

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

% Date of Decision : SEPTEMBER 18th 2009

+ Crl. Appeal No. 671/2007

SATYAVIR SINGH RATHI Appellant

! Through: Mr. D.C. Mathur, Sr. Adv. with
Mr.R.S. Malik and Mr. Suraj Rath, Adv.
versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with
Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chhabra, Adv.

+ Crl. Appeal No. 723/2007

SHIV KUMAR Appellant

! Through: Mr. B.S. Rana, Adv.
versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with
Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chhabra, Adv.

+ Crl. Appeal No. 789/2007

SUBHASH CHAND Appellant

! Through: Mr. M.K. Singh, Adv.
versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with

Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chabbra, Advs.

+ Crl. Appeal No. 788/2007

ASHOK RANA Appellant

! Through: Mr. G.P. Thareja, Adv.
versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with
Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chabbra, Advs.

+ Crl. Appeal No. 808/2007

TEJ PAL SINGH Appellant

! Through: Mr. D.K. Sharma, Adv.
versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with
Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chabbra, Advs.

+ Crl. Appeal No. 824/2007

KOTHARI RAM Appellant

! Through: Mr. Sanjay srivastava, Adv.
versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with
Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chabbra, Advs.

+	<u>Crl. Appeal No. 825/2007</u>	
#	SUMER SINGH	 Appellant
!	Through: Mr. M.K. Singh and Mr. R.K. Saxena, Advs.	
	versus	
\$	STATE (CBI)	 Respondent
^	Through: Mr. P.P. Malhotra, ASG with Mr.Akshay Bipin, Mr.S.K. Saxena, Mr.Chetan Chawla, Mr.Gaurav Sharma and Mr.Shankar Chabbra, Advs.	
+	<u>Crl. Appeal No. 836/2007</u>	
#	MAHAVIR SINGH	 Appellant
!	Through: Pt. R.K. Naseem, Mr. Nitin Tittal, Mr. Manish Kumar and Mr. Dinesh Sharma, Advs.	
	versus	
\$	STATE (CBI)	 Respondent
^	Through: Mr. P.P. Malhotra, ASG with Mr.Akshay Bipin, Mr.S.K. Saxena, Mr.Chetan Chawla, Mr.Gaurav Sharma and Mr.Shankar Chabbra, Advs.	
+	<u>Crl. Appeal No. 113/2008</u>	
#	SUNIL KUMAR	 Appellant
!	Through: Mr. Zubair Ahmad Khan, Adv.	
	versus	
\$	STATE (CBI)	 Respondent
^	Through: Mr. P.P. Malhotra, ASG with Mr.Akshay Bipin, Mr.S.K. Saxena, Mr.Chetan Chawla, Mr.Gaurav Sharma and Mr.Shankar Chabbra, Advs.	

+ Crl. Appeal No. 686/2007

ANIL KUMAR Appellant

! Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Anurag Jain, Adv.

versus

\$ STATE (CBI) Respondent

^ Through: Mr. P.P. Malhotra, ASG with
Mr.Akshay Bipin, Mr.S.K. Saxena,
Mr.Chetan Chawla, Mr.Gaurav Sharma
and Mr.Shankar Chhabbra, Advs.

* **CORAM:**
HON'BLE MR. JUSTICE B.N.CHATURVEDI
HON'BLE MR. JUSTICE G.S. SISTANI

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

: **B.N.CHATURVEDI, J.**

1. These appeals are directed against a common judgment of conviction dated 16th October, 2007 and order of sentence dated 24th October, 2007 passed by the Court of an Additional Sessions Judge, Delhi. The appellants were held guilty and convicted under various heads of charges and sentenced therefor. Each one of the appellants were convicted and sentenced thus:-

Name of Appellant	Offence for which convicted	Sentence awarded
Satyavir Singh Rathi, ACP, Delhi Police	Under Sections 120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC, 193 IPC, 201/34 IPC and 203/34 IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/- Under Section 193 IPC—rigorous imprisonment for 7 years and a fine of Rs.100/- Under Section 201 IPC—rigorous imprisonment for 7 years and a fine of Rs.100/- Under Section 203 IPC—rigorous imprisonment for 2 years.

Anil Kumar, Inspector of Police, Delhi Police	Under Sections 120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC, 193 IPC, 201/34 IPC and 203/34 IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/- Under Section 193 IPC—rigorous imprisonment for 7 years and a fine of Rs.100/- Under Section 201 IPC—rigorous imprisonment for 7 years and a fine of Rs.100/- Under Section 203 IPC—rigorous imprisonment for 2 years.
Ashok Rana, Sub-Inspector of Police, Delhi Police	Under Sections 120B IPC, 302 IPC read with 120B IPC, 307 IPC read	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/-

	with 120B IPC, 193 IPC read with 120B IPC	Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-
Shiv Kumar, Head Contable, Delhi Police	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-

TajPal Singh, Head Constable, Delhi Police	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-
Mahavir Singh, Head Constable, Delhi Police	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7

			years and a fine of Rs.100/-
Sumer Singh, Constable, Police	Delhi	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-
Subhash Chand, Constable Police	Delhi	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC

		read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-
Sunil Kumar, Constable, Delhi Police	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-
Kothari Ram, Constable, Delhi Police	120B IPC, 302 IPC read with 120B IPC, 307 IPC read with 120B IPC, 193 IPC read with 120B IPC	Under Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 302 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/- Under Section 307 IPC read with Section 120B IPC—imprisonment for life and a fine of Rs.100/-

		Rs.100/- Under Section 193 IPC read with Section 120B IPC—rigorous imprisonment for 7 years and a fine of Rs.100/-
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2. All the substantive sentences of imprisonment were directed to run concurrently.

3. The trial culminating into aforesaid convictions and sentence pertains to an infamous case known as **C.P. Shootout** case wherein two innocent lives were lost and the third one had a providential escape with grievous gunshot injuries due to indiscriminate firing by a contingent of policemen. On the fateful day of 31st March, 1997, Jagjit Singh (deceased) and Tarunpreet Singh (injured), hailing from Kurukshetra (Haryana), came to Delhi to meet one Pradeep Goyal (deceased) at his office situate at Patparganj near Mother Dairy booth, at about 12.00-1.00 p.m. Pradeep Goyal (deceased) was, however, not there in his office and the same was found closed. Jagjit Singh (deceased) contacted Pradeep Goyal (deceased) on his phone. Pradeep Goyal informed him that he would be reaching his office shortly. Jagjit Singh (deceased) and

Tarunpreet Singh (injured) decided to take their lunch and then purchased some ice-cream from Mother Dairy and whiled away in a park waiting for Pradeep Goyal (deceased) to arrive. Their wait came to an end when they noticed Pradeep Goyal (deceased) reaching his office around 1.30 p.m. Pradeep Goyal had some work at Dena Bank, Connaught Place, New Delhi. He set out in his blue coloured Maruti Esteem car bearing No. UP-14F-1580 for Dena Bank, Connaught Place, New Delhi. Jagjit Singh (deceased) and Tarunpreet Singh (injured) accompanied Pradeep Goyal (deceased) in his car.

4. One Mohd. Yaseen, a hardcore criminal, was wanted by Delhi Police on account of his involvement in some criminal cases. Inter-State Cell of Crime Branch, Delhi Police was keeping a track on him and gathering information on his movement by intercepting calls being made by him from his mobile phone. Inspector Ram Mehar of Inter-State Cell, Crime Branch, Delhi Police was doing this job and passing on information gathered by him to the appellant, ACP Satyavir Singh Rathi. On the basis of an information to the effect that said Mohd. Yaseen would be visiting a place near Mother Dairy, Patparganj, Delhi on 31st

March, 1997 around 1.30 p.m., appellant, Inspector Anil Kumar was detailed by appellant, ACP Satyavir Singh Rathi to keep a watch at the aforesaid place where Mohd. Yaseen was expected to visit.

5. Inspector Anil Kumar acted accordingly. He on noticing Jagjit Singh (deceased) being present near Mother Dairy, Patparganj, Delhi mistook him as Mohd. Yaseen and started trailing the blue coloured Maruti Esteem car being driven by Pradeep Goyal (deceased) wherein Jagjit Singh (deceased) and Tarunpreet Singh (injured) were seated and were heading for Connaught Place. Anil Kumar while following the said Esteem car in a private Maruti car sought reinforcement as at the relevant time he was being accompanied by only two police officials, namely, Head Constable Shiv Kumar and Constable Sumer Singh-appellants. ACP Satyavir Singh Rathi was at that time present in his office of the Inter-State Cell, Crime Branch, Chanakypuri. On receiving the call from Inspector Anil Kumar, ACP Satyavir Singh Rathi briefed the police staff present in the office and told them that two young persons had been spotted near Mother Dairy, Patparganj, Delhi and one of them, a bearded person, resembled to Mohd. Yaseen,

a wanted criminal. ACP Satyavir Singh Rathi, after giving necessary instructions to his police staff and requiring them to accompany him, proceeded to Connaught Place, New Delhi. The police staff accompanying him included SI Ashok Rana, Head Constable Shiv Kumar, Head Constable Tejpal Singh, Head Constable Mahavir Singh, Constable Sumer Singh, Constable Subhash Chand, Constable Sunil Kumar and Constable Kothari Ram-appellants in addition to SI A. Abbas, ASI Shamsuddin, Head Constable Srikrishna, Constable Om Niwas and Constable Bahadur Singh. ACP Satyavir Singh Rathi, accompanied by the aforesaid 12 police personnel, left Inter-State Cell, Chanakyapuri at 1.32 p.m. to assist the police team led by Inspector Anil Kumar. Barring Head Constable Srikrishna and Constable Om Niwas, all the said police officials, including ACP Satyavir Singh Rathi, were armed with service weapons. Inspector Anil Kumar, Head Constable Shiv Kumar and Constable Sumer Singh were also carrying their service weapons. The details of service weapons possessed by respective police officials are thus:-

- | | | |
|------|--------------------------|-----------------------|
| (i) | ACP Satyavir Singh Rathi | 9MM Pistol No. 0592 |
| (ii) | Insp. Anil Kumar | .38 Revolver No. 1147 |

(iii)	SI Ashok Rana	.38 Revolver No. 1139
(iv)	SI A. Abbas	.38 Revolver No. 1114
(v)	ASI Shamsuddin	.38 Revolver No. 1112
(vi)	HC Shiv Kumar	.38 Revolver No. 1148
(vii)	HC Mahavir Singh	.38 Revolver No. 0518
(viii)	HC Tej Pal	.38 Revolver No. 1137
(ix)	Ct. Sunil Kumar	SAF carbine
(x)	Ct. Subhash Chand	.38 Revolver No. 1891
(xi)	Ct. Kothari Ram	AK-47 No. 5418
(xii)	Ct. Bahadur Singh	AK-47 No. 2299
(xiii)	Ct. Sumer Singh	.38 Revolver No. 1906

6. The Maruti Esteem car, on reaching Connaught Place, New Delhi stopped near Dena Bank, Connaught Place at about 2.00 p.m. Inspector Anil Kumar who had been following the Maruti Esteem car, also reached there and parked his car behind the Maruti Esteem car. Pradeep Goyal (deceased) got down from his car, leaving behind Jagjit Singh (deceased) and Tarunpreet Singh (injured) in the car itself. Jagjit Singh (deceased) on being so required by Pradeep Goyal (deceased) occupied the driver's seat so as to avoid his car being towed away by the police from that

place. Pradeep Goyal (deceased) proceeded towards Dena Bank where two of his employees, namely, Vikram and Rajiv were already waiting for him outside the bank. All the three thereafter went inside the bank. Pradeep Goyal (deceased) sent for his briefcase and his employee, Vikram, came to Maruti Esteem car to collect the same. Tarunpreet Singh accompanied Vikram to the bank with the briefcase of Pradeep Goyal. Jagjit Singh (deceased) kept on sitting alone on driver's seat. Pradeep Goyal came out of the bank around 2.30 p.m. and after giving some instructions to his said employees, sat in his Maruti Esteem car on the front seat while Jagjit Singh (deceased) continued to occupy the driver's seat. Tarunpreet Singh got seated on the back seat. The police party led by ACP Satyavir Singh Rathi had in the meantime reached Connaught Place to reinforce the police party led by Inspector Anil Kumar. Both the parties thus joined each other there under the command of ACP Satyavir Singh Rathi. The Maruti Esteem car had, in the meanwhile, started moving towards Barakhamba Road Crossing and when it reached Barakhamba Road Crossing, the same had to be stopped in view of traffic lights turning red. Immediately, the Maruti Esteem car was surrounded by the

police personnel, in plain clothes and they resorted to indiscriminate firing from all sides on the Esteem car from their service weapons causing thereby death of Pradeep Goyal and Jagjit Singh due to gunshot injuries and grievous injuries to Tarunpreet Singh. All the three occupants of Maruti Esteem car were removed to RML Hospital in a PCR Gypsy. Pradeep Goyal and Jagjit Singh were declared by the doctor concerned as brought dead.

7. On receiving information in regard to the shootout incident, Inspector Niranjan Singh, the then SHO of Police Station Connaught Place, rushed to the spot. Other senior police officials also reached the place of incident in the meantime. On inspection of the Maruti Esteem car, Inspector Niranjan Singh allegedly recovered a 7.65 mm pistol loaded with 7 live cartridges in addition to a misfired cartridge in the barrel from inside the car and took the same into his possession. Besides, two empties lying inside the car were also seized.

8. Inspector Anil Kumar handed over a written complaint in regard to the incident to Inspector Niranjan Singh, who in turn sent the same to Police Station Connaught Place with his endorsement thereon, for

registration of a case on that basis and accordingly an FIR No. 448/97 under Section 186/353/307 IPC and Section 25 Arms Act was registered against the inmates of the Esteem car. While stating the background facts in his complaint, according to Inspector Anil Kumar, on Maruti Esteem car stopping at red light signal of Barakhamba Road Crossing, the same was surrounded from all sides by the police personnel and he thumped at driver's side front door of the car, asking the occupants to come out. However, the inmates of the car omitted to respond to Anil Kumar's direction and instead Jagjit Singh (deceased) started firing from inside the car resulting into gunshot injury to Constable Sunil Kumar, appellant. In their self-defence, it is added, the police personnel reacted by opening fire on the Esteem car as also with a view to immobilize and prevent the occupants of the Esteem car from escaping. In the course of cross firing, Constable Subhash Chand, appellant also suffered gunshot injuries on his person.

9. On the next day, on a complaint by one Shri Dinesh Chand Gupta, father-in-law of Pradeep Goyal (deceased), forwarded by the office of the Lieutenant Governor, Delhi, another FIR No. 453/97 under Section 302/34 IPC was

registered at Police Station Connaught Place, New Delhi on 1st April, 1997 against the police officials. In the complaint so filed, it was alleged that the appellants had immediately, on surrounding the Esteem car, resorted to indiscriminate firing on it from all sides as a result of which, Pradeep Goyal and Jagjit Singh received fatal gunshot injuries and succumbed to such injuries while Tarunpreet Singh sustained grievous gunshot injuries.

10. Initially, the investigation in regard to the incident was carried out by Inspector Niranjan Singh of Police Station Connaught Place, New Delhi, but the same was later taken over by the CBI pursuant to a Government of India, Ministry of Home Affairs' letter No. 14036/46/97-UTP dated 1st April, 1997. On transfer of investigation of the case, RC No.10(S)/97-SIU.V and RC No.11(S)/97-SIU.V, corresponding to the said two FIRs, were registered by CBI/SPE. As both the FIRs related to the same incident, the same were investigated jointly. The CBI on investigation came to a conclusion that the police party under the leadership of ACP Satyavir Singh Rathi and Inspector Anil Kumar had fired upon the Esteem car without any provocation whatsoever, and that the FIR No. 448/97 dated 31st March, 1997 (RC

No.11(S)/97-SIU.V) was got registered at Police Station Connaught Place, New Delhi only with a view to cover up the incident and to justify the killings. Based on the evidence collected by it in the course of investigation, the CBI found that the police party was actually not fired upon from inside the Maruti Esteem car by the person sitting on the driver's seat as mentioned in FIR No. 448/97 dated 31st March, 1997 lodged by Inspector Anil Kumar. Further, the claim of two Constables forming part of the police party sustaining gunshot injuries as a result of firing from inside the Esteem car was also found to be false. The investigation revealed that 7.65 mm pistol and 7 live cartridges, apart from one misfired cartridge lodged in the barrel and two empties, shown as recovered from inside the car were actually planted subsequently and false records prepared by the police party with a view to screening themselves from legal punishment.

11. On completion of investigation in RC No.10(S)/97-SIU.V and RC No.11(S)/97-SIU.V, a chargesheet was filed before the Court of Chief Metropolitan Magistrate on 13th June, 1997. The learned Chief Metropolitan Magistrate eventually took cognizance of the offences punishable under Section 302/307/201/34 IPC against the appellants vide his

order dated 10th July, 1997. On case being committed to the Court of Sessions, the learned Additional Sessions Judge framed formal charges under various heads against the appellants. For facility of a ready reference, the charges so framed, are reproduced as hereunder:-

“Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Satyavir Singh Rathi s/o late Shri Kaley Singh; (2) Anil Kumar s/o Shri Mahender Singh; (3) Ashok Rana s/o Shri Ram Pal Singh Rana; (4) Shiv Kumar s/o Mehar Singh; (5) Tej Pal Singh, s/o Jile Singh (6) Mahavir Singh s/o Chiman Singh; (7) Sumer Singh s/o Rati Ram; (8) Subhash Chand s/o Shri Chandan Singh; (9) Sunil Kumar s/o Ved Prakash; (10) Kothari Ram, s/o Shri Bhagwan as follows:-

That you all on or before 31.3.97 at Delhi agreed to do an illegal act i.e. to kill suspected criminal Mohd. Yaseen r/o Aligarh and his associates and wanted in various criminal cases, including in case FIR No. 759/96 u/s 365/397/302/120B IPC Police Station Haus Khas and that the act of killing was to be done in pursuance of the agreement of all of you and thereby committed an offence punishable u/s 120B IPC and within my cognizance.

And I hereby direct that you all be tried by this court on the aforesaid charge.

Sd/-

Dated: 18/9/1998

ASJ/N.Delhi

Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Satyavir Singh Rathi s/o late Shri Kaley Singh; (2) Anil Kumar s/o Shri Mahender Singh; (3) Ashok Rana s/o Shri Ram Pal

Singh Rana; (4) Shiv Kumar s/o Mehar Singh; (5) Tej Pal Singh, s/o Jile Singh (6) Mahavir Singh s/o Chiman Singh; (7) Sumer Singh s/o Rati Ram; (8) Subhash Chand s/o Shri Chandan Singh; (9) Sunil Kumar s/o Ved Prakash; (10) Kothari Ram, s/o Shri Bhagwan as follows:-

That on 31.3.97 at about 2.30 PM at Traffic Signal Barakhamba Road Crossing near Statesmen Building within the jurisdiction of Police Station Connaught Place you all in pursuance of criminal conspiracy to kill suspected criminal Mohd. Yaseen and his associates committed murder by intentionally or knowingly causing the death of Jagjit Singh and Pardeep Goyal and thereby committed an offence punishable u/s 302 read with section 120-B IPC and within my cognizance.

Secondly, on the aforesaid date, time and place in pursuance of criminal conspiracy of all of you to kill suspected criminal Mohd. Yaseen and his associates caused bullet injuries on the person of Tarun with such intention or knowledge and under such circumstances that if by that act you had caused the death of Tarun, you all would have been guilty of murder and thereby committed an offence punishable u/s 307 read with section 120-B IPC and within my cognizance.

Thirdly, that on the aforesaid date, time and place you all in furtherance of criminal conspiracy of all of you planted an Italian pistol No. 3685 of 7.65 mm loaded with one live cartridge and seven live cartridges in a match box into Maruti Esteem car bearing No. UP-14F-1580 in which the deceased Jagjit Singh and Pradeep Goyal and injured Tarun were travelling at the time of the incident and you did so to create evidence against the deceased while fully knowing and believing it to be false and thus fabricated false evidence against the occupants of the said car that they were carrying fire arms and had fired shots upon the police party and thereby committed the offence punishable u/s 193 read with section 120-B IPC and within my cognizance.

And I hereby direct that you all be tried by this

court on the aforesaid charges.

Alternative charge

That on 31.3.97 at about 2.30 PM at Traffic Signal Barakhamba Road Crossing near Statesmen Building within the jurisdiction of Police Station Connaught Place you all in furtherance of the common intention of you all to kill suspected criminal Mohd. Yaseen and his associates committed murder by intentionally or knowingly causing the death of Jagjit Singh and Pardeep Goyal and thereby committed an offence punishable u/s 302 read with section 34 IPC and within my cognizance.

Secondly, on the aforesaid date, time and place in furtherance of common intention to kill suspected criminal Mohd. Yaseen and his associates caused bullet injuries on the person of Tarun with such intention or knowledge and under such circumstances that if by that act you had caused the death of Tarun, you all would have been guilty of murder and thereby committed an offence punishable u/s 307 read with section 34 IPC and within my cognizance.

Thirdly, that on the aforesaid date, time and place you all in furtherance of criminal conspiracy of all of you planted an Italian pistol No. 3685 of 7.65 mm loaded with one live cartridge and seven live cartridges in a match box into Maruti Esteem car bearing No. UP-14F-1580 in which the deceased Jagjit Singh and Pradeep Goyal and injured Tarun were travelling at the time of the incident and you did so to create evidence against the deceased while fully knowing and believing it to be false and thus fabricated false evidence against the occupants of the said car that they were carrying fire arms and had fired shots upon the police party and thereby committed the offence punishable u/s 193 read with section 34 IPC and within my cognizance.

Dated: 18/9/1998

Sd/-
ASJ/N.Delhi

Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Satyavir Singh Rathi s/o late Shri Kaley Singh; (2) Anil Kumar s/o Shri Mahender Singh as follows:-

That you both in furtherance of the common intention on 31.3.97 at Traffic Signal Barakhamba Road Crossing within the jurisdiction of Police Station Connaught Place with intend to cause injury to Jagjit Singh and Pardeep Goyal and Tarun with having committed an offence as mentioned in case FIR No. 448/97 u/s 186/353/307 IPC and 25/27 Arms Act Police Station Connaught Place while knowing at the time that there was no just or lawful ground for such a criminal proceeding against the said Jagjit Singh, Pradeep Goyal and Tarun and that you thereby committed an offence punishable u/s 211 read with section 34 IPC and within my cognizance.

And I hereby direct that you both be tried by this court on the aforesaid charges.

Sd/-

ASJ/N.Delhi

Dated: 18/9/1998

Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Satyavir Singh Rathi s/o late Shri Kaley Singh as follows:-

That you submitted a false report about the shootout incident which took place on 31.3.97 at about 2.30 PM at Traffic Signal Barakhamba Road Crossing within the jurisdiction of Police Station Connaught Place to your higher police officers and that you fabricated the report after the registration of the FIR No. 448/97 u/s 186/353/307 IPC and section 25/27 Arms Act Police Station Connaught Place on the complaint of your co-accused Inspector Anil Kumar and you did so, so that higher

authorities could form an erroneous opinion of the incident and the same could be used against the deceased Jagjit Singh and Pradeep Goyal and injured Tarun, who were travelling in Car No. U.P.-14F-1580 at the time of the said incident and thereby committed an offence punishable u/s 193 IPC and within my cognizance.

And I hereby direct that you be tried by this court on the aforesaid charges.

Sd/-

ASJ/N.Delhi

Dated: 18/9/1998

Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Anil Kumar s/o Shri Mahender Singh; (2) Satyavir Singh Rathi s/o late Shri Kaley Singh as follows:-

That you both on 31.3.97 at Traffic Signal Barakhamba Road Crossing within the jurisdiction of Police Station Connaught Place in furtherance of your common intention knowingly or having reason to believe that the offence of murder and attempt to murder punishable with capital punishment and life imprisonment having been committed, did cause evidence of the said offence to disappear and intentionally gave false information of the shootout incident to the police authorities with the intention of screening the offenders i.e. both of you and your co-accused Ashok Rana, Shiv Kumar, TejPal Singh, Mahavir Singh, Sumer Singh, Subhash Chand, Sunil Kumar and Kothari Ram from legal punishment and thereby committed the offence punishable u/s 201 read with Section 34 IPC and within my cognizance.

And I hereby direct that you both be tried by this court on the aforesaid charges.

Sd/-

ASJ/N.Delhi

Dated: 18/9/1998

Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you (1) Satyavir Singh Rathi s/o late Shri Kaley Singh; (2) Anil Kumar s/o Shri Mahender Singh as follows:-

That you both in furtherance of your common intention knowing or having reason to believe that on 31.3.97 at Traffic Signal Barakhamba Road, Connaught Place the offences of murder and attempt to murder were committed by you and your co-accused Ashok Rana, Shiv Kumar, TejPal Singh, Mahavir Singh, Sumer Singh, Subhash Chand, Sunil Kumar and Kothari Ram gave false information on 31.3.97 at Delhi respecting the said offences in the form of FIR No.448/97 for the offences punishable u/s 186/353/307 IPC Police Station Connaught Place which you know or believed to be false and thereby committed an offence punishable u/s 203 read with Section 34 IPC and within my cognizance.

And I hereby direct that you both be tried by this court on the aforesaid charges.

Sd/-

Dated: 18/9/1998

ASJ/N.Delhi

Charge

State Vs. Satyavir Singh Rathi etc.

I B.B. Chaudhary, Addl. Sessions Judge, New Delhi hereby charge you Anil Kumar s/o Shri Mahender Singh as follows:-

That on 31.3.97 at about 1.00 PM at Crime Branch Office, Chanakiya Puri, New Delhi you made false entry in the daily diary of the office about receiving an information from an informer that suspected criminal Yaseen would go to a place near Mandawali Patpat Ganj Road outside Mother Dairy in blue colour Esteem car at about 1.30 PM to receive one of his associates who had arrived from out of station and that Yaseen would take him to a secret place and that later on after the shootout

incident at the traffic signal, Barakhamba Road at about 2.30 PM on 31.3.97 in which Jagjit Singh and Pradeep Goyal were killed and Tarun received bullet injury, you used the information, recorded in the above said daily dairy also for lodging false complaint for the registration of FIR No.448/97 u/s 186/353/307 IPC and section 25/27 Arms Act Police Station Connaught Place and thus you knowingly fabricated false facts so that authority could form an erroneous opinion that could use the same against the occupants of Car No. U.P.-14-F-1580 and thereby you committed the offence punishable u/s 193 IPC and within my cognizance.

And I hereby direct that you be tried by this court on the aforesaid charge.

Dated: 18/9/1998

Sd/-
ASJ/N.Delhi”

12. The trial encompasses affirmations by 74 prosecution witnesses, supplemented and complemented by documentary input. Based on the evidence, the learned Trial Court held the appellants guilty under various heads of charges to convict and sentence them, as mentioned at the outset.

13. Shri D.C. Mathur, Senior Advocate appearing for the appellant S.S. Rathi in Criminal Appeal No. 671/2007 assailing the impugned conviction and sentence of the appellant under Section 120B IPC contended that the chargesheet did not make mention of any criminal conspiracy being hatched by the appellants for commission of the alleged offences rather the offences under Section 302/307 and 201

IPC were stated to have been committed only in furtherance of the appellants' common intention. It was pointed out that even the Court of learned CMM before whom the chargesheet was filed proceeded to take cognizance of the offences under Section 302/307/201 IPC with the aid of Section 34 IPC only and not under Section 120B IPC vide its order dated 10th July, 1997. Shri Mathur argued that to find the appellant guilty of a criminal conspiracy, there had to be some evidence to prove meeting of mind and physical manifestation of agreement on the part of the appellants to commit illegal acts as complained of. It was pointed out by Shri Mathur that the appellant had reached the scene of crime at a later point of time after the firing at blue Maruti Esteem car had stopped and that there being no evidence that the firing resorted to by other appellants was under his supervision and command, he could not have been held guilty as a co-conspirator. Moreover, argued Shri Mathur, no question in regard to his being a party to any criminal conspiracy inviting his attention to the circumstantial evidence, if any, to prove this fact was put to the appellant, in the course of his examination under Section 313 Cr.P.C. and, therefore, no incriminating circumstantial evidence, if any, could be taken into account to

hold him guilty of being a co-conspirator. Referring to recovery of a 7.65 mm Italian pistol loaded with 7 live cartridges, besides a misfired one, and two empty cartridge cases, from inside the Esteem car, Shri Mathur contended that in the face of firing from inside the Esteem car resulting into gunshot injuries to two of the appellants, other appellants forming part of the police party reacted by firing at the Esteem car in their self-defence. Shri Mathur pointed out that the CFSL report confirms that the 7.65 mm Italian pistol had been fired through. The finding of the learned Trial Court in regard to the plantation of the Italian pistol was questioned on the plea that since possession precedes plantation and as the prosecution has failed to produce any evidence identifying person who was in possession of the Italian pistol and the cartridges—live and empty ones—the learned Trial Court was not justified in returning a finding that the presence of the Italian pistol with cartridges—live and empty—was attributable to plantation thereof by the appellants at a later point of time. Shri Mathur particularly referred to the photographs Ex.P-2, P-6 and P-14 in support of his contention that absence of windowpane on driver's side front door and presence of two exit holes on the front windscreen,

as reflected from CFSL report, recovery of two empty cartridge cases from inside the car as also the Ballistic Expert's opinion that the Italian pistol recovered from the car had been fired through, coupled with the gunshot injuries sustained by two of the appellants, namely, Constable Sunil Kumar and Constable Subhash Chand, amply probablise the defence plea that shots had been fired from the Italian pistol from inside the car necessitating simultaneous counter firing by the appellants, barring ACP S.S. Rathi and Inspector Anil Kumar. It was pointed out that the evidence being relied upon by the prosecution in the form of photographs or statements of witnesses to prove that the driver side front door windowpane of the Esteem car was intact after the firing incident, was not put to any of the appellants in the course of their examination under Section 313 Cr.P.C. and, therefore, the evidence, if any, in this regard could not be used to arrive at a finding that there was no firing from inside the car. In any case, argued Shri Mathur, as the appellant (ACP S.S. Rathi) was neither a party to alleged criminal conspiracy nor the firing by co-convicts was attributable to him, he could not be held guilty and punished for killing of the said two persons and gunshot injuries to the third one. Maintaining that the counter-firing

by his convicts was triggered in view of shots being fired from inside the Esteem car, Shri Mathur contended that the appellant did not mis-state the facts related to the incident in his report and thus his conviction u/s 193 IPC was unfounded, hence unsustainable.

14. In regard to the charge and his conviction under Section 203 IPC read with Section 34 IPC of the appellant, it was contended by Shri Mathur that the FIR No.448/97 under Section 186/353/34/307 IPC was registered at Police Station Connaught Place, New Delhi on a complaint by Inspector Anil Kumar, for which he (the appellant) could not be held liable and punished.

15. Lastly, Shri Mathur contended that the prosecution of the appellant was bad as the sanction under Section 197 Cr.P.C. for the appellant's prosecution was accorded by the Lieutenant Governor, Delhi in a mechanical way without application of his mind. To support his plea in this respect, Shri Mathur pointed out that all the material, including CFSL report, were not made available to the sanctioning authority and thus the Lieutenant Governor was not in a position to apply his mind properly before sanctioning the prosecution.

16. Shri Sandeep Sethi, Senior Advocate, representing

Inspector Anil Kumar-appellant questioned the impugned conviction and sentence of the appellant under Section 120B IPC by contending that as the prosecution did not produce any evidence in regard to existence of any criminal conspiracy and also as the evidence, if any, available on record pertaining to criminal conspiracy was not put across to the appellant by questioning him in that respect while recording his statement under Section 313 Cr.P.C. the learned Trial Court was not justified in finding the appellant as a party to the alleged criminal conspiracy. According to Shri Sethi, the role of the appellant came to an end after thumping at driver's side door as he did not join his co-convicts in firing at the Esteem car. It was contended that in the absence of any evidence that the firing resorted to by his co-convicts was commanded by the appellant, he could not be held liable for the acts of his co-convicts. Shri Sethi submitted that according to the statements u/s 313 Cr.P.C. of the 7 co-convicts, the firing at Esteem car was ordered by ACP Rathi and if the stand so taken by the co-convicts is taken into account, it is clear from record that inspite of such a direction by his superior officer, the appellant did not join his said 7 co-convicts in firing at the car. It was pointed out by Shri Sethi that the evidence on

record clearly indicated that it was ACP S.S. Rathi who was overall in-charge of the entire operation and he (Inspector Anil Kumar) as also other appellants were placed under his overall supervision and control and, therefore, for any offence committed by other appellants, he could not be held liable and punished therefor. Shri Sethi further contended that even though alternative charges under Sections 302/307 and 193 IPC read with Section 34 IPC were framed against all the appellants, none of them, including the present appellant, was convicted on such alternative charges with the aid of Section 34 IPC and thus they would be deemed to have been acquitted of these charges and as no appeal against such acquittal has been filed by the State, the same has attained finality and in the circumstances, on prosecution failing to defend the impugned conviction of the appellants under Section 120B IPC or with the aid of Section 120B IPC, their conviction cannot be converted into one under the alternative charges with the aid of Section 34 IPC. To support his contention, Shri Sethi relied upon a decision of the Supreme Court in **“Thiru Sudali @ Madasamy v. State of T.N.”, (1999) 9 SCC 88.**

17. The conviction of the appellant under Section 193

read with Section 120B IPC was challenged on the plea that without the learned Trial Court recording a definite finding as to who had planted the pistol, it was not justified in convicting all the appellants. For yet another conviction under Section 193 IPC for lodging a false report with the police, it was argued that on the basis of FIR registered on the complaint of the appellant, based on investigation, no closure or cancellation report was submitted by the CBI nor the case based on such report was sent for trial and yet the appellant has been convicted on the said charge. Lastly, Shri Sethi assailed the impugned conviction and sentence on the ground that in the absence of sanction under Section 140 of the Delhi Police Act where the prosecution is instituted after expiry of period of three months, no cognizance of the offences for which the appellant was charged could have been taken in view of bar of limitation and the trial could not have proceeded in the absence of such a sanction. According to Shri Sethi, though a plea in this regard was raised before the learned Trial Court, it was wrongly treated as one related to a sanction under Section 197 Cr.P.C. Shri Sethi contended that prosecution of the appellants required a separate sanction under Section 140 of the Delhi Police Act even if

necessary sanction under Section 197 Cr.P.C. had been accorded by the competent authority. In this connection a Single Bench decision of this Court in **“Rajender Saini and Anr. (Inspector) v. State”, 121(2005) Delhi Law Times 595** was relied upon.

18. Shri M.K. Singh, Advocate appearing for appellants Subhash Chand, Tej Pal Singh, Kothari Ram and Sumer Singh in Criminal Appeals No.789/2007, 808/2007, 824/2007, 825/2007 submitted that in regard to the incident, two separate FIRs bearing RC No.10(S)/97-SIU.V and RC No.11(S)/97-SIU.V were registered by the CBI, but both these cases were investigated by the same Investigating Officer. According to him, the investigation in respect of these FIRs should have been conducted separately, for the sake of a fair investigation, by different Investigating Officers. The learned counsel felt that the defence plea of the appellants was adversely impacted as the Investigating Officer acting in a slip shod manner failed to carry out a proper investigation to unravel the truth regarding the manner in which the incident actually took place. It was further argued that the chargesheet itself discloses that an Italian pistol of 7.65 mm bore containing 7 live cartridges and one misfired cartridge

entangled in the barrel, in addition to two empties, were recovered from inside Esteem car and in the absence of any positive evidence in this regard, there was no legal basis to record a finding that the same had been planted and thus the finding of the learned Trial Court in this respect is unfounded. It was also argued that the appellants were not confronted with the evidence, if any, in regard to their being party to the alleged criminal conspiracy or about plantation of the pistol with cartridges and two empties or in respect of the windowpane on driver's side front door being intact, in the course of their examination under Section 313 Cr.P.C. and hence the evidence, if any—direct or circumstantial—could not have been used by the learned Trial Court to record the adverse findings in these respects. Shri Singh pointed out that the fingerprints of the appellants sent to CFSL for examination did not match with the fingerprints available on the pistol. He questioned the bona fides of Investigating Officer in omitting to send the fingerprints of the inmates of the car for comparison with the fingerprints on the pistol. Lastly, referring to Section 140 of the Delhi Police Act, learned counsel contended that no cognizance of the offences, as mentioned in the chargesheet, could have been taken initially

by the Court of Chief Metropolitan Magistrate and subsequently on committal of the case by the Court of Sessions for want of a sanction under that provision. The learned counsel citing a decision of the Supreme Court in **“Jamuna Singh and Ors. v. Bhadai Shah”, AIR 1964 SC 1541** argued that in a case where a chargesheet is filed without the copies of statements under Section 161 Cr.P.C. of the witnesses and is thus incomplete, institution of the chargesheet would be on the date of cognizance. In this connection, the learned counsel also made a reference to Section 173(5) Cr.P.C. Further, the validity of the sanction for prosecution under Section 197 Cr.P.C. was questioned on the ground that the same was accorded without a proper application of mind and thus being vitiated on that account.

19. Shri G.P. Thareja, Advocate representing SI Ashok Rana-appellant in Criminal Appeal No. 788/2007 pointed out that though the appellant had fired three shots from his .38 revolver, none of the inmates of the car had suffered injuries from the shots so fired. It was contended that the appellant joined other appellants in firing at the Esteem car in obedience to the command of his superior officer. Shri Thareja submitted that the appellant did not wish to press the

stand taken by him in his statement under Section 313 Cr.P.C. that in resorting to firing he acted in exercise of his right of private defence. Shri Thareja contended that in the circumstances in which this appellant joined his 7 co-convicts in firing at the Esteem car, he cannot be held to have committed any offence, in view of protection available to him under Section 76 of IPC which was not at all kept in view by the learned Trial Court while considering his defence plea. It was further contended by Shri Thareja that neither chargesheet nor sanction under Section 197 Cr.P.C. mentioned about existence of any criminal conspiracy and it was only at the time of framing the charges by the Court of learned Additional Sessions Judge that a case to that effect was brought into play. He added that no cognizance under Section 120B IPC was taken by the Court of learned Chief Metropolitan Magistrate, Delhi on chargesheet being filed before him and he rather took cognizance of the offences under Section 302/307/201 IPC read with Section 34 IPC.

20. It was argued that some of the photographs and the statement of Rajiv Gupta, PW-45 were selectively picked up by the learned Trial Judge to arrive at an erroneous finding that the driver's side front door windowpane was intact.

Comparing the photographs of Esteem car, vide Ex.PW-12/22—PW-12/32, taken at the place of incident on 31st March, 1997 with the photographs PW-64/13—PW-64/17 snapped on 1st April, 1997 at Police Station Connaught Place, the learned counsel contended that before the photographs, PW-64/13—PW-64/17 were taken the inner side of the Esteem car had been tampered with and in such a situation, the photographs relied upon by the learned Trial Court could not have been made the basis to find that driver's side front door windowpane was intact. Shri Thareja contended that Rajiv Gupta-PW-45 being an interested witness, his testimony in regard to the condition of driver's side front door windowpane could not have been accepted without corroboration. Moreover, it was argued that no specific questions under Section 313 Cr.P.C. regarding the photographs that were relied upon by the learned Trial Court, except question number 30 making a fleeting reference about the photographs, was put to the appellant which precluded it from accepting the same in evidence to arrive at the aforesaid finding. It was further contended that in view of no question being put across under Section 313 Cr.P.C. in regard to alleged plantation of the Italian pistol and cartridges (live and

empty), the learned Trial Court could not have used this evidence against the appellant to adjudge him guilty therefor. Shri Thareja relied upon a decision of the Supreme Court in **“Brijlala Pd. Sinha, etc. v. State of Bihar” AIR 1998 SC 2443** to drive home his aforesaid point. His contention was that in view of perfunctory questioning regarding incriminating circumstances on which conviction is based either the appellant has to be acquitted of the charges or the case is liable to be remanded to the Trial Court. Shri Thareja with reference to the statements of the photographers from STATESMAN also pointed out that soon after the incident of firing, 90 photographs were taken, but out of them only 14 photographs were picked up by the Investigating Officer which raises a question mark on the fairness of the Investigating Officer as some of the photographs which were not placed on record could have favoured the appellant. Another argument raised by the learned counsel was that the learned Trial Judge was, based on his personal inspection of the Esteem car, not justified in forming an expert opinion regarding existence of driver’s side front door windowpane. Shri Thareja also argued that in the case of appellant, though no sanction under Section 197 Cr.P.C. for his prosecution

was required, and the chargesheet in the present case could have been filed by 30th June, 1997 but as an incomplete chargesheet had been filed, the Court of learned Chief Metropolitan Magistrate could not have taken cognizance of the offences beyond 30th June, 1997 in the absence of any sanction for prosecution under Section 140 of the Delhi Police Act. To support his argument, Shri Thareja has cited a decision of the Supreme Court in **Jamuna Singh's** case (supra).

21. Shri B.S. Rana, Advocate appearing for appellant Shiv Kumar, apart from borrowing and adopting the arguments on criminal conspiracy raised by Shri G.P. Thareja, Advocate for appellant Ashok Rana, argued that the appellant being attached with Inspector Anil Kumar was deputed only to keep a watch on Mohd. Yaseen and his associates. Shri Rana pointed out that as the appellant was not a member of the police party, which was briefed at Inter-State Cell, Chanakyapuri by ACP S.S. Rathi, there was no occasion for him to agree with the other appellants to commit the illegal act of eliminating Mohd. Yaseen and his associates by resorting to firing. It was argued that the appellant had fired only two shots in obedience to the command by his

superior officer without aiming at the inmates of the Esteem car and thus his case is liable to be equated with those police officials who had not joined in firing.

22. Shri R. K. Naseem, Advocate appearing for appellant Mahavir Singh in Criminal Appeal No. 836/2007 submitted that the appellant did not dispute firing a shot from his service weapon. It was, however, added that instead of firing at the Esteem car, this appellant had actually fired in the air in order to prevent the crowd, which had gathered there, from surging ahead, after the shooting incident. Shri Naseem pointed out that the prosecution has relied upon alleged recovery of a lead piece of bullet of .38 bore revolver from the ashes of Jagjit Singh (deceased) to connect the present appellant with firing at the Esteem car and causing a gunshot injury to Jagjit Singh (deceased). Shri Naseem, with reference to evidence on record, questioned the very recovery of such lead piece of bullet from the ashes of Jagjit Singh (deceased) to contend that this recovery was shown with a view to create a false evidence in regard to appellant's involvement in the shootout incident. Shri Naseem addressing on criminal conspiracy aspect, submitted that the prosecution case emanating from the contents of the chargesheet is rather to

the effect that the appellant and his co-convicts resorted to indiscriminate firing at the Esteem car in furtherance of their common intention and not in prosecution of object of any criminal conspiracy as alleged and thus the conviction of the appellant under Section 120B IPC is contrary to the prosecution case, hence unsustainable. Referring to question number 53 put to the appellant in the course of examination under Section 313 Cr.P.C., it was argued by learned counsel that confronting the appellant with the report Ex.PW-42/C was legally unwarranted as the report Ex. PW-42/C lodged by appellant Anil Kumar with Police Station Connaught Place, New Delhi could not have been treated as incriminating evidence to be put to him as he could not be answerable in respect of what Inspector Anil Kumar-appellant had stated in his said report and consequently this report could not be used against him to arrive at a finding that he had joined the other police officials in firing at the Esteem car. Shri Naseem added that site plan Ex. PW-42/L did not show the position of respective appellants at the time of firing at the Esteem car and thus in the absence of any evidence showing his position at the relevant time from which, it could not be inferred that he had joined his co-convicts in firing at the vehicle and thus,

the stand of the appellant has to be accepted. Referring to another site plan Ex. PW-74/7, Shri Naseem contended that the Junior Engineer concerned, who prepared this site plan, having not been examined the document could not be held legally proved and therefore, the same could not be admissible in evidence. He pointed out that in the circumstances, question number 53 in the statement under Section 313 Cr.P.C. of the appellant being based on inadmissible evidence, is inconsequential. Shri Naseem contended that once the recovery of piece of bullet fired from the service weapon of the appellant is held doubtful, the prosecution case that he had fired at the inmates of the car would fall to the ground and the stand taken by the appellant has to be accepted. A decision reported as “**Hate Singh Bhagat Singh v. State of Madhya Bharat**”, 1953 Cri. L.J. 1933 (SC) was cited in support. It was lastly argued that since there is no evidence of meeting of mind even Section 34 IPC would not be attracted and thus the firing by respective appellants represented only an individual act on their part rendering them liable accordingly.

23. Shri Zubair Ahmad Khan, Advocate appearing for appellant Sunil Kumar, in Criminal Appeal No. 113/2008,

contended that there is no positive evidence that this appellant was a party to alleged criminal conspiracy. He pointed out that the appellant being armed with a carbine—a sophisticated weapon—from which 10 shots were fired at, a mere touch of trigger was enough to fire these many shots in seconds. It was argued that the appellant had fired at the vehicle only with a view to immobilize it and to incapacitate the inmates from any possible escape. In the course of incident, it was contended, the appellant himself received a gunshot injury fired from the pistol that was eventually recovered from inside the car and had to be rushed to the hospital. In the context of appellant's conviction under Section 193 IPC, the learned counsel contended on the strength of a decision reported as **“Bijoy Singh and Another v. State of Bihar”, 2003 SCC (Cri) 1093** that where an FIR is got registered by a person and that person later becomes an accused, the FIR lodged by him cannot be admissible in evidence. While questioning the correctness of conviction under Section 120B IPC, the learned counsel argued that the evidence on record does not prove even sharing of a common intention on the part of the appellant in firing at the vehicle to attract application of Section 34 IPC. In support a decision in

“Laxman Anaji Jhundale and Another v. State of Maharashtra”, 2007(3) SCC (Cri) 675 was relied upon.

24. Shri P.P. Malhotra, learned Additional Solicitor General of India, representing CBI, on the other hand, while defending the impugned conviction and sentence concerning respective appellants argued that in terms of report lodged by Inspector Anil Kumar-appellant, the police officials concerned resorted to firing at the Esteem car only on Constable Sunil Kumar, receiving a gunshot injury due to shots fired from inside the Esteem car. Referring to the evidence on record, Shri Malhotra submitted that the shot that caused injury on the person of Constable Sunil Kumar-appellant was actually fired from a .38 bore pistol and not from the 7.65 mm bore Italian pistol recovered from inside the Esteem car. Shri Malhotra in view of this, questioned the plausibility of the defence version that the police officials reacted by resorting to firing at the Esteem car only on Constable Sunil Kumar receiving a gunshot injury on account of firing from inside the car. Supporting the finding on plantation of 7.65 mm bore Italian pistol and cartridges—live and empties—inside the car, Shri Malhotra wondered that had such a pistol been found lying inside the Esteem

car, Inspector Anil Kumar-appellant would have never omitted to make a mention in that respect in his report to the police. Shri Malhotra pointed out that even the photographs taken at the spot soon after the incident did not show the presence of any such pistol inside the car. Shri Malhotra submitted that admittedly ACP S.S. Rathi-appellant headed the police team involved in the shootout and that such police team members were armed with service weapons and as many as 34 shots in all, were fired at the Esteem car from all the sides resulting into fatal gunshot injuries to Pradeep Goyal and Jagjit Singh and grievous gunshot injuries to Tarunpreet Singh. Shri Malhotra questioning the correctness of many shots being fired from inside the car as mentioned in the report lodged by Inspector Anil Kumar-appellant resulting into injuries to appellants Sunil Kumar and Subhash Chand, referred to the CFSL report to point out that the appellants Sunil Kumar and Subhash Chand had in fact sustained gunshot injuries fired from the service weapons carried by Head Constable Tej Pal and Constable Kothari Ram respectively. Shri Malhotra basing his argument, particularly on the photographs Ex.P-2 and Ex.P-14 stressed that the windowpane of front right side

door continued to be intact even after shootout incident. In respect of certain photographs of the Esteem car taken later at the Police Station Connaught Place, New Delhi, Shri Malhotra making specific mention of photographs, PW-64/4, 64/75, 64/76, 64/77, 64/92 pointed out that while the photograph Ex.P-3 taken at the scene of crime showed only shattered windowpane on the left side front door of the Esteem car, the aforesaid photographs taken subsequently at the Police Station indicate that the parts of broken windowpane on left front door were completely missing implying thereby that the Esteem car was tampered with at the Police Station before its aforesaid photographs were taken there. Shri Malhotra argued that splinters of glass panes of all other windows are shown scattered inside and outside the Esteem car, but no similar splinters of glass pane of right front door windowpane are noticeable either inside or outside the car which is also a circumstance that belies the defence version of any shot from inside the Esteem car being fired at the police party. Moreover, he pointed out, even though the CFSL report mentions that the Italian pistol of 7.65mm bore shown recovered from inside the Esteem car had been fired through, the Ballistic Expert was unable to

opine in terms of point of time, in response to a question, as to when it was last fired. Referring to the statement of Qamar Ahmad, PW-73, the then DCP (Crime), Shri Malhotra submitted that though this witness had visited the spot and noticed the Esteem car at the scene of crime, he did not state about presence of any pistol inside the Esteem car. Shri Malhotra argued that in view of aforesaid, the learned Trial Judge was justified in recording a finding against any shot being fired from inside the Esteem car and recovery of 7.65mm bore Italian pistol with cartridges—live and empties—from inside the car after the incident. Shri Malhotra submitted that contrary to the stand taken by ACP S.S. Rathi-appellant and Inspector Anil Kumar-appellant that the Esteem car was followed and reinforcement sought to effectuate the arrest of Mohd. Yaseen, their intention, in fact, from the very beginning, was to eliminate Mohd. Yaseen and not to arrest him. He contended that had they really intended to effect the arrest of Mohd. Yaseen, a trap to arrest him could have easily been laid in between, at any place from Mother Dairy to Connaught Place, as so many Police Stations fell on the way, including the Police Headquarters. The arrest, contended Shri Malhotra, could

have been effected even at Connaught Place when the bearded person (Jagjit Singh) was sitting alone inside the car or after Pradeep Goyal and Tarunpreet Singh had come back from the bank and got seated in the car or by deflating the tyers of the Esteem car by firing at the same. Addressing on criminal conspiracy aspect, Shri Malhotra contended that all incriminating evidence available on record, from which the existence of the criminal conspiracy could be gathered, were put across to the respective appellants during their examination u/s 313 Cr.P.C. which substantially satisfied the requirement of the law and therefore, simply because no specific questions enumerating the incriminating circumstances proving existence of the criminal conspiracy were put to the appellants, the learned Trial Court cannot be held to have committed any error in holding the appellants guilty u/s 120B IPC. Furthermore, pleaded Shri Malhotra, unless the appellants are able to point out any prejudice being caused to them, on account of a specific question on criminal conspiracy and circumstantial evidence proving the existence of such a criminal conspiracy, being not confronted to them in their respective statements u/s 313 Cr.P.C., their conviction on this score cannot be held bad in

law. Same argument was raised by Shri Malhotra in regard to the absence of any specific question being put to the appellants in their statements under Section 313 Cr.P.C. in regard to right front door windowpane being found intact. Responding to the contention from appellants' side that in the absence of a case of criminal conspiracy being set up by the prosecution in the chargesheet and instead a case of offences being committed by the appellants in furtherance of their common intention finding mention therein, the charge u/s 120B IPC, was legally unsustainable, Shri Malhotra sought to refer to Section 464 of the Code of Criminal Procedure to blunt the force of the said argument.

25. We have heard extensive arguments advanced from either side, by respective counsel. We have, on conclusion of oral hearing, scanned the findings recorded by the learned Trial Court and re-appraised the evidence on record, with reference to the points of arguments raised at the Bar.

26. The shootout incident as such, targeting the Esteem car is not in dispute. According to the prosecution case, a volley of shots were fired at the Esteem car by all the appellants barring ACP S.S. Rathi and Inspector Anil

Kumar. Head Constable Mahavir Singh, appellant has of course disowned any firing by him at the car. The stand of the appellants in the course of trial was that firing at the Esteem car had to be resorted to in view of shots being fired from inside the Esteem car. Recovery of a pistol of 7.65 mm bore loaded with 7 live cartridges and a misfired cartridge stuck in the barrel, apart from two fired cartridge cases, from inside the Esteem car was referred to on behalf of the appellants to lend support to the plea raised on their behalf that they resorted to counter firing at the Esteem car in view of firing from inside the car. This apart, to supplement the argument in regard to firing from inside the car, reference was made to the statements of some of the prosecution witnesses testifying that the windowpane on driver's side front door was found broken. According to the appellants, that windowpane was broken into pieces in view of shots being fired from inside the car. In addition, reference was also made to the CFSL report to point out that two exit holes found in the front windscreen were, according to them, caused due to firing from inside. The learned Trial Court, however, taking note of the evidence on record, did not accept the defence theory related to shots being fired from

inside the car. It was held by the learned Trial Court that the windowpane of driver's side front door was, in fact, intact and not broken, as stated by some of the prosecution witnesses. Regarding recovery of the pistol and cartridges—live and empty cases—the learned Trial Court reached a finding that the same were actually planted inside the car after the shootout incident.

27. As far as the condition of windowpane of driver's side door, after the shootout is concerned, there is conflicting evidence on record. According to statements of Sant Lal, PW-12, ASI Ombir Singh, PW-13, Inspector Rishidev, PW-35, Constable Samrat Lal, PW-41, Inspector Niranjana Singh-PW-42, SI Sunil Kumar, PW-57 in their cross-examination, the glass pane of all the four windows of the Esteem car, including the one on driver's side seat, were found broken. From the statement of injured Tarunpreet Singh, PW-11 it is gathered that since the AC of the car was on, all the windowpanes of the Esteem car were rolled up when the car started moving towards Barkhamba Road crossing from Dena Bank. Relevant part of his statement in this regard reads thus:

“.....I heard the voice of breaking of the glass pane of the driver side window of the car after the

bullet was fired first of all. All the glass panes of the windows of the car had broken in the incident. First of all, the glass panes of the driver side window had broken and then the glasses of the other window of the car had broken. Since I had duck (ed) myself in between the two seats of the car, therefore, I cannot say if the first bullet was fired from inside the car or from outside the car. I cannot affirm or deny that the first bullet was fired from where. Jagjit Singh had not fired bullet. It is incorrect that from the place where I had duck (ed) myself in the car, I could not have seen Jagjit Singh.....”

Out of a total of 74 witnesses examined by the prosecution, Tarunpreet Singh, PW-11 is the only witness who had closely seen the shootout incident taking place, being one of the inmates of the Esteem car. The stand taken on behalf of the prosecution was that inspite of the shootout incident, no damage was caused to the windowpane on driver's side front door and the same continued to be intact. Some of the photographs vide Exs. P-1—P-14 of the Esteem car taken soon after the incident were referred to on behalf of prosecution in support of this plea. From the statement of Rajeev Gupta, PW-45, who rushed to the scene of crime immediately on hearing the sound of gunshots, it was pointed out that the windowpane of driver's side door continued to be intact. A mention was also made to the statement of Qamar Ahmad, DCP (Crime), PW-73, who

reached the spot immediately on learning about the shootout incident. Qamar Ahmad, PW-73 testified that some of the windowpanes of Esteem car were found shattered. Unlike Sant Lal, PW-12, ASI Ombir Singh, PW-13, Inspector Rishidev, PW-35, Constable Samrat Lal, PW-41, Inspector Niranjana Singh, PW-42, SI Sunil Kumar and PW-57, Qamar Ahmad, PW-73 did not say that the glass panes of all the windows of the Esteem car were found broken. Surprisingly, in spite of the aforesaid police officials, examined by the prosecution, making a statement in their cross-examination contrary to the prosecution case, they were not declared hostile to that extent to subject them to cross-examination from prosecution side. Being part of statements of its own witnesses, which remained unchallenged, the prosecution cannot shy away from the same. A perusal of photographs show that unlike splinters of shattered glass panes of the other three windows of the car, no such splinters are noticeable inside or outside the Esteem car. From either side, extensive arguments with reference to evidence, oral as well as documentary, were advanced in regard to state of the glass pane of the window on driver's side front door but we find that not much turns on it as even if it is accepted that

the driver's side front door windowpane, like other windowpanes of the car, was also found shattered, it would not automatically lead to conclude that the driver's side front door windowpane got smashed only because there was some firing from inside the Esteem car. It is to be kept in mind that even the glass panes of the other three windows were found shattered and that happened because of a volley of shots being fired by the police officials from outside the car. Notably, the Esteem car had been surrounded by the police officials and firing at the Esteem car was admittedly resorted to by them from all the sides. In a scenario where shots were being fired at the Esteem car from all the directions, the glass pane of the driver's side front door window could have also got damaged. Thus, even if the driver's side front door windowpane was found damaged, as pleaded on behalf of the appellants that alone could not be accepted as a circumstance pointing to any firing from inside the Esteem car. The omission on the part of the learned Trial Court to put a specific question to the appellant in regard to state of glass pane of window of right side front door, in their statements under Section 313 Cr.P.C. is really of not much avail to them.

28. A reference to two exit holes on the front windscreen of the Esteem car was yet another circumstance brought out on behalf of the appellants in support of defence plea that these exit holes were caused due to firing from the Italian pistol from inside the car. In an effort to develop the point on this count, a part of the statement of the Ballistic Expert, namely, Roop Singh, PW-37 in his cross-examination on behalf of appellant ACP Rathi, was sought to be made use of by the appellants. Relevant part of deposition of Roop Singh, PW-37 in his cross-examination recorded on 7th February, 2000 reads thus:-

“Q. Is it correct that one of the exit hole near driver seat on the front windscreen through which the firing from inside the car could have been made by the pistol of 7.65 mm in question, i.e., Ex. PW-36/1?

A. Keeping in view the dimension of the hole, this could be possible if a smaller hole caused by firing of the pistol from inside is duplicated by a shot fired from behind.

Q. What do you mean by duplicated?

A. If a hole created by the first shot is disturbed by another shot/bullet enlarging the earlier small sized hole to give the shape of bigger size hole.

Q. Did you find any such duplicating in the present case?

A. I have not dealt with this aspect in my report and I have not given opinion also in this regard.”

From the above extracted part of statement of the said

witness, it is evident that the exit hole on front windscreen of the Esteem car near driver seat, looking at its size, could not have been caused by a shot fired from a pistol of 7.65mm unless the same was duplicated by a shot fired from behind the car. In spite of a specific question being put in this regard, Roop Singh, PW-37 could not say that there was any duplicating of the exit hole on front windscreen near driver seat as he had not examined the exit hole from that point of view. Dimension of the exit holes on the front windscreen referred to on behalf of the appellants, thus in view of evidence on record could not be held to have been caused on account of any shot fired from the pistol Ex.PW-36/1 from inside the Esteem car. In the circumstances, the existence of these exit holes on the front windscreen also cannot be taken to support the defence plea of shots being fired from the 7.65mm bore Italian pistol from inside the Esteem car. Moreover, keeping in view that the magazine of the Italian pistol had a maximum capacity to be loaded with 10 cartridges and it was found loaded with 8 cartridges including a misfired cartridge stuck in the barrel at the time of its alleged recovery, taking into account two empties lying inside the car not more than two shots could have been fired

from it. If the argument on behalf of the appellants is to be accepted, it would appear that at least three shots had been fired from inside the car—one through the right front door windowpane and the other two piercing through the front windscreen, causing two exit holes, which could obviously be not the case.

29. According to defence version, on account of sudden firing from inside the Esteem car, appellants Sunil Kumar and Subhash Chand sustained gunshot injuries whereafter the appellants, other than ACP S.S. Rathi and Inspector Anil Kumar, had to return fire at the Esteem car in self-defence. It is not in dispute that the said two appellants did sustain gunshot injuries on their person. Learned Additional Solicitor General, however, contended that the injuries to appellants Sunil Kumar and Subhash Chand were, in fact, caused due to shots fired from the service weapons of Head Constable Tej Pal Singh and Constable Kothari Ram-appellants and not from any shot fired from inside the Esteem car. Shri Malhotra referred to Ex. PW-29/C, 20/B, 46/B and CFSL Report, Ex. PW-37/F to prove that the fired bullet piece recovered from the body of Constable Sunil Kumar-appellant had been fired from .380”

revolver carried by Head Constable Tej Pal Singh. The fired bullet piece recovered from the body (left hand) of Sunil Kumar-appellant was, according to Ballistic Expert's Report vide Ex. PW-46/B and 37/F fired from .380" revolver which was being carried by Head Constable Tej Pal Singh-appellant who had fired six shots from that weapon. There is thus no substance in the defence plea that Constable Sunil Kumar had sustained gunshot injury on his left hand from a shot fired from inside the Esteem car through the 7.65mm bore pistol and this in turn partly falsifies the defence theory of a shot being fired from inside the car through the windowpane of right front door.

30. The gunshot injuries sustained by Constable Subhash Chand find mention in the MLC vide Ex. PW-16/B and report Ex. PW-17/B from Surgical Ward. Appellant Kothari Ram was armed with AK-47 rifle No. HM 54189 at the time of incident and had fired seven shots in all. After the incident, he had produced said AK-47 revolver with two fired cartridges which were seized and later sent to CFSL for examination vide Ex. PW-46/B. Apart from two fired cartridges being so produced by Kothari Ram-appellant, a jacket piece of bullet fired from his assault rifle was

recovered from a point in the car. On examination vide Ex. PW-37/B, the said jacket piece of 7.62mm assault rifle bullet and two 7.62mm assault rifle cartridge cases were opined to have had been fired from the assault rifle carried by Constable Kothari Ram-appellant. Constable Subhash Chand was, on being taken to RML Hospital, New Delhi, initially examined by Dr. Harmeet Kapur, PW-16, who prepared his MLC vide Ex. PW-16/A and referred him to Surgical Emergency for detailed examination and expert opinion vide Ex. PW-16/B. Constable Subhash Chand-appellant was thereafter examined by Dr. Neeraj Saxena, PW-17. The injuries noticed by Dr. Saxena on the person of Constable Subhash Chand-appellant included a gunshot wound in abdominal area around 2-3 inches below his navel and another gunshot wound on his right thigh just above the knee. The X-Ray of abdominal region of the patient showed that the bullet after entering into the abdominal area had caused extensive damage to the intestine and had travelled forward and downward and ultimately lodged itself just adjacent to his sacrum (tail bone between the buttock). An X-Ray of the abdominal region was taken whereafter Constable Subhash Chand was treated for the injuries, but

according to Dr. Neeraj Saxena, PW-17 it was considered not feasible to take out the bullet as there was no medical exigency to take out the same and hence it was left in the body. Roop Singh, PW-37, who had also examined the X-Ray plate relating to Constable Subhash Chand-appellant, affirmed thus:-

.....After examining the material, I found that no opinion regarding the linking of the metallic object with 7.65mm pistol mentioned above can be given on the basis of study of shadow of metallic object in the X-Ray plate. A definite opinion was possible only after the detailed laboratory examination of the metallic object in question. However, the shadow observed in the X-Ray plate mentioned in X-Ray dated 31st March, 1997 relating to the aforesaid MLC of Constable Subhash Chand could be a steel core portion of shattered 7.62mm fired bullet.....

From the aforesaid deposition of Roop Singh, PW-37, it cannot be concluded that the metallic object in the X-Ray plate relating to Constable Subhash Chand was part of any bullet fired from 7.65mm pistol. At the same time, such metallic object being steel core portion of a shattered 7.62mm fired bullet, could not be ruled out. Taking into account that no definite opinion in regard to point of time when the 7.65mm pistol recovered from inside the car had been fired through, the metallic object left in the body of Constable Subhash Chand-appellant cannot be related to

that pistol. Whether Constable Subhash Chand sustained gunshot injury in his abdominal region by a shot fired from AK-47 rifle held by Constable Kothari Ram-appellant or from some other service weapon being carried by other appellants, in the given situation where the abdominal injury caused to Constable Subhash Chand cannot be related to a shot fired from 7.65mm pistol it is difficult to accept the defence version that Constable Subhash Chand had sustained gunshot injuries from any shot fired through 7.65mm pistol. Thus, this aspect also cannot be made use of by the appellants to prove that they had resorted to counter firing at the Esteem car on shots being fired from inside the Esteem car, in their self-defence, causing injuries to appellants Constable Sunil Kumar and Constable Subhash Chand.

31. Recovery as such of a 7.65mm Italian pistol with 7 live cartridges, one misfired cartridge and two fired cartridge cases from inside the car is by itself not of much significance, without any corroborative evidence to find if any shot was actually fired at the appellants from inside the car, especially when it is not possible to ascertain as to when the pistol, PW-36/1 was last fired through.

32. ASI Ombir Singh, PW-13, Inspector Rishidev, PW-35, Constable Samrat Lal, PW-41, Inspector Nirranjan Singh, PW-42 and SI Sunil Kumar, PW-57, who reached the scene of crime after the shootout incident testified that they had noticed the pistol lying inside the car near the driver seat. Reference was also made to the photograph Ex.P-14 showing some object lying between the driver seat and the right front side door of the car, which according to SI Sunil Kumar, was the Italian pistol in question. From the photograph Ex.P-14, it is gathered that the right front door on driver side was lying wide open after the shootout. The staff photographers of the STATESMAN reached the place of incident after hearing the sound of gunshots at the Barakhamba Road crossing. It would have obviously taken some time for them to reach the place of incident to take the photographs of the Esteem car. Injured Tarunpreet Singh, PW-11 who was seated in the Esteem car at the time of shootout categorically stated that Jagjit Singh (deceased) had not fired any shot from inside the car. Qamar Ahmad, DCP (Crime), PW-73, who reached the spot before arrival of Inspector Rishidev, PW-35 did not corroborate the statements of ASI Ombir Singh, PW-13, Inspector Rishidev,

PW-35, Constable Samrat Lal, PW-41, Inspector Nirranjan Singh, PW-42 and SI Sunil Kumar, PW-57 regarding presence of the Italian pistol inside the Esteem car. As front door on driver side was wide open, it was not difficult at all to notice the presence of the Italian pistol from outside while standing by that side of the car. Recovery of the pistol is shown to have been effected some time at about 3.15 P.M. in terms of statement of Inspector Rishidev, PW-35. In spite of recovery so effected, surprisingly, there was no mention about the same in the report Ex.PW-42/C lodged by appellant Anill Kumar with the police. It is to be kept in mind that from the evidence on record, none of the occupants of the Esteem car, including Jagjit Singh had any criminal antecedents. The appellants sought to make use of a part of a vague statement made by SI Ram Dutt, PW-49, in his cross-examination on behalf of ACP S.S. Rathi, appellant to the effect that Jagjit Singh (deceased) did not enjoy a good reputation—in what respect, not clear. Barring this bald statement, there is no evidence at all that Jagjit Singh deceased had any criminal record or that he was wanted by the police in any criminal case. Even if it be accepted, as pleaded on behalf of the appellants, that soon after the

Esteem car was surrounded by the appellants from all the sides and there was a thumping by Inspector Anil Kumar on the driver side window of front door of the Esteem car requiring the occupants to come out, there could be no reason on the part of Jagjit Singh (deceased) to have started firing from inside the car. Even if the object shown lying between the driver seat and right front door of the Esteem car is taken to be the 7.65mm bore Italian pistol vide photograph Ex. P-14, keeping in mind that the right front door of the car was lying wide open after the shootout, not much time was required to plant the said pistol inside the car. No specific question in regard to plantation of the pistol and ammunitions in question have been put to the appellants in the course of their examination under Section 313 Cr.P.C. and therefore, the circumstances, if any from which plantation of the pistol, PW-36/1 and ammunitions—live and empty—can be deduced, cannot be made use of to find the appellant guilty of plantation but there appears no impediment in taking note of the same to test plausibility of defence plea that the appellants had to resort to counter firing in view of shots being fired from inside the Esteem car. The learned Trial Court came to find that the Italian pistol

and ammunitions shown recovered from the Esteem car were actually planted ones in view of the fact that no evidence of any shot being fired from inside the Esteem car was found on record. Though the learned Trial Court could not identify the particular appellant with the help of evidence on record who had actually planted the said arms and ammunitions inside the Esteem car in view of a finding on existence of criminal conspiracy, it proceeded to hold the appellants guilty under Section 193/120B IPC with a view to fabricate false evidence against the occupants.

33. There is yet another circumstance which tends to rule out the possibility of the pistol Ex. PW-36/1 being used by Jagjit Singh (deceased). The pistol Ex. PW-36/1 was examined at CFSL by S.K. Chaddha, PW-46, a fingerprint expert who found no identifiable chance prints on the pistol vide report Ex. 46/A. Omission to find specimen fingerprints of the occupants of the car could have made no difference as no comparison was possible in view of absence of any identifiable chance prints on the pistol. No mileage can, thus, be claimed by the appellants on account of investigating officer's failure to send the same. Had the pistol been used by Jagjit Singh (deceased), as pleaded on

behalf of the appellants, some fingerprints would have certainly been found on the pistol Ex. PW-36/1 as he would have had no occasion to erase his fingerprints on the pistol in view of gunshot injuries sustained by him. Absence of any identifiable chance prints on the pistol is rather indicative of the same being planted inside the car and while doing so making it sure that no identifiable fingerprints were left on it. Thus, looked from any angle, there appears no basis to support the defence plea raised on behalf of the appellants that counter firing had to be resorted to in view of shots being fired from inside the Esteem car. Once firing from inside the Esteem car is ruled out, there is no escape from concluding that it was a case of unprovoked firing at the Esteem car resulting into death of Pradeep Goyal and Jagjit Singh as also grievous gunshot injuries to Tarunpreet Singh, PW-11.

34. Adverting to the plea raised on behalf of the appellants on criminal conspiracy, it is noticed that the chargesheet did not make mention of any criminal conspiracy rather the killing of the two occupants of the Esteem car and grievous gunshot injuries to the third one was occasioned on account of indiscriminate firing at the

inmates of the Esteem car by the appellants in furtherance of their common intention. The learned Trial Court returned a finding on criminal conspiracy in view of conclusion drawn by it that the Italian pistol with cartridges—live and empty—were planted inside the Esteem car by the appellants which, according to it, indicated that they “had already decided and conspired that whether Mohd. Yaseen is armed or unarmed, he has to be killed.” There is no mention of any evidence—direct or circumstantial—in the impugned judgment on which the finding in regard to the existence of criminal conspiracy could have been founded. Merely because appellant S.S. Rathi and Inspector Anil Kumar constantly kept in touch with each other on phone or before proceeding from his office of Inter-State Cell at Chanakyapuri, appellant S.S. Rathi did some briefing to the members of the police party including the six appellants, in regard to the operation, which was to be carried out, it could not necessarily be inferred that the plan, if any, to eliminate Mohd. Yaseen and his associates, was shared with the members of the police party, who were eventually led to Connaught Place by appellant S.S. Rathi. Similarly, appellants Sumer Singh and Shiv Kumar, who were

accompanying Inspector Anil Kumar-appellant all along from Mother Dairy to the place of incident, even they in the absence of any evidence in that respect, could not have been held to be a party to any criminal conspiracy to kill Mohd. Yaseen and his associates. The circumstances brought out by learned Additional Solicitor General in the course of arguments are not the ones taken into account by the learned Trial Court for recording finding in regard to existence of a criminal conspiracy on the part of appellants. That apart, the circumstances so pointed out by learned Additional Solicitor General, were not put across to the appellants while examining them under Section 313 Cr.P.C., and therefore, the same cannot be made use of as incriminating circumstances to find existence of any criminal conspiracy. The contention by learned ASG that even in the absence of the incriminating circumstances proving existence of criminal conspiracy being put to the appellants in their statement under Section 313 Cr.P.C., unless some prejudice is shown to have been caused to them, cannot really help the prosecution in claiming its lost ground. The circumstances brought out by Shri Malhotra in the course of his arguments that if the intention of the

appellants S.S. Rathi and Inspector Anil Kumar would have been to effect the arrest of Mohd. Yaseen, a trap could have easily been laid to catch him at any place between the Mother Dairy in Patparganj and Connaught Place, as many Police Stations fell on the way, including the Police Headquarters or that the arrest could have been effected even at Connaught Place when Jagjit Singh (deceased) mistaken as Mohd. Yaseen was sitting alone inside the car or after Pradeep Goyal and Tarunpreet Singh had come back from the bank and got seated in the Esteem car or by deflating the tyres of the Esteem car at Barakhamba Road crossing by firing at the same cannot be taken into consideration as had these circumstances been specifically put to the appellants during their examination under Section 313 Cr.P.C., they would have come forward with some plausible reasons that could have adequately explained their abstain from attempting to arrest the inmates of the car prior to the place of the shootout. The fact that they did not get an opportunity to come forward with their answers to meet the said incriminating circumstances, as pointed out by Shri Malhotra, clearly resulted into prejudice being caused to them in their

defence. Thus, incriminating circumstances, pointed out by Shri Malhotra, cannot be taken as part of evidence to find existence of a criminal conspiracy on the part of the appellants to kill Mohd. Yaseen and his associates in a fake encounter. No doubt, in view of defence plea of the appellants that counter firing had to be resorted to at the Esteem car in the face of shots being fired from inside the Esteem car being held unacceptable, it eventually turns out to be a case of a fake encounter only. However, killing the two persons as also grievously injuring the third one, could not necessarily be as a result of a criminal conspiracy hatched by the appellants.

35. Since it was never the case of prosecution in the chargesheet that the shootout incident was as a result of a criminal conspiracy, a point was raised on behalf of appellants that in the facts and circumstances, no charge under Section 120B IPC could have been framed against the appellants. Shri Malhotra appearing for the CBI, however, felt that inspite of the fact that chargesheet was filed under Section 302/307/201 read with Section 34 IPC and the cognizance of the offences by the Court of Chief Metropolitan Magistrate, Delhi was also taken accordingly, it was open to

the Sessions Court to frame a charge under Section 120B IPC if the facts of the case and material placed before him so required. There is no doubt that the Sessions Court was not bound by an order of the Court of Magistrate taking cognizance of particular offences on a chargesheet being filed before him and it is rather to be guided by the facts of the case and material placed before him in framing charges, however, in the present case, when the prosecution was, by filing a chargesheet, alleging that the offences complained of were committed in furtherance of common intention of the appellants thereby attracting Section 34 IPC, no material could be brought out to our notice on behalf of the prosecution which could have persuaded the learned Additional Sessions Judge to frame charges by invoking Section 120B IPC instead of Section 34 IPC.

36. Another contention of Shri Malhotra was that once the charges were framed, and were not challenged and the prosecution produced its evidence in support of charges, it is not open after conviction at the appellate stage to examine if a charge under a particular head could have been framed. It is, however, difficult to accept this argument. Section 386 (b) (i) of the Code of Criminal Procedure, 1973 encompassing

the powers of the Appellate Court clearly provides that in an appeal from a conviction it can reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction subordinate to it or committed for trial. It is not only that in an appeal from a conviction while reversing the finding and sentence, the Appellate Court can simply acquit the accused rather in appropriate cases, an order of discharge can also be passed. Power to discharge the accused after conviction could arise only where the charge itself is held bad in law. Thus, even where a particular charge framed against an accused is not challenged earlier, the convicted person is not precluded from challenging the very charge for which he is convicted.

37. Shri Malhotra further with the aid of Section 464 Cr.P.C. argued that even if the charge under Section 120B could not have been framed on the facts and material available before the Court of Sessions, once such a charge is framed and trial takes place resulting into conviction and sentence, such finding and sentence cannot be held invalid merely on the ground of 'absence of charge or on the ground of any error, omission or irregularity in the charge, including

any misjoinder of charge', unless, a failure of justice has, in fact, been occasioned thereby. We find it difficult to accept the interpretation put forth by learned Additional Solicitor General that Section 464 Cr.P.C. covers even a case where on facts and material available on record, no charge at all under a particular penal provision could have been framed. Section 464 Cr.P.C. appears to deal with altogether different kind of situations and it does not cover a case like the present one. In any case, whether a charge under Section 120B IPC could have been framed or not, since we find no evidence to sustain the finding in regard to existence of a criminal conspiracy, the conviction and sentence of all the appellants under Section 120B IPC is liable to be reversed.

38. An argument was raised on behalf of the appellant S.S. Rathi that as this appellant had neither joined the other appellants in firing at the inmates of the Esteem car nor the firing had taken place on his direction, he could not be held liable under Section 302 IPC or 307 IPC on account of acts committed by his co-convicts. In the same connection, it was contended that appellant S.S. Rathi was even not present near the Esteem car when shootout incident had taken place and he was rather present in his

official vehicle only at a distance. A similar argument was raised on behalf of Inspector Anil Kumar-appellant as well since he had also not joined his 8 co-convicts in firing at the inmates of the Esteem car. This apart, it was argued on his behalf that his role was limited to keep a watch on Mohd. Yaseen and follow him to the point where the firing incident took place and this role came to an end with his thumping at driver's side door window requiring the inmates of the car to come out.

39. It is noticed that ACP S.S. Rathi-appellant was overall in-charge of the entire operation targeting Mohd. Yaseen. Though the appellants claimed that the entire operation was carried out with a view to nab Mohd. Yaseen. the course of events culminating into unprovoked indiscriminate firing at the inmates of the Esteem car leave no doubt that arrest was not the ultimate result which the appellants really wanted to achieve. Even though existence of a criminal conspiracy to kill Mohd. Yaseen and his associates has been held not proved, it does not imply that the shootout at the inmates of the Esteem car was not part of a concerted act rather represented individual acts of respective appellants. It would be noticed that Constable

Sunil Kumar and Constable Kothari Ram were accompanying ACP S.S. Rathi-appellant in his official vehicle when the Esteem car while moving towards Barakhamba Road crossing was being followed by him in that vehicle besides other appellants and policemen in separate vehicles. Constable Kothari Ram as also Constable Sunil Kumar were in normal course expected to consume to stay with ACP Rathi-appellant in his vehicle. They could not have rushed to the scene of crime to join other appellants in firing shots at the Esteem car unless specifically instructed in that respect by ACP S.S. Rathi. Being on duty to head the operation his immediate physical presence at the spot or at some distance did not make any material difference. Inspector Anil Kumar and other appellants being subordinates, acting under a close supervision and control of ACP S.S. Rathi could not have resorted to an unprovoked indiscriminate firing at the inmates of the Esteem car contrary to his instructions to them in that regard. Had the appellants other than appellant Anil Kumar would have resorted to indiscriminate firing at the Esteem car without the instructions of S.S. Rathi-appellant, they were to render themselves liable to appropriate disciplinary action. No such

action was, however, initiated by S.S. Rathi-appellant, which is also suggestive of his being a party to whatever happened at the scene of crime. There is no substance in the plea that since ACP S.S. Rathi and Inspector Anil Kumar did not join others in firing at the Esteem Car, they could not be held liable for actions of their 8 co-convicts. One cannot lose sight of the fact that when so many subordinates, armed with service weapons were detailed at the job, there was really no necessity of either S.S. Rathi or Inspector Anil Kumar-appellants joining their co-convicts in indiscriminate firing at the inmates of the Esteem car. Inspector Anil Kumar was in immediate command of Head Constable Shiv Kumar and Constable Sumer Singh, who were also the ones joining their co-convicts in indiscriminate firing at the inmates of the Esteem car. Inspector Anil Kumar-appellant at no point of time tried to stop them from being a party to the said illegal act nor he recommended any disciplinary action to be taken against them for having acted without his command in that respect. Inspector Anil Kumar, after the shootout, took upon himself to prepare a false report on the shootout incident by seeking to justify that the firing at the inmates of the Esteem car by his co-convicts had to be

resorted to in self-defence in view of firing from inside the car when no such firing had actually taken place. Of course, he would appear justified in taking refuge under the plea that he did so at the behest of his superior ACP Rathi, but such a plea cannot save him from being held guilty of sharing a commonality of intention with ACP S.S. Rathi and other co-convicts. ACP Rathi on his part would not have allowed the reporting of the incident to take place at the hands of Inspector Anil Kumar the way it did unless it happened to be in accord with his wishes. In the circumstances, neither appellant S.S. Rathi nor Inspector Anil Kumar can escape criminal liability by disassociating themselves from the shootout at the inmates of the Esteem car by other appellants. Each one of the appellants had played his active role in the shootout in one way or the other in furtherance of their common intention and clearly the shootout was aimed at getting rid of the inmates of the Esteem car even though under mistaken belief that it were Mohd. Yaseen and his associates occupying the car. From the discussion heretofore it is evident that since there was no firing from inside the Esteem car, no right of self defence was available to the appellants and consequently

unprovoked indiscriminate firing at the inmates of the Esteem car was totally unjustified. The stand of some of the appellants that they resorted to firing at the Esteem car on being commanded by their Superior, ACP S.S. Rathi also cannot absolve them of their criminal act. Unprovoked indiscriminate firing at the inmates of the car was under no circumstance justifiable. The plea on behalf of the appellants that the firing at the car was also to immobilise the inmates from attempting their escape is on the face of it liable to be brushed aside as no shot was fired at any of the tyres. Causing gunshot injuries to the inmates, resulting into death of two of them and grievous injuries to the third one, could by no stretch of imagination be taken as a measure to immobilise them. The firing at the Esteem car was undoubtedly with a clear intent to annihilate the inmates of the car and was resorted to in furtherance of common intention of all the appellants. In the circumstances, it is irrelevant to find the extent of individual roles played by respective appellants in the course of the incident. Thus, all the appellants are liable to be convicted under Section 302/34 IPC and 307/34 IPC, in place of under Section 302/120-B IPC and Section 307/120-B IPC.

40. In the context of conviction and sentencing of the appellants under Section 193 read with Section 120B IPC, it may be noticed that according to the learned Trial Court itself, there was no evidence to identify the particular appellant, who had actually planted the 7.65mm bore pistol with ammunition—live and empty ones—in the Esteem car. It, however, proceeded to convict all the appellants in view of the appellants being held as party to the criminal conspiracy as it did not matter who actually planted the same. However, validity of this reasoning would cease to hold good, once existence of a criminal conspiracy as made out in the charge suffers reversal. Notably, the appellants who were involved in the actual shootout at the Esteem car as also Inspector Anil Kumar-appellant happened to be present at the scene of crime only to assist in successful execution of the operation being supervised and controlled by ACP S.S. Rathi-appellant. Being subordinates to ACP Rathi, none of them could have raised his voice against anything being enacted at the crime scene at the behest of ACP Rathi or for that matter even at the instance of Inspector Anil Kumar without implied consent of ACP Rathi. Moreover, for planting the aforesaid arms and ammunition, it was not necessary

that all the appellants should have reached an agreement in that respect. In view of the fact that charge of criminal conspiracy is found to have not been proved beyond doubt, conviction of all the appellants under Section 193 IPC read with Section 120 IPC cannot be sustained. Even though there is strong possibility that the Italian pistol and ammunition related to it recovered from inside the Esteem car, if planted, could not have taken place without a nod in that regard from ACP S.S. Rathi, even he (ACP S.S. Rathi) cannot be held guilty and convicted under Section 193 IPC in the absence of any evidence against him proving his involvement beyond doubt, as a mere suspicion, howsoever grave, cannot take the place of proof as required in a criminal trial. As already observed, for planting the Italian pistol and cartridges—live and empty ones—inside the Esteem car, agreement in that respect on the part of all the appellants being not required, even commonality of intention on the part of appellants cannot be inferred, especially when two of the appellants, namely, Constable Sunil Kumar and Constable Subhash Chand had to be removed to RML Hospital soon after the shootout in view of having sustained gunshot injuries on their person and were thus, not present

at the spot at the time when plantation could possibly have taken place. The evidence on the point being obscure and insufficient, the conviction under Section 193 IPC read with Section 120B IPC or even with the aid of Section 34 IPC cannot be sustained and a benefit of doubt is, in the circumstances, liable to be accorded to the appellants on this count.

41. Appellant Mahavir Singh sought to distance himself from other appellants, who had fired at the occupants of the Esteem car, by raising a plea that though he had fired a shot from his service weapon, it was fired in the air with a view to keep at bay the surging crowd from storming the shootout site.

42. According to SI Ram Dutt, PW-49 from PS Shahbad, District Kurukshetra on 5th April, 1997, Deedar Singh, PW-8, brother of Jagjit Singh (deceased) accompanied by one Ranjeet Singh came to Police Station Shahbad and produced before him a “lead piece” (chala hua sikka) which was claimed to have had been recovered on 3rd April, 1997 from the ashes of Jagjit Singh (deceased) after his cremation on 2nd April, 1997. This lead piece was according to SI Ram Dutt, PW-49 put by him in a plastic DIBBI and sealed. The

DIBBI containing the lead piece was taken into possession vide Seizure Memo, Ex.PW-49/A. This lead piece marked Ex. PW-37/DA-1 was later sent to CFSL for examination and opinion. On examination, vide report Ex. PW-37/DA-2, it was opined that Ex. PW-37/DA-1 was part of a .38 jacket of a bullet fired from the service weapon possessed by Mahavir Singh-appellant. In view of Deedar Singh, PW-8 omitting to corroborate the statement of SI Ram Dutt, PW-49 that the said part of .38 bullet was handed over by him to SI Ram Dutt, PW-49 at Shahbad Police Station, the very recovery of Ex. PW-37/DA-1 from the ashes of Jagjit Singh was questioned and it was submitted by Shri R.K. Naseem, learned counsel for Mahavir Singh-appellant, that such a recovery was planted only to create a false evidence to connect Mahavir Singh-appellant with firing at the inmates of the Esteem car.

43. Dr. G.K. Sharma, PW-23, who examined the X-Ray report relating to Jagjit Singh's dead body affirmed that no bullet was seen in the X-Ray of Jagjit Singh's body. The postmortem on the dead body of Jagjit Singh was carried out by Dr. Yashoda Rani, PW-24. She, in her cross-examination on behalf of appellant S.S. Rathi, made the following

statements which is worth taking note of:

“We had taken the X-Ray of the body of Jagjit Singh. No image of bullet was found inside the body. After exploration of the body by me, I could not find any bullet in the whole body. The body was thoroughly checked before I started the postmortem. The body was made completely naked and was thoroughly physically examined. The body was photographed also and was examined by the relations of the deceased as well.”

If the statement of Dr. Yashoda Rani, PW-24 is kept in view, the possibility of presence of the jacket of a .38 fired bullet in the ashes of Jagjit Singh is completely ruled out. In spite of this evidence being brought to the notice of learned Additional Sessions Judge, he ignored the same and rather accepted the argument of learned Special Prosecutor to the effect that “sometimes the bullet gets hidden in some bone or beneath it. Therefore, it is not uncommon that if a bullet is lodged in the body, the same does not come to the notice of the autopsy doctors.” The learned Trial Judge accordingly concluded that the bullet of which Ex. PW-37/DA-1 was a part could have escaped the attention of the autopsy doctors and accordingly accepted the recovery. In our view, the approach of learned Trial Judge on this score was not correct in the face of positive evidence regarding absence of any bullet or part thereof in the entire body of Jagjit Singh

(deceased). The learned Trial Judge was not justified in ignoring that evidence and rather acting on an unwarranted assumption that the bullet or part thereof embedded in the body of Jagjit Singh (deceased) could have escaped from being noticed by the autopsy surgeon. In view of evidence in regard to the alleged recovery of Ex. PW-37/DA-1 from the ashes of Jagjit Singh (deceased) being of a doubtful nature, there was no sound basis to accept such recovery and the learned Trial Court committed an error of extending benefit of doubt to the prosecution instead of to the appellants, in this respect. The finding in the impugned judgment in this regard is thus liable to be reversed.

44. However, inspite of recovery of part of bullet vide Ex. PW-37/DA-1 from the ashes of Jagjit Singh (deceased) being not accepted as an incriminating piece of evidence against Mahavir Singh-appellant, in view of admission on his part that he had used his service weapon at the time of incident to fire one shot therefrom, there is no basis to accept the plea that he had instead of joining his 7 co-convicts in firing at the inmates of the Esteem car, splurged the shot from his service weapon in the air to scare away the crowd that had gathered there from moving ahead.

He being only one of the members of the police team present at the place of incident, it was none of his responsibility to control the mob and prevent it from gathering near Esteem car unless he was so specifically directed by his superiors, namely, Inspector Anil Kumar or ACP S.S. Rathi. That is not even his case that he fired in the air to keep the crowd at a distance pursuant to any direction from Inspector Anil Kumar or ACP S.S. Rathi. Moreover, firing by this appellant from his service weapon took place at the same very time when his 7 co-convicts were simultaneously firing at the inmates of the Esteem car. If one visualizes a scenario where number of police officials were resorting to indiscriminate firing at the Esteem car from all the sides, could anybody from the public have dared rushing nearer to the Esteem car? There is no evidence nor it is the defence plea raised by any of the appellants that after volley of shots fired by them at the Esteem car had stopped, any solitary shot was fired by any of them. The question of crowd moving nearer to the scene of crime could have arisen only after the firing at the Esteem car had stopped. As there was really no occasion for a shot being fired in the air to scare away the crowd from gathering there when the firing by police

personnel was going on, the defence plea raised by appellant Mahavir Singh that he had fired the shot in the air cannot be accepted. He having joined his 7 co-convicts in the course of indiscriminate firing at the inmates of the Esteem car, in view of commonality of intention on the part of all the appellants, it hardly matters whether the shot fired by him had actually hit and injured any of the 3 inmates of the Esteem car and he is equally liable for commission of murder of Pradeep Goyal and Jagjit Singh as also for causing grievous gunshot injuries to Tarunpreet Singh.

45. On behalf of some of the appellants, validity of sanction under Section 197 Cr. P.C. was questioned on the ground that all the relevant documents, including CFSL reports having not been made available to the authority according sanction, there was no proper application of mind on the part of the Lieutenant Governor, Delhi and therefore, the sanction for prosecution of the appellants would stand vitiated. Referring to the statement of C.B. Verma, PW-48, it was pointed out that apart from a bare investigation report from SP, CBI and a draft sanction order under Section 197 Cr.P.C., no other document was received in the office of the Delhi Administration. The investigation report and draft

sanction order from SP, CBI was, according to C.B. Verma, PW-48, received in the office of Delhi Administration on 13th May, 1997. It was contended that since the CFSL report vide Ex. Pw-37/B, PW-37/C and PW-37/D were received by CBI from the office of CFSL after the letter from CBI with investigation report and draft sanction order had already been received in the office of Delhi Administration, the said reports were not available to the Administrator while according sanction for prosecution under Section 197 Cr.P.C. and thus there was lack of proper application of mind on his part rendering the sanction bad in law. The copy of the investigation report that was sent with the letter for granting sanction for prosecution appears to have not been placed/proved on record. It is noticed that apart from the aforesaid three reports from CFSL, other reports vide Ex. PW-36/A, PW-36/B, PW-37/A, PW-37/E, PW-37/F and PW-37/DA-2 were already available with the CBI and the same would have certainly found mention in the investigation report submitted with the letter of request for sanction. A perusal of the CFSL reports Ex. PW-37/B, PW-37/C, PW-37/D revealed that to form a prima facie view in regard to culpability of the appellants in the commission of the crimes

complained of, for according sanction for their prosecution, absence of these reports could not have made any material difference. A perusal of sanction order Ex.PW-48/A makes it clear that the sanctioning authority was aware of the results of relevant Ballistic Expert's reports and all other material facts which were essential to form a prima facie view for according sanction for prosecution. Simply because out of a number of CFSL reports, three of them which were received subsequently had not been sent with the investigation report for perusal by the Administrator that alone cannot justify a finding that there was no proper application of mind on the part of the Administrator while according sanction for prosecution of the appellants. Finding no substance, the challenge against validity of sanction order is liable to be rejected.

46. Another argument raised on behalf of some of the appellants is in regard to absence of a sanction for prosecution under Section 140 of the Delhi Police Act which according to them precluded the Court of Chief Metropolitan Magistrate from entertaining the chargesheet for their prosecution and proceeding to take cognizance of the offences on the basis thereof. It was argued that since the

chargesheet in the present case was instituted beyond a period of three months after the date of the acts complained of, no cognizance of the offences based on the chargesheet could have been taken by the Court of learned Chief Metropolitan Magistrate as also by the Court of Sessions and the trial against the appellants could not have been proceeded with. Relevant part of Section 140 of the Delhi Police Act, 1978 reads thus:-

“In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.....”

A bare reading of the aforesaid provision makes it clear that a sanction for prosecution under Section 140 of the said Act is required only in a case where the prosecution is instituted after more than three months from the date of commission of the offence/s. In the present case, as the incident took

place on 31st March, 1997, the chargesheet against the appellants could have been filed on or before 30th June, 1997. The chargesheet in this case was filed in the Court of learned Chief Metropolitan Magistrate on 13th June, 1997. The learned Chief Metropolitan Magistrate, however, finding that the copies of the statements under Section 161 Cr.P.C. had not been filed with the chargesheet directed filing of copies of such statements and adjourned the matter to 7th July, 1997. The cognizance was eventually taken by learned Chief Metropolitan Magistrate on 10th July, 1997. The plea raised on behalf of the appellants is that since an incomplete chargesheet had been filed on account of which no cognizance of the offences stated therein, could be taken by the Court of learned Chief Metropolitan Magistrate on that date, inspite of the chargesheet having been filed in the Court before expiry of three months' period, it is the date when the learned Chief Metropolitan Magistrate took cognizance of the offences that would determine the date of institution of the chargesheet and not the date when it was actually filed. In support of this contention, decisions of the Supreme Court in **Jamuna Singh's** case (supra) and **"Devarepalli Lakshmi Naryana Reddy & Others v.**

Naraina Reddy & Others”, AIR 1966 SC, 1672 were relied upon. In **Jamuna Singh’s** case (supra), which was relied upon in **Devarepalli’s case** (supra) the point for consideration was if the cognizance of offence/s in that case was taken on the basis of a complaint or a police report and the Supreme Court on examination of provisions of Sections 190, 193, 194 of the Code of Criminal Procedure and keeping in view the peculiar facts of the case before it as also the question that was required to be answered held that, “when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constitute such offence, a case is instituted in the Magistrate’s Court and such a case is one instituted on a complaint.....” It was not a case where any question of limitation was involved and thus the said decision cannot be taken to be laying down a rule of law universally applicable in regard to the point of time when a prosecution is to be taken to have been instituted for the purpose of reckoning limitation.

47. Notably, the chargesheet, in the instant case, was filed within three months after the date of commission of offences mentioned therein, but the cognizance of the offences could be taken by learned Chief Metropolitan

Magistrate only on a date after expiry of three months' period. Of course, copies of statements under Section 161 Cr.P.C. of the witnesses were required to be filed with the chargesheet, but simply because the prosecution had omitted to do so and thus taking of cognizance of the offences by the Court of learned Chief Metropolitan Magistrate was delayed in view of a relatively longer adjournment of the case, it would be harsh to take a view that inspite of the chargesheet being filed within the time since the Court concerned took its own time in taking cognizance of the offences, the date of institution of the chargesheet, for the purpose of limitation, is to be treated as shifting to the date of cognizance. The prosecuting agency, which took care in filing the chargesheet within time could not have anticipated that the Court of learned Chief Metropolitan Magistrate would have its own problems in taking immediate cognizance of the offences on the chargesheet being filed and where it was filing the chargesheet within three months from the date of commission of the crimes, it could not have applied for a sanction for prosecution under Section 140 of the Act as it was not at all required in that situation. If the Court of

learned Chief Metropolitan Magistrate had difficulty in taking cognizance of the offences for absence of the copies of statements under Section 161 Cr.P.C., it could have very well posted the case for a shorter date before expiry of three months and could have required the CBI to make available the copies of required material for taking cognizance of the offences. We are unable to find from the proceedings recorded by the learned Chief Metropolitan Magistrate the reason as to why instead of requiring the CBI to produce the copies of required material within a day or two, such a longer date was fixed for according consideration for taking cognizance of the offences. Whatever be the reason for delay in taking cognizance of the offences in the facts and circumstances of the case, we are unable to accept the plea that any sanction under Section 140 of the Delhi Police Act was required to sustain the prosecution against the appellants, particularly when the chargesheet had been filed in the Court well before the expiry of three months' period.

48. An argument was also raised on behalf of some of the appellants that as per statement of Geeta Ram Sharma, PW-1, in all 90 photographs of the scene of occurrence had been taken by the staff photographers of the

STATESMAN, however, out of these 90 photographs, only 14 were picked up and placed on record by the Investigating Officer. It was contended that the Investigating Officer was obliged to take into his possession all the 90 photographs to place the same on record, and omission on his part in this regard raises a question mark on the fairness of investigation by him. It was urged that possibly some of the photographs out of those left out could have favoured the appellants in proving their defence. Such an argument would not really help the appellants much in view of the fact that the photographers concerned were examined by the prosecution as witnesses to prove the photographs Ex.P-1—P-14 and if any of the appellants felt that some of the photographs out of those, which were not seized by the Investigating Officer, could be of some help in strengthening their defence, the witnesses concerned could have very well been asked in the course of their cross-examination to produce the remaining photographs to be placed and proved on record. Having omitted to take recourse to this option the appellants now cannot turn around to question the fairness of the investigation for all 90 photographs being not placed and proved on record.

49. Further, an argument was raised by learned counsel for three of the appellants that in view of two FIRs having been registered giving a different account of the manner in which the incident took place instead of one and the same police officer investigating into both the cases together, there should have been a separate Investigating Officer for either case for the sake of a fair investigation. There appears no impediment in law in cross cases relating to the same incident being handled by the same police officer and there is no substance in contending that fairness of investigation could be ensured only by getting both the cases investigated by different police officers. It is thus difficult to accept the contention that there was no fair investigation in respect of the report lodged by Inspector Anil Kumar-appellant.

50. Yet another argument advanced on behalf of Inspector Anil Kumar-appellant was that on completion of the investigation in relation to RC No.11(S)/97-SIU.V registered on the basis of his complaint, the Investigating Officer failed to file any closure or cancellation report and that there was no compliance with the provisions contained in Section 157(2) of the Code of Criminal Procedure and thus

there was violation of the said provision. From the chargesheet, it is gathered that RC No.10(S)/97-SIU.V and RC No.11(S)/97-SIU.V were investigated jointly by Inspector A.G.L. Kaul, PW-74. Both the cases so investigated though related to the same very incident, contrary to the facts disclosed in RC No.10(S)/97-SIU.V in regard to the manner in which the shootout incident took place according to RC No.11(S)/97-SIU.V, there was a firing from inside the Esteem car and 8 of the appellants had to resort to counter firing at the Esteem car in their self-defence. In the course of investigation, it was, however, gathered that there was actually no firing from inside the car and that it was a case of unprovoked indiscriminate firing by the appellants at the inmates of the Esteem car and accordingly prosecution was launched against the appellants by filing a chargesheet in that regard. Since on the basis of investigation, the facts stated in RC No.11(S)/97-SIU.V in regard to the manner in which the shootout incident had taken place was found untrue and the appellants were prosecuted by filing a chargesheet against them on the basis of RC No.10(S)/97-SIU.V and Inspector Anil Kumar-appellant stood informed of the result of investigation on his report, on being

summoned as an accused, there was substantial compliance with Section 157(2) of the Code of Criminal Procedure and no illegality is found to have been committed in that respect. As an accused, Inspector Anil Kumar-appellant had full opportunity to produce evidence in support of the facts stated in his report Ex.42/C, but he omitted to exercise that option. In the circumstances, therefore, no prejudice could be taken to have been occasioned to him in his trial for the offences he was charged with.

51. On behalf of the appellants taking the stand that firing at the inmates of the Esteem car was in obedience to a command in that respect from their superior, ACP S.S. Rathi, it was contended that no offence was committed by them in view of Section 76 of the IPC. Certain judgments were cited to contend that where a police officer acts in accordance with the lawful command of his superior officer, he would be guilty of committing an offence only if he/she has an opportunity to determine whether the act of the superior officer was lawful or not. It was contended that in order to determine whether the police officer had opportunity to determine the nature of the command of the superior officer, a Court has to adjudicate, keeping in mind

the perspective of the police officer concerned and not apply the test of a 'reasonable police officer'. If the stand taken by some of the appellants that they resorted to indiscriminate firing at the inmates of the Esteem car in obedience to a command in that respect by ACP S.S. Rathi is accepted, in view of the fact that such appellants very well knew that simultaneous firing at the inmates of the car by them was most likely to cause death of the inmates of the car, there could be no difficulty in understanding the unlawful nature of the command, as the situation as it stood did not justify such an indiscriminate firing at the inmates of the car. Thus, this is not a kind of case where the appellants could say that they acted in obedience to the command from their superior by resorting to indiscriminate firing by reason of mistake of fact, in good faith believing that they were bound by law to carry out the unlawful command by their superior. No protection under Section 76 or 79 of the Indian Penal Code is thus available in the facts and circumstances of the case and argument raised, in this respect, is therefore unacceptable.

52. In view of foregoing, in the ultimate analysis, all the appeals are partly allowed to the extent that the

impugned conviction and sentence of all the appellants under Sections 120B IPC and under Section 193/120B IPC are set aside and they stand acquitted of these charges. The conviction and sentence of the appellants under Section 302 IPC and 307 IPC are however maintained, but the same are converted into one under Section 302 IPC read with Section 34 IPC and under Section 307 IPC read with Section 34 IPC instead of under Section 302 IPC read with Section 120B IPC and 307 IPC read with Section 120B IPC and their appeals would stand decided accordingly. The conviction and sentence of appellants ACP S.S. Rathi and Inspector Anil Kumar under Sections 193, 201/34 IPC and 203/34 IPC are maintained and appeals on their behalf in respect of these charges are dismissed.

(B.N.CHATURVEDI)
JUDGE

(G.S.SISTANI)
JUDGE

SEPTEMBER 18, 2009
BG/