

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

+ **CRL.A.233/2009**

PRAKASH CHAND Appellant

Through : **Mr.D.B.Goswami, Adv.**

versus

STATE Respondent

Through: **Mr.Narender Chaudhary, APP for
the State.**

% **Pronounced on :December 02, 2013**

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

1. *“It’s all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth....”* (Lord Denning in *Jones v. National Coal Board* (1957) 2 QB 55)
2. It is often quoted that every trial is voyage of discovery in which truth is quest. In our quest to ascertain the truth, we prefer to be guided by the following observation made by the Supreme Court in *Chandra Shashi v. Anil Kumar Verma* (1995) 1 SCC 421:

‘To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to

administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that

(truth alone triumphs) is an achievable aim there; or

(it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.

3. Instant case is a glaring example as to how the local police colluded with the complainant to facilitate him in obtaining physical possession of property No.3827, Ward No.3, Maqbool Prem Gali, Mori Gate, title of which he carried only on papers. Infact, the entire investigation is coloured with motivation to ensure that the complainant, who was already armed with muscle power, succeed in his mission and the hurdles in his way are taken care of by the local police.

4. In the appeal, on noticing fabrication of record including the MLCs and the manner in which DD Nos.7-A, 8-A, 10-A and 14-A and FIR have been recorded on 8.8.1993 at PS Kashmere Gate, in our quest for ascertaining the truth for purpose of administration of justice, we are constrained to play an active role.

5. The Appellant Prakash Chand has preferred this appeal impugning the judgment dated 21.02.2009 and order on sentence dated 28.02.2009 passed in Session Case No.11/15/11/2008 vide which he has been convicted and sentenced to undergo life imprisonment with fine of Rs.5 lacs for the offence punishable under Section 302 IPC, further to undergo RI for three years with fine of Rs.10,000/- for the offence punishable under Section 325 IPC, also to undergo RI for nine months with fine of Rs.1000/- for the offence punishable under Section 323 IPC and further

to undergo RI for six months with fine of Rs.5000/- for the offence punishable under Section 427 IPC.

6. The Appellant Prakash Chand alongwith eight other accused persons was sent to face trial in case FIR No.470/1993 registered under Sections 302/307/147/148/149 IPC at PS Kashmere Gate. One of the co-accused namely Nand Kishore @ Nandu, who was named in the FIR, was discharged vide order dated 20.09.1993 i.e. before filing of the chargesheet in this case in the absence of any evidence available against him. After trial of nine accused persons sent to face trial, vide impugned judgment, the eight accused namely Pratap Singh, Hari Ram Shaukla @ Pandit Paanwala, Prakash Chaiwala, Joginder Pal, Ghanshyam, Rajesh Kumar, Ashok Kumar @ Kala and Parmanand have been acquitted by learned Addl. Session Judge. The Appellant Prakash Chand, on being convicted under Section 302 IPC, is aggrieved for the reason that in the FIR, no act had been attributed to him on the basis of which he could be convicted under Section 302 IPC. It being a case registered under Sections 302/307/147/148/149 IPC and the Appellant being not convicted under Section 302 IPC with the aid of Section 149 IPC or Section 34 IPC, the learned Addl. Session Judge committed grave error in convicting him under Section 302 IPC and sentencing him to life imprisonment without there being any material to substantiate even the accusations made in the FIR by the complainant.

7. The complaint Ex.PW5/A made by Sh.Ahmed Sultan Chawla is running into 2½ pages giving all minute details of the occurrence. Since the FIR Ex.PW6/A has been recorded on the basis of above complaint Ex.PW5/A, not only the contents of the complaint Ex.PW5/A needs to be

detailed at this stage, even the endorsement made thereon by the SHO, Kashmere Gate is of importance to have an insight into the entire incident as projected at the initial stage.

8. As per the complaint Ex.PW5/A, Sh.Ahmed Sultan Chawla, S/o Late Sh.Jiqrul Rehman, R/o 1019, Mohalla Kishan Ganj, Delhi, in the year 1988 purchased property No.3827, Ward No.3, Maqbool Prem Gali, Mori Gate vide registered sale deed and got the mutation recorded in his favour and was also discharging his liability to pay house-tax in respect of above property. At the time of purchase, the said property/plot was lying vacant for 30 years and to secure his possession, **he put his lock make Panther** on the property. In the year 1991, he got the construction plan sanctioned and was given time till 1993 to raise the construction thereon.

9. The complainant used to take care of his property by frequently visiting there at the interval of 15-20 days. About 10-12 days prior to this occurrence, when he visited his property, the Appellant Prakash Chand, who was residing adjacent to the said property, came to him informing that he would not let him raise any construction on the said property followed by some hot words exchange. **After sometime, the Appellant Prakash Chand came there alongwith 4-5 persons, whom he was addressing as Pratap @ Parmanand, Ashok @ Kala and Ghanshyam,** and asked them to identify him (complainant) and thereafter Prakash Chand left alongwith his companions.

10. Since the time granted to raise construction was expiring on 12.09.1993, he engaged Sardar Maninder Singh, *Thekedar*, resident of 8, Pusa Road to raise construction thereon by awarding contract to him.

11. After giving above background, he narrated the occurrence dated 08.08.1993 as under :-

On 08.08.1993 at about 11.15 am, the complainant alongwith his son Bakhtawar Sultan Chawla, Sardar Maninder Singh, *thekedar*, and 6-7 labourers, reached the said property in their respective vehicles. After parking the vehicles on the main road and leaving his son Bakhtawar Sultan Chawla in the vehicle itself, the complainant alongwith Sardar Maninder Singh and 6-7 labourers proceeded towards the plot which was situated in the gali. Since *thia* of Prakash Chaiwala (Accused No.4) was placed in front of the door, the *thia* was moved ahead and thereafter all of them entered the plot. In the meantime, the Appellant Prakash Chand, who was residing in the neighbourhood, came running to them and started abusing. He left the spot saying '*Abhi Tujhe Kaam Karne Ka Maja Chakhata Hoon*' and after 5-7 minutes, **he alongwith 10-15 persons came there who were armed with *saria* (iron rods), *lathis* (wooden sticks) and *patthar* (stones). Those persons included Pratap @ Parmanand, Ashok @ Kala and Ghanshyam and all three of them were armed with *sarias* and were same persons who had come alongwith Appellant Prakash Chand about 10-12 days prior to this occurrence and were asked by the Appellant Prakash Chand to identify the complainant.** The 10-15 persons accompanied Prakash Chand also **included Pandit Paanwala and Prakash Chaiwala and they were having bricks in their hands.** Prakash (Appellant) exhorted all these persons uttering '*Aaj In Sabka Kaam Tamaam Kardo*' and while exhorting, **first Prakash (Appellant), who was having a brick in his hand, hit the complainant on his head. Prakash Chaiwala also hit**

the complainant on his head with brick and when the complainant raised alarm, Maninder Singh and labourers tried to rescue him and on seeing that, **all the above named persons started assaulting Maninder Singh and his labourers with *lathis* and *sarias*. Prakash (Appellant),** who was residing in the adjoining house, **caught one old Sikh labourer and made him to fall. Pratap @ Parmanand, Ashok @ Kala and Ghanshyam, who were armed with *sarias* (iron rods) assaulted the old Sikh labourer with *sarias* whereas the other associates of Prakash (Appellant) started assaulting Maninder Singh and other labourers with *lathis* and *bricks*.** Thereafter Prakash Chand made noise and collected other **neighbours who started attacking them with bricks and bottles by throwing the same from their respective roofs and from the gali.**

12. As per the complainant, all of them, in order to save their lives, started running towards main road leaving 2-3 unconscious labourers at the spot but were **chased upto their vehicles and they even attacked his son Bakhtawar with *lathis* and *sarias* and also broke the window panes of the vehicle.** In the meantime, the police reached the spot and removed the complainant as well other injured to Hindu Rao Hospital. **On reaching Hindu Rao Hospital, the complainant came to know that the old Sikh labourer, whose name on inquiry was revealed as Gurdayal Singh, S/o Sh.Soran Singh, R/o Dabri, Distt. Alwar, Rajasthan and was injured in this incident on being attacked with *lathis*, *sarias* and stones, had expired.**

13. The complainant prayed for legal action against Prakash Chand and his associates, whom he could identify, who in furtherance of their

common intention and being armed with *lathis*, *sarias* and stones had attacked them with intention to kill them and had also committed murder of Gurdayal Singh, the old Sikh labourer.

14. While sending the above rukka Ex.PW5/A, the SHO, PS Kashmere Gate made the endorsement Ex.PW34/A. As per this endorsement addressed to Duty Officer, PS Kashmere Gate, **the SHO got wireless message about a quarrel and he alongwith staff reached Gali Maqbool Prem, Mori Gate in official vehicle where he found ASI Rajpal, Ct.Jaipal, SI S.B.Yadav, SI Sunil Sharma, SI Nageen Kaushik, ASI Rishi Prakash, HC Ram Kishan, Ct.Kiran Pal, Ct.Rajender and other staff. He found a crowd gathered there and saw bottles and stones being pelted from the roofs and the gali. Two tear gas long range shells were fired to disperse the crowd. PCR van removed some injured to hospital and one injured was sent by him in his official vehicle to hospital.** While leaving the staff to control the situation and guard the spot, the SHO alongwith SI S.B.Yadav reached Hindu Rao Hospital and collected MLC No.5468/93 of complainant Ahmed Sultan, MLC No.5469/93 of Gurmit, MLC No.5471/93 of Tarsem, MLC No.5475/93 of Gurdayal, MLC No.5470/93 of Babu Singh, MLC No.5466/93 of Bakhtawar, MLC No.5473/93 of Mangal and MLC No.5472/93 of Hawaldin. On the MLC of Ahmed Sultan and Bakhtawar, the doctor opined them to be fit for statement. The SHO recorded the statement of Ahmed Sultan and prepared the rukka and sent the same through Ct. Kiran Pal for registration of the case. On the basis of said complaint, FIR was registered and on completion of investigation, chargesheet was filed.

15. After committal of the case to the Court of Sessions and framing of Charge for the offences punishable under Sections 147/148, 323/325/427/307/302 read with Section 149 IPC, the prosecution examined 34 witnesses to bring home the guilt of the accused persons.

16. The Appellant Prakash Chand, after his examination under Section 313 Cr.P.C. as an accused, preferred to examine himself as his own defence witness.

17. While acquitting other eight accused persons, the learned Addl. Sessions Judge convicted the Appellant for the following reasons:-

(i) He had been named not only in the FIR but also in the depositions of relevant public witnesses and had been named as the main accused.

(ii) He initially extended the threat and then came with 10-12 persons, exhorted them and also caused injuries to the complainant.

(iii) The 10/12 persons brought by him also attacked the complainant and others with bricks and saria randomly.

(iv) When they tried to escape to safety, accused Prakash Chand hit Gurdayal on his head as a result of which deceased fell down.

(v) Even while lying down, the old Sikh man Gurdayal was continuously attacked by accused Prakash Chand.

(vi) As a result of attack, around eight persons received grievous as well as simple injuries but the person who suffered maximum brunt of the assault was old Sikh man Gurdayal, who was declared brought dead.

18. We have heard Mr. D.B.Goswami, learned counsel for the Appellant as well Mr.Narender Chaudhary, learned APP for the State and carefully gone through the record.

19. On behalf of Appellant, Mr. D.B.Goswami, Advocate submitted

that Appellant has been falsely implicated in this case for the reason that the Appellant had interest in the suit property from the time of his forefathers and civil litigation is also going on between the parties. Referring to the contents of rukka Ex.PW5/A, learned counsel for the Appellant submitted that there was a confusion about the identity of the Appellant as there were two persons by the name of Prakash i.e. one Prakash Chaiwala and other Prakash Chand – the present Appellant. The complainant had removed the ‘*thia*’ (temporary tea vend) of Prakash Chaiwala and infact the fight was between the complainant and the tea vendor. The Appellant was not even present at the spot and had been subsequently arrested in this case. Learned counsel for the Appellant further submitted that Maninder Singh was a transporter and not contractor. There was no building material at the spot to indicate the visit of the complainant for purpose of construction nor the persons injured in the occurrence, who accompanied the complainant on that day, were masons. In the given circumstances, there is absolutely no evidence against the Appellant and all the material witnesses have turned hostile so much so that except identifying the Appellant, the complainant has not identified the other three accused persons who were shown to have been arrested from Ugrasen Park on the same day and time from the same place. PW-5 Ahmed Sultan Chawla – the complainant even denied having made any statement to the effect that four persons namely Prakash Chand, Pratap @ Parmanand, Prakash Chaiwala and Hari Ram Sukhla @ Pandit Paanwala were apprehended from behind the bushes in his presence on his identification. If the other three persons have not been identified and any such statement being made to the police has been

denied in respect of those three persons, how it could be truthful in the case of the Appellant. Learned counsel for the Appellant submitted that the impugned judgment suffers from infirmity and is not based on correct appreciation of facts and evidence, hence the appeal may be allowed.

20. On behalf of State, Mr.Narender Chaudhary, learned APP submitted that learned Trial Court has rightly believed the statement of PW-5 Sh.Ahmed Sultan Chawla, PW-8 Sh.Bakhtawar Sultan Chawla and PW-27 Sh.Babu Singh, who were injured in the occurrence, thus their presence at the spot is not doubtful. Their MLCs reveal that they have been attacked with iron rods, bricks and stones. While referring to the postmortem report of deceased Gurdayal Singh, learned APP for the State submitted that injury no.2 i.e. haematoma on the left frontal and temporal area was sufficient to cause death and all the injuries were ante mortem caused by blunt weapon/object.

21. Mr.Narender Chaudhary, learned APP for State further submitted that acquittal of co-accused does not confer any right on the Appellant to seek his own acquittal when there is enough material to link him with the occurrence and proclaim him as the main offender. Referring to the background wherein 10-12 days prior to the incident, the Appellant brought 4-5 person and had shown the complainant to them, he submitted that on 8.8.1993 when the complainant visited the plot with the contractor and labourers, they were attacked to prevent them from raising any construction. Learned APP for the State urged that the Appellant has failed to prove his plea of alibi by leading any evidence as to where he was present at the time of occurrence. Referring to the improvements made by the witnesses in their respective statements, it

has been submitted that in view of the time gap from the date of occurrence and date of deposition, such minor contradictions or improvements do takes place and taking note of the fact that the witnesses from Rajasthan are illiterate rustic villagers, their testimony should be appreciated in the background that when large number of accused persons are present, injured is bound to get confused and if any discrepancy creeps in his statement, the same is not fatal. While praying that the well reasoned judgment of learned Addl. Session Judge does not call for any interference, he submitted that the material brought on record by the prosecution is sufficient to prove the guilt of the Appellant beyond reasonable doubt, hence appeal may be dismissed. Learned APP for the State relied upon the decisions rendered in *Matru @ Girish Chandra vs. The State of U.P. AIR 1971 SC 1050*, *Dharamvir and Anr. vs. State of Madhya Pradesh AIR 1974 SC 1156*, *Rajesh Kumar Vs. Sharamvir & Ors. (1997) 4 SCC 496*, *Brijlala Pd. Sinha vs. State of Bihar 1998 Cri.L.J. 3611*, *Surinder Grover vs. State (Delhi Admn.) 1993 SCC (Cri) 1030*, *Ranadhir Basu vs. State of West Bengal AIR 2000 SC 908*, *Har Prasad & Ors. vs. The State of Madhya Pradesh AIR 1971 SC 1450*, *Shivaji Sahebrao Bobade & Anr. vs. State of Maharashtra AIR 1973 SC 2622*, *State of Rajasthan vs. Kheraj Ram AIR 2004 SC 3432*, and *Mst.Dalbir Kaur & Ors. vs. State of Punjab* in support of his above contentions.

22. Having analysed the submissions of both the learned counsel and on examining in detail the testimony of material prosecution witnesses and documentary evidence in this regard, we feel that learned Addl. Session Judge failed to consider the inherent improbabilities in the

prosecution case. All improvements and embellishments in the testimony of complainant and the police officers/officials were treated by learned Addl. Session Judge as sufficient to prove the guilt of the accused Prakash Chand without even looking into the aspect that it is not even the case of the prosecution that Appellant Prakash Chand had hit the complainant or the deceased in the manner deposed before the Court. The timings of information to PCR and subsequent information being transmitted by PCR to local police station, recording of information at PS Kashmere Gate and sending the police party to the spot followed by the events narrated in the chargesheet, raise a serious doubt even about the fairness of the investigation what to talk of correctness of the facts mentioned in the complaint or truthfulness of the material prosecution witnesses including the injured as well the SHO and his team associated with the investigation on the date of occurrence.

23. To bring the above facts on record, we had to undertake mammoth exercise to bring on record the case of the complainant, the proceedings at the police station on that day, the timings of the MLC as well the manner in which four accused persons including the Appellant were arrested on 8.8.1993 from Ugrasen Park, Mori Gate before 4.00 pm. The task was tough for the reason that the relevant DD entries regarding departure/arrival of the SHO and issue/return of tear gas shells had been withheld by the investigating officer and their testimony as prosecution witnesses belied the official record like DD Nos.149-A and 153-A of PCR and DD Nos.7-A and 8-A recorded at PS Kashmere Gate.

24. On 8.8.1993 vide DD Nos.7-A and 8-A, information regarding quarrel was received on wireless set at PS Kashmere Gate. DD No.7-A

at 11.35 am is to the effect that the Wireless Operator in the Police Station came to Duty Officer's room and informed about *Jhagda* (quarrel) at Mori Gate Main Road near Masjid and that some officer be sent. After making the entry in the daily diary, the copy was assigned to ASI Rajpal who alongwith Ct.Jaipal No.1392/N left for the spot for necessary action.

25. DD No.8-A recorded at 11.36 am at PS Kashmere Gate is to the effect that at 11.36 am, the Wireless Operator came to D.O.'s room and got recorded that Ct.Urmila, No.3693/PCR had informed about '*jabardast jhagda*' (big fight) at Mori Gate Ram Bazaar Kucha, Mohtar Khan and some officer should be sent. After recording the information, the copy of DD No.8-A was handed over to SI S.B.Yadav who alongwith SI Sunil Kumar, ASI Rishi Prakash, SI Dharam Pal, HC Ram Kishan, Ct.Kiran Pal, Ct.Rajinder Singh and Ct.Narender left for the spot and SHO had been informed through wireless.

26. The DD is silent about the location of the SHO at that time. However, we note here that any message flashed on wireless has to be necessarily heard and taken note of by the SHO himself. From the rukka as well from DD No.8-A, it becomes clear that SHO reached the spot on receiving the wireless message. After going through the record and the short time gap i.e. of one minute in receiving the information recorded vide DD Nos.7-A and 8-A, noting that the Duty Officer must have taken a few minutes may be three to four minutes in recording the first DD, handing over to ASI Rajpal for necessary action and then start recording second DD No.8-A for handing over to SI S.B.Yadav and his team consisting of seven other police officials and even presuming that all

these police officials were made to rush to the D.O.'s room within no time, it became highly improbable as to how ASI Rajpal with Ct.Jaipal could have left alone when the DD No.7-A recorded at 11.35 am must have taken 3-4 minutes in recording the same and handing over the copy to him for proceeding towards the spot. If next call was at 11.36 am and that too of '*jabardast jhagda*' and not of any rioting, vide DD No.8-A, eight police officials were sent to the spot though ASI Rajpal could not have even left the police station as it takes a few minutes to write the DD and give the copy to the police official.

27. Since the MLC of Bakhtawar Sultan Chawla at Hindu Rao Hospital was prepared at 11.55 am, the time gap between the receipt of information and preparation of MLC of Bakhtawar, who was on the main road and was the last to be attacked after incident in the gali was over as well the statement of material prosecution witnesses created a serious doubt about the authenticity of narration of events. Not only that, memos Ex.PW3/A to E, G, H, J, K, M and O prepared on 8.8.1993 in respect of the arrest of four accused persons wherein SI S.B.Yadav has been shown as witness No.1 and SI Dharam Pal as witness No.2 followed by signature of Investigating Officer (SHO, PS Kashmere Gate) but thereafter name of complainant Ahmed Sultan Chawla has been added as witness No.3 and manipulation thereon is writ large. On these memos, even pen used is different. In some of the above mentioned memos, name, address and signature of the complainant Ahmed Sultan Chawla are squeezed in the small space available above signature of SHO/IO and at other places, even below the body of memos making it clear to even a man of ordinary prudence that complainant had been

made to sign as a witness at a later stage. MLCs also had traces of being tampered with.

28. The above aspects made us to list the case for directions to hear the State and the Investigating Officer. ACP K.K.Kaushik (Retd.) appeared before the Court on 25.10.2013 and after giving him an opportunity to refresh his memory with the Trial Court Record as well police file, he was questioned on various aspects of the case pertaining to date of occurrence. No explanation came forward and finding him observing silence on the aspect as to how the entire police team including the SHO could be at the spot at about 11.35 am when the first information recorded vide DD No.7-A and vide DD No.8-A (11.36 am) SHO was informed through wireless, then how Bakhtawar who was assaulted after 10-15 minutes of the incident in the gali, could be the first to reach the hospital at 11.55 am especially taking into account the situation prevailing at that time and the distance of Hindu Rao Hospital from the spot braving congestion enroute.

29. With the aid of various documents prepared on 8.8.1993 , we are attempting to re-enact the sequence of events and then to examine them for purpose of decision of this appeal.

30. The timings on the MLC and the version of the complainant in Ex.PW5/A as well as endorsement Ex.PW34/A by the SHO had created lot of confusion about the time and manner of occurrence, who were the officers present at the spot, how the situation was controlled and by whom, location of the SHO at the time of receiving the wireless message, when and by whom tear gas shells were collected, by whom the injured were removed to the hospital. Since the MLCs were disclosing

the history of fight with mob and also as per the endorsement on rukka, people from the gali and the roof top were throwing stones and bottles in the gali but the complainant had attributed all the injuries received by him and other persons accompanying him including the deceased Gurdoyal, to the Appellant and his associates, we had to undertake an exercise to examine and understand the case from all perspectives/angles for the reason that as per prosecution, it is a case of rioting and while the persons positioning at advantageous situation like on the roof top could not be at the receiving end, only those persons who happened to be present in the gali from each side, were to bear the brunt. It being the case of prosecution that complainant and his associates as well Appellant and his associates were in the gali, how the accused and his associates could escape unhurt, as the bottles and stones thrown from the roof top by the mob do not hit the person after ascertaining his identity or to which side, he belongs.

31. DD Nos.149-A and 153-A (at page 45 of TCR) are the first information given to PCR by Naseem and Prakash and are to the following effect :

*'DD No.149/A dt. 8.8.93 PCR, N.Delhi
Inspt. – Jhagda 11.25 Nasiam
Mori Gate Main Road par Masjid ke pass jhagda.*

*sd/-
Inder Singh, ASI'*

*'DD No.153/A dt. 8.8.93 PCR/ N.Delhi
Inspt. – Jhagda 11.28 Prakash*

_915037 Mori Gate Main Bazaar Bihari Lal Building Shop

No.3875 bottlein va patthar chal rahe hain. jhagda.

*sd/-
Nirmala, 3613'*

(Note : At page 45 of the TCR, due to tag piercing, the first digit of the telephone number is not legible).

32. **Statement of PW-3 HC Sri Ram recorded in the Court**

PW-3 HC Sri Ram stated that :

'On 8.8.93 I was on duty on PCR Van at Oscar 41 from 8.00 am to 8.00 pm. Our van was parked at ISBT at that time. At about 11.30 am, an information was received at PCR that a quarrel was going on at Kashmiri Gate. I alongwith the staff reached the spot in the PCR Van. A crowd was present there. I found seven injured persons at the spot. I removed them to Hindu Rao Hospital.'

33. **Details of the occurrence dated 08.08.1993 as incorporated in rukka Ex.PW5/A :**

- (1) PW-5 Ahmed Sultan Chawla - the complainant alongwith his son Bakhtawar Sultan Chawla (PW-8) and Maninder Singh, 'thekedar'(PW-12) with 6-7 labourers reach the property at about 11.15 am.
- (2) The two vehicles i.e. of the complainant and Maninder Singh are parked on the main road and son of the complainant is left in the vehicle.
- (3) The complainant alongwith Maninder Singh and the labourers enter the gali to show the plot to him, moves the 'thia' of Prakash Chaiwala to enter the plot No.3827, Gali Maqbool Press, Mori Gate, opens the lock and all of them enter the plot.
- (4) Appellant Prakash Chand residing nearby came running to the spot and started abusing but left while threatening to teach a lesson.

- (5) After 5-7 minutes, Prakash Chand came with 10-15 persons who were armed with *Sarias*, *lathis* and *patthar* and those persons included Pratap @ Parmanand, Ashok @ Kala and Ghanshyam who had accompanied Prakash even 10-12 days prior to that day and were instructed by Prakash Chand to properly identify the complainant.
- (6) Pandit Paanwala and Prakash Chaiwala also present there and armed with bricks.
- (7) Prakash (not specified whether Prakash Chaiwala or Prakash Chand i.e. Appellant) exhorted to finish all of them.
- (8) Prakash Chaiwala as well Prakash hit the complainant on his head with bricks in their respective hands.
- (9) The complainant raised alarm and Maninder Singh and his labourers tried to come to his rescue and on seeing that all the persons assembled there started assaulting Maninder Singh and his labourers with *lathis* and *sarias*.
- (10) Pertaining to deceased Gurdayal - : **Prakash residing in the adjoining house caught hold of one old Sikh who was running, made him to fall and Pratap @ Parmanand, Ashok @ Kala and Ghanshyam, who were armed with iron rods, started attacking old Sikh with *lathis* and *sarias* while their remaining associates continued assaulting Maninder Singh and remaining labourers with *lathis* and *sarias*.**
- (11) Prakash Chand raised alarm and called the neighbourers.
- (12) The other neighbourers started throwing bricks and bottles on them (complainant and the persons accompanied him) from the roof top.
- (13) While 2-3 labourers were lying unconscious at the spot, remaining

persons proceeded towards the main road to save their life.

(14) The Appellant Prakash Chand and his associates chased the complainant and his companions upto the main road where their vehicles were parked and attacked Bakhtawar, who was sitting in the vehicle with *lathis* and *sarias* and also broke the window panes of the vehicle.

(15) **In the meantime, police vehicles arrived at the spot and removed him and other injured to the hospital where, on reaching, he came to know that the old Sikh, whose name on enquiry was revealed as Gurdayal Singh, S/o Soran Singh, R/o Village Dabri, Distt. Alwar, Rajasthan, who suffered injuries on being attacked with *lathis*, *sarias* and *stones* had died before reaching the hospital.**

Delay in sending special report

34. We noticed that on the rukka Ex.PW5/A, endorsement Ex.PW34/A was made and DD No.10-A dated 08.08.1993 (kayami mukadma) is mentioned without specifying the time of recording DD No.10-A but photocopy of the FIR (at page No.25 of TCR) contains :

*'Date and hour of occurrence : 8.8.93 at 11.25 am.
DD No.10-A dt. 8.8.93 at 2.45 pm'*

35. PW-6 HC Shri Prakash, the Duty Officer admits that :

'It is correct that D.D. No.10-A and date 8.8.93 and even the timing of 2.45 P.M. is written in different ink on the original FIR whereas the other writing of the FIR are written in a different ink.'

36. Carbon copy of FIR Ex.PW6/A (at page No.29 of TCR) sent to learned Magistrate, though records the date and hour of occurrence as '*8.8.93 at 11.25 am*' but in column No.1 of FIR, no detail of DD No. 10-A is given. At what stage, this manipulation has been done and by

whom is not known.

37. Ct.Om Prakash, No.2063/N was given the special report for handing over to the senior officers vide DD No.10-A (at page No.39 of TCR) and vide this very DD, it was recorded that he left on motorcycle No.DDN-6105 for the above purpose.

38. DD no.14-A dated 8.8.93 (page 41 of TCR) records return of Ct. Om Prakash No.2063/N on motorcycle No.DDN-6105 at 7.30 pm after delivering the special dak.

39. PW-2 Ct.Om Prakash made the following statement before the Court:-

On .../8/93 (Date not legible) I was posted at PS Kashmiri Gate. On that day at about 4.00 a.m. the duty officer handed over to me special reports for delivery to higher officials I went on police motor cycle and delivered the special reports of this case to the concerned Magistrate, DCP office, Civil Lines and in the office of Addl. C.P. at Police Head Quarters.'

40. The FIR Ex.PW6/A/Special Report bears the following endorsement by the Magistrate :-

*'Recd. at res.
At 6 am
sd/-
9.8.93'*

41. We are at a loss to understand as to why Ex.PW6/A, the carbon copy of FIR sent to MM, does not contain the kayami DD number and its time. Further if the special dak was delivered on the same day and arrival entry made by Ct.Om Prakash on 8.8.1993 itself vide DD No.14-A at 7.30 pm, how he could depose before the Court that FIR was handed over to him at 4.00 am (next day). However, the endorsement of

Metropolitan Magistrate about the receipt of special FIR at 6.00 am on 9.8.93, leads to inescapable conclusion that FIR No.470/1993 had not been recorded on 8.8.1993 at 2.45 pm vide DD No.10-A. With above inconsistencies and manipulations in DDs and FIR, we remain in dark as to when the FIR was registered and when the special Report was sent to the Ilaqa Magistrate.

42. Significance of special report in heinous crimes and effect of delay in sending the report have been highlighted in ***Meharaj Singh vs. State of U.P. (1994) 5 SCC 188***, as under :-

'12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P.C. is aimed at

serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante timed and had not been recorded till the inquest proceedings were over at the spot by PW8.'

MLCs

43. At page No.151 of TCR, there is a prescription slip Ex.PW29/A of PW-12 Maninder Singh – transporter/thekeदार of the date 8.8.93 from Jeewan Hospital, East Park Road, Karol Bagh, Delhi. In this prescription slip, no history has been given. It records only the injuries.

44. At page No.153 of TCR, there is a request by SI S.B.Yadav to Civil Surgeon, Civil Hospital, Rajpura Road to medically examine Maninder Singh, who was earlier rushed to Jeewan Hospital after suffering injuries and it was necessary to examine him at Govt. Hospital. On the reverse side of this request of SI S.B.Yadav, MLC No.190 dated 11.08.1993 has been prepared by the Doctor observing that the case is three days old i.e. of Sunday 8.8.93 at 11.00 am and after referring to the injuries, opinion was to be given after X-ray. Nothing happened thereafter.

45. MLC No.5466 Ex.PW19/E of Bakhtawar, aged 22 years, S/o Sultan Chawla (Complainant) :

'Date and hour of arrival – 8.8.93 at 11.55 am.'

Brought by : HC Shri Ram, PCR-041.

History of fight.

O/E : General condition fair, patient conscious alert.

Not admitted.

Fit for statement.

Nature of injuries suffered – simple.’

46. MLC No.5468 Ex.PW19/D of Ahmed Sultan Chawla, S/o Zikrul Rehman :

‘Date and hour of arrival – 8.8.93 at 12.05 pm.

Brought by : HC Shri Ram, PCR-041.

History of fight. Being beaten by Mob.

O/E : Patient fully conscious, alert.

Not admitted.

Fit for statement.

Nature of injuries suffered – simple.’

47. MLC No.5469 Ex.PW1/C of Gurmeet, S/o Jaggir Singh :

‘Date and hour of arrival – 8.8.93 at 12.15 pm.

Brought by : HC Shri Ram, PCR-041.

History of fight.

O/E : General condition fair, conscious.

Not admitted.

Unfit for Statement (written in black on unknown date and time and by unknown person though the patient not even admitted).

Nature of injuries suffered – simple.’

48. MLC No.5470 Ex.PW19/B of Babu Singh, S/o Dayal Singh (deceased) :

‘Date and hour of arrival – 8.8.93 at 12.15 pm.

Brought by : HC Shri Ram, PCR-041.

History of fight. Beaten by Mob.

O/E : Patient conscious alert.

Six injuries suffered

Admitted.

***Unfit for Statement* (written in black on unknown date and time and by unknown person).**

Pt. fit for giving statement – sd/- 10.8.93 12.30 pm

Date of discharge : 16.08.93

Nature of injuries suffered – grievous.’

49. MLC No.5471 Ex.PW1/B of Tarsem Singh :

‘Date and hour of arrival – 8.8.93 at 12.25 pm.

Brought by : HC Shri Ram, PCR-041.

History of fight.

O/E : General condition – not satisfactory, semi-conscious.

Admitted

***Fit for Statement* (written in black on unknown date and time and by unknown person).**

Pt. is fit to give statement – sd/- 10.8.93 12.30 pm

Date of discharge : 14.8.93.

Nature of injuries suffered – simple.’

50. MLC No.5472 Ex.PW19/A of Hawal Deen, S/o Zor Khan :

‘Date and hour of arrival – 8.8.93 at 12.30 pm. And 12.50 p.m (both written)

Brought by : HC Shri Ram, PCR-041.

History of fight. Being beaten by the mob.

O/E : General condition fair, patient drowsy.

Not admitted.

***Unfit for statement.* (written in black on unknown date and time and by unknown person though the patient not even admitted).**

Nature of injuries suffered – simple.’

Though the patients Gurmeet Singh (MLC No.5469) and Hawaldeem (MLC No.5472) were not even admitted, on the left margin of their MLCs with different pen (black) it is recorded :

‘Unfit for statement

Sign (illegible)’

Name of the person and date & time of so recording are not mentioned. When the patient was not even admitted, how the endorsement ‘unfit for statement’ could be made. It appears to be a case of tampering with the MLC.

51. MLC No.5473 Ex.PW1/A of Mangal :

‘Date and hour of arrival – 8.8.93 at 12.35 pm.

Brought by : HC Shri Ram, PCR-041.

History of fight.

O/E : General condition fair, fully conscious..

Not admitted.

Nature of injuries suffered – simple.’

52. MLC No.5475 of Gurdayal, :

‘Date and hour of arrival – 8.8.93 at 12.40 pm.

Brought by : HC Shri Ram, PCR-041.

History of fight.

Declared : Brought dead.’

53. Having analysed the submission of learned counsel for the Appellant and learned APP for the State and having gone through the evidence in detail, we feel that the testimony of police officials i.e. PW-34, PW-17, PW-9 and PW-4 are of vital importance.

Version of SHO Inspector K.K.Kaushik recorded in the endorsement Ex.PW34/A on the rukka:-

(1) On receiving wireless message, SHO alongwith staff reached the spot and found ASI Rajpal, Ct.Jaipal, SI S.B.Yadav, SI Sunil Sharma, SI Nageen Kaushik, ASI Rishi Prakash, HC Ram Kishan, Ct.Kiran Pal, Ct.Rajender and other staff present there.

(2) Tear gas shells already in the vehicle.

- (3) A crowd already gathered there and from the roof top and the gali, people were pelting stones and bottles.
- (4) To disperse the crowd and control the situation, two long range tear gas shells were fired.
- (5) The crowd was dispersed and some injured removed to hospital by PCR and one injured was sent by him in his vehicle.
- (6) After controlling the situation at the spot, leaving staff to guard the spot, the SHO alongwith SI S.B.Yadav proceeded to Hindu Rao hospital.
- (7) SHO obtained MLCs of the injured persons and the dead person. While Hawaldeem, Gurmeet (not admitted) and Babu Singh were 'unfit for statement', Ahmed Sultan Chawla, his son Bakhtawar Sultan Chawla and Tarsem singh were fit for statement.
- (8) Statement Ex.PW5/A of Ahmed Sultan Chawla was recorded and Duty Officer was directed to register the case and also send the copy to senior officer through special messenger and photographer be sent to the spot.

Statement of PW-34 ACP K.K.Kaushik, then SHO, PS Kashmere Gate and IO of the case, made before the Court :-

- (1) On 8.8.1993 he was posted as SHO at PS Kashmere Gate and at 11.30 am, received an information on the wireless set regarding the incident of rioting at Mori Gate. He alongwith SI Navin Kaushik (Correct name Nageen Kaushik), SI Dharam Pal, HC Ram Kishan, Ct.Kiran Pal reached the spot and saw a gathering of 150-200 persons in gali Maqbool Press. Stones were being thrown from the roof. On seeing the situation, he fired 2-3 tear gas shells and dispersed the mob and

controlled the situation with the staff. Some injured persons lying in the street and road were sent by him to the hospital in PCR Van and in his vehicle as well.

(2) Some staff was deputed at the spot and he alongwith SI S.B.Yadav rushed to the hospital, collected the MLC of seven injured persons and injured Gurdayal Singh was declared 'brought dead'.

(3) He recorded the statement of Ahmed Sultan Chawla **who was declared fit for statement.** (Though he was not even admitted in the hospital.

(4) He alongwith SI S.B.Yadav and other staff reached the spot, prepared the rukka and sent through Ct.Kiran Pal for registration of the case.

(5) Conducts the investigation like preparation of site plan, seizure of bricks etc. and the two vehicles i.e. Ambassador and TATA Seira of the complainant and Maninder Singh.

(6) Seizes the documents relating to ownership of the complainant and also seizes the clothes of complainant.

(7) Site was got photographed.

(8) Arrested four accused persons namely Prakash Chand, Prakash Chaiwala, Hari Ram Shukla @ Pandit Paanwala and Pratap from a park near Mori Gate at the instance of complainant Ahmed Sultan Chawla and their personal search was conducted.

Cross examination of PW-34 (Page 127 of the paper book)

(1) Reached the spot at 11.35 pm.

(2) Did not remember the name of the injured accompanied him to the

hospital/taken in his official vehicle to the hospital.

(3) Made inquiries from neighbourers but no notice was served on any of them to join the investigation.

(4) Memos prepared by the subordinates. One of them was SI S.B.Yadav.

(5) Rukka Ex.PW34/A is not in his handwriting but of somebody else. (During hearing on 25.10.2013 in this Court, stated to be in the handwriting of SI S.B.Yadav).

(6) Rukka was prepared at his dictation and he dictated whatever complainant Ahmed Sultan Chawla stated.

(7) Ahmed Sultan Chawla met him at the spot. He recorded his statement in the hospital.

(8) On 8.8.1993, he made the arrival entry at around 6.00 pm.

(9) On 8.8.93 he visited Ugrasen Park at about 3.30 pm in official vehicle with 3-4 police officials.

(10) Accused persons not known to him prior to the incident.

(11) Did not remember whether the information received was about riots or mere quarrel but he was in the area at that time and was coming back from a meeting at Red Fort regarding the security arrangements on Independence Day.

(12) SI Nageen Kaushik, SI Dharam Pal, HC Ram Kishan and Ct. Kiran Pal were also with him but did not remember the time of their departure from the police station on that day and it could be two hours prior to receiving the information.

(13) When he reached the spot, 3-4 police officials were already there.

(14) He did not call Anti Riots Staff at the spot but requisitioned

additional force from the police station.

(15) He did not carry tear gas shells with him while visiting Red Fort but collected the tear gas shells from the police station while he was returning from Red Fort and police station falls on the way to the spot.

(16) Tear gas shells can be issued only after making entry by MHC(M) in the concerned register. Tear gas shells were not issued in his presence and he was waiting outside in the vehicle and did not remember who received the tear gas shells from the MHC(M) and no entry in this regard annexed with the chargesheet.

(17) No public witness examined during investigation in this case.

(18) After use of tear gas shells, everybody ran away and the situation came under control.

(19) Police officials took the position on the main road as well as entry of gali Maqbool Press and inside the gali.

(20) He saw the people running out of the gali after the use of tear gas shells but no police official tried to apprehend any person running away from there.

Case Diary dated 08.08.1993 (from 2.30 pm to 11.00 pm) recorded from Serial No.1 to 28: (No time recorded against the entries made on that date)

Serial No.1: On receiving the information through wireless about the quarrel, the SHO alongwith staff reached the spot and found ASI Rajpal, Ct.Jaipal, SI S.B.Yadav, SI Sunil Sharma, SI Nageen Kaushik, ASI Rishi Prakash, HC Ram Kishan, Ct.Kiran Pal, Ct.Rajender and other staff present at the spot. SHO was having tear gas shells in his vehicle. On seeing the crowd gathered and pelting stones and bottles from the

roof top and gali, to disperse the crowd and control the situation, fired two tear gas shells. PCR removed injured to hospital and he also provided his vehicle for removing the injured. After bringing the situation under control, leaving the staff to guard the spot, he alongwith SI S.B.Yadav reached the hospital, obtained the MLC, recorded the statement of the complainant. The SHO alongwith SI S.B.Yadav returned from the hospital in his official vehicle.

Serial No.2: From the spot, after making endorsement, rukka was sent through Ct.Kiran Pal.

Serial No.3 & 4: Site photographed and photographer examined under Section 161 CrPC.

Serial No.5: Spot inspection at the instance of complainant Ahmed Sultan Chawla.

Serial No.6: Seizure of three iron rods and five lathis.

Serial No.7: Seizure of broken bricks.

Serial No.8 & 9: Seizure of stones.

Serial No.10: Seizure of lock make 'Panther' produced by the complainant.

Serial No.11: Seizure of two vehicles.

Serial No.12: Seizure of property ownership related documents produced by the complainant.

Serial No.13 & 14: Arrival of Ct.Kiran Pal after registration of the case and handing over of the file. His examination under Section 161 CrPC. (No time mentioned of the arrival).

Serial no.15 & 16: Search for the offenders in company of the complainant and apprehension of four person sitting under a bush in

Ugrasen Park, Mori Gate at the instance of complainant and after ascertaining their identity, their arrest in this case.

Serial No.17: Disclosure statements of the arrested persons.

Serial No.18: Statement under Section 161 of Sultan Chawla.

Serial No.19: Statement under Section 161 of SI S.B.Yadav.

Serial No.20: Statement under Section 161 of SI Dharam Pal.

Serial No.21: The complainant made to leave after instructions (*Baad Hidayat Farig Kiya Gaya*).

Serial No.22: SHO alongwith staff also left.

Serial No.23: **Inspector alongwith staff on reaching the spot and saw quarrel going on at property No.3827 between the complainant Sultan Chawla and wife of Prakash Chand and their relations and both sides claiming title over the property and they were asked to produce the key of the lock but none of the party was having the key. Both the sides were made free after instructions.**

Serial No.24: Picket put outside property No.3827 and proceedings under Section 145 CrPC initiated to ensure peace.

Serial No.25 & 26: Appellant Prakash chand sent for medical examination to Hindu Rao Hospital and his return after the medical examination.

Serial No.27 & 28: Inspector alongwith staff, case property and the four arrested person returned to police station and arrested persons were put in the lock-up, case property deposited in the Malkhana and by that time, it was too late in the night (*Wagt gair ho chukka hai*).

Vital aspects as narrated by other material police witnesses in their statement under Section 161 CrPC and deposition before the Court in respect of the events dated 8.8.93

Statement recorded under Section 161 CrPC of PW-17 SI S.B.Yadav

- (1) On receipt of DD No.8-A, he alongwith SI Sunil Sharma, SI Nageen Kaushik, ASI Rishi Prakash, HS Ram Kishan, Ct.Kiran Pal and Ct.Rajender Singh reached the spot where he found/met the SHO alongwith staff (*Jahan par aap bamey staff mauka par mile*).
- (2) Many persons gathered there and the SHO **immediately fired two rounds of tear gas long range**.
- (3) SHO with staff dispersed the crowd who were pelting bottles and stones from gali and roof top.

In the words of SI S.B.Yadav:

‘.....*Jaay mauka vardaat gali Maqbool Press pahuncha jahan par aap bhi bamey staff mauka par mile. **Mauka par logo ki kafi bheed ikkattha thi. Aapne foren do round tear gas long range ke chhode** tatha hamrahi staff ki madad se bheed jo galiyon va chhatton se bottlon, pattharon se pathrav kar rahi thi titar bitar kiya.....*’

- (4) SHO alongwith him (SI S.B.Yadav) reached Hindu Rao Hospital leaving the staff to guard the spot.
- (5) Obtained the MLC of all the injured and of Gurdayal Singh, who was declared brought dead and out of seven injured, some were fit for statement and some were unfit for statement.
- (6) Recorded the statement of complainant Ahmed Sultan Chawla.
- (7) Returned to the spot alongwith him (SI S.B.Yadav) where after making endorsement on the rukka, sent through Ct.Kiran Pal for

registration of the case.

(8) Site plan prepared at the instance of complainant as well seizure of the articles lying at the spot.

(9) At the pointing out of complainant Ahmed Sultan Chawla, from Ugrasen Park, accused Prakash Chand, Pratap @ Parmanand, Prakash Chaiwala, Hari Ram shukla @ Pandit Paanwala were arrested from the bushes where they were hiding.

Statement of PW-17 Inspector S.B.Yadav, then Sub-Inspector recorded in the Court

(1) On receipt of DD No.8-A, he alongwith SI Dharam Pal, SI Sunil Sharma, ASI Rishi Pal, Ct. Kiran Pal and other staff reached the spot.

(2) Big crowd present there and people were throwing bricks, bottles and stones from the roof on the crowd in the gali.

(3) SHO Inspector K.K.Kaushik also present at the spot.

(4) SHO fired two tear gas shells of long range on the persons who were pelting stones etc. and the crowd was brought under control.

(5) **In the pelting of stones, seven persons had received the injuries and one person, whose name was revealed as Gurdayal Singh, had died.**

(6) All the injured taken to Hindu Rao hospital. Some were fit to make statement while others were unfit.

(7) **One of the injured Ahmed Sultan Chawla was also in the hospital.** SHO recorded his statement in the hospital and thereafter returned to the spot where SHO prepared the rukka and sent through Ct.Kiran Pal for registration of the case.

(8) He states about other investigation at the spot regarding seizure of the articles.

(9) **On the same day, SHO organized a police team consisting of him (PW-17), SI Dharam Pal, other police staff and complainant Ahmed Sultan Chawla.**

(10) They reached Ugarsen Park, Mori Gate and at the pointing out of Ahmed Sultan Chawla, four accused persons namely Prakash Chand, Prakash Chaiwala, Hari Ram Shukla @ Pandit Paanwala and Pratap @ Parmanand were arrested.

Cross examination of PW-17 SI S.B.Yadav

Cross examination by counsel for accused Ashok @ Kala and Rajesh @ Bhaiya :

'I visited the spot for two times on 8.8.1993. I had signed all the seizure memos on the spot after sending the rukka. I had joined the investigation of this case on 8/9/10/11 August, 1993 and again on 9.9.1993. We remained at the spot from 11.35 am to 11.50 am for the first time. I again visited the spot at 2 PM on 8.8.1993 and we remained at the spot till 4 PM. The disclosure statement of accused Prakash Chand was recorded after his arrest after 4 PM.' (At page No.68 of Paper Book)

Cross examination by counsel for accused Prakash Chand :

'I myself alongwith other police officials left the police station at 11.36 AM. SHO was also with us. ASI Rajpal and a Constable had reached on the spot prior to us. (At page 71 of Paper Book) There were 10-11 houses adjoining and in front of the property in dispute and the stones and bottles were being thrown from all these houses. I do not know that at which direction the bottles and stones were being thrown. I cannot say whether bottles and stones were being thrown at random or the

same were being directed to any particular person. When I reached on the spot there were around 30-40 people in the gali. I cannot say if the stones and bottles were being thrown particularly at these 30-40 people. Out of these 30-40 people around 10-15 people were beating Sultan Ahmed Chawla and his labourers with lathi, iron rod and bricks. This continued for around 5-7 minutes in my presence. SHO did not call for any additional force as we were having the sufficient force with us. I do not remember if any member of the police party was having gun or not. Voluntary, the police officials were having lathis. There was no information as to the riot. There were only two DDs regarding the quarrel. We came to know only after reaching spot that riot is taking place. The persons sitting on the roof tops were visible to us. There were no children and women out of the persons sitting on the roof tops. There were around 100 people on the roof of the building of both the sides. I was posted in this police station around 6-7 minutes prior to this incident. I myself and ASI Rajpal were the Division Officers of that particular area. I had been visiting that area frequently and therefore, I knew many persons personally. I did not recognise any of the person present on the roof top. Voluntary, the accused persons present in the Court were part of the 30-40 people present in the gali, who were beating Sultan Ahmed Chawla and his labourers. The rukka was not prepared in my presence. However, it was prepared on the spot but I was standing separately. I was standing at 5-6 ft. away from the place where rukka was being prepared. **(At pages 72 to 73 of Paper Book).** We reached on the spot within 10 minutes of the receipt of the call i.e. 11.46 pm and remained on the spot for 10 minutes. Within this 10 minutes the situation was controlled. The injured persons suffered injuries in my presence. I cannot say whether any person had received injury prior to the time I reached on the spot. All the eight persons suffered injuries in my presence. The injured persons suffered injuries in my presence. I cannot say whether any person had received injury prior to the time I reached on the spot. All the eight persons suffered injuries in my presence. The injured persons, who MLCs were prepared did not suffer any injury on account of stone and bottles being thrown from the roof top. The stones and bottles were being thrown by one or two persons from

*the roof top and remaining were the spectators. I did not go to the roof top nor I did see any other member of the police party going to the roof top. I saw people running away from the roof top. Voluntary, these people ran away after the tear gas was used.(At page 75 of the paper book).....The police party was on the road as well as on the gali. It is correct that none of the person so running away could be apprehended. I cannot tell specific reasons for this. I cannot say if there is only one entry or exit of this gali. It is correct that 30-40 people who were present in the gali also ran away in our presence and we could not apprehend any one of them. After 10 minutes I myself and SHO took some of the injured persons in our vehicle to the hospital. Remaining injured persons were shifted in PCR Van. Besides me, SHO and Ct.Kiran Pal remained at the spot. **We reached back on the spot from hospital at around 12.15 pm and remained there upto 1.45 pm.** In hospital IO recorded the statement of Sultan Ahmed Chawla only. The statement of other witnesses were not recorded in my presence. **I reached back on the spot again at 2.00 or 2.15 pm and remained there upto 3.45 to 4.00 pm.** I do not know if remaining accused persons were discharged or not, however, Sultan Ahmed Chawla came back with us on the spot. At Ugrasen Park there are bushes around 7-8 ft. height. The Ugrasen Park is around 500 mtrs. away from the spot. This park is not surrounded by the residential building. (At page 76 of the paper book).....’*

Statement recorded under Section 161 CrPC of PW-9 Ct.Kiran Pal

- (1) On receipt of DD No.8-A, accompanied SI S.B.Yadav and staff to the spot **where SHO alongwith staff was found present.**
- (2) Many persons gathered there and the SHO **immediately fired two rounds of tear gas long range.**
- (3) SHO with staff dispersed the crowd who were pelting bottles and stones from gali and roof top.
- (4) SHO alongwith SI S.B.Yadav **left for Hindu Rao Hospital and**

returned from there at about 2.30 pm and handed over the rukka to him for registration of the case (does not speak of endorsement being made at the spot).

(5) Took the rukka to Duty Officer and after registration of the case returned to the spot and handed over the file to the SHO.

Statement of PW-9 Ct.Kiran Pal recorded in the Court

(1) On 8.8.93 on receipt of DD No.8-A, he accompanied SI S.B.Yadav and other staff to the spot.

(2) They saw a big crowd throwing bottles and stones from the roof.

(3) **In the meantime, SHO Inspector K.K.Kaushik also reached the spot.**

(4) SHO threw two tear gas shells of long range to disperse the crowd.

(5) PCR van was also there.

(6) Injured removed to hospital by PCR.

(7) **SHO and SI S.B.Yadav left for Hindu Rao Hospital and returned at 2.15 – 2.30 pm.**

(8) SHO handed over rukka to him for registration of the case.

(9) After getting the FIR registered, he returned to the spot and handed over the copy of FIR and rukka to the SHO at the spot.

Cross examination of PW-9 Ct.Kiran Pal

Cross examination by learned counsel for accused Prakash Chand :

‘When we reached stones were being pelted. There were about 5000 to 7000 persons as crowd. I cannot tell who were pelting stones or quarrelling. Tear gas shells were thrown on the crowd because they were not paying any attention towards warnings. I cannot say where the written work was done by the IO/SHO only the SHO can tell.’ (At page 46 of the paper book).

Statement recorded under Section 161 CrPC of PW-4 SI Dharam Pal

- (1) On receipt of DD No.8-A, accompanied SI S.B.Yadav and other staff to the spot **where SHO alongwith staff was found present.**
- (2) Many persons gathered there and the SHO **immediately fired two rounds of tear gas long range.**
- (3) SHO with staff dispersed the crowd who were pelting bottles and stones from gali and roof top.
- (4) SHO alongwith SI S.B.Yadav left for Hindu Rao Hospital and returned to the spot. Thereafter rukka was sent for registration of the case through Ct.Kiran Pal.
- (5) Site plan prepared at the instance of complainant as well seizure of the articles lying at the spot.
- (6) At the pointing out of complainant Ahmed Sultan Chawla, from Ugrasen Park, accused Prakash Chand, Pratap @ Parmanand, Prakash Chaiwala, Hari Ram shukla @ Pandit Paanwala were arrested from the bushes where they were hiding.

Statement of PW-4 SI Dharam Pal recorded in the Court

- (1) On receipt of DD No.8-A, he alongwith SI S.B.Yadav reached the spot.
- (2) Big crowd had gathered at the spot.
- (3) **In the meantime, SHO also reached the spot alongwith the staff.**
- (4) Two rounds of tear gas fired on the direction of the SHO to disperse the mob.

- (5) SI S.B.Yadav and SHO went to Hinru Rao Hospital and he alongwith staff remained at the spot.
- (6) SHO returned to the spot and sent rukka through Ct.Kiran Pal.
- (7) SHO inspected the spot and prepared the site plan, got the spot photographed and seized the articles lying there.
- (8) Seizure of the documents produced by the complainant.
- (9) Efforts were made to trace out accused persons and accused Hari Ram Shukla, Prakash Chand, Prakash Chaiwala, Pratap Singh were arrested and their personal search was conducted vide memos Ex.PW3/F, G, H and J.

54. Taking the sequence further, we now consider the version of PW-5 Ahmed Sultan Chawla – the complainant at different stages as well of son i.e. PW-8 Bakhtawar Sultan Chawla and other injured public witnesses.

Vital aspects as narrated by material public witnesses in their statement under Section 161 CrPC and deposition before the Court

Statement of PW-5 Sh.Ahmed Sultan Chawla recorded in the Court

- (1) He visited the spot about 15 days prior to this occurrence and Prakash Chand misbehaved with him and also brought 3-4 persons asking them to identify him.
- (2) He could not identify those persons nor could tell their names.
- (3) He had given the contract for construction to the Contractor Maninder Singh.
- (4) On 8.8.93 at about 11.15 am, he alongwith his son Bakhtawar Sultan Chawla (PW-8), contractor and his 6-7 labourers reached the spot leaving his son outside in the car.

- (5) By removing the *thia* of Prakash Chaiwala, he entered the property after opening the lock.
- (6) As soon as he entered, accused Prakash Chand came there and abused him and left with a threat to teach him a lesson.
- (7) Prakash Chand again returned to the spot alongwith 10-12 persons.
- (8) He narrated the incident as under:

‘.....After abusing me, he returned with a threat to teach me a lesson. He again returned at the spot alongwith 10/12 persons. Accused Prakash Chand was having saria in one hand and one brick in his other hand. He hit my head with the brick as a result I received injury and blood was oozing. The brick in that process slipped from his hand. But he started beating me with saria, as a result, I received injury on my forehead and my left ear had also been cut. In the meanwhile, the other 10/12 persons who came alongwith accused Prakash Chand had attacked on Maninder Singh and his labours. When I was trying to escape myself from the spot and one old Sardar who had come to my rescue was hit by accused Prakash Chand with a saria on his head, as a result, he sustained injuries and he was continuously attacked with saria by the accused, as a result, the old sardar fell down on the ground. When I was running from the spot after saving myself with the blood stains clothes, mob was chasing me, which was being led by accused Prakash Chand. When I came near the car of my son who was waiting for me there, accused Prakash Chand had raised voice that I should be finished today. Accused Prakash Chand had also attacked on the head of my son with saria and the other persons broken the glasses of my car. My son also fell down after receiving the injury. The name of the old man who had sustained the injury was Gurdayal Singh. I came to know his name in the hospital. In the meanwhile, the police also came at the spot. Police took me, my son and Gurdayal Singh to the hospital alongwith 2/3 persons who were lying injured at the spot to Hindu Rao Hospital for medical treatment. Police came at the hospital and recorded my statement Ex.PW5/A which bears my

sign at point-A. Police took me from the hospital to the spot.....' (At pages 17 to 18 of the paper book)

This witness has been cross examined by learned APP for the State as he did not support prosecution's case in respect of accused Pratap @ Parmanand, Ashok @ Mama and Ghanshyam that they were having lathis and sarias with them. During cross examination by learned APP, he stated that :

'I did not tell the name of accused Pratap @ Parmanand, Ashok @ Mama and Ghanshyam in my statement that they were having lathis and sarias with them. (Confronted with portion A to A of Ex.PW5/A where it is so recorded). I did not mention in my statement to the police that accused Pratap, Ashok and Ghanshyam had chased one old Sardar and they caused injury to him with lathis and sarias. (Confronted with portion B to B of Ex.PW5/A where it is so recorded). I did not know the said accused persons prior to the incident. It is wrong to say that the accused namely Prakash Chand, Pratap @ Parmanand, Prakash Chaiwala, Hari Ram Shukla @ Pandit Paanwala were apprehended behind the bushes in my present on my identification. (Confronted with supplementary statement Mark-A where it is so recorded at point-B).' (At page 21 of the paper book)

Cross examination by counsel for accused Prakash Chand :

'.....I have made the statement to the police that accused Prakash Chand had in one hand saria and in another hand one brick. (Confronted with Ex.PW5/DA where the words saria is not mentioned). I cannot tell the number of the persons collected at the spot at the time of quarrel as I had become unconscious after receiving the injury. I have made statement to the police that accused Prakash Chand had beaten the deceased with sarias of continuous attack. (Confronted with Ex.PW5/DA where it is not so mentioned). It is wrong to suggest that I had received injury through the mob. I have not mentioned about the other persons having specifically having sarias and bricks in their possession. I

did not specifically identify the saria which was in the hand of accused Prakash Chand. I did not mention in my statement to the police that in which hand accused Prakash Chand had a saria as well as brick. I do not remember if I have stated in my statement to the police that accused Prakash Chand had given saria blow on the head of Bakhtawar. (Confronted with Ex.PW5/DA where it is not so recorded).(At page 23 of the paper book).....I had told the police in my statement that one old Sardarji came to rescue me when I was trying to escape from the spot. (Confronted with statement Ex.PW5/A where it is not so recorded.). I do not recollect if I had told the police that Prakash Chand had hit that Sardarji with an iron rod. I do not recollect if I had told to the police in my statement that accused Prakash Chand continuously attacked that Sardarji with saria. I did not tell the police that Pratap @ Parmanand, Ashok @ Kala and Ghanshyam alongwith 2 or 3 other accused who were armed with lathis and Pratap @ Parmanand, Ashok @ Kala and Ghanshyam were armed with sarias, they all attacked with lathis and sarias on the person of old Sardarji. (confronted with statement Ex.PW5/A where it is so recorded) (At page 26 of the paper book)

55. Whatever be the subsequent improved version made by the PWs before the Court, the role attributed to the Appellant in the rukka Ex.PW5/A, so far as Gurdayal Singh is concerned, was limited to the extent that

‘jab maine (Ahmed Sultan Chawla) shor machaya to Maninder Singh va labour ke sabhi aadmi mujhe chhudane lage. Yeh dekh kar ye sabhi aadmi Maninder Singh vs labour ke aadmiyo par toot pade tatha Pratap @ Parmanand, Ashok @ Kala vs Ghanshyam jinke paas lohe ke saria the, sabhi ne lathi vs sariyon se budhe sardar par vaar kiya’

56. Though for the purpose of this appeal, the civil litigation between the parties over the suit property No.3827, Gali Maqbool Press, Mori

Gate is not a matter of concern for us but we record that PW-25 Mohd. Miyan (through whom the complainant is claiming title) has made categorical statement that physical possession of the suit property was neither taken by him and his brother (co-owner) nor it was handed over to the purchaser (Ahmed Sultan Chawla) by them at the time of execution of sale documents in the year 1988 in favour of the complainant.

Statement of PW-8 Sh.Bakhtawar Sultan Chawla recorded in the Court

- (1) On 8.8.93 at about 11.15 am, he came to plot No.3827, Gali Maqbool Press, Mori Gate in Ambassador Car No.HPS-6888 alongwith his father Ahmed Sultan Chawla (PW-5). Maninder Singh, Contractor also came in his TATA Seira alongwith his labourers.
- (2) His father and the contractor entered the property alongwith the labourers while he kept sitting in the car and spot not visible from parking of the vehicle.
- (3) After 10-15 minutes large number of people came towards his car and they were armed with lathis, stones, iron rods and bottles and being led by accused Prakash Chand.
- (4) On seeing the crowd, he locked the car hiding himself inside the car.
- (5) Those people started throwing bottles and stones on his car and broke the window pane and dragged him outside the car. (There is no corroboration by other witnesses to his statement regarding dragging him outside the car).

- (6) Thereafter they started beating him with iron rod, bottles and lathis causing injuries to him. Even when he fell down on the road, those persons continued hitting him with iron rods and lathis.
- (7) **In the meantime, police came there and on seeing the police, people ran away from the spot.**
- (8) Police took him to the hospital in Ambulance.
- (9) The attack was by mob at the instance of accused Prakash Chand.

Cross examination of PW-8 Sh.Bakhtawar Sultan Chawla

Cross examination by learned counsel for accused Prakash Chand:

- (1) Distance between place of occurrence and place of parking his car was about 200 meters.
- (2) Maninder Singh, Contractor had brought 10-12 labourers and there were only two vehicles at the spot.
- (3) He did not know what was the business of Maninder Singh but there he came as Contractor.
- (4) He did not enter the street and continued sitting the car.
- (5) He could see persons throwing stones from their roofs and the mob coming towards his car and nothing else.
- (6) He has not seen the present incident as he was sitting in the car.
- (7) He did not know about any agreement or contract between his father and Maninder Singh as he was minor at that time. (As per MLC, he was 22 years old).

Statement of PW-12 Sh.Maninder Singh

PW-12 Sh.Maninder Singh, who has been referred to as Contractor by the complainant, States :

- (1) **He was a transporter at that time and continues doing the same business.**
- (2) **He was brought by the complainant to the spot for selling the plot.**
- (3) When Sultan tried to open the lock, quarrel took place and stones were pelted from the roof and then he left the spot.

This witness was declared hostile and cross examined by learned APP for the State where he denied the prosecution's case in toto including the suggestion that he was brought to the spot by the complainant for raising construction on the plot No.3827 or any assault by accused Prakash Chand on the complainant. He also denied any attempt being made him to save the complainant or at that stage, he (Maninder Singh) was also being attacked by other persons. He also denied the suggestion that accused Prakash Chand fell down on one of their man Gurdayal on the ground and he hit his head on the ground and other persons caused injuries to that old Sardar.

Statement of PW-20 Sh. Makhan Singh, PW-21 Gurmeet Singh, PW-23 Tarsem Singh, PW-24 Sh.Mangal Singh recorded in the Court

PW-20 Sh.Makhan Singh stated that he alongwith 8-9 labourers had come from Rajasthan on the asking of one Mr.Chawla, a Muslim. When they visited the property and were standing on the road in front of the house, some persons attacked them with bricks etc. He sustained injuries but could not identify the assailants

PW-21 Sh.Gurmeet Singh stated about the injuries being caused when he alongwith other labourers visited the spot when some persons

were hurling stones from the roof of the building. He also stated that he could not identify any of those persons.

PW-23 Sh.Tarsem Singh, another injured stated that he alongwith seven other labourers came to Delhi for labour job and one Chawla took them to Mori Gate where stones were thrown on them and they got injuries. He also stated that all the labourers received injuries and Gurdayal Singh expired.

PW-24 Sh.Mangal Singh stated that he came to Delhi alongwith other labourers and they were taken to Mori Gate by one Mr.Chawla. When they reached there, they were attacked by some persons and due to injuries, one of the labourers Gurdayal expired. He also could not identify the assailants.

Since PW-20 Sh.Makhan Singh, PW-21 Sh.Gurmeet Singh, PW-23 Sh.Tarsem Singh and PW-24 Sh.Mangal Singh did not support the case of prosecution, they were declared hostile and cross examined by learned APP for the State but without any success.

PW-22 Sh.Balwinder Singh, a relative was called from Rajasthan to identify the dead body of his Uncle Gurdayal Singh.

Statement of PW-27 Sh.Babu Singh, son of the deceased recorded in the Court

PW-27 Sh.Babu Singh stated that on 8.8.93 he was brought by one Mr.Chawla and he alongwith Gurmeet Singh, Tarsem Singh, Gurdayal Singh (his father) and some other persons reached Mori Gate. It was Sunday. Mr.Chawla entered the plot and also removed one tea stall (Khokha). He entered the spot with Mr.Chawla. One Prakash Chand

came and abused Mr.Chawla and thereafter went out of the plot only to return after 4-5 minutes with 15-20 persons who were armed with lathis and sarias. He narrated the incident as under :

*“.....I cannot identify Mr.Prakash Chand. We all also entered in the said plot alongwith Mr. Chawla. After our entry, one Prakash Chand came there who is accused present in the court today (correctly identify). Mr. Prakash Chand abused Mr. Chawla and thereafter Mr.Prakash Chand went out of the plot. After about five minutes Mr.Prakash Chand brought 15-20 persons at the spot with him. All were armed with lathis and sarias (iron rods). They all started pelted stones on us. **Meanwhile Mr.Parkash Chand hit my father with lathi on his head.** My father fell down on the ground. To save my father I also lay down myself on the body of my father. I was also given lathi blows by accused Parkash Chand and one Panditji Pan wale (identified one accused Ashok Kumar as Panditji Panwala). I sustained fracture in my left leg and left hand. Other persons who were with me also sustained injuries. **I became unconscious. All of us were removed to hospital. I regain my conscious after 2-3 days of the incident.** Then I came to know that my father expired on the day of incident itself.....” (At page 96 of the paper book)*

PW-27 Sh.Babu Singh was declared hostile and cross examined by learned PP as under :-

‘It is correct that due to lapse of time of about 13 years I could not recognize the some of the accused persons and I could not recollect the exact details.

It is correct that Prakash Chand had called several persons from the locality at the spot who had attacked us and they have all attacked us by lathis, iron rods and by pelting stones. It is correct that my father was caught by those persons and was hit against at the floor by his head. The Prakash Chand accused is present in court today and it is correct that due to lapse of time, I had some confusion regarding the identity of accused Prakash Chand but now I am sure that the Prakash Chand present in the court is the

same person who had caused injuries to my father and myself. I am not sure that whether all the remaining accused except Prakash Chand and Ashok Kumar Panwala were present in the mob.....”(At pages 99 to 100 of the paper book)

Cross examination of PW-27 Sh.Babu Singh by learned counsel for accused Ashok @ Kala, Ghanshyam and Rajesh

‘I used to drive truck before I came to Delhi. I came to know about Mr.Chawla through one Manjeet who promised me to provide me a job of Security Guard. At that time I was unemployed so I came to Delhi for a job. I came to Delhi in the evening of Saturday immediately before the day of incident. We were in all 7-8 persons who had come to Delhi. We all had stayed at Sis Ganj Gurudwara, Chandni Chowk. Mr.Chawla took us from Gurudwara at about 8.30 am. We had reached at Kashmere Gate at the place of incident at about 10.00 am in three different TSRs. I was instructed by Mr. Chawla at the plot i.e. spot to guard the same.....”(At page 101 of the paper book).

Cross examination of PW-27 Sh.Babu Singh by learned counsel for accused Prakash Chand :

“.....At the time of incident, I was unemployed but prior to that I was working as a driver and presently also I am working as a driver. Mr. Chawla was not known to me prior to the date of incident. I was not called by Mr. Chawla in Delhi. Vol. I came to Delhi with S.Makhan Singh who was acting on behalf of Mr. Chawla. S.Makhan Singh was a building contractor. S. Makhan Singh is my relative and he was known to me for 2-3 years prior to the date of incident. I was brought to Delhi by S.Makhan Singh to do the labour work. I came to Delhi on Saturday and incident took place on Sunday. We were 7-8 persons when we reached at Mori Gate to do the labour work. I do not know masonry work. I was brought to do the labour work only.

I met with Mr. Chawla for the first time on Sunday i.e. the day of incident. I did not see any mason with Mr. Chawla. None of us was knowing the work of masonry. We reached at Mori Gate at

about 10-11.00 am. Mr. Chawla accompanied us to Mori Gate from Gurudwara Sis Ganj

.....
The quarrel had taken place of Mr.Chawla while the tea stall was being removed by Mr. Chawla with one Prakash Chand. I do not know whether he was running the tea stall or not but he is present in court today. At this stage, witness has pointed out one Mr.Prakash Chand who is not Prakash Chaiwala.”
(At pages 103 to 104 of the paper book).

*.....I knew Gurmeet Singh and Tarsem Singh even prior to the incident because we have common relatives in the village including S.Makhan Singh. S.Makhan Singh was also present on the day of incident at the spot and remained there till the incident became over. Remaining persons out of 7-8 persons had come with me from Rajasthan when we were brought by S.Makhan Singh. I came to know about the remaining persons when we were collected by S.Makhan Singh to proceed towards Delhi. I do not know the names and addresses except the persons mentioned above. Hawaldeen had also come with us from Rajasthan. He also remained present during the time of incident at the spot with us. It is correct that all the persons were of Rajasthan and none was from Delhi. S. Makhan Singh never provided any employment to me prior to the incident. **I am having driving license of HMV since 1983. Presently, I am working as a driver.** Vol. the nature of our job is private. My father had also come with me to do the labour work. At that time, my father was aged about 50-60 years.*

I do not know any Maninder Singh. My statement was recorded in the hospital by the police on 2nd or 3rd day of the incident.....” **(At pages 106 to 107 of the paper book).**

Statement of PW-28 Sh.Hawaldeen recorded in the Court

PW-28 Sh.Hawaldeen stated that:

‘I had come to Delhi alongwith my other villagers. On 8.8.93 I was present in Delhi. On that day, I alongwith Tarsem Singh, Dogar Singh and 2-3more persons of my village whose names I do not remember now, had come to Mori Gate to work as a labourer.

*Time was about 8.00 am. when we were in the market, a quarrel took place there and some **persons started pelting stones from the top floors of the buildings.** I was also hit by a stone on my mouth and my two upper teeth were broken. I do not know the name of person to whom that place belong where I had gone to work as labourer. 3 or 4 persons of our group also sustained injuries namely Babu Singh, Tarsem Singh and Dogar Singh. Father of Babu Singh also sustained injuries and he had died. I do not know the names of those persons who had attacked us. I also do not know the name of the person who was leading those persons.*

This witness was declared hostile and cross examined by learned APP for the State where he stated that :

*‘..... **Accused Prakash Chand present in Court is specifically shown to the witness and after seeing the accused Prakash Chand, witness has stated that he is unable to identify him.** It is incorrect to suggest that I am not identifying accused Prakash Chand and other accused persons deliberately as I have been won over by them.*

Conclusion

57. After considering the testimony of material prosecution witnesses as well the documentary evidence prepared on 8.8.1993 by the Investigating Officer who was none-else but the SHO, PS Kashmere Gate, we have no hesitation in coming to the conclusion that the complainant had visited the spot with hired muscle power arranged from neighbouring State of Rajasthan.

58. PW-12 Maninder Singh was a transporter and seeing the property intended to be purchased by him to be disputed one and a quarrel starting on the issue, he preferred to leave the spot at the earliest and got his injuries treated from Jeewan Hospital, East Park Road, Karol Bagh.

59. PW-21 Gurmeet Singh, PW-23 Tarsem Singh, PW-24 Mangal Singh, PW-27 Babu Singh and PW-28 Hawaldeem are all residents of Village Dabri, Distt. Alwar, Rajasthan arranged by Mr.Chawla i.e. the complainant through PW-20 Makhan Singh and brought to Delhi in the evening of previous day and made to stay in Gurdwara Sis Ganj.

60. All these injured were infact men of the complainant brought there at his instance and the purpose was definitely not construction.

61. PW-27 Sh.Babu Singh, son of the deceased, who visited the spot was holder of HTV driving licence. Prior to that day and subsequent thereto he was carrying on his profession as driver.

62. The events of 8.8.1993 as incorporated in the statement of the complainant Ex.PW5/A do not speak about use of tear gas shells by the police on that day. For that matter, even HC Sri Ram of PCR, who removed all the injured to Hindu Rao Hospital and PW-8 Sh.Bakhtawar Sultan Chawla also does not speak about use of tear gas shells by the police. In this context, it becomes relevant that neither there is any entry for issuance of tear gas shells nor return of the remaining tear gas shells to the Malkhana explaining the purpose of consuming tear gas shells.

63. There is no investigation by the SHO, PS Kashmere Gate as to who was the informant to PCR vide DD No.153-A especially when in this chargesheet, two of the accused are named Prakash i.e. Prakash Chand and Prakash Chaiwala. If one of them is informant to PCR and DD No.8-A has been recorded at 11.36 am at PS Kashmere Gate only on the basis of this information (DD No.153-A of PCR) given by Ct.Nirmala No.3613/PCR (recorded as Ct.Urmila No.3693/PCR in DD No.8-A), how SI S.B.Yadav with a large team consisting of seven other

police officials left the police station pursuant to this DD. Further ASI Rajpal alongwith Ct.Jaipal were stated to have left prior to SI S.B.Yadav and his team vide DD No.7-A at 11.35 am.

64. Even if we ignore the discrepancies/improvements/embellishments appearing in the testimony of material prosecution witnesses on vital aspects for the reason that witnesses appear for deposition after a long gap and consider the documentary evidence of the date of occurrence with the timings recorded thereon, we find that the present case is riddled with many holes.

65. Since as per the SHO, the complainant's statement Ex.PW5/A was recorded by him on 8.8.1993 after questioning the complainant and thereafter dictating it to his sub-ordinate police officer (who as per the SHO was SI S.B.Yadav), the time likely to be taken in recording Ex.PW5/A would be much more than what in ordinary course is likely to be taken in copying what has already been written.

66. When the case was listed for directions on 25.10.2013, to satisfy ourselves about the timings likely to be taken for each purpose, the Investigating Officer was asked to simply write down the two DD entries i.e. DD Nos.7-A and 8-A as well the rukka in his own handwriting on computing the time from the digital watch in the Court.

67. The time taken by the Investigating Officer in writing DD Nos.7-A and 8-A as well rukka is as under:

- | | |
|--------------------------------------|--------------------------|
| (i) Time taken in copying DD No.7-A | - 4 minutes & 17 seconds |
| (ii) Time taken in copying DD No.8-A | - 4 minutes & 48 seconds |
| (iii) Time taken in copying rukka | - 1 hour & 5 minutes |

(These three sheets we are enclosing with the appeal file in a

closed envelope).

68. Unlike Duty Officer who had been attending the calls also while recording the DD, the Investigating Officer had taken the above time exclusively devoted for above purpose. We were constrained to enter into this exercise in our quest for truth. We were unable to comprehend how one DD can be at 11.35 am about the '*jhadga*' and after recording the information, copy given to ASI Rajpal who left alongwith Ct.Jaipal within one minute and the next minute at 11.36 am, another information was recorded about '*jabardast jhagda*' about which information was sent to the SHO through wireless, police party headed SI S.B.Yadav consisting of seven other police officials could leave within one minute so as to meet ASI Rajpal and Ct.Jaipal already present at the spot.

69. A simple calculation of the time taken in recording of DD and leaving for the spot, covering the distance of 1 km. from the police station to the spot for taking charge of the situation, would show that the testimony of the police officials as well as the complainant and his son in this regard are not corroborated by the record of Hindu Rao Hospital wherein the date and hour of arrival of the injured persons has been recorded. The calculation of time :-

- (i) DD No.148-A of PCR at 11.25 am, informant - Naseem
- (ii) DD No.153-A of PCR at 11.28 am, informant – Prakash
- (iii) DD No.7-A of PS Kashmere Gate - Time of receiving information at PS Kashmere Gate at 11.35 am regarding '*jhagda*' and after recording the DD, assigned to ASI Rajpal, who alongwith Ct.Jaipal left for the Spot.

We may presume that recording of DD No.7-A might have

taken about four minutes and within one minute of receiving this DD, ASI Rajpal alongwith Ct.Jaipal left the police station for the spot and they must have taken about five minutes in reaching the spot, which as per column No.4 of the FIR, is recorded to be 1 km from the PS in the Western direction. Thus, ASI Rajpal alongwith Ct.Jaipal, with all efficiency and speed at his command, at the earliest could have reached the spot at 11.45 am.

(iv) DD No.8-A of PS Kashmere Gate - Time of receiving information at PS Kashmere Gate at 11.36 am regarding *jabardast jhagda* and after recording the DD, assigned to SI S.B.Yadav, who alongwith ASI Rishi Prakash, SI Dharam Pal, HC Ram Kishan, Ct.Kiran Pal, Ct.Rajender Singh and Ct. Narender left for the Spot.

We may presume that Duty Officer could have started recording this DD No.8-A only after completion of DD No.7-A i.e. at the earliest at 11.40 am (11.35 am + 4 min. + 1 min.) and recording of DD No.8-A might have taken about four minutes and within one minute of receiving this DD, SI S.B.Yadav alongwith seven other police officials, who are presumed to be present in the D.O.'s room, left the police station for the spot and they must have taken about five minutes in reaching the spot. Thus, SI S.B.Yadav alongwith his team, could have reached the spot at the earliest at 11.50 am.

70. We could not notice any departure entry of SHO, PS Kashmere Gate either for Red Fort or for any other purpose. Even the endorsement on the rukka as well the case diary of that day is silent as to when and with whom the SHO left the police station on that day and for what purpose like briefing at Red Fort. The police officials namely SI Dharam

Pal, HC Ram Kishan, Ct.Kiran Pal named by the SHO in his statement recorded before the Court to be accompanying with him, infact left the police station vide DD No.8-A with SI S.B.Yadav and not with the SHO.

71. The police officials including the SHO mentioned their time of reaching the spot at 11.35 am. We are not entering into the controversy as to whether the team headed by SI S.B.Yadav met the SHO at the spot or SHO arrived later on. However, there is no discrepancy on the aspect that the situation was brought under control by the police party only after arrival of all the members who happened to reach there by 11.35 am about which we have serious doubt.

72. The case of the prosecution at the best can be that immediately on receiving the message on wireless about the quarrel at the spot at 11.35 am, adopting practical approach with a view to control the situation, the entire police team including the SHO rushed without waiting for the paper formalities like recording of DD to be completed. None of them had any information prior to 11.35 am and in that circumstance also, they must have taken around five minutes in covering the distance of one kilometer. So in that case also, none of them could reach the spot before 11.40 am.

73. As per prosecution, when the police party reached the spot, bottles and stones were being pelted from the roofs and gali and to control the situation, two rounds of tear gas shells were fired. It must have taken atleast 10-15 minutes in getting the mob dispersed by use of tear gas shells and then take stock of the situation. As per PW-8 Sh.Bakhtawar Sultan Chawla, after about 10-15 minutes of pelting the stones, bricks and bottles, a crowd led by Prakash Chand came on the main road where

he was sitting in the vehicle and attacked him. As per PW-34 Inspector K.K.Kaushik and PW-17 SI S.B.Yadav, police force was present at the main road as well in the gali and SI S.B.Yadav claims to be an eye witness. The simple question arises that in that situation, after use of tear gas shells and presence of police all around, was it probable for Prakash Chand to lead the mob upto the main road and attack Bakhtawar Sultan Chawla. To our mind, the answer ought to be in negative. Even if his testimony is taken to be a gospel truth, in view of the congested route from Kashmere Gate to Hindu Rao Hospital, **in no circumstance, PW-8 Bakhtawar Sultan Chawla could have been examined at Hindu Rao Hospital at 11.55 am.**

74. Here we take the time recorded on the MLCs to be accurate as the Hospital Authorities or the doctors examining the injured person were impartial in discharging their duties.

75. The complaint Ex.PW5/A speaks that when PW-5 Ahmed Sultan Chawla – the complainant arrived at the hospital, he came to know about the death of one of the labourers, whose name was revealed as Gurdayal Singh, S/o Soran Singh R/o Vilage Dabri, Distt. Alwar, Rajasthan. This is again not plausible for the reason that Ahmed Sultan Chawla was examined at 12.05 pm am whereas date and hour of arrival of Gurdayal Singh is 12.40 pm. None of these persons brought from Distt. Alwar, Rajasthan were personally known to PW-5 Ahmed Sultan Chawla – the complainant or his son i.e. PW-8 Bakhtawar Sultan Chawla as they were got arranged through PW-20 Sh.Makhan Singh, who himself was lying in injured condition. We are unable to get answer that how even before being brought to hospital by PCR and declared ‘brought dead’ by doctor

on duty, Ahmed Sultan Chawla could come to know about his death as well as his name, parentage and complete address which are detailed in Ex.PW5/A. We have already noted that the complaint Ex.PW5/A has traces of a plaint in civil suit and the manner in which it has been made, the words could not have come out from the mouth of an injured person who alongwith injured son was in the hospital and might be undergoing the trauma.

76. The kayami DD in this case is DD No.10-A. On the rukka, no time of this DD has been mentioned. On the carbon copy of the FIR Ex.PW6/A sent to MM, again neither the DD number nor time of its recording is mentioned in column No.1 of the FIR though on the photocopy (at page 25 of the TCR) date and time of DD is incorporated. PW-6 ASI Sri Prakash, the Duty Officer admits that on the original FIR, in different ink and handwriting, DD No.10-A and its time has been written.

77. Though the rukka and endorsement are claimed by PW-34 Inspector K.K.Kaushik to be in the handwriting of PW-17 SI S.B.Yadav, who accompanied him to Hindu Rao Hospital, SI S.B.Yadav denied the rukka being prepared in his presence. PW-17 SI S.B.Yadv states that he remained at the spot from 11.35 am to 11.50 am for the first time and again he visited the spot at 2 PM on 8.8.1993 and remained there till 4.00 pm. Both these timings become highly doubtful for the reason that the time taken in writing the rukka, sending the rukka, registration of FIR by Duty Officer, handing over of the rukka with copy of the FIR to the SHO at the spot, arrest of four accused persons from Ugrasen Park at the instance of complainant and conducting proceedings in respect of their

arrest, disclosure etc. could not have been completed by 4.00 pm.

78. Special Report has been received by learned MM on next day at 6.00 am and PW-2 Ct.Om Prakash stated to have received the FIR on that day at 4.00 am and within two hours, he delivered the same. This is in contradiction to DD No.14-A dated 8.8.1993 by PW-2 Ct.Om Prakash to the effect that by 7.30 pm, he returned after delivering the special dak handed over to him vide DD No.10-A.

79. As per prosecution, the complainant party and the Appellant and his associates were present in the gali when pelting of bricks and stones was going on. In that circumstance, both the parties were bound to suffer injuries. Surprisingly, MLC of none of the accused persons has been placed on record though PW-34 Inspector K.K.Kaushik stated that Appellant Prakash Chand was sent for medical examination after his arrest.

80. Complainant Ahmed Sultan Chawla denied the arrest of four accused persons namely Prakash Chand, Prakash Chaiwala, Pratap and Hari Ram Shukla @ Pandit Paanwala who were residing in close proximity to the place of occurrence. The fact recorded at serial No.23 of the case diary reveal that even in the evening the complainant party and wife of the Appellant Prakash Chand with other supporters were present at the spot claiming their respective right over the suit property No.3827. The arrest of these four accused persons is neither on the basis of secret information nor it is emerging on record as to how the complainant on that day became aware of their presence in the bushes of Ugrasen Park. In the given circumstances, we have serious doubts about the place and manner of arrest of four accused persons namely Prakash

Chand, Prakash Chaiwala, Pratap and Hari Ram Shukla @ Pandit Paanwala on 8.8.1993 as reflected in the chargesheet.

81. Further in the endorsement on the rukka Ex.PW5/A, injured Hawaldeen, Gurmeet and Babu Singh were stated to have been unfit for statement. Black deeds of SHO are painted in black in margins of MLCs No.5469 of Gurmeet and No.5472 of Hawaldeen as even the 'Not Admitted' patients have been shown 'unfit for statement' without even disclosing the date, time and name of the persons certifying so. Here it is relevant to mention that as per the MLC No.5469 of Gurmeet, No.5470 of Babu Singh, No.5472 of Hawaldeen, at the left margin, endorsement regarding 'UNFIT FOR STATEMENT' are written with black ink pen, which are undated, untimed and by unknown doctor and injured Gurmeet and Hawaldeen were not even admitted in the hospital, so there was no question of obtaining any opinion regarding their fitness to make statement.

82. For above reasons, we are of the view that prosecution has not been able to establish its case against the Appellant beyond reasonable doubt. The impugned judgment dated 21.02.2009 and order on sentence dated 28.02.2009 are hereby set aside and the Appellant Prakash Chand is acquitted of all the charges. He be released from jail forthwith, if not wanted in any other case. His bail bonds stand cancelled and the sureties are discharged.

83. Taking cognizance of growing number of cases of manipulative investigation, the Supreme Court, in the case of ***Dayal Singh and Ors.vs. State of Uttaranchal (2012) 8 SCC 263***, where an attempt was made to shield the offender, framed the following three questions to be answered:

- a) Where acts of omission and commission, deliberate or otherwise, are committed by the investigating agency or other significant witnesses instrumental in proving the offence, what approach, in appreciation of evidence, should be adopted?*
- b) Depending upon the answer to the above, what directions should be issued by the courts of competent jurisdiction?*
- c) Whenever there is some conflict in the eye-witness version of events and the medical evidence, what effect will it have on the case of the prosecution and what would be the manner in which the Court should appreciate such evidence?*

In paras 14 and 15 of the report, the Supreme Court dealt with the questions as under :

14. Now, we will deal with the question of defective or improper investigation resulting from the acts of omission and/or commission, deliberate or otherwise, of the Investigating Officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions and then to examine its effects. In order to examine this aspect in conformity with the rule of law and keeping in mind the basic principles of criminal jurisprudence, and the questions framed by us at the very outset of this judgment, the following points need consideration:

- (i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation.*
- (ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution.*
- (iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.*

(iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions in regard to taking of penal or other civil action against such officer/witness.

15. In order to answer these determinative parameters, the Courts would have to examine the prosecution evidence in its entirety, especially when a specific reference to the defective or irresponsible investigation is noticed in light of the facts and circumstances of a given case.

In para 28 of the report, the Supreme Court concentrated on the duty of the Judge in such situation as under:

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

84. Before parting with this case, we record that the fabrication of record noticed by us hereinbefore, is glaring reflection on the working of the then SHO, PS Kashmere Gate. With a view to help the complainant, he showed little hesitance in arresting 10 persons for heinous crime like

murder and rioting, thereby ruining their life and stigmatizing them as 'killers'. As already recorded by us, Nand Kishore was discharged on 20.09.1993 and other eight accused persons have been acquitted by learned ASJ. The only hurdle in the way of the complainant was the Appellant and in order to secure his conviction, the complainant did not mind improving his earlier version about the occurrence thereby making the role of the Appellant more and more serious, rather holding him to be the person responsible for the injuries which resulted into the death of Gurdayal Singh.

85. On 25.10.2013 we have been informed by Mr.K.K.Kaushik, (Retd. ACP), who appeared in the Court, that he has superannuated. Let copy of this order be sent to the Commissioner of Police for information and necessary action at his end.

86. A copy of this judgment be sent to the Jail Superintendent concerned forthwith with direction to release the Appellant, if not wanted in any other case.

87. Trial Court Record be sent back alongwith copy of this judgment/order.

(PRATIBHA RANI)
JUDGE

(REVA KHETRAPAL)
JUDGE

December 02, 2013
'st'