned Judge i.e. Ms. Mamta Sehgal and then she called them number of times during the period from December-2002 to January-2003 stating that some of the documents were missing and PW- 8 deposed that whenever he went to the Court, appellant Dinesh Chandra Sharma used to be present but he used to avoid them and would go out of the Court on one pretext or the other and would not return in their

presence. He deposed that he brought this fact to the notice of Ms. Mamta Sehgal, the then Ld. ASJ who then relieved them with the directions to come as and when she would call them. It is also pertinent to mention that Ld. District & Sessions Judge in his order dated 25.06.2004 whereby the services of the charged official were terminated Ex.PW-5/A had also observed that there was another enquiry pending against accused Dinesh Chandra Sharma for misplacing some documents and a second one for demanding bribe of Rs. 50,000/- for getting an accused acquitted and furthermore in one ACR his integrity had been opined as doubtful.

25.8 In view of the foregoing discussion, this Court fully endorses the observation by the Ld. Trial Court that conjoint testimony of PW4 Jagan Nath, PW6 Shyam Lal & PW8 Sunil Kumar Nautiyal seen in the light of documents produced by PW-7 demonstrate that the chain of custody of the file shifted to the appellant Dinesh Chandra Sharma properly through various well documented memos. The file was in proper custody of appellant Dinesh Chandra Sharma from the date of handing of files i.e. 03.05.2001 as per Ex.PW7/C. I fully endorse the observation that the Naib Court, Peon, Lawyers and litigants are integral part of an open Court system and the mere fact that the file moves around them during the proceedings, same should not be misconstrued as temporary loss/ lack of custody of the Ahlmad because eventually it reaches to the Ahlmad and who has to ensure that the record is intact in all respects. This kind of entrustment and safe keeping is mandated by

the Chapter 16 Part 'D' of the Delhi High Court Rules pages 1220-1221 categorically provides that the custody of the judicial record in the Court of District & Sessions Judge, Additional District & Sessions Judge shall be vested with the Ahlmads/Record Keepers and it would be expedient to refer to Rule 2 onwards which provide as under:-

“2. When any of the officials named in Rule 1, having custody of pending judicial records is transferred to another office permanently, or proceeds on leave for a period of two months or more, he shall make over full and complete charge of the records in his custody to the official relieving him;

3. The relieving official shall, in the presence of the official to be relieved, check all the records leaf by leaf with the indices attached thereto, see that no document is missing, and then sign a certificate to the effect that he has carefully checked all the records made over to him, and has received the documents mentioned in the indices attached to them. If any part of any record or any document is found to be missing the matter shall immediately be brought to the notice of the Presiding Officer of the Court;

4. If any document or part of the record is subsequently found to be missing, the Presiding Officer of the Court shall immediately take action for its recovery or reconstruction. He shall also fix responsibility on the custodian if the document was on the index, or on the official whom the custodian relieved, if it was not on the index.”

25.9. In the instant case, even if it is assumed that on some point of time the appellant Dinesh Chandra Sharma remained on leave now and then during the course of ordinary duties, yet it was his duty to keep the judicial record in check and it is in evidence that he never reported that any document was missing, pilfered, mutilated or defaced to the Presiding Officer. It is not his defence that before proceeding on leave he had handed over the charge to some one else; and therefore, the plea

that his application for summoning leave record and the attendance register of other Court Staff members was dismissed vide order dated 24.07.2001 does not cut much ice. The said order was not challenged and it is difficult to discern that such order caused him any prejudice.

(CHAPTER- B)

THE DOCUMENTS THAT WERE REMOVED/TAMPERED/ DEFACED:

210 It is admitted position that PW-2 Sh. Y. K. Saxena who was the Special Prosecutor, CBI in main Uphaar case bearing RC-3/ 97/SIC- IV/New Delhi filed an application in his own hand-writing bearing his signatures dated 20.01.2003 which is Ex.PW2/A containing details of such documents at serial no. 1 to 9 which are as follows :

- (i). (D-20) viz., Seizure Memo dated 18.07.1997 for seizure of documents mentioned there in the second page of this document (SM) found half torn;
- (ii). (D-84) viz., the File of Delhi Fire Service regarding Uphaar Cinema, Green Park, New Delhi containing Note sheets page 1 to 30 and correspondence pages 1 to 128. The correspondence page 123 was found half torn, which is a letter dt. 28.11.96
- (iii). (D-89) viz., One Register called 'Occurrence Book' of the Control Room, HQ, DFS, originally pages 1 to 400 and pages no. 363 to 400 were found and the relevant was page 379 which was also missing.
- (iv). (D-91) viz., Occurrence Book register of BCP Fire Station, ND for the period 13.12.96 to 18.1.97 containing pages 1 to 400 and pages nos. 95 to 104 were missing and ink had been spread from pages 109 to 116. The relevant pages were 96 to 113;
- (v). (D-92) viz., the Casual leave register maintained in the Headquarter, Delhi Fire Service for the period 1995-96

pertaining to casual leave of the officers to the rank of station officers upto Dy. Chief Fire Officer. The pages no. 45 to 50 were missing. The relevant page was no. 50 and its seizure memo dated 5.8.97 was also missing;

(vi). Four cheques (original) viz.,

(a) Cheque No. 955725 dated 26.06.1995 for Rs. 50,00,000/- drawn on Punjab National Bank, Rajinder Nagar alongwith its SM dt. 27.8.97 (D-24);

(b) Cheque no. 805578 dated 30.11.1996;

(c) Cheque no. 805590 dated 20.02.1997, both alongwith Seizure memo dt. 18.8.97; and

(d) Cheque no. 183618 dated 23.05.1996 alongwith Seizure memo dt. 27.8.97 (D-26).

(vii) (D-28) were the File containing minutes of MD Meetings and correspondence (total 40 sheets). Its page no. 1, 9, 12, 14, 18 and 19 were missing. Its page no. 1 to 17 were relevant;

(viii) (D-34) was One set of loose sheets containing 62 pages regarding correspondence about Uphaar Cinema. Its pages 1 and 2 were missing.

(ix) (D-93) One file of DCP (Licensing) containing 132 documents. The document no. 2, 33, 41, 42, 111, 119 and 127 were missing).

211 It is admitted position that the appellant Dinesh Chandra Sharma later claimed to have traced three cheques and produced on 10.06.2003 viz., cheque no. 955725 dated 26.06.1995 for Rs. 50,00,000/- ;cheque no. 805590 dated 20.02.1997 for Rs. 2,96,550/- and cheque no. 805578 dated 30.11.1996 for Rs. 1,50,000/-. It is a matter of Trial Court Record that after the application moved by the Ld. Addl. PP dated 20.01.2003 Ex.PW2/A was allowed, the certified copies of the said documents were obtained from the Registry of the Supreme Court where the original record of the Uphaar case was pending in criminal appeal and the documents which were missing/ tampered/ obliterated/ torn were

proved by the author / scribe / witness of the said documents in the main Uphaar case and same were proved by the prosecution in the instant case through PW1, PW11, PW13 (Fire Officials) and PW3, PW22, PW34 (Bank Officials) and PW10, PW12, PW16, PW19, PW20, PW26, PW28, PW14, PW17 (CBI Officials). Here, Ld. Addl. PP was right to urge that by that time secondary evidence had already been led on aforesaid three cheques by examining the Bank Witnesses, which were, as he urged, were magically discovered by the appellant Dinesh Chandra Sharma.

NATURE AND IMPORTANCE OF MISSING/
DOCUMENTS:

TAMPERED

212 At the outset, there is considerable merit in the submission of the Ld. Addl. PP that the documents that got misplaced, mutilated or defaced were most probably selected in a deliberate and clandestine manner out of total record of about 20000 pages, which selected documents specifically pertained to the role of the appellants Sushil & Gopal Ansal besides H.S. Panwar out of the sixteen accused facing trial in the main Uphaar tragedy case. In so far as the defense plea about discrepancies in the Ex.PW2/A and the other application by the IO Ex.PW30/DB is concerned, much mileage was sought to be drawn by the defense that as per Ex.PW2/A, there were stated to be nine documents that were missing/pilfered as on 21.01.2003, while as per Ex.PW30/DB, those 09 documents became 6 documents and as per Ex.PW10/A they again become 9 documents. It needs to be clarified that Ld. Trial Court was right in observing that Ex.PW30/DB was not a complete list of

missing documents dated 21.01.2003 as it is evidently clear from Ex.PW30/DB that the Ld. Presiding Officer Ms. Mamta Sehgal ordered Ahlmad to report regarding the documents by 21.01.2003, which is indicative that same is prior to 21.01.2003 since sometime was afforded to the appellant-Ahlmad for tracing the documents. Further, in serial No. 6 in Ex.PW2/A, 03 documents i.e. D24, D25 (two cheques) and D-26 were mentioned, however, in Ex.PW30/DB, these cheques were shown as 3 separate documents at serial no. 6, 7 & 8, and therefore, the number of documents became 08 because document no. D28, D93 & D34 were not mentioned in the list. Further, before IO ACP R.S. Khatri of the main Uphaar case could file his affidavit containing the list of the missing/ torn document, Dinesh Chandra Sharma found two documents which are D93 and D34 and for this reason, in the affidavit of Sh. R.S. Khatri, two documents mentioned at serial no. 8 & 9 in Ex.PW2/A were not reflected. The fact that one document D93 resurfaced was duly mentioned in Ex.PW37/E as well as in dismissal order passed by the Ld. D&SJ Ex.PW5/A. It is also pertinent to note that accused persons raised no objections during the recording of the secondary evidence regarding retrieval or re-surfacing of D-28.

(CHAPTER-C)

DOCUMENTS PROVED DURING TESTIMONY BY SECONDARY EVIDENCE,
ATTRIBUTED TO THE APPELLANTS AND BENEFIT DERIVED BY THEM:

MISSING DOCUMENTS ATTRIBUTED TO APPELLANT H.S. PANWAR:

213 PW1 categorically testified that nine registers containing 400 pages were seized vide memo PW1/A (colly.) by PW-28 that were properly paginated and counted. His testimony corroborates that the OB register of Bhikaji Cama Place, Fire Station, New Delhi dated 13.12.1996 to 18.01.1997 was seized vide seizure memo Ex.PW1/A that contained pages from 1 to 400 which were intact and legible forming part of the record of main Uphaar case, and proved vide Ex. 49/A & B. PW-1 thus was able to prove that during the trial in main Uphaar Case page no. 95 to 104 were found missing and from page No. 109 to 116 blue ink was sprinkled as as to make illegible. PW-11 also categorically testified that that he handed over the Occurrence Book Ex.PW10/E maintained at Delhi Fire Services, Control Room Headquarter to CBI office vide seizure memo Ex. PW-11/A containing 1 to 400 pages and he was examined in main Uphaar case as witness, he found that page no. 363 onwards were missing and the said evidence was corroborated by PW-26.

214 PW-13 Sh. R. C. Sharma in his deposition identified the certified copy of the torn document i.e. a letter written to Delhi Fire Services from Mr. Vimal Kumar Nagpal, Vice President (Services), Ansal Properties and Industries Ltd dated 28.11.1996 and further affirmed that the said document was handed over to the Inspector from CBI and he proved the certified of said document along-with an affidavit of PW-10 which is Ex.PW-10/C (colly.) that bears the signatures of the accused H.S. Panwar at point A. The said aspect was corroborated by

PW-10 R.S. Khatri. The Hon'ble High Court of Delhi in the main Uphaar case titled Sushil Ansal v. State (supra), vide paragraph (7.165) had an occasion to observe that “*no objection certificate was requested to be issued on receiving letter dated 28.11.1996 Ex.PW-33/F (which is D-84), which was also torn from the middle bottom portion and the accused H.S. Panwar purportedly did re-inspection on 22.12.1996 and he issued a certificate whereas he was on leave on that day*”. Now, interestingly, the letter dated 28.11.1996 Ex.PW-33/F (which is D-84) was produced in the main Uphaar case and in the instant case a register having 158 pages and this page was only taken out and deliberately torn and the Ld. Addl. PP then took me through the observations by the Hon'ble Judges vide paragraph (7.169) wherein several discrepancies were found in running of the Cinema Hall that led to the incident, which discrepancies were had been claimed to have been removed vide letter dated 28.11.1996 regarding which a fake inspection was done by the accused H.S. Panwar. The inevitable inference is that the NOC was given by accused H.S. Panwar in complete disregard to the fire safety norms & rules.

215 As regards D-89 (proved vide Ex. 49/A & B in the main Uphaar case), pursuant to letter dated 18.11.1996 Ex.PW-37/F two NOCs were issued on 24.12.1996 and 12.05.1997 by the Delhi Fire Services, and it is pertinent to mention that *the last one was issued about one month prior to the incident*. At the cost of repetition, these NOCs were issued by deceased accused H.S. Panwar without carrying

out physical inspection and in order to derail the proceedings page Nos. 363 to 400 were removed and the relevant page was 379 that showed departure of officials for various inspections on 12.05.1997, in which there was no mention of accused Mr. H.S. Panwar going out for inspection at the site. Coming to document D-91, it was a register containing 400 pages containing details of the visits for inspection at the spot at various places during the period 13.12.1996 to 18.01.1997 and page Nos. 96 to 213 were removed for the date 22.12.1996 and 23.12.1996 specifically (emphasized) in order to obscure the inspection report dated 24.12.1996 whereby the NOC was issued for running the Cinema Hall. Ld. Addl. PP for the State rightly urged that in order to cast a doubt about the continuity of the record or the pattern adopted by the officials of Delhi Fire Services, page Nos. 109 to 116 of D-91 were defaced by spreading ink and thereby making it illegible. It was in evidence that no physical inspection was done on 22.12.1996 since accused H.S. Panwar was actually on leave on that day.

216 Turning to D-92 (proved as Ex. PW-88/G, H & J in the main Uphaar case), it appears that it contained 92 pages and page 50 was the crucial one and it manifestly appears that pages 45 to 50 were deliberately handpicked and removed. Ld APP rightly urged that it was clearly reflected at the bottom of page 50 that H.S. Panwar was on leave on 22.12.1996, which was described as “chill leave”. It is pertinent to mention here that the role of the accused H.S. Panwar (since deceased) was extensively commented by the Hon'ble Judges of the

Supreme Court in the case of Sushil Ansal v. State (supra) vide paragraphs (12.6), (12.7), (12.8) and (12.9) and the gist of which is that leave register that was proved on the record Ex.PW-88/6 showed that

H.S. Panwar inspected the site and gave approval for issuance of 'NOC' to run a Cinema Hall but on that day he was on leave, which was sanctioned by the Chief Fire Officer and PW-88 categorically stated that all the equipments were not checked during inspection of the building where the Cinema Hall was running. There were made comments about non-availability of fire sprinklers in the Cinema Hall as well as some of that were not filled and the accused H.S. Panwar was castigated for issuing 'No Objection' vide letters dated 24.12.1996 and 12.05.1997 and was held to be guilty of gross rashness and negligence towards his duties.

MISSING DOCUMENTS ATTRIBUTED TO APPELLANTS ANSALS:

217. In so far as D-24 is concerned, PW-3 Sh. Mukesh Chander Khullar deposed on instruction by the Senior Manager of the Bank, that he went to the office of CBI and handed over a cheque of Rs. 50,00,000/- (Rs. Fifty Lacs) issued in the current account of M/s Green Park Theaters Association Pvt. Ltd in favour of Sushil Ansal, the certified copy of the cheque of which was Ex.PW3/A vide the certified copy of the seizure memo of the said cheque is Ex.PW3/B. PW20 corroborated the taking of possession of the aforesaid cheque from PW3 through the aforesaid seizure memo.

218 PW22 Sh. M. L. Dhupar deposed he handed over two cheques to CBI officer vide seizure memo Ex.PW10/K bearing his signatures at point B, viz., cheque no. 805578 dated 30.11.1996 issued by Gopal Ansal, authorized signatory for Ansal Theaters & Clubhotels Pvt. Ltd in favour of M/s Music Shop for an amount of Rs. 1,50,000/- and another cheque no. 805590 dated 12.02.1997 signed by Gopal Ansal, authorized signatory for Ansal Theaters & Clubhotels Pvt. Ltd in favour of M/s Chancellor Club for Rs. 2,96,550/-, and he identified the certified copies of the cheques marked Ex.PW10/L & Ex.PW10/M respectively. Further, the testimony of PW22 is corroborated from the testimony of PW10 who testified that he filed the photocopy of document D25 which is seizure memo dated 18.08.1997 which is Ex.PW10/K (certified copy) and certified copies of aforesaid cheques Ex.PW10/L & Ex.PW10/M (certified copy). Further, testimony of PW12 also corroborates as he was Assistant IO to PW10. He proved Ex.PW10/K which is seizure memo of the aforesaid two cheques and same bears his signatures at point A.

219 In so far as D-26 is concerned, PW-34 Sh. Ishwar Bhatt deposed that he handed over to CBI a cheque bearing no. 183618 dated 23.05.1996 drawn on Syndicate Bank, Green Park Extension, New Delhi in favour of Chief Engineer (Water) for an amount of Rs.9,711/- duly signed by Gopal Ansal, Authorized signatory for Ansal Theaters & Clubhotels Pvt. Ltd; and he proved Ex.PW10/O and Ex.PW10/N being certified copies of photocopies of cheque and seizure memo and identified his signatures at point B & C. He testified that the

photocopies of said documents got exhibited by way of secondary evidence as Ex.PW93/A and Ex.PW93/B in the main Uphaar case and his testimony is Ex.PW34/A (in the present case). As such the witness proved Ex.PW10/O & Ex.PW10/N and his testimony in main Uphaar case Ex.PW34/A which is also corroborated by his earlier testimony in the main Uphaar case. Further, the testimony of PW34 is corroborated from the testimony of PW10 & PW-12 Ashok Gupta.

~~2520~~ PW-10 Sh. Rai Singh Khatri was IO of the Uphaar case and he testified that during investigation in FIR no.432/1997 of PS Hauz Khas, he along with his team members had seized various documents and he filed the charge-sheet alongwith all relevant document in the court of Sh. Brijesh Sethi, Ld. MM, the then Ld. MM on 15.11.1997; and he categorically deposed that the Photocopies of the charge-sheet and the documents were prepared under his direct supervision for supplying the same to the accused persons as well as for keeping the same for the purpose of record and he kept one set of charge-sheet with him. He deposed that after it was informed to him that total 9 documents were found to be torn/ obliterated/ tampered/ sprinkled with ink he arranged the certified copies of relevant documents for the purpose of trial from his set of charge-sheet along-with his sworn affidavit Ex.PW10/A (Colly.) and the certified copies of the missing or tempered documents were marked exhibits in his testimony. These documents were proved as PW-91 A & PW-91 B & PW-91-C in the main Uphaar case.

~~2521~~ PW16 Prithvi Singh, PW19 M.S. Partyal, PW20 N.S. Virk,

PW26 Tribhuvan, PW14 Bal Kishore, PW17 Satya Pal Singh & PW28 Deepak Gaur were other officers of the CBI who were assisting PW-10, who corroborated the version about seizure of various documents during the investigation. Suffice to state that all the documents as per Ex.PW2/A were proved during evidence of this case by their author, witness, custodian. Thus, Ld. Trial Court rightly concluded that there remain no doubt left regarding the fact that these documents were in fact intact at the time when they were submitted before Ld. MM and till custody of the file was with Dinesh Chandra Sharma.

522 In so far as D-24, though out four cheques that had been misplaced, three were retrieved or traced out purportedly by accused Dinesh Chandra Sharma in the month of June, magically as commented by the Ld. Addl. PP for the State, but by that time secondary evidence had already been led and the said documents were placed on the record when the matter was not even listed in June-2003. Ld APP had urged that the whole idea was to seek leverages in the application pending before the Hon'ble High Court of Delhi moved by the appellants seeking permission to go abroad.

Aggarwal, Ld. Senior Advocate that the said cheques were admitted at the time of framing of charge, which copy is Ex.PW-37/C is misplaced as there was no admission by the accused persons nor proceedings under

Section 294 Cr.P.C. were resorted to and rather as urged by the Ld. Addl. PP for the State the application for leading secondary evidence by the prosecution was challenged by the accused R.M. Puri, who was real

brother-in-law of the appellants Sushil Ansal and Gopal Ansal, and who had nothing to do with the said documents. Now, the inevitable inference is that leading of secondary evidence with regard to the said cheques was opposed since the three cheques clearly suggested that the appellants Sushil Ansal and Gopal Ansal were in-charge of day to day affairs of the Cinema and that they were making payments or issuing cheques in the ordinary course of business, suggesting that they were enjoying vast financial powers.

523 Coming to D-28 (proved as Ex. PW-98/X-1 to X-6 in the main Uphaar case), it is inevitable inference again that since the minutes were undated and unsigned, therefore, the forwarding letters that communicated the drawing of minutes to the Directors etc. were deliberately handpicked and destroyed. Ld APP had pointed out that the covering letters dated 03.03.1997 Ex.PW-10/S; 14.04.1997 Ex.PW- 10/Q; dated 02.05.1997 Ex.PW-10/R; dated 09.05.1997 Ex.PW-10/P and letter from the Law Firm dated 14.03.1997 Ex.PW-10/T along-with envelope and minutes of the meeting marked Ex.PW-10/U and PW-21/A (Colly) were handpicked so as to put the relevant minutes under a cloud. Ld. Addl. PP was right in pointing out that the minutes that were drawn during the relevant time would show that each and every decision with regard to functioning of the Cinema Hall so much so that issuance of complimentary passes or even laying of a nail in the wall, etc. were directed to be routed through for the final decision by the appellant Gopal Ansal. In this regard, reference was made to the observations by

the Hon'ble Supreme Court in the final matter of Uphaar Tragedy vide Paragraph 26.6, and several other paragraphs. Ld. Addl. PP for the State pointed out that Hon'ble High Court of Delhi in judgment in the main Uphaar case titled Sushil Ansal v. State (Through CBI) (supra), vide paragraph (9.64) commented that according to the minutes book/Board's resolution produced in the Court Ex.PW-103/XX3 Gopal Ansal claimed that he had resigned from the company on 30.06.1995 and yet he continued to enjoy managerial powers and almost unlimited powers to withdraw the amounts and operate the accounts of the company. It was observed that accused Gopal Ansal was not fettered in terms of accountability to the company for the monies withdrawn and utilized by him and in this regard at least two instances of the bank accounts were operated ostensibly for the use of accused Gopal Ansal have been placed on the record.

25.24 Further, role of the two Ansal Brothers was extensively commented upon by the Hon'ble Judge, High Court of Delhi and it would be pertinent to refer to the observations made vide paragraph

7.169 in particular sub-para (9) that goes as under:-

“The first two accused were concededly directors of the company and had engaged themselves on day to day functioning. Their involvement in the company continued even thereafter. If one were to take their argument on its face value there was no occasion for Sushil Ansal to continue being described as a licensee even in 1992 or hold himself out as such. He not only did so but permitted the company to do so, as well as the statutory authorities issuing no objections as well as approvals who described the licensee of the original license No. 51 i.e. Sushil Ansal as the licensee or occupier of the cinema hall. Significantly enough he

withdrew a large amount of Rs. 50 lakhs in 1995 from the account of the company. As held by the trial court he was called as a special invitee to attend the meeting of Board of Directors. He along with Gopal Ansal continued to enjoy unlimited powers to withdraw the amounts and operate the accounts of the company. Both of them were also authorized right up to the date of incident to operate such accounts and also create liabilities upon the company's property.”

25.25 In view of the foregoing discussion, the plea by the defence in the written submission that relevant documents that went missing, pilfered or defaced had not even been relied upon by the superior courts in finding the appellants Sushil Ansal and Gopal Ansal guilty in the main Uphaar Tragedy Case viz. Sushil Ansal v. State (Govt. of NCT of Delhi) (supra), does not cut much ice. In the Written Submission filed on behalf of appellant Sushil Ansal, a tabular analysis is depicted to the effect that the Hon'ble Supreme Court had relied upon other documents viz., Ex. PW100/M, PW17/DB, PW69/B, PW69/CC and PW103/X-68 to find him culpable. But is not addressed is the fact that such aforesaid documents were *per se* for the year 1977, 1974, 1979 and 1981, whereas, the documents that were destroyed, pilfered or defaced in the instant case i.e., documents pertaining to fire clearances as also the cheques in question discussed hereinabove were pertaining to the period 1995-96 before the tragedy struck on 13.06.1997. With regard to such evidence forming part of D-84 and D-89, it would be expedient to re-produce the observations of the Hon'ble High Court of Delhi in the main Uphaar case, viz., Sushil Ansal vs State through CBI (supra), paragraph

7.169 , wherein it was observed as follows:-

(1) No objection certificates were being issued, mechanically and merely for the asking by the licensee, of the cinema hall. The inspection reports which preceded these exercises were in proforma or standard form; the inspections carried out lackadaisically granted the permission to renew licenses.

(2) The concerns required to be addressed in DCR 1953 and DCR 1981, regarding fire safety as well as means of escape and exit, (or rapid dispersal) in the event of fire or other emergency, were not even considered. In fact, on the contrary, Ex. PW 33/D on 24.12.1996 to DCP (Licensing) records that “the department has no objection to the renewal of license of the above mentioned cinema from fire safety and means of escape point of view....”

(3) The last inspection report, dated 12-5-1997, does not show any application of mind to the compliance with the gangway, exit rules or other vital aspects which the fire department had to necessarily consider as part of its obligation, under Section 6 of the 1986 Act, read with Rule 5;

(4) All the reports, preceding the fire incident of 13-6-1997, talk of existence of equipments mandated by the rules. However, significantly, they omit any mention whether these equipment were tested, and found in order. Similarly, it is not known whether the report of 12-5-1997 was preceded by testing of the emergency, and other lights.

(5) The evidence of PW-85 that the emergency lights were not controlled from the operator or projector room, assumes significance. According to the contention of accused Gopal Ansal, the lack of electricity, due to tripping at 5-05 possibly meant that the lights went off. Here, it is to be remembered that during such emergencies, the emergency lights have to

be automatically switched on; they should not depend on the general supply; or even on the generator supply.

(6) The depositions of PWs 1, 3, 7, 10 and 11 establish that no public address system, emergency lights or exit lights were operational at the time when smoke entered the cinema balcony.

(7) None of the inspection reports even notices that two transformers, one of 1000 KVA capacity, (installed by DVB) existed on the ground floor, near the parking area. There was no advertence or assessment of fire hazard of that equipment, or in the transformers' proximity, or its condition, in relation to the parked vehicles. No advisory in that regard was even mentioned; perhaps not even thought of. These concerns were essential, and had to be addressed by virtue of provisions of the DCR 1953 and DCR 1981.

(8) There was no fire extinguisher, of any type in the DVB transformer room;

(9) The report of the fire department dated 18-11-1996 PW-33/C had noted inadequacies in the existing transformer. However, the subsequent report stated that the deficiencies were rectified. This inspection was supposedly carried out-as the evidence points out-when the accused H.S. Panwar was on leave. The subsequent report mechanically gave clearance, vis-à-vis fire safety.

7.170 In view of the above discussion, it is held that the clearance or approval and the no-objection certificates issued by the fire department, were contrary to DCR 1953, and contrary to vital fire safety norms. They were issued mechanically, in a routine manner. The cinema hall was also ill equipped with appliances, and several fire extinguishers were not operable, according to the report Ex. PW-64/D. These establish beyond a doubt that the clearances by the fire

department, preceded by inspections were unreliable; the cinema management did not comply with safety norms, both in regard to fire emergencies, as well as other emergencies, to facilitate rapid evacuation of patrons. The appliances and extinguishers were neither sufficient nor adequate to quell the fire.”

~~256~~ The role of the main three accused persons viz., the two Ansal brothers and accused H.S.Panwar was then summarized in the main Uphaar case decided by the Supreme Court report in Sushil Ansal v. State (supra), the following observations were made regarding the role of the accused Sushil & Gopal Ansal and the false plea in defense was taken by them:-

86. Appearing for Sushil Ansal Mr Ram Jethmalani, learned Senior Advocate, in his inimitable style and remarkable forensic skill argued that his client Sushil Ansal was not the occupier of the Uphaar Cinema nor did he owe any duty of care towards those who came to watch the movie on the fateful day so as to give rise to any civil or criminal liability against his client for the alleged breach of any such duty. Mr Sushil Kumar appearing for Gopal Ansal, adopted a similar line of argument and urged that even Gopal Ansal had nothing to do with the Cinema or the management of its affairs as on the date of the unfortunate fire incident. Reliance in support of that submission was placed both by Mr Jethmalani and Mr Sushil Kumar on the fact that the Cinema was owned by GPTA (P) Ltd. and later by Ansal Theatres and Clubotels (P) Ltd. who alone could be said to be the occupiers of the Cinema at the relevant point of time. Reliance was also placed upon the fact that Sushil Ansal was the Managing Director of the company only till 21-11-1983. He had finally retired from the Board on 17-10-1988, thereby putting an end to his association with the Cinema and its affairs. Even Gopal Ansal who took over as Managing Director of the company on 21-11-1983 had retired from the Board of Directors on 17-10-1988,

whereafter he exercised no control over the Cinema or its management to earn him what in retrospect is a dubious distinction of being the “occupier of the Cinema”. He had no doubt resumed the Directorship of the company for a period of six months in December 1994, but was concerned only with the business of the clubs being run by the company. This implied, according to the learned counsel, that neither Sushil nor Gopal Ansal was the occupier of the Cinema on the date of the occurrence to give rise to any civil or criminal liability against them.

90. The trial court and, so also, the High Court have both concurrently held that Sushil and Gopal Ansal were, at all material times, at the helm of the affairs of the company that owned Uphaar Cinema. All crucial decisions relating to the Cinema including decisions regarding installation of DVB transformer on the premises, closure of the right side exit and gangway and rearrangement of the seating plan in the balcony were taken while either one or the other of the two was either a Director or Managing Director of the company. Both the courts have further found that the Ansal brothers' control over the day-to-day affairs and the staff employed to look after the cinema management continued even up to the date of the incident. In particular the courts below have concurrently held that the decision to install DVB transformer and to let out various parts of the premises for commercial use in violation of the sanctioned plan were taken by Sushil Ansal as Managing Director of the company. The applications for grant of the cinema licence and subsequent renewals were found to have been made by him as the representative licensee on behalf of the company even after his purported retirement from the Board of Directors. Not only that, the courts below have concurrently held that Sushil Ansal was exercising a high degree of financial control over the affairs of the company and the Cinema owned by him. Gopal Ansal was similarly exercising an equally extensive degree of financial control even after his retirement as Director. The courts below have also found that all decisions relating to changes in the balcony seating arrangement and installation of additional seats were taken during Gopal Ansal's term as Managing Director and at his request. The courts have noticed and relied upon the show-cause notice dated 28-5-1982 in which Gopal Ansal, the

Managing Director, was cautioned about the dangerous practice being followed by the cinema management of bolting the doors of the cinema hall during the exhibition of the films. An assurance to the effect that such a practice would be discontinued was given by Gopal Ansal as Managing Director of the company.

93. The cumulative effect of the above facts and circumstances proved by cogent evidence placed on record by the prosecution, in our view, fully supports the prosecution case that Sushil and Gopal Ansal were in full control over the affairs of the company which owned the Cinema, as well as the Cinema itself, at all material times, including the date of the incident. We have, therefore, no hesitation in affirming the finding that the Ansal brothers, Sushil and Gopal, were both occupiers of the cinema complex as on the date of the incident in which capacity they owed a duty to care for the safety of the patrons visiting/coming to the premises.

117.10. That out of 22 fire extinguishers seized after the incident from various parts of the building including the parking lot and balcony, 10 were empty, 4 were not working properly while 1 was leaking from the top. This meant that only 7 of such extinguishers were in working condition.

130. The duty to care for the safety of the patrons, we have explained in the earlier part, was cast upon the Ansal brothers, occupiers of the Cinema, both in common law as also in terms of statutory provisions on the subject. We have also held that the evidence adduced at the trial and the concurrent findings recorded by the courts below, have, established the breach of that duty in several respects [*See in detail* paras 117 to 122, above]. For instance absence of any public address system to warn those inside the Cinema in the event of any emergency was in the facts and circumstances of the case a part of the duty to care which was breached by the occupiers. This duty was a continuing obligation and had to be strictly discharged in respect of each cinema show conducted in the theater. The grant of a licence or its renewal by the Licensing Authority did not in any manner relieve the occupiers of that obligation which was implicit even in the grant and the renewals thereof. Similarly, the requirement that the Cinema must have emergency lights, fire extinguishers and that the occupiers must provide help to the

patrons in the event of any emergency ensuring rapid dispersal from the enclosed area were obligations that too were implicit in the issue and renewal of the cinematograph licence. Breach of all these obligations could not be justified on the ground that a licence was granted or renewed in favour of the occupiers/licensee and no matter the duty to care towards safety of the patrons was neglected by the theatre owners or occupiers. Failures in the event of a mishap like the one at hand on account of failure of the occupiers to discharge their legal obligations to take care for the safety of the patrons cannot be held to be immune from prosecution simply because a licence to exhibit the films had been granted or renewed from time to time.

243. Bearing the aforesaid parameters and the principles in mind and in the light of findings recorded concurrently and approved by us, I have not been able to convince myself or feel persuaded or find a valid reason why the High Court should have reduced the sentence of two years awarded by the trial court by reducing it to one year in the wake of the finding recorded by us also as we have held that all the accused owed a duty of care to the deceased persons since A-1 Sushil Ansal and A-2 Gopal Ansal were in actual control of the premises and took active participation in the day-to-day management of the theatre. They were the actual decision-makers without whose approval no action could be undertaken in the premises. A-1 was the licensee of the Cinema and had the obligation to run it with due and reasonable care. A-2 as the Managing Director of Ansal Properties & Industries Ltd. had exercised complete control over the management of the theatre. They were the actual beneficiaries of the establishment who were making out financial gains by charging the public. As persons in charge of a public entertainment centre which caters to the general public they owed a duty of care to maintain a safe environment. It would be indeed very far-fetched to contend that a person who maintains a cinema hall and charges the public a fee for the facility, does not owe a duty of care to ensure that the public can enjoy the facility in a safe environment.

244. In the present case every rule in the book had been violated with impunity, whether it be the maintenance of the transformer, illegal user of the area around the transformer,

closure of gangways and exit in the balcony. Not only that the transformer was not kept in a safe environment, the area around the transformer had been filled with combustible substances so as to aggravate the danger. The public announcement system, emergency lights, etc. which are the most basic requirements in the cinema hall were non-functional. On top of that, the illegal closure of exit in the balcony ensured that patrons could not make a speedy exit. All these decisions were taken by A-1 and A-2 who were in active control of the theatre and the premises. In such a scenario it can easily be said that not only were they negligent but the negligence was of such a high degree that no reasonable man would have undertaken such a course especially the ones who were dealing in the business of running a cinema theatre where the lives of public at large were involved day in and day out as visitors to the cinema show.

257 The sum and substance of the foregoing discussion is that the documents were not got misplaced randomly, accidentally or due to carelessness of the appellant Ahalmad/record keeper but were probably identified, selected and segregated and then in a calculated manner either destroyed, mutilated or defaced so as to confer undue advantage to the appellants Ansal brothers and the Fire Officer H.S.Panwar. It is pertinent to mention that these nine documents pertained to the year 1995-97 just before the Uphaar Tragedy. It is not fathomable that the appellant Dinesh Chandra Sharma was so wise so as to understand the importance of such documents on his own despite being a Court employee for so long in service and commit such blameworthy criminal misconduct on his own while the judicial record was in his actual and/or constructive custody except on being abetted to do at the behest of the beneficiaries. Like wise, it is not fathomable that the appellant P.P.Batra could decipher on

his own about the importance of the documents in questions. It is but apparent that on the filing of the charge sheet in the main Uphaar tragedy case, only the appellants Ansal brothers and H.S.Panwar knew about such incriminating documents collected by the investigating agency against them. It is most probable given all the facts and circumstances that the appellants Ansal brothers and H.S.Panwar hatched a criminal conspiracy to save themselves from the impending penal consequences in the main Uphaar tragedy case and abetted the commission of offences in the nature of tampering/mutilating and defacing the nine documents in question. To conclude, the three appellants Sushil and Gopal Ansal besides H.S.Panwar must have had the knowledge as to which documents were bound to incriminate them and they must have entertained a real, apparent and imminent common objective or design to do something about it so as to escape punishment. Now, we shall be examining how the appellants trio proceeded to achieve that objective.

(CHAPTER-D)

DISCUSSION ON THE MOBILE CALL RECORDS & CALLS EXCHANGES BETWEEN APPELLANT DINESH CHANDRA SHARMA AND P.P. BATRA

26. The prosecution in order to prove its case against the appellants, heavily relied upon the history of call data record (CDRs) and the landline numbers registered in the name of the M/S Ansal Properties & Infrastructure Limited (for short APIL), which were also commented in detail by the 1st Trial Court to bring an element of criminal conspiracy

as amongst the key offenders/appellants. First thing first, PW32 proved original history register containing relevant entries pertaining to landline nos. 23352269, 23352270 & 23352518 all allotted to APIL and their copies of the history register are Ex.PW32/A, Ex.PW32/B & Ex.PW32/C respectively. PW33 G.S. Bakshi proved the MTNL record pertaining to landline nos. 23352269, 23352270 & 23352518 and it was clearly brought out that all the aforesaid landline telephone connections were allotted to Ansal Properties and Industries Ltd that were later changed in the name of Ansal Properties & Infrastructure Ltd.(APIL) w.e.f 21.03.2005 vide applications that are Ex.PW33/A and Ex.PW33/B, the affidavit Ex.PW33/D and the affidavit of indemnity is Ex.PW33/E.

~~At~~ As regards mobile connections relied upon by the prosecution, PW-38 Amit Roy served notice under section 91 Cr.P.C to MTNL which is Ex.PW38/A (forwarding letter), and call history of three telephone numbers 23352269, 23352270 and 23352518 is Ex.PW38/B (Colly.) with another forwarding letter addressed to AVO Central, written by Dharampal Singh, Div. Engineer Ex.PW38/C. He served a notice under section 91 Cr.P.C to Hutch company to provide the CDR of relevant mobile numbers and pursuant thereto the CDR of relevant mobile number for relevant period were provided to him vide forwarding letter Ex.PW36/M and Ex.PW36/A. The certified copies of CDRs were marked Ex.PW36/B, Ex.PW36/C & Ex.PW36/D for the months of August, September and November 2002 respectively for mobile no. 981167434. Likewise, the CDR details of another mobile no

9811026904 for the month of May & November were Ex.PW36/E & PW-36/F respectively and the CDR of a third mobile no. 9811313863 was for the month of May, 2002. The reply to notice under section 91 of the Cr.P.C Ex. PW-36/A then provided CDRs of a fourth mobile no. 9811027522 attributed to appellant Dinesh Chandra Sharma for the five months viz.. May, June, August, September & November 2002 that were marked Ex.PW36/H, Ex.PW36/I, Ex.PW36/J, Ex.PW36/K and lastly Ex.PW36/L respectively. Although, there is not explanation by PW-38 ACP Amit Roy as to why the Call Data Record for the month of July & October was not sought, retrieved or extracted in respect of mobile No. 9811027522 attributed to appellant Dinesh Chandra Sharma as well as Mobile No.9818031897 attributed to appellant P.P. Batra. It is difficult to discern that there was any ulterior motive in the conduct of the Investigating Officer in his failing to do so.

22 The issue that appellant P.P. Batra was an employee with Ansal Properties and Infrastructure Ltd. was brought out from the testimony of PW-24 Sh. Vivek Gandhi, Vice President & HR Administration of Ansal Properties and Infrastructure Ltd., who issued certificate Ex.PW-24/A pursuant to notice under Section 91 Cr.P.C. Ex.PW-38/G by the Investigating Officer that Prem Prakash Batra @ P.P. Batra was working in the company w.e.f. 15.11.1995 and continued to be an employee of the company till the date of issuance of certificate dated 15.09.2007 and the appointment letter was marked 'X', which was not challenged.

23 The Ld. Trial Court vide paragraph 68(A)(xiii) of the impugned judgment, on analysis of the call records exchanged between the appellant Dinesh Chandra Sharma and the landlines numbers installed at the premises of the APIL besides the call exchanged with P.P. Batra and Vijay Katyal, APIL, tabulated the CDRs as follows:

TABLE NO. 1

S.N o.	DATE	TIME	CAL L MADE TO	MOBIL E / LANDL INE NUMB ER	DURATI ON	EXHIBIT No./Pg No.
1.	13.05.20 02	10392 0	Ansal Properti es & Industri es Ltd. (API)	3353062	34	Ex PW 36/N – Pg 401, Vol-V Ex PW 33/D- Pg No. 359, Vol -V
2.	13.05.20 02	10392 0	Ansal Properti es & Industri es Ltd.	3353062	34	Ex PW 36/N – Pg 401 ,Vol-V Ex PW 33/D- Pg No. 359, Vol-V
3.	14.05.20 02	95109	Ansal Properti es & Industri es Ltd.	3738104	13	Ex PW 36/H Pg 387 Vol-V Mark DA @ 257G , Vol-IV
4.	15.05.20 2	14022 5	Ansal Properti es	3738104	18	Ex PW 36/H Pg 388 Vol-V

			& Industri es Ltd.			Mark DA @ 257G , Vol-IV
5.	17.05.200 2	16270 6	Ansal Properti es & Industrie s Ltd.	3738104	24	Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV

6.	21.05.2002	103729	Ansal Properties & Industries Ltd.	3738104	70	Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV
7.	22.05.2002	102016	Ansal Properties & Industries Ltd.	3738104	34	Ex PW 36/H Pg 388 Vol-V Mark D A @257G , Vol-IV
8.	22.05.2002	103714	Ansal Properties & Industries Ltd.	3738104	35	Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV
9.	24.05.2002	104635	Ansal Properties & Industries Ltd.	3738104	52	Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV
10.	24.05.2002	114230	Ansal Properties & Industries Ltd.	3738104	21	Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV
11.	28.05.2002	140950	Ansal Properties	3738104	18	Ex PW 36/H Pg 389 Vol-V Mark DA @

			& Industrie s Ltd.			257G , Vol-IV
12.	29.05.200 2	12304 1	Ansal Properti es & Industrie s Ltd.	3738104	108	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV
13.	29.05.200 2	10431 6	Ansal	3352268	18	Ex PW 36/N-Pg

			Properti es & Industri es Ltd.			401 Vol-V Ex PW 33/D- Pg No. 359, Vol-V
14.	30.05.2002	103508	Ansal Propertie s & Industrie s Ltd.	3738104	48	Ex PW 36/H Pg 387 Vol-V Mark DA @ 257G , Vol-IV
15.	18.06.2002	130337	Ansal Propertie s & Industrie s Ltd.	3738104	50	Ex PW 36/I Pg 390 Vol-V Mark DA @ 257G , Vol-IV
16.	03.08.2002	114039	Ansal Propertie s & Industrie s Ltd.	3738104	53	Ex PW 36/J Pg 391 Vol-V Mark DA @ 257G , Vol-IV
17.	19.08.2002	121016	Ansal Propertie s & Industrie s Ltd.	3738104	51	Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV
18.	19.08.2002	121134	Ansal Propertie s & Industrie s Ltd.	3738104	48	Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV
19.	19.08.2002	162405	Ansal Propertie s & Industrie s Ltd.	3738104	40	Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV
20	26.08.2002	112710	Ansal Propertie s &	3353062	50	Ex PW 36/N Pg 401 Vol-V Ex PW 33/D 359

			Industrie s Ltd.			Vol-V
21	29.08.2002	151739	Ansal Propertie s & Industrie s Ltd.	3738104	26	Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV
22	06.09.2002	102935	Ansal Propertie s & Industrie s Ltd.	3738104	22	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV
23	06.09.2002	102957	Ansal Propertie s & Industrie s Ltd.	3738104	25	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV
24	06.09.2002	113524	Ansal Propertie s & Industrie s Ltd.	3738104	35	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV
25	06.09.2002	120912	Ansal Propertie s & Industrie s Ltd.	3738104	38	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV
26	06.09.2002	124815	Ansal Propertie s & Industrie s Ltd.	3738104	***	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV
27	06.09.2002	165524	Ansal Propertie s & Industrie s Ltd.	3738104	24	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV

28	06.09.2002	121938	Ansal Properties & Industries Ltd.	3352270	28	Ex PW 36/K Pg 401 Vol-V Ex PW 32/B Pg 352 Vol-V
29	06.09.2002	134355	Ansal Properties & Industries Ltd.	3352269	60	Ex PW 36/N Pg 401 Vol-V Ex PW 32/A 351 Vol-V
30	07.09.2002	143603	Ansal Properties & Industries Ltd.	3738104	32	Ex PW 36/K Pg 394 Vol-V Mark DA @ 257G, Vol-IV
31	13.09.2002	133948	Ansal Properties & Industries Ltd.	3738104	27	Ex PW 36/K Pg 394 Vol-V Mark DA @ 257G, Vol-IV
32	21.09.2002	152925	Vijay Katial, API	9810064446	40	Ex PW 36/N Pg 401 Vol-V Ex PW 27/B Pg 295 Vol -IV
33	28.09.2002	121253	Ansal Properties & Industries Ltd.	3353316	19	Ex PW 36/N Pg 401 Vol-V Ex PW 33/D Pg 359 Vol-V
34	28.9.2002	134729	Ansal Properties & Industries Ltd.	3738104	95	Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G, Vol-IV
35	03.10.2002	165612	Ansal Properties &	3353316	5	Ex 36/N Pg 401 Vol-V Ex PW 33/D Pg

			Industrie s Ltd.			359 Vol-V
36	26.10.20 02	15202 1	PP Batra Steno, API	981803189 7-	6	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
37	26.10.20 02	15475 5	PP Batra Steno, API	981803189 7	16	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
38	26.10.20 02	16452 9	PP Batra Steno, API	981803189 7	4	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
39	01.11.20 02	11073 4	PP Batra Steno, API	98180318 97	43	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
40	02.11.20 2	10510 2	PP Batra Steno, API	98180318 97	11	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
41	02.11.20 2	14500 9	PP Batra Steno, API	981803189 7	79	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
42	07.11.22 02	11412 8	Ansal Propertie s & Industrie s Ltd.	3738104	21	Ex PW 36/N Pg 402 Mark DA @ 257G , Vol-IV
43	11.11.20 2	13264 6	PP Batra Steno, API	98180318 97	21	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV

44	13.11.2002	80806	PP Batra Steno, API	9818031897	52	Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV
45	14.11.2002	90027	PP Batra	9818031897	27	Ex PW 36/N Pg

			Steno, API			403 Vol-V Ex PW 27/B Pg 295 Vol -IV
46	18.11.20 02	11395 8	PP Batra Steno, API	981803189 7	12	Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV
47	18.11.20 02	12373 0	PP Batra Steno, API	98180318 97	23	Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV
48	26.11.200 2	12102 7	PP Batra Steno, API	98180318 97	6	Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV
49	26.11.200 2	12141 9	PP Batra Steno, API	98180318 97	2	Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV

264 Based on such tabular depictions, an informed conclusion was drawn that total Number calls made by Dinesh Chandra Sharma to API landlines were 34(thirty four); and total Number calls made by Dinesh Chandra Sharma to PP Batra were 13(thirteen); and a single call was made by Dinesh Chandra Sharma to Vijay Katyal (API) -1, who was another official working with the Ansals and it was rightly observed by the Ld. Trial Court that these CDRs establish the link between accused Dinesh Chandra Sharma and P.P. Batra as several calls were made by Dinesh Chandra Sharma to M/s Ansal Properties & Industries Ltd landline and to P.P. Batra. Ld Trial Court further depicted the call patterns between the mobile no. 9818031897 of accused P.P. Batra & landline numbers of API from where calls were made to accused

Dinesh Chandra Sharma as under:

TABLE NO. 2

S.No	DATE	TIME	CALLS MADE FROM	CALLS MADE TO	DURATI ON
1	01.11.2002	81214	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	79
2	01.11.2002	105544	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	29
3	01.11.2002	113618	3738104 API	9811027522 (DC SHARMA)	33
4	01.11.2002	151604	3738104 API	9811027522 (DC SHARMA)	72
5	02.11.2002	111948	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	24
6	07.11.2002	183318	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	49
7	11.11.2002	142737	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	20
8	14.11.2002	114256	3738104 (API)	9811027522 (DC SHARMA)	57
9	18.11.2002	174521	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	71

				SHARMA)	
10	20.11.2002	81618	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	30
11	25.11.2002	131339	3738104 (API)	9811027522 (DC SHARMA)	33
12	27.11.2002	122738	3352270 (API)	9811027522 (DC SHARMA)	20
13	28.11.2002	1142 25	3738104 (API)	9811027522 (DC SHARMA)	67
14	28.11.2002	132855	3738104 (API)	9811027522 (DC SHARMA)	16
15	29.11.2002	122241	3738104 (API)	9811027522 (DC SHARMA)	19

16	29.11.2002	122325	3738104 (API)	981102752 2 (DC SHARMA)	11
----	------------	--------	------------------	-------------------------------	----

25 Based on such tabulated depiction, it was rightly observed by the Ld. Trial Court that as many as 09(Nine) calls were made from APIL landlines to the appellant Dinesh Chandra Sharma while as many as 07(seven) calls were by P.P. Batra to Dinesh Chandra Sharma. These CDRs go on to establish that P.P. Batra was in direct contact with Dinesh Chandra Sharma. Does it prove that they were in cahoot and acting in pursuance of the common aim or object of any criminal conspiracy? This Court shall answer the query hereinafter under a different head. Now, there is no merit in the defense plea that there was led no oral evidence by some one from the 'APIL' to substantiate that such landline numbers were installed and operational from its premises or as to who was using such numbers in specific. It is proven on the record that 'APIL' was the registered subscribers to the aforesaid landline numbers. Mr. A.T. Ansari, Ld. Addl. PP for the State rightly canvassed that since it was proven on record that appellant Dinesh Chandra Sharma was talking to someone on the seven landline numbers attributed to 'APIL', which concern was owned by appellants Sushil Ansal and Gopal Ansal, it was within their special knowledge as to how those calls emanated from their office during the crucial period of the trial against them, which they failed to prove under Section 106 of the Indian Evidence Act. To sum up, the factum of destruction and

tampering of the judicial record only benefited the appellants Sushil and Gopal besides H.S.Panwar, there is no escape from the inference that there was a definite connection between them on the one hand and the appellant Dinesh Chandra Sharma through their employee appellant P.P.Batra.

26.6. It is pertinent to observe that Ld. Addl. PP rightly pointed out that it was appellant P.P. Batra who had acknowledged in his written submissions filed at the time/stage on arguments on charge in the instant case that he was in conversation with co-accused/appellant Dinesh Chandra Sharma and also gave details of the call records between the two, which are as under:-

Phone calls made to officials of API by Dinesh from his
Mobile No. 9811027522

Sr. No.	Phone Nos.	Date	Time	Duration (seconds)
1.	3353 062	13.05.2002	10:39	34
2.	3352 269	20.05.2002	10:43	18
3.	3353 062	26.08.2002	11:27	50
4.	3352 270	06.09.2002	12:19	28
5.	3352 269	06.09.2002	13:43	60
6.	3353 316	28.09.2002	12:12	19
7.	3353 316	03.10.2002	16:56	05
8.	3715 119 (1110 Ansal Bhawan) Ansal Housing & Finance	01.05.2002	11:10	53

Phone calls made by officials of API by Dinesh at his mobile No. 9811027522 from the following Nos.

Sr. No.	Phone Nos.	Date	Time	Duration (seconds)
1.	3352 270	27.11.2002	12:27	20
2.	5194 151 (S.C. Wadhwa)	11.11.2002	16:55	03
3.	5194 151 (S.C. Wadhwa)	11.11.2002	16:55	06
4.	3352 270	27.11.2002	12:27	20

Phone calls made to Mr. Dayal by Dinesh from his Mobile
No. 9811027522

Sr. No.	Phone Nos.	Date	Time	Duration (seconds)
1.	3738 104	18.06.2002	13:03	50
2.	3738 104	03.08.2002	11:40	53
3.	3738 104	19.08.2002	12:10	51
4.	3738 104	19.08.2002	16:24	40
5.	3738 104	29.08.2002	15:17	26
6.	3738 104	06.09.2002	10:29	22
7.	3738 104	06.09.2002	10:29	25
8.	3738 104	06.09.2002	11:35	34
9.	3738 104	06.09.2002	12:09	38
10.	3738 104	06.09.2002	12:48	0
11.	3738 104	06.09.2002	16:55	24
12.	3738 104	07.09.2002	14:36	32
13.	3738 104	28.09.2002	12:12	95
14.	3738 104	07.11.2002	11:41	21

Phone calls made by Mr. Dayal to Mr. Dinesh at his Mobile No.
9811027522

Sr. No.	Phone Nos.	Date	Time	Duration (seconds)
1.	3738 104	01.11.2002	11.36	33
2.	3738 104	01.11.2002	16.30	11

3.	3738 104	14.11.2002	11.42	57
4.	3738 104	25.11.2002	13.13	33
5.	3738 104	28.11.2002	11.42	67
6.	3738 104	28.11.2002	13.28	16
7.	3738 104	29.11.2002	12.22	19
8.	3738 104	29.11.2002	12.33	11

Phone calls made by Dinesh to Mr. Batra from his Mobile No.
9811027522

Sr. No.	Phone Nos.	Date	Time	Duration (seconds)
1.	9818031897	26.10.2002	15.20	6
2.	9818031897	26.10.2002	15.47	16
3.	9818031897	26.10.2002	16.45	4
4.	9818031897	01.11.2002	11.07	43
5.	9818031897	02.11.2002	10.51	11
6.	9818031897	02.11.2002	14.50	79
7.	9818031897	11.11.2002	13.26	21
8.	9818031897	13.11.2002	08.08	52
9.	9818031897	14.11.2002	09.00	27
10.	9818031897	18.11.2002	11.39	12
11.	9818031897	18.11.2002	12.37	23
12.	9818031897	26.11.2002	12.10	6
13.	9818031897	26.11.2002	12.14	2

Phone calls made by Mr. Batra to Mr. Dinesh from his Mobile No.
9818031897

Sr. No.	Phone Nos.	Date	Time	Duration (seconds)
1.	9811027522	01.11.2002	08.12	79
2.	9811027522	01.11.2002	10.55	29

3.	9811027522	02.11.2002	10.51	11
4.	9811027522	07.11.2002	06.33	49

5.	9811027522	11.11.2002	14.27	20
6.	9811027522	20.11.2002	08.16	30

26.7 If that is what borne out from the written submissions filed on behalf of the appellant P.P.Batra, how in the world now it could be denied by him that mobile No. 9818031897 did not belong to him. Interestingly, another tabular presentation was put forth by the defence with regard to number of hearings that took place in the main Uphaar Tragedy case viz. *eight hearings in the month of May-2002, eleven in July-2002, ten in August-2002, twelve in September-2002, ten in October-2002 whereas four each in November and December, 2002 whereas seven hearings in January-2003*. It is also interesting to point out that exchange of eight calls from APIL landlines to the mobile number attributed to the appellant Dinesh Chandra Sharma from 13.05.2002 to 27.11.2002 were also conceded. In order to cut long story short, based on the evidence brought on the record and submissions and counter submissions by the Ld. Addl. PP and the Ld. defense counsels, the following factual and circumstantial findings are established by the prosecution for a decision in the present matter:

(i). It is borne out from the above referred tabular description of call exchanges that after passing of order dated 4th April, 2002 by the High Court of Delhi giving directions for time bound completion of trial, in a span of 3½ months certain selected documents were destroyed. In so far as call exchanges between the appellant-accused Dinesh Chandra Sharma and appellant P.P. Batra are concerned, it is brought out that the

mobile phone as per the testimony of PW-27 was activated w.e.f. 9th October, 2002 and it is a matter of strong inference that prior thereto the two appellants were in contact with each other through landline numbers proven to be installed at the premises where the Ansal Properties and Infrastructure Limited; and

(ii) The pattern of call records of mobile No. 9811027522 from the mobile phone of appellant Dinesh Chandra Sharma to aforesaid landline numbers 3353062, 3738104, 3352668, 3353316 installed at the premises of Ansals besides one call to Vijay Katyal working with Ansals on his mobile No. 981006446 and that of appellant P.P. Batra No. 9818031897 started w.e.f. 12.05.2002 and lasted till 26.11.2002, which facts were admitted even by appellant P.P. Batra in his written submissions at the time of consideration of charges in the matter; and

(iii) The testimony of PW-27 brings out that mobile No. 9818031897 attributed to appellant P.P. Batra was activated w.e.f. 09.10.2002 and the aforementioned tabular analysis relevant CDRs thereafter from 01.11.2002 till 29.11.2002 reveal that there were as many as seven calls from his mobile phone to the mobile number of appellant Dinesh Chandra Sharma 9811027522; and

(iv) There is no merit in the plea of the defence that certificate under Section 65B of the Indian Evidence Act Ex.PW-36/O was not clear whether it was pursuant to the request of the IO dated 11.08.2006 or second request dated 04.10.2006. What needs to be appreciated is that information supplied in PW-36/M was complete call data record while

information supplied vide PW-36/N was an abridged version specifically with regard to exchange of calls between Dinesh Chandra Sharma from his mobile No. 9811027522 and P.P. Batra No. 9818031897 besides land line numbers of Ansals; and

(v) There is no evidence as to what relevancy the CDRs of the other three mobile numbers viz., 9811675434, 9811026904 and 9811313863 Ex.PW-36/B to Ex.PW-36/G supplied to the IO vide forwarding letter dated 29.09.2006 Ex.PW-36/A had on the matters in issue. It is not clear who were the subscribers and/or using such mobile numbers. It would be bear repetition that much challenge was thrown to the genuineness or authenticity of the CDRs reflected in Ex.PW-36/B to Ex.PW-36/G in respect of the aforesaid three mobile numbers but then no questions were asked either to PW-27 or to PW- 35, PW-36, or for that matter PW-38 IO/ACP Amit Roy and the challenge to the reliability and authenticity of the CDRs is just a cry in the wilderness over and irrelevant and extraneous matter; and

(vi) The CDRs with regard to 9811027522 attributed to appellant Dinesh Chandra Sharma viz. for the month of May Ex.PW-36/H, June Ex.PW-36/I, August Ex.PW-36/J, September Ex.PW-36/K and November Ex.PW-37/L remained unblemished. There were no questions in cross-examination of PW-35 & 36 or for that matter PW-38 regarding any substantial discrepancies in regard of call data records in respect of the aforesaid number attributed to appellant Dinesh Chandra Sharma that would suggest that the integrity of the data was compromised; and

(vii) There is no merit in the plea that PW-36 was not authorized person to retrieve the data. PW-36 Anu Anand categorically deposed that he was an authorized person by his company to have access and retrieve data by using the authorized username and password. He did what he did by all counts in the ordinary course of his duties and no motive or reason can be attributed to him to depose falsely. The plea that entire data was transferred to DAT (Digital Audio Tape) and then it was subjected to human or manual intervention cuts no ice. It was not done in respect of CDR Ex.PW-36/H, PW-36/I, PW-36/J and PW-36/K; and at the cost of repetition, the CDR Ex.PW-36/N with regard to such mobile number was abridged version for the convenience of investigation in the matter; and

(viii) It is pertinent to mention herein that a meticulous perusal of the CDR for the month of May, 2002 pertaining to the mobile no. 9811027522 attributed to appellant Dinesh Chandra Sharma Ex.PW- 36/H reveals that there is no issue with regard to the chronology of the dates but indeed there are few issues with regard to the chronology of time besides repeated or duplicate entries. But then the said discrepancies w.r.t disturbed chronology of time was explained by PW- 36 in a very cogent and reliable manner, and in so far as the duplicate entries are concerned, they reveal the same time of recording of calls, duration of calls as also cell IDs apart from same IMEI numbers . There is no issue about the CDR for the month of June, 2002 with respect to said mobile no. marked exhibited as Ex.PW36/I.

(ix) Likewise, the CDR for the month of August, 2002 of the aforesaid mobile No. 9811027522 Ex.PW36/J shows only two repeated/duplicate calls but again at the same the duration and call type besides IMEI numbers are the same. While, there are five instances of calls being registered up-side-down i.e. not in symmetry or chronology but again that was well explained by the PW-36. There is no issue with the CDR for the month of September, 2002 Ex.PW-36/K and coming to the CDR for the month of November, 2005 Ex.PW-36/L, there are seven instances of duplication of calls, but again it reads same time, duration, cell type as well as identical IMEMI No. Further, it has only one instance of change in chronology of date on 30.11.2002 but then the dialed number from mobile no. 9811027522 is to some other person unconnected with this case. As stated earlier, the CDR Ex.PW-36/N is an abridged version of the mobile number 9811027522 attributed to the appellant Dinesh Chandra Sharma, which is from the month of May till November, 2002 but then skipping the months of July and October, 2002, which were more or less calls emanating from the premises of Ansal Properties and Infrastructure Ltd. as between the appellant Dinesh Chandra Sharma and the co-accused P.P. Batra.

(x) The only objection with regard to Ex.PW-36/H to PW-36/L is with regard to time and date not being in sync but PW-36 explained that when he huge data is retrieved and transferred on DAT file, there are bound to be some duplication and in so far as the call time in few instances not being in sync showing call generated twice at the same

time, even naked eyes would show that as call is made while moving, the connectively is registered on different cell towers and for that reason time of making call and its registering on the CDR happen to be at the same time but with different Cell Towers; and

(xi) The plea that reply Ex.PW-27/B cannot be considered in the absence of 'Customer Application Form' cannot be sustained either since Notification No. 800-4/98-VAS (Volume VI) dated 22.11.2001, placed on record by the learned Counsel for the appellant Sushil Ansal would show that requirement of pasting photograph of the subscriber in the case of pre-paid mobile connection was dispensed with and later vide Notification No. 852-336/2002-VAS dated 24.07.2002 filling-up of Customer Application Form as also requirement of putting/pasting of photograph of the subscriber was made mandatory w.e.f. 01.09.2002 by the Ministry of Communication and Information Technology, Department of Technology, Government of India. It is but obvious that after such notification dated 24.07.2002, it must have taken the service provider some time to streamline its process of issuance of pre-paid connection and in that context it should be seen that 'Customer Application Form' for mobile phone of appellant Dinesh Chandra Sharma as also P.P. Batra were not probably not available;

(xii) It must be appreciated that the CDRs and Ex.PW-27/B were retrieved after four years from the main server and there is no denial by the defence that conversation never took place between the appellants Dinesh Chandra Sharma and P.P. Batra and there is no denial that there

was close affinity between the two accused persons. Infact, appellant Dinesh Chandra Sharma in his statement under Section 313 Cr.P.C. admitted having conversation with the appellant P.P. Batra and attention of the Court was invited to question No.69 and its answer, which is as

under:-

“60. It is in evidence against you that on 10.07.2006, pursuant to a request made by IO, PW- 38 Sh. Amit Roy, PW-35 Sh. R.K. Singh, Nodal Officer, Bharti Airtel Ltd. provided the requisite information regarding subscriber details of mobile numbers, 9810138492 (subscribed in the name of LN Soni), 9810064446 (subscribed in the name of Vijay Katyal) and 9818031897 (subscribed in the name of P.P. Batra) vide letter, Ex.PW27/B after verifying the same from the computer system of his office; the same was taken into possession by the IO, PW 38 Sh. Amit Roy, vide seizure memo Ex.PW27/A.

What you have to say?

Ans. It is a matter of record. Accused P.P. Batra telephoned me for enquiry about the status of certified copy application and status of the present case etc. I had informed to the IO the said fact when I was in police custody, when he enquired about the same from me. The other person named L.N. Soni, Deepak Kathpalia Advocate) and R. Dayal also called me in that connection.

(xiii) Further, the Ld. Addl. PP for the State also made reference to the responses by the appellant Dinesh Chandra Sharma to Question Nos. 106 to 146, whereby the appellant Dinesh Chandra Sharma was put / confronted with the CDR of his mobile No. 9811027522 and the calls made to the land-line numbers of Ansal Properties and Industries Ltd. besides appellant P.P. Batra and vice versa, to which he only reply “it is a matter of record”. In this regard, reference can be invited to

decision in Paul v. State of Kerala, (2020) 3 SCC 115, wherein earlier decision in the case of State of U.P. v. Lakhmi, (1998) 4 SCC 336 was affirmed wherein it was observed as under:-

“As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanations to incriminative circumstances. In very rare instances the accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defence. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

(xiv) It is also pertinent to mention here that when call records were put to the appellant P.P. Batra in his examination under Section 313 Cr.P.C. including mobile No. 9818031897 attributed to him, he gave vague and evasive denial that call records have not been proved to the effect - *“the alleged certified copy of the CDRs were showing calls recorded in chronological order and several long gaps and through under legal advice he was saying that CDRs were fabricated documents”*. Likewise

admissibility of Ex.PW-27/B was assailed but then there is substance in the plea of the Ld. Addl. PP for the State that he never denied that aforesaid number did not belong to him.

26.8. In view of the foregoing discussion, this Court has no hesitation to hold that plea taken by the appellant Dinesh Chandra Sharma that he had only conversation with P.P. Batra with regard to providing certified copies is sham and unpalatable, but then his admission that he was in touch with co-appellant P.P. Batra can be considered against him as well against co-appellant P.P. Batra for which reference can be made decision in Bhagwandas Keshwani & Ors. v. State of Rajasthan, (1974) 4 SCC 611 to the effect that admission made by the one of the co-accused in the statement under Section 313 Cr.P.C. was also an incriminating circumstance against other co-accused covered by provisions of Section 10 of the Indian Evidence Act. It was a case where public servant was prosecuted for submitting forged and fabricated medical reimbursement bills from his department, who was facing joint trial with accused/Proprietor of the Medical Store from which fake receipts were obtained and while the accused public servant was denying the allegations, co-accused Proprietor of the Medical Store conceded in his examination under Section 313 Cr.P.C. that fake cash memos were issued by him at the instance of the co-accused Public Servant; and in such context it was held that such admission on the part of the co-accused was also an incriminating fact against the co-accused Public Servant since such statement by the maker was not exculpatory in

nature.

209 As was pointed out by the Ld. Addl PP, the appellant P.P. Batra, at the time of consideration of charge, filed his written submission in which he had conceded that he had acquaintance and family relationship with co-accused/appellant Dinesh Chandra Sharma. In this regard, it would be expedient to refer to paragraph (3) of the written submission filed by the appellant P.P. Batra that goes as under:-

“That besides this, it is also mentioned that there used to be a contact between P.P. Batra and others with Dinesh Chandra Sharma. An extract of the call details have been placed on judicial record wherein it has been shown that besides the present accused P.P. Batra, many other persons including the CBI officials as well as the complainant were in contact with the said Ahlmad of the Court as it is the admitted case of the prosecution that the certified copies are applied for obtaining the statement of the prosecution witnesses and it is for that reason that all these persons including the CBI officials and the complainant were in contact with the said Dinesh Chandra Sharma. Be that as it may, since no conversation is on record, mere on the basis of the fact that accused P.P. Batra had some times contacted with Dinesh Chandra Sharma on mobile phone would not ipso-facto bring him in conspiracy with the said Dinesh Chandra Sharma for the offences alleged in the charge-sheet.”

210 Again coming to the discrepancies in CDRs espoused by the defense, Ld Addl. PP had urged that PW-36 very categorically ironed out the creases that were laid by the defence. This Court cannot agree more since it needs to be appreciated that PW-36 was an independent witness and his testimony that entire CDRs were retrieved from the main servers CDRs after four years and downloaded on the DAT file (Digital Audio Tape) and during extraction some data was disturbed, was not confronted

and barring vague suggestion that CDRs were not genuine or authenticated, nothing was elicited from the witness. In Sarwan Singh v. State of Punjab, (2003) 1 SCC 240, wherein it was observed that: “*It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted.*” Further, in the case of Guruprasad v. State of Maharashtra, through PSO Deolapar, 2019 SCC OnLine Bom. 1188, it was held that since particular portion of the examination-in-chief with regard to date of birth was not challenged in the cross-examination, there was no option with the Court but to accept the same. In this regard reference was invited to decision in Union of India v. Ravindra V. Desai, (2018) 16 SCC 273. It was a case where the accused, who was a Naval Officer in Indian Navy was found guilty of making sexually explicit calls to the wives of some other Naval Officers and during the trial extensive Call Data Record was placed on the record and the Hon'ble Court dealt with certain issues concerning the discrepancies in the CDRs of the accused and the Court relied on the testimony of the Nodal Officer from the service provider, whereby he explained as

under:-

“if the specific command is given for header or heading of the call data for the target mobile number, i.e., the mobile number about which the call data is to be generated, the period, the date and the time of generation are printed and ' in such case, the first column is always the serial number of the calls. But, if that command is not given the heading and the serial number column are not printed. He explained that

everyday hundreds of CDRs are generated and printed and possibly, while taking the print of the CDR, Exhibit T-2, he had not given the command for header or heading and, therefore, heading as well as column for serial number is missing from the CDR, Exhibit T-2. He further explained that after 2011, as per the guidelines issued by the Government of India, Department of Tele- Communications, the format of CDR has been changed and as per the said guidelines, missed calls are also required to be deleted from the CDR. He pointed out that these missed calls in respect of SMS are still maintained because from the SMS, the company generates revenue, while no such revenue is generated from the missed calls. Therefore, the missed calls, which were shown as 'Null' or 'Nil' call time in the earlier record, are not shown in the present record, but such 'Null' record about the SMS is still maintained. It appears that the column for 'Call Time' has been shifted from the 9th column to 3rd column due to change in format. In view of the explanation given by witness Subir Kumar Deb, we are satisfied that the CDR, Exhibit T-2, now submitted by him, is reliable and it is properly stored and generated in the Centralised Server, as deposed by him. We do not find any major defect and the minor changes and the differences in the earlier record and the present record, Exhibit T-2, are properly explained by the witness.”

2611 Further, Ld. Addl. PP submitted a tabular compilation bringing out the distinguishable facts in the so called overhyped case by the defence viz., Ravi Kant Sharma v. State (supra) vis-à-vis the instant matter, pointing out that the cited case was one where the location of the accused case was sought to be established through his CDR, which was titled ‘Temporary’. In other words, neither the full and final authenticated CDR was filed nor certificate under section 65B of the Indian Evidence Act was given and it was urged that the defence was trying *to compare chalk with cheese*. It was pointed out that SLP

against the said decision is still pending in the Hon'ble Supreme Court and the ratio propounded in that case is binding as between the parties and not binding proposition of law. Anyways, the decision in the case of Ravi Kant Sharma (supra) relied upon by the defence on the issue of reliability and genuineness of the CDRs is clearly distinguishable and in this regard it was rightly pointed out by the Ld. Addl. PP for the State that the CDRs in the case of Ravi Kant Sharma's case (supra) were such that were not mentioning IMEI number, type of the CDR had heading "This is a temporary call detail statement" and it was a case where time, date and year format was found not in uniform pattern viz. date – month year (DD/MM/YY) was changed to month, date and year i.e. MM/DD/YY; and that the time of call were not registered in logical sequence and Nodal Officer not only turned hostile but no certificate under Section 65-B of the Indian Evidence Act was proved either.

2612 To my mind, it was rightly canvassed by the Ld. Addl. PP for the State that report Ex.PW-27/B is not hit by Section 162 Cr.P.C. as said the evidence was produced by the witness and obtained by the Investigating Officer in terms of Section 91 Cr.P.C. and the data was obviously verified from the record, which testimony of PW-27 remained unrebutted and uncontroverted, and it is pointed out that Section 162 is not to be read *de hor* of Section 91 and reference was made to the decision in Central Bureau of Investigation v. V. Vijay Sai Reddy, (2013) 7 SCC 452, wherein it was held that Investigating Officer is well within his powers to seek certain documents or information for

verification of some aspects from any witness under Section 91 of the Cr.P.C. To my mind, the decision in Kali Ram v. State of Himachal Pradesh (supra) is distinguishable since oral statement recorded under section 161 Cr.P.C is hit by section 162 but not when a witness working in his official capacity is called upon to verify inputs based on certain records. In the case of Usha Kolhe v. State of Maharashtra, 1963 Criminal Law Journal 418, a Chemical Examiner had submitted a report to the Investigating Officer and not to the Court. The plea that such evidence was barred by Section 162 of the Cr.P.C. was rejected since it was held that Section 510 Cr.P.C. makes provision for proof of document by production thereof and the application of 161 (2) of the Cr.P.C. is expressly made subject to what is provided in the Code of Criminal Procedure. Even if assuming for the sake of convenience Ex.PW-27/B is held to be hit by Section 161 and 162 of the Cr.P.C., the testimony of PW-35 R.K. Singh, the Nodal Officer is undeniable that he had found from the subscriber ship detail that mobile No. 9818031897 belonging to appellant P.P. Batra; and

2013 Much mileage was sought to be taken by the defence from the testimony of PW-36 Anu Anand, the Nodal Officer who acknowledged that the Format in which the data was stored remains but its format infact changes to suit the requirement of the Investigating Agency and that requires manual intervention. At the same time, it is pertinent to mention that he denied the suggestion that the explanation given by him regarding retrieval of the data from the DAT and the data

getting displaced with regard to chronological order or gaps in several dates was false due to manipulation or manual intervention. What needs to be appreciated is that there *was no prodding* as to in what manner the data was kept in the main server and there was no apparent motive brought out either in the testimony of PW-36 Anu Anand or for that matter PW-38 ACP Amit Roy that they had any ulterior motive to fabricate the data. There is no dispute that the data on the main server was being stored in automatic manner without manual intervention and it is but obvious that whenever any data is retrieved from the main server, usual commands are given to retrieve the data in a particular format by the service provider either on its own or as may be requested or requisitioned by the Investigating Agency. At the cost of repetition, the CDRs pertaining to the year 2002 were retrieved/extracted in the year 2006 and there is semblance of plausible explanation by the Ld. Addl. PP for the State that it is our experience that when memory of online server gets full, the data is automatically and randomly gets transferred in the 'back end' of the main server online and PW-36 gave plausible explanation that the data was stored in the DAT file, which was a storage device and at the stage of random transfer of the data, indexing and sequence of data get disturbed. It is pertinent to mention here that in the case of State (NCT of Delhi) v. Navjod Sandhu, 2005 Criminal Law Journal 3950 and Gajraj v. State, MANU/DE/1074/2009 besides Union of India v. Ravi V. Desai, their Lordships considered the discrepancies in the CDR and the explanation given by the technical expert were found

to dispel any doubt about genuineness or authenticity of the CDRs. In this regard it cannot be overlooked that Section 22A of the Indian Evidence Act provides as under:-

“22A. When oral admissions as to contents of electronic records are relevant.—Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.”

214 A cumulative reading to Section 22A and Section 65 of the Indian Evidence Act would show that where ever there is any question mark on the genuineness or reliability of the electronic data, oral evidence can be allowed and reference in this regard can be had to Kundan Singh v. State, (2016) 1 DLT (Crl.) 144, wherein it was held as under:-

"38. Section 22-A of the Evidence Act is the part of *fasciculus* of Sections from 17 to 31 under the heading 'Admissions It specifically deals with relevancy of oral admissions as to the contents of an electronic document and was inserted w.e.f. 17.10.2000 by the Information Technology Act, 2000. Oral admissions as to the contents of electronic record are relevant when genuineness of the electronic record is in question. The expression "unless the genuineness ... is in question", elucidates the ambit and relevance of the Section. Use of word "relevant", viz. "admissibility" also of significance, though these terms are interlaced and connected. The object of providing said provision recognizes that the evidence relating to genuineness or "reliability " of electronic record is of consequence, in-spite of the certificate under Section 65 B of the Evidence Act. Thus, Section 22A specifically provides that when genuineness of an electronic record is in question, oral admissions are relevant and could be examined. As noticed below, it states and records the obvious.

It would relate to the policies, procedures for use of the equipment that stored the said information since creation and data base and integrity of the same. Questions which would arise and have to be answered is whether data base was protected and had no or limited access, which permits modification/alteration; whether the data base could be wrongly lodged or created or could be transferred or changed when the data base was transferred and stored in the backup systems. These are questions which are pertinent and have to be examined to ascertain whether or not there was possibility of change, alteration or manipulation in the initial or original data after it was created. The courts must rule out that the records have not been tampered and read the data or information as it originally existed. These are aspects which are not codified as such, for probative value is examined on the case to case basis keeping in mind the relevant facts”

(CHAPTER-E)

POST DISMISSAL SCENARIO - DISCLOSURE STATEMENT OF THE APPELLANT DINESH CHANDRA SHARMA:

27. Post dismissal of the services of appellant Dinesh Chandra Sharma, the prosecution has heavily relied on his disclosure statement dated 25.11.2006 Ex.PW18/A, pursuant to which were recovered two registers Ex.PW18/C and Ex.PW18/D vide seizure memo Ex. PW-18/B, incidentally witnessed by Anoop Singh Karayat, showing that the appellant Dinesh Chandra Sharma had led the Investigation Officer to reveal for the first time that he was employed as a Supervisor with A- Plus Securities. There is no merit in the plea that such disclosure is hit by section 25 of Indian Evidence Act since Id Trial Court has rightly observed that in terms of section 27 of the Indian Evidence Act, first condition necessary application is the discovery of a facts, *albeit a relevant fact*, in consequence of the information received from a person

accused of an offence, and it was rightly held that discovery of such act must be deposed to and at that time accused should be in police custody. Also, it is important that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible. The fact that was discovered for the first time while being in police custody was that appellant Dinesh Chandra Sharma was working as Supervisor in A-Plus Securities after his dismissal from services from the District Courts, which eventually led to the disclosure that the employer firm was having some business connection with the APIL.

271 So far as the contention of the defense that the agreement between Star Estate Management Ltd. (SEML) and A-Plus security could not be proved, the said contention is misconceived since although PW39 Anokhe Lal Pal denied any connection, on careful comparison of the signatures by the Court by invoking power under section 73 of Indian Evidence Act on document Marked Z-2, it has been proved that in the agreement between these two concerns, he was the signatory. Since DV Mahlotra had passed away, his testimony was important to prove the said agreement. The record produced from the Registrar of Companies shows that APIL had a majority share holding in SEML. Needless to point out that as per company law, if the holding company has more than 50% of the shares of the subsidiary company then the management is governed by holding company. The arguments raised on behalf of Sushil Ansal that APIL does not have more than 1% share of SEML was appar- ently misleading since as per the record Ex.PW-25/B (colly) produced

from the ROC, it is evident that Ansals owned and controlled as large as 98% of the share holdings of the SEML.

27.2. Although, PW-39 Anokhe Lal Pal and PW-40 Shiv Raj Singh turned 'hostile' and did not support the prosecution case, their searching cross-examination by the Id APP for the State brings out that there is more to the story than to meet the eyes. Anyways, without further ado, assuming for the sake of convenience the prosecution case that appellant Dinesh Chandra Sharma was given a job in November- 2004 as Field Supervisor at A-Plus Securities belonging to appellant Anoop Singh upon the recommendations of accused D.V. Malhotra (since deceased) an employee of Star Estate Management Ltd. (SEML) at the behest of appellant P.P. Batra, I AM AFRAID the plea that criminal conspiracy by the main culprits continued till the time job was secured to the appellant Dinesh Chandra Sharma is superfluous and not legally palatable.

27.3. First thing first, there no *iota* of evidence led by the prosecution that appellant Dinesh Chandra Sharma was paid double the salary than that was usually being paid to the other employees or Field Officials of the A-Plus Securities. Secondly, assuming for the sake of convenience that appellant Anoop Singh had applied white fluid on the name of Dinesh Chandra Sharma in the wages and remuneration registers of the firm Ex.PW-18/C and PW-18/D, that would not make him an accomplice, accessory, partner or a co-conspirator in original criminal conspiracy framed by the appellants Ansal brothers with H.S.

Panwar and P.P. Batra much prior in time. The plea that criminal conspiracy continued till the time the matter in the main Uphaar Tragedy case was decided by the Hon'ble Supreme Court of India is a very fantastic argument but absolutely misconceived and not legally fathomable. *If that plea were accepted, it would only mean that the learned counsels who legally represented the appellants up to the superior court were blameworthy too. It is not valid argument that the appellants challenged each and every order, starting from their summoning, framing of charges, allowing of leading secondary evidence or even question put to the witnesses etc. in the Superior Courts. This is the pitfall of adversarial justice system where defense lawyers do not want to concede any grounds to the prosecution.* All said and done, the appellants in the main Uphaar case as also in the instant matter were entitled to raise legal objections in terms of legal advice given to them by their counsels.

27.4 Thirdly, the defence of the appellant Anoop Singh that at some later stage he came to know that appellant Dinesh Chandra Sharma was an ex employee from the District Courts whose services had been terminated due to some illegal act committed by him, appears to be more plausible considering that initially he was a witness cited by the Prosecution, whose statement under section 161 of the Cr.P.C was recorded on 25.11.2006. Be that as it may, the fact that employment was given to appellant Dinesh Chandra Sharma, most probably at the behest of appellant P.P. Batra, who was acting in cahoot with appellants Ansal

brothers, is relevant fact being a subsequent fact under section 8 of the Indian Evidence Act, but the prosecution plea that the job was provided so as to silence the appellant Dinesh Chandra Sharma from spilling the beans, would be stretching the connection too far and too wide in the realm of surmises and conjectures. In other words, the conduct of Anoop Singh might have been questionable but then he was not a party to destruction or tampering of the judicial record in the main Uphaar tragedy case.

27.5. There was merit in the plea of Sh. Tarun Chandiok, Advocate for the appellant Anoop Singh that he was not an accused in the main Uphaar Tragedy Case nor there is any claim that he was a Pairvi Officer or aware of the criminal conspiracy hatched by the trio of Ansal Brother and H.S. Panwar and there is no evidence on the record to show that appellant Anoop Singh had any prior knowledge about the antecedent of appellant Dinesh Chandra Sharma. Although finding that evidence that appellant Dinesh Chandra Sharma was introduced by P.P. Batra to Anoop Singh, the only act attributed to appellant Anoop Singh is that he defaced, altered or manipulated the attendance register of M/s A-Plus Security and Training Institute Pvt. Ltd. so as to de-associate himself from the appellant Dinesh Chandra Sharma. By all account, such act, if any, was committed after the criminal conspiracy had come to an end and no act or omission on the part of appellant Anoop Singh can be read in the context of Section 10 of the Indian Evidence Act or for that matter Section 201 read with 120B of the IPC.

(CHAPTER-F)

PROPOSITION OF LAW ON CRIMINAL CONSPIRACY AND APPRECIATION
OF CIRCUMSTANTIAL EVIDENCE

28. Since the Ld. Trial Court convicted the appellants under section 120-B of the IPC with other substantive offence under section 409 and 201 of the IPC, it would be expedient to advert to the case law cited at the Bar by both sides on the law governing the said offence. In the case of Kehar Singh & Ors. v. State (Delhi Administration), (1988) 3 SCC 609, on the aspect of appreciation of evidence on criminal conspiracy wherein it was observed as under:-

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

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of

agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties “actually came together” and agreed in terms” to pursue the unlawful object; there need ever have been an express verbal agreement, it being sufficient that there was “a tacit understanding between conspirators as to what should be done.”
{Bold portions emphasized}

28.1 In another case titled as Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra, (1970) 1 SCC 696, it was observed that “A conspiracy from its very nature is generally *hatched in secret*. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. In the case of Yash Pal Mittal v. State of Punjab, (1977) 4 SCC 540, it was observed that as under:-

“There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences, may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.”

28.2. In State through Superintendent of Police, CBI/SIT v.

Nalini & Ors., (1999) 5 SCC 253, it was observed that “...and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.” There is merit in the plea of the Id APP that the nature of circumstantial evidence has to be appreciated by this Court and if there are missing links that have to be culled out from the proven facts on the record, for which reference can be invited to decision in V.C. Shukla & Ors. v. State (Delhi Administration), (1980) 2 SCC 665, wherein it was observed as under:-

“It is true that in most case it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.”

283 Likewise, in the case of Edmund S. Lyngdoh & Ors. v. State of Meghalaya & Ors., (2016) 15 SCC 572, it was held that “agreement among the conspirators can be inferred by necessary implications, and the inference can be drawn on the proved facts.” Id APP rightly urged that while appreciating evidence, this Court has to take into consideration Section 3 of the Indian Evidence Act and understand that no prosecution case can be proved with 100% certainty and invited reference to a decision in State of Maharashtra v. Mohd. Yakub & Ors., (1980) 3 SCC 513, wherein vide paragraph (12) it was observed that *the Evidence Act does not insist on absolute proof for the simple reason that perfect proof in this imperfect world is seldom to be found.*”

Likewise in the case of Lal Singh & Ors. v. State of Gujarat & Ors.,

(2001) 3 SC 221, it was observed as under:-

“prosecution has not proved beyond reasonable doubt all the links relied upon by it. *In our view, to say that prosecution has to prove the case with a hundred percent certainty is myth.....* it is not necessary for the prosecution to establish each and every link as confessional statement gets corroboration from the link which is proved by the prosecution. In any case, the law requires establishment of such a degree of probability that a prudent man may on its basis, believe in the existence of the facts in issue.

30. *that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it --"all exactness is a fake". El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove impossible. All that its requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.*”

{bold italics emphasized}

284 In another case titled Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445, the Supreme Court quoted observations of Lord Denning in *Bater v. Bater* in (1950) 2 All.E.R. 458 that “*the standard adopted by the prudent man would vary from case to case, circumstances to circumstances*”. It was held that the Prosecution is not required to meet any and every hypothesis put forward by the accused.

285 The contours of benefit of doubt were discussed in the case of K.Gopal Reddy v. State of AP, of (1979) 1 SCC 355, wherein the court placed reliance on the enunciation by Lord Denning in *Miller*

(Supra), which is as under:

“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.”

28.6. The caution articulated by the Supreme Court in [Devender Pal Singh v. State of NCT of Delhi](#), (2002) 5 SCC 234 also emphasizes that perfection in a case may not be natural, when it stated thus:

“-53. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent.

28.7. On that said legal note, we need to reflect on another dimension in the law, provided by Section 10 of the Indian Evidence Act, which is as under:-

"10. Things said or done by conspirator in reference to common design :-Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

28.8 Thus, in order to prove an offence u/s. 120-B IPC, the prosecution need not necessarily prove that the perpetrator expressly agreed to do or cause to be done the illegal act, *the agreement may*

be proved by necessary implications. It is also well settled that a criminal conspiracy is a partnership in crime and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan, and therefore, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible thereof". It is further well ordained in the law that every one of the conspirators need not take active part in the commission of each and every one of the conspiratorial acts.

28.9 Avoiding long academic discussion, since the charges against the appellants were also framed under Section 109 IPC, first it would be expedient to understand scope of Section 107 of the IPC, which provides "*that a person is said to abet a thing when a person abets the doing of a thing, who vide clause secondly engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, intentionally aids, by any act or illegal omission, the doing of that thing.*" The offence of abetment pursuant to criminal conspiracy is made punishable under Section 109 of the IPC. In the case of *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*, AIR 1962 SC 876 the Hon'ble Judges of Supreme Court explained the distinction between the offences committed under Section 120B and

Section 107 of the IPC, and it was observed as under

“...The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary. Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence.”

“Put very briefly, the distinction between the offence of abetment under the second Clause of Section 107 and that of criminal conspiracy Under Section 120-A is this. *In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence.*”

28.10. The Ld. Trial Court also referred to decision in the case of in Somasundaram v. State, (2020) 7 SCC 722, wherein the difference between section 120-B and the offence of abetment was explained as under:

“Explanation II to Section 108 of the Indian Penal Code makes it clear that the offence of abetment would be committed irrespective of whether the act abetted is committed or not or whether the effect which would constitute the offence is caused or not. Illustrations(a) and (b) are clear that the person who abets, as declared in law, cannot extricate himself from criminal liability for the offence of

abetment on the ground that the act which was abetted was not done or that the offence which was actually abetted was not committed. Section 109 of the Indian Penal Code contemplates, on the other hand, the situation that there is abetment and the act abetted is committed, and what is furthermore, it is committed as a result of the abetment. Should these ingredients be present and if there is no express provision under the Indian Penal Code for the punishment of the act of such abetment, the person renders himself liable for being punished with the punishment for that offence which stands committed in consequence of the abetment by the Accused.”

“In order to attract Section 109 of the Indian Penal Code, the act abetted must be committed in consequence of the abetment. Sections 115 and 116 of the Indian Penal Code deal with punishments for abetment of offences when the offence is not committed in consequence of the abetment and where no express provision is made in the Indian Penal Code for the punishment of such abetment.”

“Also, as we have noticed, under Explanation V to Section 108 of the Indian Penal Code for the offence of abetment by conspiracy to be committed, the principal player, meaning a person who commits the act which results in the offence being committed (as in the case of murder by poisoning) need not be in league with the abettor. All that is required is that the abettor also engages in the conspiracy which must be understood as meaning participate in the concert between two or more others even if he may not have seen or known, by face or otherwise, one or more persons who are privy to the conspiracy. Thus, based on their involvement constituting abetment, a person or any number of persons without even knowing the identity of all the principal participants to the conspiracy, can be prosecuted with the aid of Section 107 read with Section 108 of the Indian Penal Code.”

2811 Thus, it is a settled proposition of criminal law that though, there is close association of conspiracy with the elements of abetment, the substantive offence of conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated under Section 107 IPC. In

view of the foregoing academic discourse governing the offence of criminal conspiracy, reverting to the instant case, the plea of Sh. Hari Haran, Ld. Sr. Advocate for the appellant Gopal Ansal that the prosecution case that his client and his brother Sushil Ansal besides the Fire Officer H.S. Panwar had a legitimate expectation to seek acquittal in the main Uphaar Tragedy Case, and therefore, such common object cannot be said to be illegal or so as to commit an offence, *is quite impressive but holds no water*. The prosecution has been able to prove that though the object of conspiracy was apparently to prolong/frustrate the trial and seek an acquittal of the main accused persons, which by all means is a lawful object, what the prosecution has shown is that the aforesaid three appellants in conspiracy with their employee/appellant

P.P. Batra adopted illegal means i.e. to get certain documents either destroyed, mutilated or defaced in order to achieve the common object. In other words, although the common objective of the appellants seeking acquittal in a criminal case was legitimate, the means that were adopted were illegal in terms of Section 43 of Indian Evidence Act as the aforesaid accused persons through appellant P.P. Batra instigated, coaxed and goaded the appellant Dinesh Chandra Sharma for tampering and manipulating the judicial records, which in effect got the trial delayed by about six months.

2812 As regards period of conspiracy, it is indeed appreciable the plea that criminal conspiracy cannot be reckoned in perpetuity. In the instant case, although the aim or object of the conspiracy, which was to

seek acquittal, by employing or deploying means of disappearance of evidence was not fulfilled but then illegal means were adapted to that end. Further, the plea by Sh. Hari Haran, Ld. Sr. Advocate for the appellant Gopal Ansal that the criminal object/illegal means adopted stood accomplished on 20.07.2002 is misconceived as during the proceedings on that day i.e. 20.07.2002, there was only issue with regard to one document i.e. D-81, explained hereinabove, and has rightly been pointed by the Ld. PP for the State that the investigating agency took about six months time to unearth the documents that were missing and accordingly, moved an application for leading of secondary evidence. In my opinion, from the prosecution evidence led on the record, the criminal conspiracy commenced after the framing of charge, probably on or before 04.04.2002 and came to an end when the application for secondary evidence was moved on 20.01.2003 and allowed vide order dated 31.01.2003. Lastly, the plea by Sh. Hari Haran, Ld. Sr. Advocate for the appellant Gopal Ansal that the charges were not happily worded as it provided the criminal conspiracy was hatched sometime after filing of the charge-sheet on 15.11.1997, but then it was only a *prima facie* view, and as rightly pointed out by the Ld. PP for the State at no stage of trial it was ever canvassed that the framing of charge in any way prejudiced the appellants in any manner nor this Court finds any miscarriage of justice resulting to the detriment to the appellants.

FINAL CONCLUSION ON ISSUE OF CRIMINAL
CONSPIRACY:

2813 Needless to state that the prosecution of the appellants in the present case is based on circumstantial evidence and in the most often quoted case of Sharad Brijid Chandra Sarda v. State of Maharashtra, (1984) 4 SCC 116, five golden principles of issue of circumstantial evidence were laid down as follow :

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

29. In view of the aforesaid proposition of law and based on the cumulative appreciation of oral, documentary and circumstantial evidence brought on the record before the Ld. Trial Court, the following irrefutable conclusions are reached :-

1. The appellants Sushil Ansal and Gopal Ansal besides H.S. Panwar were the three main accused out of 16 accused that were arraigned for trial in the main Uphaar case in RC No. 3(S)/97/SIC.IV/CBI/ND under Sections 304/304A/337

IPC read with 14 of the Cinematography Act; and

2. It is brought home by the prosecution that charges in the main Uphaar case were framed on 09.04.2001 and piqued by the apparently slow pace of the trial, the association of victims of Uphaar case, in short AVUT, filed a petition Hon'ble High Court of Delhi, which vide order dated 04.04.2002 directed expeditious trial in a time bound manner; and

3. It is brought home by the prosecution that certain specific documents in question, out of as many as 150 catalogued/categorized running into 20,000 pages, were deliberated identified, selected and were misplaced, tampered or defaced, which came to light at the time of recording of testimony of PW33 T.S. Sharma, Assistant Divisional Officer, Fire Department, on 29.07.2002; and

4. It is also brought home that consequent to the painstaking efforts by the investigating agency, an application was moved by the IO on 13-14/01/2003 and by the Ld. Addl. PP on 20.01.2003 vide document Ex. PW2/A that broadly categorized NINE of documents in various parts (discussed herein before in CHAPTER 'B' & 'C') were missing, upon which secondary evidence was allowed to be led by the Ld. Trial Court vide order dated 31.01.2003; and

5. It is brought home by the prosecution that the documents that were misplaced, tampered with or de-faced were such that were specifically incriminated not only accused H.S. Panwar, the Dy. Fire Officer but also appellants Sushil and Gopal Ansal; and it is a strong circumstance established on the judicial record by the prosecution that neither at the stage of complying with provision of Section 207 Cr.P.C which envisaged supply of copies of charge-sheet and documents to the accused persons nor till the stage of consideration of charges, there was any report or complaint from any stakeholders including the appellant Dinesh Chandra Sharma or for that matter any other Court staff that any document was missing, tampered or de-faced; and

6. It is brought home by the prosecution that the appellant Dinesh Chandra Sharma, joined duties as Ahlmad/ Record Keeper w.e.f 30th April, 2001 vide joining report Ex.PW7/D in the concerned Trial Court and in all human probabilities, only appellants Sushil and Gopal Ansal besides H.S. Panwar, knew or could have certainly known about

import or purport of the documents that were eventually found misplaced, tampered or de-faced; and it is neither practicable nor fathomable that despite being a court employee for long, appellant Dinesh Chandra Sharma could have known on his own as to the merit or purport of the documents that were misplaced, tampered or de-faced unless he was instructed so by the beneficiary of such documents; and

7. It is brought home by the prosecution that the appellant P.P.Batra was employed as a Stenographer with APIL and he being a pairvi officer was coming to the court on a regular basis with appellant Ansal Brother; and

8. The prosecution by way of CDRs, which are marked Ex.PW36/H, PW-36/I, PW-36/J, PW-36/K & PW-36/L in-sync with the testimony of PW27, bring home that appellant P.P. Batra was subscriber of mobile no. 9818031897, which was activated as per Ex.-27/B w.e.f. 09.10.2002 and as already explained, there were several calls exchanged from the aforesaid mobile number as also from the landline numbers registered in the name of APIL with mobile no. 9811027522 belonging to the appellant Dinesh Chandra Sharma;

9. The prosecution has brought home that calls exchanges between the appellant Dinesh Chandra Sharma and P.P. Batra started on or before 13.05.2002 and this court has already observed that the plea by the appellant Dinesh Chandra Sharma that he was only communicating with co-accused/appellant P.P.Batra in connection with information with regard to supply of inspection applications, availing certified copies of the proceedings etc. is a lame excuse that cannot be believed.

30. The aforesaid discussion brings home that the trio of Ansal Brothers and H.S.Panwar in all human probabilities entered into a criminal conspiracy to tamper with the judicial record in such a manner as not only to delay and frustrate the trial but also secure an acquittal in the main Uphaar case for which they roped in the service of their employee appellant P.P. Batra and in pursuance of criminal conspiracy

the latter abetted the commission of offences through appellant Dinesh Chandra Sharma for causing of dis-appearance of the evidence with the intention of screening the offenders from legal punishment within the meaning of Section 201 of the IPC. Each of aforesaid factual circumstances have been fully established by the prosecution that is consistent with the hypothesis of guilt of the appellants since they had the motive, access and opportunity to commit the offences and the chain of evidence led by the prosecution is so complete as not to leave any reasonable grounds consistent with the innocence of the accused persons/appellants.

(CHAPTER-G) CRIMINAL

BREACH OF TRUST:

31. Coming to charge under Section 409 of the IPC against appellant Dinesh Chandra Sharma, it would be expedient to refer to provision of section 405 and 409 of the IPC, that provide as under:

405. Criminal breach of trust: Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

¹⁶⁸[Explanation¹⁶⁹[1]- A person, being an employer¹⁷⁰[of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be

deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

¹⁷¹[Explanation 2- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

409. Criminal breach of trust by public servant, or by banker, merchant or agent

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with ¹⁵²[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

311 Interpreting the necessary ingredients of the offence of criminal breach of trust by a public servant, their lordships of the Supreme Court in the case of Anwar Chand Sab Nanadikar v. State of Karnataka, (2003) 10 SCC 521, held as under:-

Section 409 IPC deals with criminal breach of trust by a public servant, or by a banker, merchant or agent. In order to bring in application of the said provision, entrustment has to be proved. In order to sustain conviction under Section 409,

two ingredients are to be proved. They are:

- (1) the accused, a public servant, or agent was entrusted with property of which he is duty-bound to account for; and;
- (2) the accused has committed criminal breach of trust.

What amounts to criminal breach of trust is provided in Section 405 IPC. Section 409 is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:

- (1) Entrusting any person with property, or with any dominion over property.
- (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation-
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged; or
 - (ii) of any legal contract made touching the discharge of trust.

312 Likewise in the case of Jaikrisnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889, it was held as follows:

“To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation

with dishonest intent may readily be made.”

313 In light of the foregoing legal position, adverting to the instant case, it is apparent that appellant Dinesh Chandra Sharma was a public servant who committed breach of trust within the meaning of Section 405 IPC since being the custodian of the judicial record, he dealt with the same in such a manner that amounts to violation of the direction of law prescribing the mode in which such trust was to be discharged. It is our judicial experience dealing in CBI Special Courts matters that the prosecution in CBI matters quite often file voluminous documents, which are categorized as D-1, D-2 onwards, each one containing bundle of documents reflecting on particular aspects of the case; and that such records are kept in boxes/trunks and it is also our experience that documents are taken out of such boxes and trunks during the proceedings/trial depending upon the witness summoned and present for recording of testimony in the Court. It, therefore, does not lie in the mouth of the appellant Dinesh Chandra Sharma that some or other staff of the Court had equal opportunity or equal access and opportunity to get the documents misplaced, tampered or defaced. In all human probabilities, as discussed hereinbefore, the documents were not misplaced randomly or accidentally but there was definite design and manner in which the same were selected and then got misplaced, tampered or defaced with consequent to the active participation of the appellant Dinesh Chandra Sharma and such aspect rules out the

possibility of any other staff member to do what was illegally done. The prosecution has been able to prove that the appellant Dinesh Chandra Sharma was entrusted with the custody of the judicial record and he intentionally caused wrongful gain to the appellant Sushil, Gopal Ansal and H.S. Panwar and thereby caused wrongful loss to the public represented by the State. Ld. Trial Court, therefore, rightly concluded that appellant Dinesh Chandra Sharma was not supposed to interact through mobile with the litigants, Lawyers, pairokars or pairvi officers since there were other prescribed procedures for filing inspection applications, application for applying certified copies and for ascertainment of date of hearings and there was a whole battery of lawyers in the then pending trial legally representing the main accused persons.

31.4. In view of the meticulous appreciation of oral, documentary and circumstantial evidence and foregoing discussion, I find no legal infirmity or perversity in the opinion expressed by the learned Trial Court that the appellant Dinesh Chandra Sharma was an experienced Court staff member and he was subject to some rule of ethical and moral conduct of insulating himself from any litigation in the pending trial in his Court and he failed to exhibit integrity and probity expected from him for some illegal gratification or the other. It was not incumbent on the prosecution to show how misappropriation took place or other words, how or in other words when exactly documents were misplaced, tampered or defaced. In so far as appellant P.P. Batra is concerned, the

plea that he had nothing to gain from misplacing, tampering or defacing the documents in question and he is not culpable unless and until it is shown that he got some tangible and palpable benefits belies common sense since it is in the realm of master-servant relationship and it is not inconceivable that sometimes servants turn out to be more faithful to their masters/employers than what one could perceive for variety of human reasons. The Ld. Trial Court rightly observed that the appellant P.P. Batra was a connecting bridge between the main appellants and appellant Dinesh Chandra Sharma. At the cost of repetition, the appellant had taken shelter behind technical objections and has not denied that he was ever in conversation with appellant Dinesh Chandra Sharma. A cumulative reading of oral, documentary and circumstantial evidence brought on the record brings out that the prosecution has proved the motive for committing offence of destruction / tampering and defacement of the judicial record, the nexus between the parties, entrustment of judicial record and its tampering and not only during the trial of the case but also subsequently giving appellant Dinesh Chandra Sharma employment.

(CHAPTER-H)

SANCTION OF PROSECUTION UNDER SECTION 196 OF CR.PC

32. Before drawing the curtains finally down in these five appeals, a vehement objection was taken that no sanction for prosecution was obtained by the State under section 196 of Cr.P. C. Now, the said provision reads as under :-

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence – (1) No Court shall take cognizance of -

- (a) any offence punishable under Chapter VI or under section 153A, (Section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or
- (b) a criminal conspiracy to commit such offence, or
- (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

- (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or
- (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub- section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.”

31 Now, a bare perusal of the aforesaid provision would show that Sections 109, 201, 409 and 120B of IPC are not included in the specific list of offences provided under Section 196 (1) and (1-A) Cr.P.C. Further, Section 196(2) of the Cr.P.C provides that sanction of prosecution of public servant is required to be obtained for the offences of criminal conspiracy for the commission of offences other than offense punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or above. It was rightly urged by the Ld. Addl. PP for the State that the charges have been framed in the present case under the aforesaid provisions viz. Sections 109, 201, 409 & 120B of IPC and the offences under Sections 409 and 201 IPC are visited with punishment for life imprisonment and rigorous imprisonment for a term of two years or above, and therefore, Section 196(2) Cr.P.C is not attracted. Likewise, the provision of Section 197(1) of the Cr.P.C shall also be inapplicable since the protective umbrella is available when a direct connection or inseparable link with one official duty as a public servant are clearly demonstrated. This was a stark case where the status and nature of duties assigned to the appellant Dinesh Chandra Sharma were such that afforded him an opportunity or occasion to commit a criminal act, hence, no sanction was required, for which, reference can be made to the decisions in Devinder Singh v. State of Punjab (2016) 12 SCC 87; Rekha Sharma v. CBI (2015) 218 DLT 1 and Harihar Prasad v. State of Bihar (1972) 3 SCC 89.

(CHAPTER-H)
THE CASE AGAINST APPELLANT ANOOP SINGH KARAYAT

33. All said and done, the prosecution case against the appellant Anoop Singh Karayat, is on a weak footing since he was not the accused facing trial in the main Uphaar case and assuming for the sake of convenience that he employed the appellant Dinesh Chandra Sharma as supervisor in the month of November, 2004 after his dismissal from his services in April that year (2004) at the instance of accused Col.(Retd)

D.V. Malhotra and/or appellant P.P. Batra, does not make him an accomplice or an actor in the original criminal conspiracy of disappearance of evidence so as to screen the real offenders. The plea of the prosecution that criminal conspiracy did not end on 13.01.2003 or for that matter on 31.01.2003, when secondary evidence was allowed by the Ld. Trial Court, but that it extended to the period till their appeals were dismissed by the Hon'ble Supreme Court, is too far fetched, fantastic if not bizarre, and cannot be legally sustained. The giving of job to appellant Dinesh Chandra Sharma indeed is a relevant fact by virtue of Section 8 of the Indian Evidence Act that would suggest that appellant Dinesh Chandra Sharma was having good rapport, friendship or affinity with appellant P.P. Batra and by all means, indirectly enjoying the patronage of the appellant Sushil and Gopal Ansal. However, it was rightly canvassed by the Ld. counsel for the appellant Anoop Singh Karayat that it is not fathomable that appellant Anoop Singh Karayat or

for that matter, other appellants had a premonition that after the documents would get misplaced, tampered or de-faced, no sooner or later the appellant Dinesh Chandra Sharma would be out of services, and then, he would be afforded a job to silence his mouth or to stop him from spilling the beans. The appellant Anoop Singh Karayat was Chairman of A-Plus Securities that were provided security services to Star Estates Management Institute, which was a wholly owned subsidiary of APIL. I think the connection is too wide and I am unable to persuade his role in any part of the conspiracy at any point of time. His explanation, that he did away with the services of the appellant Dinesh Chandra Sharma on coming to know that he was a dismissed employee and applied the fluids on the wage & remuneration register PW-18/C & PW-18/D is a blameworthy but not so as to attract criminal liability.

FINAL DECISION/RELIEF:

34. In view of the foregoing discussion, I find that the criminal appeals filed by the appellants Gopal Ansal, Sushil Ansal, P.P. Batra and Dinesh Chandra Sharma assailing the impugned judgment dated 08.10.2021 are devoid of any merits and the same are hereby dismissed. Accordingly, the judgment on conviction accorded against the appellants Gopal Ansal, Sushil Ansal, P.P. Batra and Dinesh Chandra Sharma on various grounds under Sections 409, 201 read with 120B IPC by the Ld. Trial Court is sustained. Let the above-said appellants/convicts be heard on the quantum of sentence.

35. However, the impugned judgment dated 08.10.2021 in so far as it has convicted the appellant Anoop Singh Karayat cannot be sustained in law for the reasons advanced hereinabove. Hence, the appeal filed by appellant Anoop Singh Karayat is allowed and he stands acquitted of the charges Section 409, 201 read with 120B IPC. The appellant Anoop Singh Karayat shall submit his bail bond with surety under Section 437-A of Cr.P.C. before the Ld. Trial Court.

Announced in the open Court
on 18th July, 2022

(DHARMESH SHARMA)
Principal District & Sessions Judge (NDD)
Patiala House Courts, New Delhi