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IN THE HIGH COURT OF DELHI

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Judgment reserved on :14.07.2009

Judgment delivered on: 28.07.2009

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CRL. APPEAL 962/2004

SUNIL

...Appellant

Through : Mr. Mukesh Kalia, Advocate
Ms. Sumita Kapil, Advocate
Mr. Girish Gupta, Advocate

versus

STATE

...Respondent

Through : Mr. Pawan Sharma, Advocate

CRL. APPEAL 977/2004

SHRI KRISHAN

...Appellant

Through : Mr. Mukesh Kalia, Advocate
Ms. Sumita Kapil, Advocate
Mr. Girish Gupta, Advocate

versus

STATE

...Respondent

Through : Mr. Pawan Sharma, Advocate

CRL. APPEAL 981/2004

RAVINDER

...Appellant

Through : Mr. Mukesh Kalia, Advocate
Ms. Sumita Kapil, Advocate
Mr. Girish Gupta, Advocate

versus

STATE

...Respondent

Through : Mr. Pawan Sharma, Advocate

CRL. APPEAL 14/2005

VIJAY

...Appellant

Through : Mr. Mukesh Kalia, Advocate
Ms. Sumita Kapil, Advocate
Mr. Girish Gupta, Advocate

versus

STATE

...Respondent

Through : Mr. Pawan Sharma, Advocate

CRL. APPEAL 61/2005

BABU RAM @ FAUJI

...Appellant

Through : Mr. Mukesh Kalia, Advocate

Ms. Sumita Kapil, Advocate

Mr. Girish Gupta, Advocate

versus

STATE

...Respondent

Through : Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. The process of law was set into motion, when on 11.11.1998 at 4.05 P.M. an unknown person informed the Police Control Room that a quarrel was going on in front of H.No.286, Gali 300, D Block Jahangir Puri, and that a person was firing. Const. Vijay Rani PW-3, on duty at the police control room noted the said information in the PCR form marked A. The information was forwarded to PS Jahangir Puri, where Const. Runa Rathore PW-12, recorded DD. No. 51B, Ex.PW-12/A.

2. Copy of DD No.51B was given to ASI Ram Niwas PW-32 for investigation. Accompanied by Const. Surender PW-6 and Const. Sita Ram PW-5 he left for the spot and on reaching the spot saw a huge crowd gathered there. The situation was riotous. Insp. Sajjan Singh PW-56 the SHO PS Jahangir Puri also reached the spot in the mean time.

3. Before investigation could commence as to what had happened and who did what, the rioting crowd had to be contained. The crowd had surrounded house No.366 on Gali No.400 in D Block belonging to Babu Ram. The crowd was demanding that those who had fired be handed over to the crowd. Stones were even thrown at the police personnel who had reached. Additional police force had to be requisitioned and with the arrival of a large number of police personnel at the spot, due to the very presence of the police force, the situation cooled as the crowd melted away.

4. Inspector Sajjan Singh and ASI Ram Niwas learnt that many injured had been removed to LNJP Hospital. They proceeded to the hospital and collected 25 MLCs being Ex.PW-18/A to Ex.PW-18/R and Ex.PW-47/A, Ex.PW-50/B to Ex.PW-50/E, Ex.PW-51/A, Ex.PW-51/B, Ex.PW-53/A and Ex.PW-55/E of 27 injured persons who were admitted at the hospital. All of them had gun shot wounds. Anil Kumar a resident of House No.D-354 had been declared brought dead at the hospital.

Another injured victim Vijay resident of House No.D-431-432 was in a serious condition and he died in the hospital the same day at 9:20 PM.

5. Since the crowd was saying that appellant Babu Ram and other co-accused, who are all family members, had created the trouble and as per the crowd the target of the accused was the family of Lala Satpal and his neighbour and friend Mangat Ram, and since Mangat Ram who had received superficial pellet injuries was discharged from LNJP Hospital evidenced by his MLC Ex.PW-18/B, Insp.Sajjan Singh returned to the spot and went to House No.D-354, Jahangir Puri, the resident of Mangat Ram. He recorded the statement Ex.PW-2/A of Mangat Ram as per which Mangat Ram stated that a quarrel was going on for the last 4 or 5 days between his neighbour Satpal who resides in House No.D-293/294, Jahangir Puri and another neighbour Shri Kishan a resident of House No.D-291, Jahangir Puri because each family was accusing the young male members of the other family of having teased a young daughter of their family and that Shri Kishan was a relative of the other accused. He disclosed that on the day of the incident i.e. 11.8.1998, at around 3:00 PM an altercation took place between Satpal and Shri Kishan. Anil Kumar, brother of Mangat Ram went to help Satpal and at that time Babu Ram and his son Ravinder joined the altercation and took

the side of Shri Kishan. Sunil, son of Shri Kishan was already present along with his father. The four, namely Shri Kishan, his son Sunil, Babu Ram and his son Ravinder, left threatening that they would teach a lesson to Satpal and his supporters. Soon thereafter Babu Ram, Shri Kishan, Ravinder and Sunil were seen on the roof of his house and on the instigation of Shri Kishan and Sunil, Babu Ram fired bullets at Anil and him i.e. Mangat Ram. Ravinder kept on instigating Babu Ram to keep on firing so that supporters of Satpal were killed. Babu Ram kept on firing indiscriminately on all and sundry at street No.300.

6. Making an endorsement under the statement Ex.PW-2/A, Inspector Sajjan Singh forwarded the same through Const.Surender for an FIR to be registered.

7. HC Suresh Kumar PW-19, the duty constable at PS Jahangir Puri received the rukka sent by Inspector Sajjan Singh at about 8:30 PM and on the basis of the statement Ex.PW-2/A registered FIR No.561/1998, Ex.PW-19/B under Sections 302/307/34 IPC. Simultaneously, with a gap of 40 minutes i.e. at 9:10 PM, the next FIR, being No.562/1998, Ex.PW-19/D3 was registered under Sections 147/148/149/186/332/352 IPC on the basis of a written statement of fact sent to the police station by ASI Baljit who was also posted at PS Jahangir Puri and was a part of the police team which reached the spot to control the

situation. In the said FIR it stands recorded that when the police personnel reached D Block Jahangir Puri they saw a crowd having surrounded the house of accused Babu Ram and some members of the crowd were pelting stones at the house of accused Babu Ram.

8. It is apparent that the slight day delay in the registration of the two FIRs i.e. Ex.PW-19/B and the FIR Ex.PW-19/D3 is on account of the reasons noted above; namely, the police personnel having first brought the riotous situation under control and thereafter the SHO proceeding to LNJP Hospital and collecting 25 MLCs of the injured persons and thereafter returning to the spot and recording Mangat's statement.

9. As to how appellant Vijay became a suspect on 11.11.1998 is not known because no document has been proved at the trial which shows that on 11.11.1998 anybody named Vijay. But, on 11.11.1998 itself, at late night, all the appellants were arrested from the house of Babu Ram i.e. House No.D-366, Gali No.400, Jahangir Puri. Babu Ram made a statement Ex.PW-32/D in which he told that the gun with which he had fired as also live and used cartridges with him could be handed over by him as the same were in his house. Thereafter, Babu Ram handed over a single barrel gun and four live cartridges as also sixteen used cartridges to

Insp.Sajjan Singh, all of which were seized as recorded in the seizure memo Ex.PW-32/F. At the spot, with the help of complainant Mangat Ram and on the pointing out of Mangat Ram, Insp.Sajjan Singh prepared a rough site plan Ex.PW-56/A recording therein the location of House No.366, Gali No.400, D Block, Jahangir Puri i.e. the house of Babu Ram as also the location of House No.D-354, Gali No.300, Jahangir Puri i.e. the house of the complainant Mangat as also the location of House No.D-291 and House No.D-293/294, both on Gali No.300, Jahangir Puri, being the residence of Shri Kishan and Satpal respectively. He noted the spots where Anil and Vijay, the two young boys who were killed, were shot at; as also the spot where Mangat Ram was shot at.

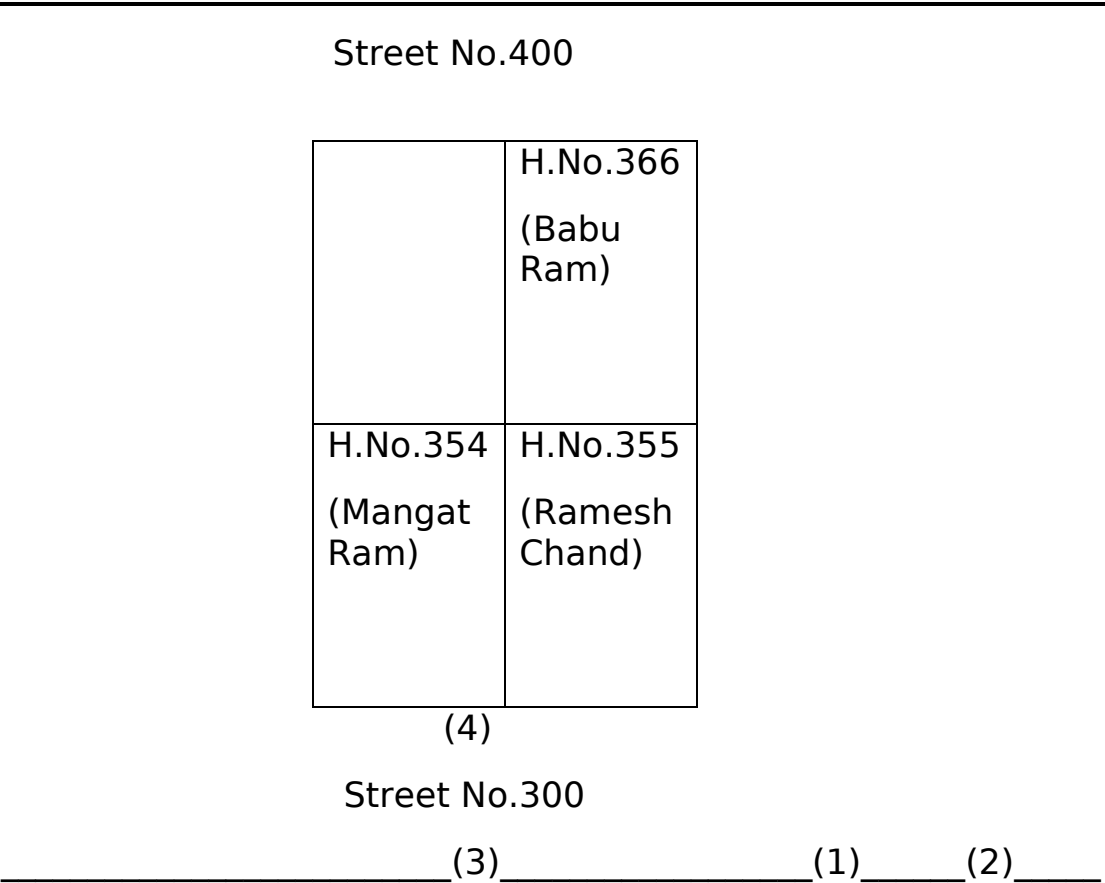
10. The site plan to scale prepared subsequently by the draftsman Teerath Raj Singh PW-7 i.e. Ex.PW-7/A, reflects the rough site plan Ex.PW-56/A in a better and a clear manner inasmuch as the measurements have been recorded therein and thus we take the liberty, at this stage itself, to pen profile the site plan because the same is a very relevant piece of information while considering the evidence on record.

11. As per the two site plans, street No.400 and street No.300 in D Block Jahangir Puri, run parallel to each other along the west-eastern directions. Street No.400 is towards the north and street No.300 is towards the south. The width of

street No.400 is 16'.6". The width of street No.300 is 15'.10". The distance between the two streets is 47'.8". This distance between the two streets is not an empty space but consists of a row of houses having a depth of 23'.10". To make it clear, one row of houses being House No.361 to 368 have a depth of 23'.10" and these houses abut street No.400. Back to back to these houses are a row of houses bearing No.353 to 359 with each house having a depth of 23'.10". These houses open towards street No.300. Opposite to the row of houses bearing No.353 to 359 on street No.300 are house Nos.298 to 293. It is apparent that the doors of house No.353 to 359 open in the southern direction on to street No.300 and the doors of house Nos.298 to 293 open towards the northern direction on to street No.300. On the site plan, the spots where Anil and Vijay were shot at have been marked 1 and 2. They are at a distance of 3'.6" and 3' respectively from the boundary wall of house No.295 and house No.294. Spot where Mangat Ram was shot at is shown at point No.3 which is also at a distance of about 3' from the boundary wall of house No.297. The spot wherefrom Babu Ram is stated to have fired is shown as spot No.4 and is on the roof of house No.354 belonging to Mangat Ram. The site plan shows that house No.366 of Babu Ram is back to back with house No.355 of Ramesh Chand and house No.354 of Mangat Ram is adjacent to the house of Ramesh Chand towards the west of house of Ramesh Chand. The

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location of house of Babu Ram, Ramesh Chand and Mangat Ram, may be graphically shown as under:-



(NB: Spots 1, 2, 3 and 4 being the 4 spots described in the site plan as pen profiled above have been shown).

12. The dead bodies of Vijay Kumar and Anil Kumar were seized and sent to the mortuary where Dr.Anil Kumar PW-24 conducted the post-mortem of the two on 12.11.1998 and prepared the reports Ex.PW-24/A and Ex.PW-24/C as per which he noted that both of them had received multiple pellet injuries discharged by a smooth bored firearm fired from a distance range and the cause of death was haemorrhagic shock due to the resultant injuries.

13. We need not note the evidence pertaining to the ballistic expert qua the pellets recovered from the two dead bodies as also the used cartridges as also the gun recovered from appellant Babu Ram, for the reason Babu Ram has admitted having fired the shots which caused injuries to 23 persons and resulted in the death of two. Babu Ram claims to have acted in self-defence, when as per him, a crowd, baying for his blood and the blood of his family members, surrounded his house and attempted to break into his house to lynch his family members as also to set his house on fire.

14. It may be noted that the accused are related to each other as under:-

A. The sister of accused Babu Ram is the wife of accused Shri Kishan.

B. Accused Ravinder is the son of Babu Ram.

C. Accused Sunil is the son of Shri Kishan.

D. Accused Vijay is a distant relative of Shri Kishan.

15. The accused were charged with the offence of having murdered deceased Anil and Vijay and attempting to murder 25 persons who received pellet injuries when they were present on street No.300. The case of the prosecution was that an altercation took place between the family of Lala Satpal and Shri Kishan qua the teasing of the daughter of Satpal by the young male members of the family of the other.

The accused intervened. The family of Shri Kishan left with the

accused to the house of Babu Ram and to vent vengeance against Lala Satpal and the neighbours who had supported Satpal; namely Mangat and Anil the brother of Mangat (who resided in House No.D-354, Gali No.300 Jahangir Puri), at the instigation and pointing out of the co-accused, Babu Ram fired 16 shots specifically targeting Mangat and his brother Anil as also Vijay who resided in House No.D-431/432, Jahangir Puri and probably sided with Lala Satpal. As per the prosecution Babu Lal fired on all and sundry in street No.300.

16. We note that the defence of accused Babu Ram was of self-defence and the defence of his family members and his house. The other accused claimed not to be present, much less having instigated Babu Ram to fire the shots.

17. In order to prove its case, the prosecution examined 56 witnesses. In order to prove the defence, the appellants examined 15 defence witnesses.

18. In view of the defence taken by the appellants and as noted above, we need not note the testimony of all the witnesses of the prosecution. We need to note the testimony of all those who received firearm injuries on the fateful day and those who claimed to be eye witnesses as also the testimony of the defence witnesses.

19. Mangat Ram PW-2 deposed that he was a resident of House No.D-354, Gali No.300, Jahangir Puri and on 11.11.1998 at about 3:00 PM he was outside his house. He

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heard an altercation between Lala Satpal and accused Shri Kishan and Sunil son of Shri Kishan, pertaining to the daughter of Lala Satpal being teased by the young male members of the family of accused Shri Kishan. Accused Babu Ram and his son Ravinder came to the spot and participated in the altercation. The four i.e. Shri Kishan, his son Sunil, Babu Ram and his son Ravinder left the spot, threatening that Lala Satpal and his supporters would be taught a lesson. Soon thereafter, all the accused went to the roof of Babu Ram's house i.e. House No.D-366, Gali No.400, Jahangir Puri and from there jumped onto the roof of his i.e. Mangat Ram's house, which was behind the house of Babu Ram. Accused Shri Kishan and accused Sunil exhorted Babu Ram to open fire and not spare Lala Satpal or anyone who supported him. Babu Ram was armed with a gun. Vijay and Ravinder were also on the roof. Babu Ram opened fire targeting Anil and Vijay. He i.e. Mangat also received a gun shot injury on his right leg. That due to indiscriminate firing many persons in street No.300 received gun shot injuries. The injured were removed to a hospital. His statement Ex.PW-2/A was recorded.

20. Ashok Kumar PW-8 deposed that on 11.11.1998 at about 3:00 PM he heard an altercation between family of Satpal and the accused Shri Kishan and his son Sunil. In the meantime, accused Babu Ram and his son accused Ravinder also joined. Thereafter, the four accused proceeded towards

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the house of accused Babu Ram and on the way accused Vijay also joined them. All the accused went to the roof of house of Mangat Ram. Accused Babu Ram was having a gun in his hand from which he fired a shot in the air and shouted that they would not spare anyone. Accused Shri Kishan and Sunil told accused Babu Ram to fire at the persons at their instance and accused Ravinder and Vijay said that no supporter of Satpal should be spared that day. Thereafter accused Babu Ram fired bullets which hit the deceased Anil as also Mangat Ram. On being directed by accused Sunil and accused Ravinder, Babu Ram fired towards deceased Vijay and shot him. Afterwards, Babu Ram started firing indiscriminately as a result of which many persons received bullet injuries.

21. Kashmere Lal PW-9 deposed that an altercation took place between accused Shri Kishan and Sunil on the one side and Satpal on the other, pertaining to daughter of Satpal being teased by the family members of Shri Kishan and that Babu Ram and Ravinder joined in the altercation. Thereafter Babu Ram, Ravinder, Shri Kishan and Sunil went to the house of Babu Ram and soon thereafter all the accused were seen by him on the roof of house of Mangat Ram and that Babu Ram fired indiscriminately causing gun shot injuries to the deceased Anil and Vijay as also to many others.

22. Smt.Darshan PW-13 deposed that a dispute arose between accused Shri Kishan and Sunil on the one side and

Lala Satpal on the other. Babu Ram and his son Ravinder joined in the quarrel. Babu Ram, his son Ravinder accompanied by Shri Kishan and Sunil left the spot and were soon thereafter seen on the roof of the house of Babu Ram from where they jumped to the roof of the house of Mangat Ram. Accused Vijay also jumped onto the roof of the house of Mangat Ram. Accused Babu Ram was having a gun in his hand and all the other accused were directing him to fire at the persons at their instance. Accused Babu Ram started firing and hit Mangat Ram, Anil and also the son of her brother-in-law (devar) Vijay. Thereafter Babu Ram fired indiscriminately. She received bullet injuries on her left abdomen and buttocks. Her grand-son Tarun, grand-daughter and son Raj Kumar also received bullet injuries in the said firing.

23. Raj Kumar PW-14 deposed that an altercation took place between Lala Satpal and Shri Kishan in which Sunil, son of Shri Kishan participated, pertaining to daughter of Lala Satpal being teased by the male members of the family of Shri Kishan. Babu Ram and his son Ravinder also came to the street where the altercation was taking place. Babu Ram, Ravinder, Shri Kishan and Sunil left for the house of Babu Ram. Soon thereafter said 4 persons came to the roof of the house of Babu Ram and jumped to the roof of the house of Mangat Ram. Babu Ram had a gun in his hand. Soon thereafter Vijay also jumped from the roof of house of Babu Ram to the roof of

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the house of Mangat Ram and accused Shri Kishan exhorted Babu Ram to fire on the persons he would point out. Accused Babu Ram started firing and as a result thereof many persons including his mother Darshana, his sister Anju Bala, his nephew Tarun, his niece Priya Rani including himself received bullet injuries.

24. Sushil Kumar PW-15 deposed that a quarrel took place between Lala Satpal and accused Shri Kishan and Sunil son of Shri Kishan. Babu Ram and his son Ravinder came to the street where the quarrel was going on. Babu Ram, Ravinder, Shri Kishan and Sunil left and reached the roof of the house of Babu Ram from where they jumped onto the roof of house of Mangat Ram. Babu Ram had a gun in his hand. Vijay was also present with them. Sunil and Shri Kishan exhorted Babu Ram to fire. The accused pointed towards Anil his i.e. Sushil's brother. Babu Ram fired a shot and injured his brother. At the pointing out of the accused towards Mangat, Babu Ram fired injuring Mangat. Babu Ram fired indiscriminately injuring not only Vijay but even others.

25. Shakeel Ahmed PW-17 deposed that on 11.11.1998 at about 3:00 PM he saw a crowd in Gali No.300. He noticed 4/5 people on the roof of a house, amongst whom, some were exhorting accused Babu Ram to fire from his gun. In the said firing from the gun, one bullet hit his left eye. On being cross-

examined, he stated that the crowd was running helter skelter and was pelting stones.

26. Baldev Ram PW-27 deposed that prior to 11.11.1998 Satpal residing in D block and accused Shri Kishan were quarreling over the teasing of the daughter of Satpal for 5-6 days. On 11.11.1998, again the quarrel irrupted between Shri Kishan and Satpal over the said issue. People gathered. In the meantime, Sunil son of the Shri Kishan, and Babu Ram along with his son Ravinder who were residing In Gali No.400 joined. The spat took an ugly turn. Accused Vijay also came there. Accused Shri Kishan asked Babu Ram to get his gun and teach a lesson to Satpal and his supporters. Thereafter the said five accused went towards Gali No.400. The accused went to the roof of house of Babu Ram and thereafter they went to the roof of house No.D-354 which belonged to deceased Anil (brother of Mangat Ram). The accused Babu Ram then started firing from his gun. The first victim who was fired at, at the pointing out of other accused, was Anil and thereafter accused Babu Ram fired indiscriminately due to which Mangat Ram received bullet injuries in his leg. His cousin brother, namely Vijay, also received gunshot injuries due to which he died in the hospital.

27. Anju PW-45 deposed that on 11.11.1998 at about 3:00 PM accused Babu Ram fired shots from his gun from the roof of his house in which her brothers namely Anil and Vijay

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were killed. She also received pellet injuries on her head and hand. That when Babu Ram fired the shots the other accused were on the roof.

28. We note that nothing of substance has been brought out in the cross examination of aforementioned witnesses save and except the fact that except for Shakeel Ahmed PW-17 all other eye witnesses have admitted being related to each other and to the complainant Mangat Ram as also the deceased Anil and Vijay. The relationship may be summarized. Mangat Ram PW-2 is the brother of deceased Anil. Ashok Kumar PW-8 is the father of deceased Vijay. Kashmere Lal PW-9 is the uncle of deceased Vijay. The exact relationship of Anil and Vijay is not known but probably appear to be either cousins or co-brothers. Darshana PW-13 is the sister-in-law of Anil and Vijay. Sushil PW-15 is the brother of Mangat Ram PW-2. Baldev Ram PW-27 is son of Darshana PW-13. Anju PW-45 states that she is the sister of Anil and Vijay. Needless to state, the thrust of the defence is that all aforementioned witnesses save and except Shakeel Ahmed PW-17 are interested witnesses and hence should be disbelieved.

29. 16 other witnesses of the prosecution, namely Hamid Mohd. PW-23, Anwari PW-29, Gulshekh PW-30, Mohini Devi PW-33, Matloob Ali PW-34, Pradeep PW-35, Chanderkala PW-36, Ramdev PW-37, Zubeda PW-38, Salma PW-39, Smt.Maryam PW-40, Smt.Bunda PW-41, Naim PW-42, Jafar PW-43, Crl.A.Nos.962/04, 977/04, 981/04, 14/05 & 61/05

43, Vasudev PW-44 and Smt.Sateshwari PW-46 were also examined. We need not note the detailed testimony of the said witnesses save and except to note that as per PW-23, PW-29, PW-33, PW-37, PW-38, PW-39, PW-40, PW-41, PW-42, PW-43, PW-44 and PW-46 they were present at Gali No.300 on 11.11.1998 at around 3:00/3:30 PM and due to indiscriminate firing received gun shot injuries. The other witnesses simply stated that they received gun shot injuries at around 3:00 PM on 11.11.1998. Said witnesses have not stated the place where they received the injuries. It is also important to note that all said witnesses are residents of D Block and E Block, Jahangir Puri. We may also note that Chanderkala PW-36 additionally deposed that she had witnessed a quarrel between Satpal and dhobis of Gali No.300 pertaining to Seema being teased by son of Satpal. We may note that Seema, as per the defence witnesses is the daughter of Shri Kishan i.e. she is the niece of Babu Ram.

30. In defence the appellants examined 15 witnesses out of which 14 i.e. DW-1 to DW-14 claimed to be eye-witnesses and the last witness i.e. DW-15 was a formal witness. He i.e. Const.Virender simply produced the record and deposed that FIR No.562/1998, Ex.PW-19/D3 (also exhibited as Ex.DW-15/A) was registered at the police station.

31. Sushila Devi wife of accused Shri Kishan, DW-1, deposed that her daughter Seema returned home from school

on 11.11.98 at about 2:00 PM. When Seema went to answer the call of nature at the Government toilet, Ganesh son of Satpal jumped from the male side of the toilet to the female side and attempted to outrage the modesty of Seema. He tore the sleeve of her shirt from the shoulder. Seema informed this to her i.e. Sushila. An altercation ensued. An armed mob lead by Lala Satpal, his family members and Mangat Ram surrounded their house and tried to pull them out by catching their hair. In order to save her and her daughter Seema from the mob, her brother Babu Ram intervened and took them to his house No.D-366, Gali No.400. The mob, some members whereof had kerosene bottles in their hand surrounded the house of her brother and tried to break into the house. Some pelted stones at the house of her brother. Sensing danger, her brother Babu Ram took them to the roof of his house. The mob persisted in their acts of arson and rioting. To save them and his house, Babu Ram fired in the air to scare away the mob which continued to attack his house, compelling him to fire at the unruly mob. Some members of the mob entered and ransacked the house. Anil and Vijay as also 26 other persons in the mob received injuries.

32. Seema DW-7 daughter of accused Shri Kishan and Sushila DW-1, deposed that on the day of the incident, at about 12:30 PM she went to the public urinal to answer the call of the nature. Ganesh tried to outrage her modesty. She told

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this to her mother and in the meantime Ganesh along with Kale and Khuji also reached her house, and started quarreling with her mother. Her maternal uncle, accused Babu Ram, came to their rescue and took her mother and herself with him. A crowd, armed with swords, lathis, etc, gathered in front of her uncle's house, and tried to break in. Babu Ram went to the roof and fired in the air to disperse the mob.

33. Raghubir Singh DW-2 deposed that on 11.11.1998 at about 4:00 PM, a crowd gathered on the street. He came out of his house and saw a quarrel in Gali No.400. He saw some persons dragging Sushila and Seema. Babu Ram took Sushila and Seema with him and locked them in a room of his house. There was commotion all around and people armed with lathis and dandas pelted stones at the house of Babu Ram. Babu Ram went to the roof of his house and started firing. On hearing the noise of firing, people started running but after some time again collected there.

34. Chattar Singh DW-3 deposed that on 11.11.1998, at around 4:00 PM he saw some persons, which included Satpal, quarreling with Seema and Sushila. Babu Ram intervened and in order to save them, took Seema and Sushila to his house. The mob followed Seema and Sushila in order to assault them. The mob was armed with lathis, dandas, etc. Babu Ram went to the roof of his house and fired in the air in order to disperse the crowd. However, the crowd became violent and started

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pelting stones. The crowd tried to break open the door of the house of Babu Ram. Babu Ram again fired in the air and the crowd dispersed.

35. Mahender Singh DW-4 deposed that on 11.11.1998, at around 4:00 PM, he heard noises and saw 100/125 people gathered, armed with lathis, sariya, etc. surrounding the house of Sushila, sister of accused Babu Ram. Lala Satpal and his son had caught hold of Seema and Sushila by their hair and were saying "aaj inko nahi chhoregein". Accused Babu Ram came and saved Sushila and Seema and escorted them to his house. The crowd pursued them. Accused Babu Ram bolted the door of his house from inside and went to the roof. The crowd tried to break open the door of the house of Babu Ram and pelted stones. Apprehending danger to his life Babu Ram fired from his gun. Some people tried to climb into his house. Babu Ram retaliated by firing on the road in order to disperse the crowd. But, the public did not leave the spot and again attacked the house compelling Babu Ram to again fire on the road.

36. Mehboob Ali DW-5 deposed that on 11.11.1998 at about 4:00 PM, he heard noises and saw that about 100-125 persons had surrounded the house of Sushila, sister of Babu Ram. The crowd was venting its anger towards Sushila and Seema saying that they should not be spared today. Babu

Ram reached there and escorted Sushila and Seema to his house i.e. House No.D-366, Gali 400. The public started following them. Babu Ram bolted the door of his house from inside. The people started pelting stones and ransacked the house. Babu Ram along with Sushila and Seema climbed the roof of his house and fired at the public which made them angry. The public then tried to climb the roof and in order to stop them, Babu Ram fired on the road.

37. Raj Kumar DW-6 deposed that he was passing by the place of incident and saw a crowd gathered on Gali 300 and 400. The crowd had surrounded a house and Lala Satpal, Mangat, Anil and Ganesh were trying to outrage the modesty of a girl and a woman. Babu Ram came to the place and saved the girl and the woman by escorting them to his house. This made the public angry. Babu Ram entered his house and bolted the door from inside. The public started pelting stones and tried to ransack the house of Babu Ram. Babu Ram climbed the roof of his house and fired in the air in order to disperse the crowd. The crowd got flared up and tried to climb the roof. Babu Ram fired on the road at which the crowd dispersed but came back soon after and started attacking the house. Babu Ram again fired at the crowd which retaliated by hurling petrol bombs etc.

38. Udaiveer DW-8 deposed that he runs a shop in Gali 300 and 400. On the day of the incident he saw a crowd of about 100-125 people gathered outside the house of Sushila, wife of Shri Kishan. Lala Satpal and his son Ganesh and Anil had caught Sushila and Seema by their hair and in the meantime accused Babu Ram arrived. He intervened and escorted Sushila and Seema to his house. The crowd followed them to his house and turned violent. Stones were thrown towards the house of Babu Ram and the crowd tried to break the door of Babu Ram's house compelling Babu Ram fire towards the road to scare away the mob.

39. Narender Pal DW-9 deposed on the same lines as DW-8.

40. Satish DW-10, Mukesh DW-11 and Abdul DW-12 deposed pari-materia; stating that a crowd had gathered outside the house of Sushila and was threatening to pull out Seema, daughter of Sushila from her house. Babu Ram intervened and took Sushila and her daughter to his house. The crowd surrounded the house of Babu Ram and threatened to set it on fire compelling Babu Ram to fire shots in the air to scare away the crowd. Siya Ram DW-13 deposed that on the day of the incident some people gave beating to a lady and her daughter. The accused came and took the lady and the daughter. Accused Babu Ram went to the roof and when the

crowd pelted stones, he fired. Jai Pal DW-14 deposed that on the day of the incident he saw people pelting stones at the house of Shri Krishan. Public was trying to snatch the wife of Shri Krishan and his daughter. Two people died. Babu Ram intervened to save the lady and her daughter and fired from his gun while standing on the roof.

41. It may be noted that all the defence witnesses refer only to the presence of accused Babu Ram and Sushila and Seema, and make no reference to the presence of the other accused persons.

42. When examined under Section 313 Cr.P.C. all the accused save and except accused Babu Ram denied their presence at the spot. Babu Ram admitted his presence at the spot and that he fired from his gun but claimed that he did so in self-defence.

43. Vide impugned judgment and order dated 18.11.2004, the learned Trial Judge has convicted the accused persons for the offence punishable under Section 302/34 IPC pertaining to the death of Anil and Vijay. They have been convicted for the offence punishable under Section 307/34 IPC for attempting to murder Mangat Ram and other persons who received gun shot wounds.

44. To summarize, the reasoning of the learned Trial Judge is the discrepancy in the testimony of the defence witnesses pertaining to the weapons in the hands of the unruly crowd. The learned Trial Judge has noted that some witnesses have spoken of the crowd being armed with swords and knives. Some have deposed that the crowd was armed with lathis and dandas. Some have deposed that the crowd was having sarias (iron rods). Some have deposed that the crowd had kerosene/petrol bombs. The learned Trial Judge has further held that there is no evidence of any petrol or kerosene being detected from near or outside the house of Babu Ram. The learned Trial Judge has further held that the defence witnesses had not spoken about accused Sunil, Ravinder, Vijay and Shri Krishan whose presence and participation stands established by the witnesses of the prosecution and that there was no reason to doubt their presence at the spot or the testimony of the prosecution witnesses. The fact that they had received gunshot injuries was proof of their presence and that nothing was brought out in the cross-examination to discredit said witnesses who have corroborated each other. The plea of self-defence has been rejected by the learned Trial Judge in view of the testimony of the witnesses of the prosecution, as per whom the accused were the aggressors and according to whom, the house of accused Babu Ram was never surrounded by any mob, much less threatened to be set on fire.

45. In our opinion there is hardly much scope for raising a dispute pertaining to the defence of Babu Ram of having acted in self-defence. The defence is a sham.

46. The site plan, Ex.PW-56/A, prepared by Inspector Sajan Singh and the site plan to scale Ex.PW-7/A prepared by Tirath Raj Singh PW-7, to which we have made a detailed reference in para 11 above, show that deceased Vijay and Anil were shot dead at street No.300. Mangat Ram PW-2 also was shot at in street No.300. PW-8, PW-9, PW-13, PW-14, PW-15 and PW-27 have categorically stated that they received the gunshot injuries when they were in street No.300. These witnesses may be related to the two young boys who were shot dead as also to Mangat Ram, the complainant, but said fact alone would not render suspect their testimonies. The said six witnesses are all residents of block-D and have their houses on gali No.300 and thus their presence at the spot is natural. That all of them received gunshot wounds itself establishes their presence at the spot. A related witness is not an interested witness on account of being the relation of the complainant. An interested witness is one who has a motive to secure the false conviction of the accused and to achieve the same deposes falsely. As held in the decision reported as State of Rajasthan v. Smt Kalki & Anr (1981) 2 SCC 752:-

“As mentioned above, the High Court has declined to rely on the evidence of P.W.I on two grounds: (1) she was a "highly interested" witness because she

"is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W. 1 had no interest in protecting the real culprit, and falsely implicating the respondents."

47. Besides, the other prosecution witnesses namely PW-17, PW-23, PW-29, PW-30, PW-33, PW-34, PW-35, PW-36, PW-37, PW-38, PW-39, PW-40, PW-41, PW-42, PW-43, PW-44 and PW-46 are not related to the deceased or Mangat Ram. Said witnesses have deposed that they received gunshot wounds on 11.11.1998 at around 3/3:30 PM. Out of said 17 witnesses, PW-23, PW-29, PW-33, PW-37, PW-38, PW-39, PW-40, PW-41, PW-42, PW-43, PW-44 and PW-46 have categorically deposed that they were present at gali No.300 when they received the gunshot wounds. The other witnesses have not stated as to where they were standing when they received the gunshot wounds. PW-23, PW-29, PW-33, PW-37, PW-38, PW-39, PW-40, PW-41, PW-42, PW-43, PW-44 and PW-46 are not related to each other or to the deceased or to any

other witness of the prosecution. They would have no motive to falsely depose. The testimony of said witnesses establishes that the firing was directed towards people who were on street No.300. The house of Babu Ram is abutting street No.400, which as noted in para 11 above, runs parallel to street No.300 and the two streets are separated by a row of houses constructed back to back. In no way can an unruly crowd which has assembled on street No.300 set on fire any house which is on street No.400. Further, the falsity in the testimony of the defence witnesses who claim that Babu Ram, acting in defence of his house and himself and his family members, fired from the roof of his house is apparent from the fact that standing on the roof of house No.366 which is the house of Babu Ram, it is just not possible to hit anybody standing on street No.300. A little bit of geometry would show the same. Standing on any point at the roof of the house of Babu Ram, the straight line connecting the said spot from any portion of his roof to any spot on street No.300 would pass through the roof and the walls of house No.D-355, D-356 and D-357 abutting street No.300 on its northern boundary.

48. Besides, there is no evidence of any kerosene oil or petrol being detected outside the house of Babu Ram. This also falsifies the defence version that the riotous mob was threatening to burn down the house of Babu Ram.

49. No doubt, FIR Ex.PW-19/D-3 has indeed been registered at 9:10 PM which evidences rioting in D-Block, Jahangir Puri, but therefrom it does not stand proved that the defence version is correct. It is also true that photographs of the house of Babu Ram show that the door of his house has been broken and brick bats have been thrown towards his house.

50. What has happened is evident. After Babu Ram fired indiscriminately and shot dead two persons on the street and injured 26 more on the street i.e. street No.300, it was apparent that the crowd retaliated. The site plan Ex.PW-7/A shows that the houses on the streets of D-Block Jahangir Puri have a front of 10' and a depth of 23'.10". Jahangir Puri is a resettlement colony where slum dwellers have been relocated. Tiny plots admeasuring 10' x 23'.10" have been allotted to the rehabilitated slum dwellers by the government. The population density in the colony is extremely heavy. Huge crowds can gather in densely populated areas within seconds. It is apparent that the angry crowd sought vengeance against Babu Ram after Babu Ram had created mayhem in the area. That 16 rounds were fired by Babu Ram is not disputed by him. By no stretch of imagination can firing of 16 rounds be belittled. If a man fires 16 rounds on a crowd causing death of 2 and injuring 26 others, the crowd is bound to retaliate.

51. From the evidence of the witnesses of the prosecution it is apparent that some quarrel regarding eve teasing had taken place on street No.300 involving the families of Satpal and accused Shri Kishan who is the brother-in-law of Babu Ram. Even the defence witnesses have spoken of an eve-teasing incident. The difference is, as per the defence witnesses the victim of the eve teasing incident was Seema, the daughter of Shri Kishan and as per the prosecution witnesses the aggressors were the family members of Shri Kishan. There is commonality in the testimony of both sets of witnesses that Babu Ram left street No.300 taking along with him his sister Sushila and Seema. The difference in the two versions is regarding the presence of the co-accused. As per the witnesses of the prosecution, some of them have spoken of all co-accused being present at street No.300, with some excluding the presence of co-accused Vijay. It is thus apparent that whatever be the cause of the spat on the public street, Babu Ram retrieved himself safely from the street and reached his house.

52. We have already discounted the defence version, in view of evidence on record, of the crowd following Babu Ram and surrounding his house. We have already held that the evidence establishes indiscriminate firing by Babu Ram on the persons in street No.300 and the fact that his house abuts street No.400 evidences that the firing was not to scare the

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crowd which had surrounded the house of Babu Ram. We have already held that for anyone to be standing on street No.300 it is just not possible to set on fire any house on street No.400. We have already held that by standing on any spot on the roof of Babu Ram's house it was just not possible to shoot any person on street No.300.

53. The inevitable conclusion is, that as claimed by the witnesses of the prosecution, Babu Ram jumped from the roof of his house on to the roof of House No.D-354 of Mangat Ram and standing at the roof of Mangat Ram's house at the spot marked '4' on the site plan Ex.PW-7/A, indiscriminately fired 16 shots, all directed downwards on the persons in street No.300, with specific targets being Mangat Ram and his family members against whom Babu Ram had a grievance of being the sympathizers of Lala Satpal.

54. Besides, the right of self-defence is a self-limiting right and authorizes the person acting in self-defence to use only such force which is reasonable and commensurate with the danger to body or to property. No doubt, defence of a dwelling house stands on a different footing and law has always looked with special indulgence on a man who is defending his dwelling against those who try to unlawfully evict him, for: *the house of everyone is to him as his castle and fortress.*

55. The indiscriminate firing by Babu Ram cannot be justified under any circumstances.

56. The testimony of the witnesses of the prosecution and the defence, though with a difference qua the origin of a spat on the public street, establishes a public spat on a public street involving the families of Shri Krishan and Lala Satpal. The evidence, as held above, establishes that Babu Ram fired from the roof of the house of Mangat Ram and targeted people on street No.300 where the spat between the family members of Shri Krishan and Lala Satpal took place. It is apparent that Babu Ram was led into firing because he learnt of the quarrel going on in street No.300. It is obvious that Babu Ram had come to aid of his sister and his brother-in-law. It is obvious that Babu Ram has acted with vengeance and not to protect himself or his house. It is not the case of Babu Ram that his sister's house or the family members of his sister who were on street No.300 were in danger and he did the firing to protect them.

57. Looked from any angle whatsoever, Babu Ram cannot escape the consequence of his acts.

58. Turning to the incriminatory evidence against the co-accused we find that in his statement Ex.PW-2/A, made soon after the incident, Mangat Ram has not named Vijay, much less ascribed any role to Vijay. Only while deposing in Court, for the first time, Mangat Ram talked about the

presence of Vijay, but has only stated that when Babu Ram fired on being exhorted by Shri Krishan and Sunil, Vijay was seen standing on the roof. Ashok Kumar PW-8 has deposed that when Babu Ram and the other co-accused left street No.300 to go to the house of Babu Ram, on the way Vijay joined them. He ascribes a role to Vijay when Babu Ram fired; role being of exhorting in the company of Ravinder that supporters of Satpal should not be spared. Kashmiri Lal PW-9 does not talk of Vijay's presence on street No.300 or of anything done or spoken of by Vijay. He merely says that he saw Vijay on the roof of Mangat Ram's house when Babu Ram fired. Similarly, even Darshana PW-13 speaks of seeing Vijay on the roof of Mangat Ram's house. Even she does not speak of his presence in street No.300 or of saying or doing anything while standing on the roof of the house of Mangat Ram. Similar is the testimony of Raj Kumar PW-14, pertaining to Vijay as also is the testimony of Sushil Kumar PW-15.

59. We are thus inclined to give the benefit of doubt to Vijay qua whom only one witness of the prosecution has alleged of having participated in the firing. Vijay being an un-officious bystander; simply witnessing the firing cannot be ruled out. In any case, if not a clean acquittal, Vijay is entitled to the benefit of doubt.

60. Qua Sunil, Shri Krishan and Ravinder it has to be noted that Mangat Ram, Ashok Kumar, Kashmiri Lal, Darshana, Crl.A.Nos.962/04, 977/04, 981/04, 14/05 & 61/05

Raj Kumar and Sushil Kumar have categorically deposed that they were present in street No.300 along with Babu Ram. All of them have stated that said three persons left in the company of Babu Ram. The said witnesses have ascribed roles to the three, albeit with a slight variance. The variance is that Mangat Ram, Sushil Kumar and Ashok Kumar claim that Shri Krishan and Sunil exhorted Babu Ram to fire from the roof of his house, Raj Kumar says that Shri Krishan alone exhorted. Similarly, the role ascribed to co-accused Narender is at slight variance in the testimony of the witnesses of the prosecution. But, the slight variations are immaterial.

61. Where there are a large number of accused and a large number of witnesses, it is bound to happen that there would occur variations in the testimony of the witnesses as to which accused exactly did what. The reason is obvious. With the passage of time after an incident takes place, memory fades. The core of the events pertaining to an incident is remembered by the person. At the fringes, memory fades. In the decision reported as Anna Reddy Sambasiva Reddy & Ors. Vs. State of Andhra Pradesh 2009 (6) SCALE 223 it was observed:

“... looking to the nature of the incident where large number of persons attacked D-1, D-2 PW-1, PW-2 and PW-3, it would not have been possible for PW-1 or PW-3 to attribute specific injury individually to each accused. How could it be possible for any person to recount with meticulous exactitude the various individual acts done by each assailant? Had

they stated so, their testimony would have been criticized as highly improbable and unnatural. The testimony of eye-witnesses carries with it the criticism of being tutored if they give graphic details of the incident and their evidence would be assailed as unspecific, vague and general if they fail to speak with precision. The golden principle is not to weigh such testimony in golden scales but to view it from the cogent standards that lend assurance about its trustfulness."

62. In the decision reported as Masalti V. State Of Uttar Pradesh AIR 1965 SC 202 it was observed:

"... Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault."

63. In the decision reported as State of Himachal Pradesh v. Lekh Raj & Anr AIR 1999 SC 3916 the following was observed:-

"Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the

social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of Madhya Pradesh [1981] SCC (Crl.) 676, this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki and Anr. held that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.”

64. The criminal appeals filed by Sunil, Shri Krishan, Ravinder and Babu Ram being Crl.Appeal No.962/2004, Crl.Appeal No.977/2004, Crl.Appeal No.981/2004 and Crl.Appeal No.61/2005 respectively are accordingly dismissed.

65. Crl.Appeal No.14/2005 filed by Vijay is allowed. The conviction of Vijay for the offences punishable under Section 302/34 IPC and Section 307/34 IPC is set aside. He is acquitted of the charges framed against him. Since he is on bail, his bail bond and surety bonds are discharged.

66. Appellant Babu Ram is in jail. Appellants Sunil, Shri Krishan and Ravinder have been admitted to bail pending hearing of their bails. Since the appeals filed by them have Crl.A.Nos.962/04, 977/04, 981/04, 14/05 & 61/05

been dismissed their bail bonds and surety bonds are cancelled. They are directed to surrender and suffer the sentence imposed upon them, which needless to state is to undergo imprisonment for life.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JULY 28, 2009
mm / DHARMENDER