



# Jus Corpus Law Journal

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## Case Comment: Kehar Singh and Others v State (Delhi Administration)

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CASE NAME	KEHAR SINGH AND ORS.v STATE (DELHI ADMN.)
CITATIONS	1988 AIR 1883, 1988 SCR Supl. (2) 24
JUDGEMENT DATE	AUGUST 3 <sup>rd</sup> , 1988
PETITIONER/ APPELLANT	KEHAR SINGH AND OTHERS
DEFENDANT/ RESPONDENT	STATE (DELHI ADMN.)
BENCH	Oza, G.L. (J)
CONSTITUTION AND OTHER STATUTES INVOLVED	IPC, CRPC, INDIAN EVIDENCE ACT, COMMISSION OF INQUIRY ACT, THE ARMS ACT, THE CONSTITUTION OF INDIA

RELEVANT SECTIONS/ ARTICLES	ARTICLES 19, 21, 136 OF THE INDIAN CONSTITUTION, SECTIONS 34, 120B, 302, 307 OF THE INDIAN PENAL CODE, SECTIONS 9(6), 164, 194, 327, 354(3) OF THE CODE OF CRIMINAL PROCEDURE, SECTIONS 10, 145, 155, 157 OF THE INDIAN EVIDENCE ACT, SECTIONS 3, 4, 5, 6, 8 OF COMMISSION OF INQUIRY ACT, SECTIONS 27, 54, 59 OF THE ARMS ACT.
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## INTRODUCTION

*Kehar Singh and Ors. v State (Delhi Admn.)* is very famously known as the “Indira Gandhi assassination case”. Indira Gandhi was the Prime Minister of India from 1966-1977 and repeated the service from 1980-1984. In the year 1984, on 31<sup>st</sup> October, Indira Gandhi was killed by her Sikh security counsels. The assassination of Indira Gandhi sparked riots all over India and the Indian Sikhs were killed in huge numbers in revenge attacks. This case drew national and international attention and was the most discussed topic then. Indira Gandhi’s assassination news received extensive coverage in the West and drew foreign attention quickly. This case was considered by the courts as the rarest of rare cases and a death sentence was passed to the accused in this case.

## BACKGROUND OF THE CASE

In 1984, the Indian Army initiated an operation known as ‘Operation Blue Star’ in which armed forces entered the golden temple of Amritsar to remove the terrorists. It all began after the rise of the Khalistan movement in India. It was a political movement by the Sikh nationalists to create an independent state for Sikhs. The Khalistan movement began in the early 1940s but soon gained enough popularity in the 1970s and 1980s. Operation Blue Star was a very big mission undertaken by the Indian Army to remove potential armed terrorists hiding inside the Golden Temple. Operation Blue Star was a solution put forth by Indira Gandhi to stabilize the situation

of ongoing disputes in Punjab. The terrorists set up their base at the Harmandir Sahib complex and it was found out that they had machine guns and other powerful weapons.

This led the Indian Army to enter the holy place to take into their custody the notorious armed militants. After the Indian army went in, there was a lot of destruction including several civilians being killed and the premises being destroyed. The Akal Takht was also left damaged. This hurt the religious sentiments of the Sikhs and various people from the Sikh community began to express their resentment against the then Prime Minister Indira Gandhi for issuing orders to carry out such an operation. A few months after the Operation, Indira Gandhi was assassinated by her two bodyguards who belonged to the Sikh religion. She was shot closely and about 30 times by Satwant Singh and Beant Singh. Beant Singh was the nephew of Kehar Singh and Kehar Singh was accused of criminal conspiracy and was tried and executed in the Tihar Jail. This case of Kehar Singh v State is hence most popularly known as the Indira Gandhi assassination case.

#### **FACTS OF THE CASE**

In 1984, in the month of June, the Indian Army initiated an operation called Operation Bluestar to eliminate some terrorists who were hiding in the Golden Temple complex. To do so, the Indian Army had a well-organized plan to enter the temple complex area and capture the armed terrorists. The operation, however, resulted in damage to property as well as the lives of many civilians. The Akal Takht was also left damaged after the completion of Operation Bluestar. This hurt the sentiments of people belonging to the Sikh community. It hurt their religious feelings and hence they held Smt. Indira Gandhi is responsible for the incident that took place.

Sikh people rallied against Smt. Indira Gandhi publicly expressed their anger and resentment towards her as she was responsible for issuing orders to continue such an operation. Balbir Singh and Beant Singh were sub-inspectors and Satwant Singh was a constable of Delhi police and was posted in the Prime Minister's office for security duty. Kehar Singh worked in the Directorate General of Supply and Disposal in New Delhi as an assistant. These people were all Sikh by faith and after Operation Bluestar took place, they expressed their bitterness openly toward Smt. Indira Gandhi and holding her responsible for the actions that took place in the

Golden Temple. After Operation Bluestar, various speeches were held and recordings were made and shared against the Prime Minister's decision of the Indian Army entry to the Golden Temple Complex. Balbir Singh, Beant Singh, Satwant Singh, and Kehar Singh were all a party to this. They were thus parties to a criminal conspiracy for the commission of the murder of Smt. Indira Gandhi.

On 31<sup>st</sup> October 1984, Smt. Indira Gandhi had an interview with Peter Ustinov from Irish television. The interviewer and the crew were waiting at Bungalow No. 1, Akbar Road, Safdurjung Road, Bungalow No.1 was the residence of Smt. Indira Gandhi. The two buildings were on the same campus and were connected by a narrow pathway and were separated by a gate called the TMC Gate. At about 9:10 am, Smt. Indira Gandhi came out of her house along with her security counsels and respective assistants and bodyguards. She was followed by Head Constable Narayan Singh, Assistant Sub-inspector Rameshwar Dayal, her attendant Nathuram, and R.K. Dhawan, Special Assistant. Beant Singh and Satwant Singh had prior knowledge of the schedule of Smt. Indira Gandhi and thus they knew that she'd pass through the TMC gate. Hence they tried to manipulate their duty timings in such a manner that Beant Singh would be present at the TMC Gate and Satwant Singh would be present at the TMC sentry booth.

Satwant Singh misrepresented his health conditions and stated that he had dysentery and thus wanted his duty near the washroom. Thus both Beant Singh and Satwant Singh together placed themselves near the TMC Gate to further their actions with common intention. Indira Gandhi when approached the TMC Gate, she was shot 5 times by Beant Singh and 25 times by Satwant Singh. She was then rushed to the All India Institute of Medical Sciences where she succumbed to her injuries. The post-mortem report stated that Smt. Indira Gandhi lost her life owing to a haemorrhage and shock arising out of the continuous firing of 30 rounds in total. The post-mortem reports also confirmed that the bullets found in the body of Smt. Indira Gandhi was shot by the weapons of the accused persons.

Both the assassins, Beant Singh and Satwant Singh were fired at by the Indo-Tibetian Border Police where Beant Singh sustained injuries and died on the spot and Satwant Singh suffered severe injuries. It was also found out that these two assassins were not the only ones involved

in the murder. The murder of Smt. Indira Gandhi was pre-planned with an ulterior motive and common intention. Another person alleged to have been a part of this well-organized plan was Balwant Singh. Balwant Singh also belonged to the Sikh community and was highly offended by Operation Bluestar hence he openly protested and held rallies against Smt. Indira Gandhi. He was accused of being in connection with Beant Singh and continuously helping Beant Singh plan and execute the assassination of Smt. Indira Gandhi. Another person who was alleged to have been involved in the conspiracy was Kehar Singh.

After Operation Bluestar, Kehar Singh was highly offended by the fact that the Akal Takht was damaged as a part of the operation and several civilians had to pay the price too. This led Kehar Singh to fill hatred in the mind of his comrades and his nephew Beant Singh. He was the mastermind of the plan and had provoked people against Smt. Indira Gandhi through various religious speeches and protests and rallies held by him.

Since Beant Singh died on the spot as a result of being shot by the police, he was discharged from all the charges. The other accused Kehar Singh, Balwant Singh, and Satwant Singh were charged under sections 34, 109, 120b, 302, 307 of the Indian Penal Code 1860<sup>1</sup> and u/s 27 of the Arms Act, 1959.<sup>2</sup>

## **ISSUES RAISED**

Soon after the assassination, the Government of India set up a commission under the Commission of Inquiry Act of 1952. It was headed by Justice M.P. Thakkar who was the judge of the court. There were various issues raised :

- Whether the President has the power, under Article 72 of the Indian Constitution<sup>3</sup>, to hear a case based on its merits when the case has already been decided by the court.
- What is the extent of the power of the President under Article 72 of the Indian Constitution?

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<sup>1</sup> Indian Penal Code 1860, s 34

<sup>2</sup> Arms Act 1959, s 27

<sup>3</sup> Constitution of India, art. 72

- By the virtue of powers stated under Article 72 of the Indian Constitution, whether the petitioner is entitled to an oral hearing by the President.
- Whether the power of the President to grant pardon be subjected to judicial review.
- Whether the trial in Tihar Jail was valid.
- Does High Court have the power to change the place of sitting of the Sessions court to proceed with the trial?
- Whether the High Court has the power to allot a particular case to a particular Session judge.
- Is there any restrictions on Public trials?

#### **ARGUMENT RAISED BY THE APPELLANT**

- It was argued by the appellant side that according to Article 21 of the Indian Constitution a speedy, open, and public trial is guaranteed, and conducting the trial in Tihar Jail violates such rights, and the procedure of such open and public trial is also stated in Sec 327 of CRPC.
- It was also argued that recording a trial on camera only applies to special cases and is nowhere mentioned in Section 327 of CRPC.<sup>4</sup>
- In this particular case, the High Court shifted the trial of the case and made Tihar Jail the place of hearing for the specific case. It was argued that the authority or power to shift the trial of a criminal case to a particular place other than the normal sitting of the court does not come under the powers of the High Court. Section 9(6) of the Code does not empower the High Court to specify the place for the hearing of an individual case.
- It was also argued by the appellant side that the trial court passed orders that the entry of Media and Press to the Tihar Jail would be regulated by the Jail authorities and this shows that it is a restricted trial and not an open or a public trial.
- It has been argued that by restricting the media and press from getting access to judicial proceedings the Trial Court is creating discrimination between the media persons and

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<sup>4</sup> Code of Criminal Procedure 1973, s 327

the general public and thereby violating the law provided under Article 19(1)(a) of the Indian Constitution. The court should always follow a first come first serve basis.

- The High Court didn't need to have allotted the particular case to a particular judge under Section 194 of the Code of Criminal Procedure.
- Even after the prayer made by the accused for the supply of copies of statements of the witnesses or even the Thakkar Commission Report, they were not supplied and made available. The accused are also entitled to the relevant material of the specific case and also need it to formulate their defences accordingly.
- It was put forth by the appellant side that the scope of Sec 6 of the Commission of Inquiry Act of 1952<sup>5</sup>, was misinterpreted by the High Court.
- It was argued that the confession of Satwant Singh was not recorded in the manner prescribed in Sec 164 of the Code of Criminal Procedure. Hence it is not valid to be used to convict the accused.
- It was stated that there was no evidence that Beant Singh and his wife were taken by Kehar Singh deliberately to expose them to protests and provocative speeches against the then Prime Minister Smt. Indira Gandhi.
- It was also stated that Kehar Singh being an elderly religious Sikh person was trying to prevent Beant Singh from taking any negative action against Prime Minister Smt. Indira Gandhi.

#### **ARGUMENT RAISED BY THE RESPONDENT**

- Under the Special Leave Petition provided under Article 136 of the Indian Constitution, the courts were not to interfere with the findings of the Trial Court.
- There is no constitutional right under Article 21 of the Indian Constitution that states the trial to be open and public. Article 21 only states the procedure established by law and given under the Code of Criminal Procedure, Section 327. The laws regarding the procedure can be amended and hence the law of open and public trial can be amended in the future. It does not stand as a constitutional right thereof.

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<sup>5</sup> Commission of Inquiry Act 1952, s 6

- The space or premises where the trial was held was not the place where prisoners were kept in the Tihar Jail. It was an office building where the trial was held and people had free access to the trial. It was held with no difference from the ordinary trials.
- The friends, family, or relatives of the accused were not restricted from having access to the trial. Any person from the general public who wanted to approach the court and watch the judicial proceedings was free to do so subject to the jail regulations.
- Section 6 of the Commission of Inquiry Act makes it clear that a witness examined before the commission is protected and his statements cannot be used against him in any other proceedings whether civil or criminal.
- According to Section 327 of the Code, a trial should be open and free. An open place is defined as any place where ordinary citizens have access. Hence, the Court did not put restrictions on the trial.
- According to Section 194 of CRPC, the High Court can specify the judge for the trial court. The section is clear and regular.

## JUDGEMENT

Smt. Indira Gandhi was killed brutally and in a horrendous way. She was unarmed when she was attacked. She was shot 30 times and it was found out by the post-mortem report that the very first two bullets that she took were enough to kill her. She was killed mercilessly by Beant Singh and Satwant Singh who were her security counsels. Beant Singh and Satwant Singh being the security in the office of the Prime Minister were supposed to protect her against any external aggression whereas they planned and executed the murder of Smt. Indira Gandhi which denotes a serious breach of trust.

Under Section 194 of CRPC, in the first part, it is mentioned that the Sessions Judge by general or special order can allot cases to the Additional or Assistant Sessions Judge. The last part of this section also provides authority to the High Court to allot cases to a particular Judge. The trial took place in the Tihar Jail as the place was considered to be appropriate for conducting the trial of the particular case and according to Sec 9(6) of the CRPC, the power has been imposed on High Court to direct the trial and specify the place for conducting the trial in a particular case.



No material fact was found regarding preventing people from entering the court to witness the proceedings; hence, the trial was open and fair. On the deep analysis of the provision of Sec 6 of the Commission of Inquiry Act, it was found that there are two restrictions on the use of a statement made by the witness. The witness's statement cannot be subjected to any other proceedings be they civil or criminal. Section 145, read with section 155(3) and Section 157 of the Evidence Act, 1872<sup>6</sup> permits the use of the previous sentence only for the purposes so examined. The purposes are cross-examination and corroboration.

Balwant Singh was acquitted as no evidence or proof was found against him. No evidence was found regarding his involvement in the conspiracy. Indira Gandhi lost her life due to the injuries that she suffered arising out of being shot by Beant Singh and Satwant Singh. Beant Singh died on spot as a result of being fired by the Indo-Tibetian Border police. The other accused Satwant Singh and Kehar Singh who was involved in the conspiracy were held to be responsible completely and their appeals were dismissed based on shreds of evidence found against them. The post-mortem report of the deceased Prime Minister confirmed that the bullets were shot by the guns of Beant Singh and Satwant Singh. The findings of the High Court and Trial Court in this particular case, under Section 302 of IPC, read with Section 120b and 34 of the IPC were proven against Kehar Singh and Satwant Singh and since it was the rarest of the rare cases, the death penalty was imposed on the accused persons.

## **SUGGESTIONS**

Operation Blue Star is considered to be the beginning of this assassination case as the hatred of the Sikh community triggered right after the orders to carry on the operation was issued by the then Prime minister Indira Gandhi. After Operation Blue Star ended with several casualties and damage caused to the Akal Takht in the Golden Temple of Amritsar, various protests and hate speeches were conducted against Prime Minister Indira Gandhi. People were exposed to provocative speeches and recordings and there was an open expression of resentment. After witnessing the upset and destabilized environment of the Sikh community against Smt. Indira

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<sup>6</sup> Indian Evidence Act 1872, s 157

Gandhi, close-fitting and uncompromising security must have been ensured around her. The security must have been checked and rechecked to ensure the safety of the Prime Minister. This way the crime could have been prevented.

## CONCLUSION

Indira Gandhi was considered the “*Iron Lady*” of India. She had marked her presence in Indian politics and has contributed significantly to the growth and development of India. She was elected the Prime Minister and served in the post from 1966-1977 and then again repeated the post from 1980-1984 when she was finally murdered by her two own bodyguards who belonged to the Sikh religion. The reference to the religion of the bodyguards is significant here because of the very reason for the criminal conspiracy to murder Smt. Indira Gandhi was that she ordered to carry on Operation Blue Star. Operation Blue Star caused immense damage to the property of the Golden Temple and thus Sikh sentiments were hurt.

Though the beginning of this takes us back to the Khalistan movement where the Sikhs wanted their separate nation. Indira Gandhi faced a lot of opposition from the Sikh community because she never supported the idea of a separate Sikh nation. She considered India as one and wanted to take India to the peak of development and growth. She was a true leader. She wanted India to be wealthy, dominant independent, and united. Therefore, she wanted India to be centralized and wanted the citizens of India to cooperate in making India a strong and independent nation.