



2025:AHC:167404-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Appeal No. 6109 of 2006

Yamin And Others

.....Appellants(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellants(s)	:	S.M.N. Abbas Abdi, ambreen Masroor, Kameshwar Singh, Manoj Singh, Mohd. Jamshed Khan, Nasira Adil, Noor Mohammad, Radheshyam Yadav, Rajiv Sisodia, Satish Trivedi, Vinod Kumar Sahu
Counsel for Respondent(s)	:	Govt. Advocate

With

Criminal Appeal No. 6110 of 2006

Zulfekar And
Others

.....Appellants(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellants(s)	:	S.M.N. Abbas Abdi, ambreen Masroor, Kameshwar Singh, Manoj Singh, Mohd. Jamshed Khan, Nasira Adil, Noor Mohammad, Radheshyam Yadav, Rajiv Sisodia, Satish Trivedi, Vinod Kumar SahuS.M.N. Abbas Abdi, ambreen Masroor, Manoj Singh, Noor Mohammad, Satish Trivedi
Counsel for Respondent(s)	:	Govt. Advocate

With**Criminal Appeal No. 6111 of 2006**

Tahir And Others

.....Appellants(s)

Versus

State of U.P.

.....Respondents(s)

Counsel for Appellants(s) : S.M.N. Abbas Abdi, ambreen
Masroor, C.P.Singh, Manoj Singh,
Noor Mohammad, Satish Trivedi,
Vivek Mishra

Counsel for Respondent(s) : Govt. Advocate

Court No. - 44

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE TEJ PRATAP TIWARI, J.

1. Heard Mr. N.I. Jafri, learned Senior Counsel assisted by Mr. S.I. Jafri, Mr. Sushil Dubey, learned counsel for appellants, Sri Radhe Shyam Yadav, learned amicus Curiae for appellant no. 3 and Sri L.D.Rajbhar and Sri N.K. Srivastava, learned A.G.A for the State.

2. Present in criminal appeal arises from the judgement and order dated 28.08.2006, passed by Sri B.N. Shukla, learned Sessions Judge, Meerut in S.T. No. 241 of 1989, (State Versus Tahir, Jahid, Noor Hasan, Zulfiquar, Yamin, Rizwan, Hasnain, Jamshed, Aslam, Akil, Foozi, Mahboob, Aas Mohammad and Ahsan). By that judgement and order, the accused persons Tahir, Jahid, Zulfiquar, Yamin, Rizwan, Akil, Foozi, Mahboob and Aas Mohammad have been convicted under Sections 148, 302/149, 307/149 and 449 I.P.C. They have been awarded two years rigorous imprisonment for offence under Section 148 I.P.C; life imprisonment for the offence under Section 302/149 I.P.C., together with fine Rs. 5000/-; five years rigorous imprisonment for offence under Section 307/149 and two years rigorous imprisonment for the offence under Section 449 I.P.C. All sentences are to run concurrently. During the pendency of this appeal, The appellants Foozi (in CRLA No. 6610 of

2003), Akil and Jahid (in CRLA No. 6111 of 2006) were granted remission by the State Government. One appellant - Yamin (CRLA No. 6109 of 2006) died during pendency of the appeal. His appeal is declared abated. The other appellants Rizwan, Aas Mohammad, Zulfikar, Mahboob and Tahir came to be released on interim bail granted under a general order passed by a co-ordinate bench of this Court, in another proceeding. That order became subject matter of challenge before the Supreme Court. It was set aside. Consequently, the said appellants have now surrendered. They are in jail. In such circumstances, the three appeals have been heard out of turn, on the request of the Supreme Court.

3. The criminal prosecution emerged on the strength of a Written Report dated 09.02.1989. Though, the defence claims existence of another Written Report, we may consider that (other Written Report), a little later. Relevant to the prosecution case, Ilyas (since deceased), submitted a Written Report dated 09.02.1989 at Police Station, Kithore, Meerut, narrating - prior to the occurrence, parties had developed animosity. In that, an attempt on life had been made on the son of Ahsan (nephew of Khurshed), one of the seven persons killed in the occurrence in the present case, in 1985. Second, in the year 1986, son of above named Ahsan allegedly killed Usman and Ishtiaq. The nephew of Ahsan, namely, Munnar who was assaulted by four sons of Ahsan resulting in another case lodged, for offence under Sections 323-324 I.P.C. Then in 1988, wife of Ishhaq and his sons Najbool and Shahid were killed. Therein, Khurshed and Haneef (both killed in this occurrence) were arrested. In that case, they were released on bail, two days prior to the present occurrence.

4. In the context of those bad relations or animosity pre-existing, the Written Report further disclosed - at about 4:00 p.m., that day, Tahir, Jahid, Noor Hasan, Zulfikar, Nazreen (not charged), Yamin, Rizwan, Hasnain, Aas Mohammad, Jamshed, unnamed nephew of Jamshed (declared Juvenile), Adil (not charged), Foozi, elder son of Foozi (declared Juvenile) and two other unknown assailants, all armed with

guns, countrymade pistols and rifles, assaulted Khurshed who was standing on road side. First, Noor Hasan armed with rifle and Zulfiquar armed with countrymade fire arm shot dead Khurshed who was standing on road side.

5. Thereafter, all the assailants reached the residence of Khurshed. Jahid, Akil (armed with rifles) and Hasnain (armed with countrymade pistol), killed Shakila (wife of Khurshed) and Fahim (son of Khurshed).

6. Thereafter, Rizwan (armed with rifle) and Yamin and Aas Mohammad (armed with countrymade pistols), broke open the door of the house of Tullo (wife of Tauseef), and shot her dead.

7. Thereafter, Jamshed and his nephew (declared juvenile) armed with rifle and Foozi and his elder son (declared juvenile), also armed with rifles and two other assailants armed with countrymade pistols shot and killed Wakil and Khatoon, and injured Rashid.

8. Thereafter, the miscreants reached the house of Haneef. There, Tahir, Akil, Jahid, Noor Hasan, Hasnain and Julfiqar armed with rifles and countrymade pistols, killed Haneef and injured his son Mustafa, his wife Ansar and daughter Gulista.

9. Then, the FIR narrated, the occurrence was witnessed by Mehndi, Ansar, Shareef, Shahadat and also Munkad and Zarrar. Next, the FIR narrated, the occurrence had been planned by Ahsan son of Ishhaq resident of Kithore. After causing the occurrence, the accused escaped towards the jungle of Bahroda, on a jeep bearing registration no.UTG 1396, while others fled, on foot.

10. In all, seven persons were killed and four were injured in the occurrence. The scale of the occurrence terrified the local inhabitants. Shopkeepers downed their shutters and the market closed in that commotion. The report further disclosed, being terrified, the inhabitants hid themselves inside their homes. They came out after the occurrence was over. The Written Report was written by the scribe Munkad Ali (P.W.-5). It is Ex.Ka.8 at the trial. On that Written Report, the FIR was

registered at Police Station, Kithore, at 16.15 hours. The distance of the Police Station from the place of the occurrence was disclosed, six furlong. That would roughly be 1.2 kilometer. The FIR is Ex.Ka.33 at the trial.

11. On 09.02.1989, an abandoned jeep vehicle bearing registration No.UTG 1396 was recovered at the culvert of Bahroda road, by S.I. Nand Kishore. That Recovery Memo is Ex.Ka.48 at the trial. Also, on 09.02.1989, S.I. Nand Kishore recovered three empty brass cartridges of 34 bore and one used bullet, from the terrace of the house of Khurshed. Also, two empties of 315 bore, and one empty of 30 bore were recovered from the house of the deceased Tullo. One empty of 12 bore (alloy), two empties 12 bore (red colour) and two empties of 315 bore were found outside the house of Haneef, lying on the ground, in a pit. That Recovery Memo is Ex.Ka.49 at the trial.

12. Thereafter, on 09.02.1989, samples of plain and blood stained earth were recovered from five different places of the occurrence. Those Recovery Memo(s) are Ex.Ka.50, Ex.Ka.51, Ex.Ka.52, Ex.Ka.53 and Ex.Ka.54. Thus, Ex.Ka.50 is of recovery made from near the place where the dead body of Vakeel and Khatoon were lying; Ex.Ka.51 is of recovery made from where the dead body of Haneef was found lying; Ex.Ka.52 is of recovery made from where the dead body of Tullo was found lying; Ex.Ka.53 is of recovery made from where the dead body of Shakeela was found lying and Ex.Ka.54 is of recovery made from where the dead body of Khurshed was found lying.

13. The injured were examined on 09.02.1989. In that regard, six Injury Reports exist. First, Injury Report of Gulista aged about 15 years was prepared by Dr. Dushyant Tyagi. It is Ex.Ka.9 at the trial. In that following injuries were noted:

*“1. Fire arm wound 1.5 x 1.5 cm on the lower 1/3 of lt.
Thigh 13 cm above the knee joint blackening present fresh
bleeding present adv. X-Ray, K.U.O.*

2. L.W. 3 cm x .5 cm x bone deep on the Lt knee joint fresh bleeding present Adv X-Ray X.U.O.”

14. Next, Ansar aged about 22 years was examined by Dr. Dushyant Tyagi on 09.02.1989 at about 5.05 p.m. That Injury Report dated 11.02.1989 is Ex.Ka.10 at the trial. In that, the following injuries were noted :

“Inj:- Fire arm wound 3 cm x 1 cm in between the basis of little 4 ring finger of Rt hand blackening is present on the inner aspect of both the fingers and the wound fresh bleeding present Adv X-Ray X.U.O.”

15. Third, Mustafa aged about 17 years was examined by Dr. Dushyant Tyagi on 09.02.1989 at 5.35 p.m. That Injury Report dated 11.02.1989 is Ex.Ka.11 at the trial. In that, following injuries were noted:

“Inj:- 1. Fire arm wound 1 cm x .3 cm on the Lt side Neck 13 cm away from the Lt shoulder Rt. At 10 O’clock position blackening tatooing present, depth could not be probed in pts in terest fresh bleeding present. Adv. X-Ray X.U.O.

2. Fire arm wound 1.2 cm x .3 cm on the Lt side of Neck 3 cm behind & away from the Inj 1 blackening tatooing present fresh bleeding present Adv X-Ray K.U.O.”

16. Also, Rashid, aged about 13 years was examined by Dr. Dushyant Tyagi on 09.02.1989 about 6.15 p.m. That Injury Report dated 09.02.1989 is Ex.Ka.12. In that, following injuries were noted:

“Inj:- 1. Fire arm wound 2 cm x 2 cm on the back of Rt upper arm 4 cm above the Rt elbow blackening is present in the adjoining arms measuring 5 cm x 4 cm fresh bleeding present. Adv. X-Ray K.U.O.

2. Raised black pain head sized observation (multiple) in 9 cm x 4 cm area on the lower 1/3 of Rt. Thigh (outer side) 3 cm above the knee blackening present.”

17. Also, on 09.02.1989, seven Inquest Reports were prepared arising from the seven deaths in the occurrence. The Inquest Report of Khurshed was prepared by S.I. Kali Ram Malik of Police Station Kithore, (P.W.8 at the trial). Though, the header of the first page of that Inquest Report does

not disclose the details of the Criminal Case registered, in the relevant column on that page, those case details are available. The inquest proceedings commenced at 7.15 p.m. and closed at 8.15 p.m. On the second page, in the details of the case crime, section description "147, 148 and 149 I.P.C." have been mentioned on top of the section descriptions "302, 307 and 120B I.P.C." appearing in the first line at the top. It is Ex.Ka.13 at the trial. By way of details of list of documents, it has been mentioned as below:

"(1) पंचायत नामा- 2 वर्क

(2) रिपोर्ट CS वर्क 1

(3) रिपोर्ट RI वर्क 1

(4) रिपोर्ट MO वर्क 1

(5) नक्शा नाश वर्क 1

(6) फॉर्म नंबर 313 वर्क 1

(7) नमूना मोहर वर्क 1

(8) नक़ल FIR

(9) नक़ल रपट"

18. Then, the Inquest Report of the deceased Khatoon was prepared by S.I. Kali Ram Malik (P.W.-8) of Police Station, Kithore. In that, again the header of the first page does not contain the details of the criminal case registered. However, such details exist against the relevant column. There is some overwriting as to time of completion of the inquest examination. In that, the time 9.35 p.m. is shown when the dead body was handed over. It is Ex.Ka-17 at the trial. By way of list of documents, it has been mentioned, that Written Report is below:

"(1) पंचायत नामा- 2 वर्क

(2) नक़ल FIR, नक़ल रपट

(3) चालान नाश वर्क 1

(4) फोटो नाश वर्क 1

(5) रिपोर्ट RI वर्क 1

(6) रिपोर्ट CS वर्क 1

(7) रिपोर्ट PHO वर्क 1

(8) नमूना मोहर वर्क 1"

19. Third, Inquest Report of Vakeel was prepared by S.I. Kali Ram Malik (P.W.-8) of Police Station, Kithore. In that, again the Criminal Case number is not mentioned on the header of the first page but it was found recorded against the relevant column. Yet, time of closure of the inquest proceeding is over written. It is exhibited as Ex.Ka.21 at the trial. By way of list of documents, it has been recorded, as below:

“(1) पंचायत नामा- 2 वर्क

(2) नक़ल FIR, नक़ल रपट वर्क 1

(3) चालान नाश वर्क 1

(4) फोटो नाश वर्क 1

(5) रिपोर्ट RI वर्क 1

(6) रिपोर्ट CS वर्क 1

(7) रिपोर्ट PHO वर्क 1

(8) नमूना मोहर वर्क 1"

20. The Inquest Report of Haneef was also prepared by S.I. Kali Ram Malik (P.W.-8) of Police Station, Kithore. As in other cases, Criminal Case number is not available on the header of the first page but

it was found recorded against the relevant column. It is Ex.Ka.26. List of documents were noted as below:

- “(1) पंचायत नामा- 2 वर्क
- (2) नकल FIR, नकल रपट
- (3) चालान नाश वर्क 1
- (4) फोटो नाश वर्क 1
- (5) रिपोर्ट RI वर्क 1
- (6) रिपोर्ट CS वर्क 1
- (7) रिपोर्ट PHO वर्क 1
- (8) नमूना मोहर वर्क 1”

21. Thereafter, the Inquest Report of deceased Shakeela was prepared by S.I. Nand Kishore of Police Station, Mundali examined as P.W.-11. In that, the Criminal Case number details are not available on the header of the first page but in the body of the Inquest Report. It is Ex.Ka-36. List of documents noted, are as below:

- “(1) पंचायत नामा- 2 वर्क
- (2) नकल चिक वर्क 1
- (3) नकल रपट वर्क 1
- (4) चालान नाश वर्क 1
- (5) फोटो नाश वर्क 1
- (6) रिपोर्ट RI वर्क 1
- (7) रिपोर्ट MO I/C वर्क 1
- (8) नमूना मोहर वर्क 1”

22. Next, the Inquest Report of Naeem @ Faheem was prepared by P.W.-11. Similar to the other Inquest Reports, Criminal Case details are not available on the header on the first page but in the body part of the Inquest Report. It is Ex.Ka-40. As to the list of documents, it was recorded as below:

“(1) पंचायत नामा- 2 वर्क

(2) नकल चिक वर्क 1

(3) नकल रपट वर्क 1

(4) चालान नाश वर्क 1

(5) फोटो नाश वर्क 1

(6) रिपोर्ट RI वर्क 1

(7) रिपोर्ट MO I/C वर्क 1

(8) नमूना मोहर वर्क 1”

23. Thereafter, the Inquest Report of Tullo was prepared by S.O. K.P. Singh (P.W.-12) of Police Station, Parikshitgarh (District Meerut). Though, the Criminal Case details are not available on the header of the first page but those are found recorded on the body of the Inquest Report. There is over writing with respect to time of the FIR being lodged. It is Ex.Ka-49. As to the list of documents, it was recorded as below:

“(1) पंचायत नामा- 2 वर्क

(2) नकल चिक रपट

(3) चालान नाश वर्क 1

(4) फोटो नाश वर्क 1

(5) रिपोर्ट RI वर्क 1

(6) रिपोर्ट MO I/C वर्क 1

(7) नमूना मोहर वर्क 1"

24. On 10.02.1989, the dead body of the seven deceased were subjected to autopsy examination conducted by Dr. P.N. Khanna (P.W-1, at the trial). There is no doubt that all the deceased died of gun shot injuries without suffering any other injury. The cause of death has been reported as a result of antemortem injuries. With respect to those deaths, autopsy examination was conducted around between 2.00 p.m. to 5.00 p.m., All deaths have been reported to be about one day earlier.

25. Autopsy examination reports are - Ex.Ka.1, Ex.Ka.2, Ex.Ka.3, Ex.Ka.4, Ex.Ka.5, Ex.Ka.6 and Ex.Ka.7, respectively. Their details are as below:

Autopsy Report of Vakeel

“(i) Grievous wound of entry 4cm x 2cm x – cavity, deep on the right ear with pinna and lobule lacerated and punctured (B.S.T in an area 3cm x 2cm). Directions- right front towards

(ii) wound of exit 11cm x 5 cm x right cavity deep on the head 4cm above left ...”

Autopsy Report of Haneef

“(i) grievous wound of entry 3cm x 1cm x chest cavity deep on left side chest 3cm internal to left nipple and 5cm from midline. B.S.T. present (area 16cm x 9cm) left to right above downwards and oblique.

(ii) grievous wound of exit 17cm x 14 cm x lacerated cavity deep on right side abdomen 2cm right to umbilicus. Pieces of small and large intestine coming out from the wound.”

Autopsy Report of Khurshed

“(i) grievous wound of entry 3cm x 5.5cm x chest cavity deep on right side chest 4cm internal to right nipple and 5cm from midline B.S.T present (T- in an area 6cm x 3cm) direction right to left and above downwards.”

Autopsy Report of Naeem @ Faheem

“(i) grievous wound of exit 4cm x 1.5cm x brain cavity deep on the top of head 10 cm above left ear with exposure of brain matter

(ii) grievous wound of entry 1cm x 1cm B.S.T present (transverse lie- deep 1cm x 1cm) left temporal – 4.5 cm above left ear.”

Autopsy Report of Shakeela

“(i) grievous wound entry 1cm x 1cm x neck cavity deep on left side lower chin

(ii) grievous wound of exit 14cm x 13cm x neck cavity deep on left side of neck with vertically communicating with injury

(iii) grievous wound of entry $\frac{3}{4}$ cm x $\frac{3}{4}$ cm x chest cavity deep on upper part left side chest close to midline 4.5 cm lower collar bone. B.S.T present (3/4cm 3/4cm right to left below upwards)”

Autopsy Report of Khatoon

“(i) grievous wound of entry 3/4cm x 3/4cm x skin deep on the right side chest 9cm internal to midline 7 cm from nipple. B.S.T present.

(ii) grievous wound of exit 3.5 cm x 1 cm x skin deep on the right side chest 2.5 cm below injury no. 1 and communicating with injury.

(iii) grievous wound of entry 3/4cm x 3/4cm x abdominal cavity deep on upper parts of abdomen 3cm left from midline, 15cm above umbilicus. B.S.T present (Transverse lie 3/4cm x 3/4cm). Direction-above downwards, left to right.

(iv) grievous wound exit 14cm x 6.5cm x abdominal cavity deep on the right side back close to middle line (2cm) 13cm below shoulder blade (right) communicating with injury no. 3.”

Autopsy Report of Tolly

“(i) grievous wound of entry 3/4cm x 3/4cm x chest cavity deep on the outer side of right breast 3cm external to nipple. B.S.T (T-3/4cm x $\frac{3}{4}$ cm). Direction-above downwards, left to right

(ii) grievous wound of entry 3/4cm x 3/4cm x chest cavity deep on brim parts of right breast 9cm below nipple. B.S.T (T-1cm x 0.5cm). Direction-above downwards and backwards

(iii) grievous wound of exit 4cm x 2cm x chest cavity deep on right side back 3cm below shoulder blade 1cm from midline, communicating with injury no. 1.

(iv) grievous wound of exit 5cm x 3cm x chest cavity deep on right side external of 4cm below shoulder blade, 2cm from midline, communicating with injury no. 2.”

26. Upon submission of charge-sheet and the trial being committed to the Court of Sessions, following charges were framed against the accused persons:

CHARGE

“Firstly: That you in Rizwan Alongwith two others on 9-2-89 at about 4 P.M. on Meerut Road Side, at house of Khurshed, at the house of Smt. Tullo and a house of Haneef and at the Gher of Khurshed situated Qasba Kithore, Police Station Kithore, Distt. Meerut were membe common of an unlawful assembly, the/object of which was to commit the murder of Khurshed, Smt. Shakila, Fayeem, Smt. Tullo, Vakil, and Smt. Khatoon & Haneef and Rashid, Irfan, Mustafa, Smt. Hansar and Km. Gulistan and thereby committed an offence of rioting with deadly weapons, to wit, Rifles, Guns and country-made-pistols and thereby committed an offence punishable

Under Section 148 of the Indian Penal Code and within the cognizance of this court of sessions;

Secondly: That you & Bizwan alongwith two others on the aboveaid date, time and place in prosecution of of aforesaid unlawful Decantly the common object of all committed the murder by intentionally and knowingly causing death of Vakil, Smt. Khatoon, Khurshed, Smt. Shakila, Fayeem, Smt. Tullo, and Haneef and thereby committed an offence punishable Under Section 302/149 of the Indian Peral Code and within the cognizance of this court of sessions;

Thirdly: That you/Rizwe alongwith two others on the shave said date, time and place in prosecution of the common object of allun, did an act, to wit, fired on Rashid, Irfan, Mustafa, Smt. Hansar and Km. Gulistan with such intention and knowledge and under such circumstances, that if by that act, you have had caused the death of Rashid, Irfan, Mustafa, Smt. Hangar and Km. Gulistan, you would have been guilty of committing the murder of the above said persons and thereby committed an offence punishable Under Section 307/149 of the Indian Penal Code and within the cognizance of this court of sessions;

Fourthly: That you alongwith two others on the above said date, time and place committed house tress-pass by entering into the houses of Khurshed, Smt. Tullo, and Haneef, used as human dwelling, in order to commit the offence of murder which is punishable with death and you thereby committed an offence punishable Under Section 449 of the Indian Penal Code and within the cognizance of this court of sessions; And I hereby direct that you be tried by this court on the said charges."

27. At the trial, besides relying on the above documentary evidence, prosecution relied on 12 witnesses. In that, Dr. P.N. Khanna, the doctor, who conducted the autopsy examination on the seven dead bodies, was examined as P.W.1. He first proved that the deceased Vakeel had received five gun shot injuries including two exit wounds. On internal examination, he noted that the frontal and parital bone were fractured and extensive damage had been suffered by the deceased. He noted ten extensive internal injuries suffered by that deceased. He also proved ten pellets were recovered from the dead body of the deceased.

28. Second, he proved that the deceased Haneef had received two gun shot injuries (including one exit wound). On internal examination, he proved nine extensive injuries suffered by that deceased.

29. Third, he proved that the deceased Khurshed had received one gunshot injury being entry wound on his chest. On internal examination, he found five serious injuries suffered by that deceased.

30. Fourth, he proved that the deceased Naeem @ Faheem had received two fire arm injuries (including one exit wound). On internal examination he proved five extensive injuries suffered by that deceased.

31. Fifth, he proved that deceased Shakeela had received four gunshot injuries including two exit wounds. On internal examination, seven extensive injuries were found suffered by that deceased.

32. Sixth, he proved that the deceased Khatoon had received six fire arm injuries including three exit wounds. The said deceased was found to have suffered seven extensive injuries.

33. Last, he proved that the deceased Tullo had suffered eight firearm injuries including three exit wounds. On internal examination, eight extensive injuries were found suffered by that deceased. He proved all the autopsy examination reports.

34. Thereafter, the injured witness Rashid Ali was examined as P.W.-2. He first proved, he knew the assailants from before. Three of them Hasnain, Jamshed and Ahsan, died during trial. He also proved the assailant Foozi was father-in-law of accused Tahir and the accused Mahboob was his brother-in-law. Next, he proved that the accused Akil was the maternal uncle of Noor Hasan. Further, he proved that Aslam was the nephew of the accused Jamshed. As to the remaining accused, he described them as members of one family.

35. Second, he proved that the accused and the victims lived in the same locality/vicinity.

36. Third, he also proved that the deceased Khurshed was his grandfather, by relationship. He had bad relations with Ahsan, son of Irshad. Ibrahim, son of Ahsan had been shot at by Tahir and others. Then, Ishtiyaq and Usman son of Ibrahim had been killed by Tahir and others. That case was pending.

37. Fourth, arising from the killing of Tahir and Najbulla, 22 persons of his side went to jail including Khurshed, Haneef, Ansar, Bindi and Iliyas. They were released on bail, two days prior to the occurrence.

38. Having proved that background, the injured witness then proved, on 09.02.1989, he was returning from his college at about 3.00 p.m. alongwith Irfan, who joined him on his way back. When they reached near the house of Ansar and Haneef, in Mohalla Mohseen Khaan, they heard gun shot. While walking in the lane of the Mohalla, he saw Tahir, Jahid, Akil, Hasnain had climbed on the roof of the house of Khurshed. Those accused were armed with rifles, except Hasnain, who was armed with a countrymade fire arm. All accused were firing with their firearms.

39. Second, he saw Yamin, Rizwan and Aas Mohammad firing at the house of Tauseef. In that, Rizwan was armed with a rifle whereas the other accused were armed with countrymade pistols.

40. Third, he saw accused Jamshed, Aslam, Foozi, Mahboob (armed with rifles) and two others armed with countrymade pistols firing at the house of Khurshed.

41. Fourth, he proved, Jamshed, Aslam and Mahboob and others fired at him, hitting him on his left hand, while Irfan was saved. Both of them ran and took shelter in the house of Ahsan, son of Ibrahim.

42. Thereafter, Ilyas got prepared/written the Written Report at his house, through P.W.-5 Munkad Ali, on the oral dictation of Ilyas. He also proved, Ilyas fixed his thumb impression on that Written Report. He proved, the Written Report as Ex.Ka.8 at the trial. Thereafter, he proved, Shakeela, Faheem were killed inside the house of Khurshed by Tahir, Jahid, Akil and Hasnain, while Tullo was killed in the house of Tauseef by Yamin, Rizwan and Aas Mohammad. Similarly, he proved, Vakeel and Khatoon were killed in the house of Khurshed by Foozi, Mahboob, Jamshed and Aslam. Thereafter, 13 named accused went to the house of Haneef and killed him there. They also injured Gulista, Ansar and Mustafa. Last, he proved, he learned from others that Khurshed had been killed on the road side. All the accused persons escaped on a jeep towards Bharoda village. He also described that he went with the first informant to lodge the FIR.

43. Next, injured witness Gulista was examined as P.W.-3. First, she proved that at the time of occurrence her brother Mustafa, her sister-in-law (Bhabhi) and her father Haneef were present at their house, while, her brothers Kallua and Safeek were in jail. At that moment, Tahir, Jahid, Akil, Noor Hasan, Zulfiquar and Hasnain entered her house. Jahid and Zulfiquar were armed with rifles and the other accused were armed with countrymade pistols. They started firing, indiscriminately. In that, her brother Mustafa and her sister-in-law Ansar were shot at and injured. Her father Haneef was also shot at and killed. He ran inwards. Third, she also proved, besides the above named accused, seven other accused, namely, Rizwan, Yamin, Foozi, Mahboob, Aslam, Jamshed, Aas Mohammad and Hasnain were standing guard outside her house. When the occurrence was caused by the other set of accused persons. All were armed.

44. After causing that occurrence, the accused persons left her house. She also claimed to have lost consciousness, which she gained after 15 days, at the hospital.

45. Next, Shahadat son of Idrish was examined as P.W.-4. He was a teacher at a local Madarsa. He proved the occurrence was caused between 3.30 p.m. to 4.00 p.m, when he was present on the terrace of the house of his uncle Islam. From there he saw Tahir, Jahid, Akil, Hasnain, Rizwan, Yamin, Aas Mohammad, Jamshed, Aslam, Foozi, Mahboob, Noor Hasan and Zulfiquar and two unknown assailants. Some were armed with countrymade pistols and rest were armed with rifles. Third, he proved, Tahir (armed with countrymade pistol), Jahid, Akil and Hasnain (armed with rifle) broke open the door of the house of Khurshed. He heard cries for help of Shakeela.

46. Second, he proved, he saw Rizwan, Yamin, Aas Mohammad broke into the house of Tauseef and killed Tullo. Third, he proved Jamshed, Aslam, Mahboob and Foozi (all armed with rifle) and two unknown assailants (one armed with rifle and another armed with pistol) entered the house of Khurshed. There, they killed Khatoon and Akil. Fourth, he proved, thereafter Jamshed, Aslam, Foozi, Mahboob, Noor Hasan,

Julfikaar and two unknown assailants went in the lane of Ahsaan, and shot at Rashid and Irfan.

47. Fifth, he proved, he saw Rashid, Irfan and Ahsan in that occurrence. In that, he further described Jamshed, Aslam, Mahboob and Foozi, Noor Hasan were armed with rifles, while Noor Hasan was armed with a country made pistol.

48. Sixth, he proved, thereafter, the accused assailants went to the lane leading to the house of Haneef. He heard cries for help from there. Last, he proved, the preparation of Inquest Reports with respect to the dead bodies of Shakeela, Khurshed, Khatoon and Vakeel. He also proved his signatures on the Inquest Reports.

49. Thereafter, Munkad Ali, the scribe, was examined as P.W.-5. He proved that he knew all the accused persons, from before. On the date of occurrence at around 3:45 p.m. while he was returning from school, he heard gunshots. On enquiry, he learnt Khurshed had been killed. He reached that place of occurrence and saw the dead body of Khurshed. At that time, he also learnt that some other residents of the area had been killed. By the time, he reached the house of Ilyas Pahalwan at the village, he saw a large crowd had gathered outside that house. Ilyas requested the witness to write his report. He wrote the same and read it out to Ilyas. He proved that Written Report as Ex.Ka-8. To that, the first informant Ilyas affixed his thumb impression. Thereupon, the Written Report was handed over to Ilyas and he went to the police station with the same. The scribe returned home.

50. Thereafter, Munkad son of Shabbir was examined as P.W.-6. He did not support the prosecution story during his examination-in-chief. He was declared hostile.

51. Thereafter, Dr. Dushyant Tyagi was examined as P.W.-7. He proved the injuries suffered by the injured witnesses and others, including those suffered by Gulista (P.W.-3), Ansar (not examined at the trial), Mustafa (not examined at the trial), Rashid Ali (P.W.-2 at the trial).

Not only he proved the respective injury reports of those injured but also he proved their thumb impressions etc.

52. Thereafter, S.I. Kali Ram Malik from Police Station Kithore was examined as P.W.-8. He proved the Inquest Reports of Khurshed, Vakeel and Haneef.

53. Thereafter, Constable Manvir Singh was examined as P.W.-9 with respect to transportation and handling of dead bodies of Tullo, Haneef, Naeem, Shakeela, Khurshed, Khatoon and Vakeel to P.L. Sharma Hospital.

54. Thereafter, S.I. Tejvir Singh of Police Station Kithore was examined as P.W.-10. He proved the registration of the FIR and the relevant G.D. entries and investigation.

55. Next, S.I. Nand Kishor Sagar of Police Station Mundali was examined as P.W.-11. He proved the Inquest Reports of Shakeela and Naeem @ Faheem.

56. Next, SHO K.P. Singh of Police Station Parikshatgarh was examined as P.W.-12. He proved the Inquest Report of Tullo.

57. Thereafter, Munni was examined as C.W.-1 primarily with reference to charge of conspiracy levelled against the acquitted accused. With that, we are not concerned in this appeal.

58. Thereafter the statement of the accused persons, Tahir, Jahid, Noor Hasan, Zulfiquar, Yamin, Mohd. Rizwan, Aas Mohammad, Aslam, Akeel, Foozi, and Mahboob were recorded. Thereafter, the defence led evidence through Vakeel Ahmed (DW-1), Iqbal Ahmad (D.W-2), Tahir Ali (E.W-2), Mohd. Arif Ali, (AW-1), Naseeruddin (A.W-2). In that status of evidence, the learned Court below convicted the present appellants and sentenced them as noted above.

59. Sri N.I. Jafri, learned Senior Advocate, has first pointed out that the accused Hasnain, Jamshed and Ahshan, died during trial while the appellant No.1 Yamin (in Criminal Appeal No. 6109 of 2006) died during pendency of this appeal. Three other appellants, namely Foozi,

Akeel and Jahid have been released by the State Government, upon remission granted.

60. As to merit submissions, the F.I.R lodged by Ilyas is plainly ante - timed, without any doubt. According to the prosecution story, the occurrence was caused at 4.00 p.m. which indicates inherent impossibility in the prosecution story, to the extent it narrates that the F.I.R came to be lodged within fifteen minutes, thereafter. Keeping in mind the magnitude of the occurrence, wherein seven people were done to death and four others were injured, all with deadly firearms, and that occurrence had spread over six locations - one in a market place and the other five in a residential area, at different houses of different victims, the very nature of that occurrence, it would have created panic and circumstances including those of terror and fear as may not have allowed for an F.I.R narration being made describing in detail the occurrence, that too within fifteen minutes.

61. Reasonable doubt as to the F.I.R. being ante-timed has been cited by relying on the statement of Shahadat (P.W-3), who clearly disclosed that it took two and an half hour, to prepare the Written Report. He also indicated that the F.I.R was lodged in consultation with the police officials. Further, reasonable doubt has been claimed on the statement made by Sub-Inspector Tejveer Singh (P.W-10) who tried to establish that the check F.I.R itself was recorded in police dispatch, at 4:15 p.m. In the nature of occurrence described by the prosecution, there is absolutely no possibility that the F.I.R may have been lodged with such promptness.

62. The scale of the occurrence and its response by the police is further established from the fact that the police personnel from three different police stations namely, Kithore, Mundali and Parikshitgarh had to be called not only for preparation of Inquest Reports but also to take care of the law and order situation, that had arisen.

63. Last, referring to the time of preparation of the Inquest Report as recorded and over writing in those records, it has been stressed, F.I.R was lodged much later, than disclosed.

64. Accompanying the above submission, secondary submission has been advanced that the F.I.R. as registered by the police is not a true narration made by Ilyas, at the relevant time. It is the second narration made after delay/lapse of time, upon consultation with the police officials. The F.I.R is claimed to have been registered on two pages, against Written Report submitted by Ilyas on two pages. Intrinsic evidence exists that not being the correct fact. The scribe of the F.I.R namely Munkad Ali (P.W-5), clearly proved that the first/Written Report prepared by him was a single page document. It was torn and thereafter the second document was prepared. That first/original Written Report was torn, was also proved by way of documentary evidence Exhibit Kha-1. Once the prosecution witness himself established that the original report was replaced with the second report, a doubt arises as to the truthfulness of the F.I.R.

65. More importantly, the Written Report now relied by the prosecution is admittedly a two page document that led to an FIR being registered on two pages. Pages are commonly described as '*vark*' in the police documents. Referring to the Inquest Reports of Khurshed, Khatoon, Haneef and Tullo, it has been submitted, while number of pages/'*vark*' of other documents mentioned in the list of documents appended to those Inquest Reports is mentioned, the number of pages/'*vark*' of the check FIR has not been disclosed. In fact, those have been left blank. On the contrary in the Inquest Reports pertaining to the deceased Vakeel, Shakeela, Naeem, Faheem, it is clearly recorded that the check FIR was a single page document.

66. Thus, it is clearly established that the initial Written Report was on one page only. It was later manipulated and changed to suit the prosecution convenience, whereby the present appellants came to be named. Referring to Ex.Kha-1, it has been submitted that the original FIR was lodged against unknown assailants. Thus, it was not known, at the relevant time as to who caused the occurrence.

67. As to the other external check, it has been submitted that though the occurrence was caused on 09.02.1989, the Special Report was not sent to the Magistrate, till as late as 13.02.1989. 10th being a working day, and 11th being a Saturday, no explanation was either furnished by the Investigation Officer nor he could explain why the Special Report was sent with such long delay.

68. Relying on the decisions of the Supreme Court in **Mohd. Muslim Vs. State of U.P. , (2023) 7 SCC 350** and **Meharaj Singh Vs. State of U.P., (1994) 5 SCC 188**, it has been stressed that sufficient reasonable doubt exists in the prosecution story.

69. Second, it has been stressed that the adverse circumstances/facts proven by Rashid Ali (PW-2), Gulista (PW-3) and Shahdat (PW-4) were never put to the appellants under Section 313 Cr.P.C. Relying on **Rajkumar @ Suman Vs. State of U.P (NCT, Delhi) (2023) 17 SCC 95**, **Ashok Vs. State of U.P., 2024 INSC 919** and **Ramji Prasad Jaiswal @ Ramji Prasad Jaiswal and others Vs. State of Bihar (2025) INSC 738**, it has been stressed, in absence of such confrontation offered to the accused persons, the evidence led by those witnesses - identifying the present appellants as the perpetrators of the occurrence, cannot be relied. In that regard, it has been further submitted that 36 years have passed since the occurrence. It would be wholly belated to seek correction by putting such adverse circumstances to the accused now, as the prejudice caused to the defence evidence 36 years ago, cannot be cured after such a long delay.

70. Also, submissions have been advanced to doubt the presence of the non-injured prosecution fact witnesses by asserting material improvements and contradictions.

71. On the other hand, learned A.G.A would submit there is no delay and there is no doubt about the occurrence. Hyper - technical objection raised with respect to the short time taken to lodge the FIR, cannot be over emphasized to doubt the truthful prosecution story. Similarly, all Inquest Reports contain full recital of the FIR lodged, prior in time. The

fact that details of such FIR may not be found mentioned on the header of the first page, is therefore, of no consequence. Similarly, non-disclosure of number of pages/ '*vark*' of the FIR in the list of documents appended to the Inquest Reports cannot be relied to doubt either the Written Report or the FIR. The Written Report was duly proven as prepared by the scribe Munkad Ali (PW-5) at the dictation of Ilyas (since deceased). The presence of Ilyas at the Police Station along-with Munkad Ali (PW-5) was also proven. The issue of over writing as to the time of the preparation of the Inquest Report, though not desirable, does not caste any doubt on the truthfulness of the prosecution story that the occurrence took place around 3:30 - 4:00 p.m. on 09.02.1989. In absence of any doubt that the FIR was registered at 4:15 p.m. and keeping in mind the fact that none of the fact witnesses led any evidence to prove that the occurrence was caused at 4:00 p.m. sharp, and not at any time - a little earlier, the objection been raised on behalf of the defence, is hyper technical and not real. What the Court may test is the truthfulness of the prosecution narration and not the empirical truth as to the time when the occurrence was caused and the FIR registered.

72. As to the external check, it has been submitted, though the existence of such test may not be denied, at the same time, the Court may look at the occurrence in entirety. A brutal massacre of seven persons had been carried out, in broad day light. Besides, the necessity to conduct the investigation, measures had to be adopted to ensure prompt initial steps of investigation. Therefore, not only the police personnel of Police Station, Kithore, Meerut (within whose jurisdiction the occurrence took place), were required to prepare the Inquest Reports but the police personnel of nearby Police Stations namely Mundali and Parikshitgarh had to be called to help the police personnel of Police Station Kithore. Referring to the consistent narration made by the police personnel of all three Police Stations that they received information through radio sets - generated by S.P, Meerut, to reach the place of occurrence and referring to the time when the inquest examination started on which the case crime number is found mentioned, it has been

submitted - no undue emphasis may be laid on the fact that the Special Report may have been received by the learned Magistrate on Monday following the occurrence i.e 13.02.1989. In that regard, it has also been submitted that 11th was a second Saturday while 12th was a Sunday. It is writ large on the face of record itself, that there was no delay in submitting the Special Report.

73. Insofar as the single page Written Report relied by the defence is concerned, it has been submitted, that part of the defence theory is wholly imaginary. Neither such document is part of the Case Diary nor there is any cogent evidence to believe that such a document had actually been prepared and submitted by Iliyas. Referring to the document Kha-1, though it is a document that may have been torn into two pieces and may have been taped back, at the same time it does not bear any thumb impression at all. It is a self - serving document prepared by the defence, purely to set up a false defence at the trial. No credence may be given to that document.

74. Next, it has been submitted, not only the prosecution story is based on consistent account offered by all ocular witnesses but it is strengthened and thus proven, through the unquestioned testimony led by two injured witnesses, namely Rashid Ali (PW-2) and Gulista (PW-3). There is absolutely no reason to doubt that they were injured in the assault. The nature of the firearm injury suffered by them is also undisputed/duly proven at the trial by Dr. Dushyant Tyagi (PW-7). That forms the core of the prosecution story. Both the witnesses narrated and proved what they saw. Gulista (PW-3) proved Tahir, Jahid, Akil, Noor Hasan, Zulfiquar and Hasnain entered her house while Rizwan, Yamin, Foozi, Mahboob, Aslam, Jamshed, Aas Mohammad and Hasnain, stood agreed. In that Jahid and Zulfiquar armed with rifles and others armed with countrymade pistols fired indiscriminately at the occupants of that house. In that occurrence, she, her brother - Mustafa (not examined at the trial) and sister-in-law - Ansar (not examined at the trial) were injured, while her father Haneef was killed.

75. Correspondingly, the other injured Rashid Ali (PW-2) proved that he was returning from his college at about 3:00 p.m. On his way back he met Irfan (not examined at the trial). Near the house of Ansar and Haneef, he heard gun shots. In that he saw Tahir, Jahid, Akil and Hasnain had climbed on the terrace of the house of Khurshed. Hasnain was armed with a countrymade pistol while the other accused were armed with rifles. He also saw Yamin, Rizwan and Aas Mohammad fire at the house of Tauseef. Rizwan was armed with a rifle while others were armed with countrymade pistol. Third, he proved, Jamshed, Aslam, Foozi, Mahboob (all armed with rifles) and two others (not identified by him) were armed with countrymade pistols. They fired at the house of Khurshed. In that Jamshed, Aslam, Foozi and Mahboob also fired at the witness. In that he was hit on his left hand.

76. To the extent, both Rashid Ali (PW-2) and Gulista (PW-3) are injured witnesses, there is no reason to doubt their presence. To the extent, that account offered by the injured witnesses is consistent with the other eye witness account offered by Shahadat (PW-4), Munkad and (PW-5), there is no reason to doubt the prosecution story. The prosecution story has been proved beyond reasonable doubt.

77. Coming to the statement recorded under Section 313 Cr.P.C, it has been submitted that though the requirement of law remains that each adverse circumstance found proven against the accused must be put to him before an order of conviction may arise there on, at the same time that principle of natural justice has not been violated in the present case inasmuch as the entire prosecution evidence has been led in the presence of the appellants. The prosecution witnesses have named the accused with their names, and the role played in the occurrence. Further, the appellants availed full opportunity to cross-examine all the witness, at length. They doubted the presence of the appellants, the injuries suffered by them and the account of the occurrence offered by them. However, the witness stood true. Seen in that light, in the facts of the present case the appellants were fully aware of the evidence being relied against them and the strength of proof arising thereon.

78. Thus, referring to the statements recorded under Section 313 Cr.P.C, it has been submitted, substantive compliance of the law has been made. No hyper-technical construction may be made as may allow for an undue benefit to arise in favour of the defence, in the present facts.

79. Having heard learned counsel for the parties and having perused the records, the first noticeable feature that cannot be lost sight in this case and which distinguishes from other cases is;

(1) The occurrence involves a massacre wherein seven persons closely related to each other, were done to death, with use of deadly firearms, namely, rifles, guns and countrymade pistols.

(2) The occurrence was caused over a short span of time, in broad day light, by not one or two but a group of assailants, in an organised/well planned massacre.

(3) The occurrence was caused with brutality that is writ large on the record. Women, young children and men were targeted indiscriminately, solely on the basis of their presence at particular households. It was not an act of mindless terror wherein indiscriminate firing may have been caused with automatic guns at a public place, rather, it was cold blooded calculated massacre wherein the assailants arrived on a motor vehicle, well armed and fully prepared.

(4) They first killed Khurshed who was present in the market area. Next, they proceeded to his house and the house of his near ones.

(5) They did not kill individuals or other people on streets or public places rather, they forced their entry into the individual houses and caused the occurrence. Thus, in all seven including two women and two children were killed. Also four persons including two children were injured. Those children have been examined as injured witness.

(6) The massacre was an act of vendetta, against Khursheed and his near ones.

80. It is that nature of occurrence that gives the context for the judicial enquiry that we must make to test, if the prosecution story has been proven beyond reasonable doubt.

81. We note, so the occurrence was caused in an urban area. The kind of terror that is generated in the society and the victims as also the response mechanism that the Police authorities provide, gets tested in different ways in such occurrences. Thus, simple blemishes or deficiencies that have been pointed by the defence would have to be looked, in the context of the occurrence and its magnitude and the promptness of the police response as noted above.

82. The place of occurrence and the manner of killing is undisputed to the defence. Thus, it is undisputed that the killings were caused at six different places, first - in the market place where Khurshed was killed, second - inside the house of Khurshed where Shakeela and Faheem, wife and son of Khurshed were killed and Gulista (PW-3) and Ansar – injured, third - inside the house of Tauseef where his wife Tullo was killed, fourth - inside the yard of Khurshed where Wakeel and Khatoon were killed; fifth - in the house of Haneef where he was killed, sixth – where Rashid Ali (PW-2) was injured, in the corner of a lane.

83. Thus, the first issue to be dealt with is the time of the occurrence and the time when the Written Report came to be lodged at Police Station Kithore. Seen in the context of the FIR narration, the occurrence was caused around 4:00 p.m. However, that narration was made by Iliyas (since deceased). He could not be examined as he died, in the meanwhile. At the same time, the scribe Munkad Ali (PW-5) did prove that the occurrence took place at around 3:45 p.m. – 4:00 p.m. During his cross-examination, he was not doubted as to the same. Therefore, it would be unwise to assume that the occurrence took place at exact 4:00 p.m. IST and not earlier. That premise claimed by the defence has no basis. Corroboration exists, through the injured Rashid Ali (PW-2), who proved that he was returning from school/college around 3:00 p.m. and

at that time he became the witness to the occurrence wherein he was also injured. Again, during his cross-examination, the said witness was not doubted as to his statement that he started back for his home around 3:00 p.m. Assuming that he would have taken some time to walk back from college on foot, before he reached his locality/residence and therefore the place of occurrence, it is safe to assume that the occurrence may have taken place around 3:30 - 3:45 p.m.

84. The occurrence having taken place around that time, we do not find that there was no time available with the first informant Iliyas (since deceased), to lodge the FIR promptly i.e. at 4:15 p.m. Thus, the first premise that the FIR was ante-timed is found not existing. The Police Station Kithore, Sub District Mawana, District Meerut where the First Information Report was registered was not more than 6 furlong from the place of occurrence. Thus, it was located barely one kilometer from the place of occurrence. In a case of this nature, it may otherwise be acknowledged that the police authorities would have received information by themselves arising from the sheer magnitude of the occurrence and may have reached the place of occurrence, even before the FIR was lodged. In the present case there is evidence of such being the fact. Police forces from two other police stations namely, Mundali and Parikshitgarh were deployed at the place of occurrence. Such deployment may not have been made at the instance of those police stations but only upon direction issued by higher police authorities i.e. the Superintendent of Police. Existence of wireless messages has been proven by the police witnesses. Their presence on spot is firmly established on the admitted fact that Inquest Reports were prepared by police officials from Police Station Kithore, Police Station Mundali and Police Station Parikshitgarh. Then, S.I. Tejveer Singh (PW-10), did establish that the police was dispatched at 4.15 p.m. Therefore, adequate corroboration exists that FIR was lodged promptly.

85. As to the time taken in dispatching the Special Report, though, it is a relevant fact at the same time, it is not decisive. Before any

conclusion may be reached that the F.I.R. is ante-timed, firm evidence must exist to accept that delay, by way of fact. Delay in sending the Special Reports itself may not be decisive. Besides our observations in the preceding para, here it is also a fact that 11th was a second Saturday while 12th Sunday. The Special Report reached the learned Special Magistrate on 13.02.1989. Thus, once the fact witness proved, duly corroborated by the wholesome mention of the Case Crime number in the body of the Inquest Report, and the Injury Reports, it may not be doubted that the FIR was not registered because the Inquest Reports do not bear the details of the case number in the header of the first page. That is not part of the proforma. To the extent those details are mentioned on that page, against the proper column, full compliance of the laws exist. Also, non mention or wrong mention of number of pages/ 'vark' of the FIR in the list of documents, is also of no relevance, in face of it being firmly established otherwise, that the FIR was registered at 4:15 p.m, as disclosed.

86. The submission advanced on the strength of evidence led by Munkad Ali (P.W.-5) that earlier, one page Written Report was prepared also does not prove that the F.I.R. as lodged is ante-timed. By merely stating that that document was prepared but not submitted, the said witness did not lead evidence that the present F.I.R. was ante-timed. Second the evidence led by Shahadat (P.W-4) that it took **2-2 ½ hour** to prepare the F.I.R. also does not give rise to any reasonable doubt that the F.I.R. was ante-timed. In the first place Shahadat (P.W.-4) is not the first informant or the scribe. He was a witness of fact of the occurrence. During his examination-in-chief he did not lend proof, that the F.I.R. was lodged after 2 – 2 ½ hours after the occurrence. Therefore, his statement recorded during his cross-examination was not with respect to the facts that he may have proven. In any case, those statements made by Shahadat (P.W.-4) were not confronted either to be scribe or the Investigation Officer Tejvir Singh (P.W.-10). Therefore, we are unable to accept the submission advanced by learned Senior Counsel for the appellants that a reasonable doubt exists in that regard. Tejvir Singh

(P.W.-10) proved it by way of secondary evidence, since, the first Investigation Officer Yogendra Singh had died on the date the evidence of the Investigation Officer being recorded.

87. Second, as to the occurrence, the prosecution has relied on the eyewitness account offered by the injured witness Rashid Ali (P.W.-2) and Gulista (P.W.-3). The fact that both witnesses received gunshot injuries in the assault suffered by them, is beyond any shadow of doubt. Rashid Ali (PW-2) had started for his home from his college, on foot at around 3:00 p.m. on 09.02.1989. On way, he was joined by a friend. Near the house of Ansar and Haneef, he heard a gunshot in the lane. At that point, he saw Tahir, Jahid, Akil and Hasnain on the roof of the house of Khurshed. All the accused were armed with rifles, while Hasnain was armed with a countrymade firearm. He also proved, he saw Yamin, Rizwan and Aas Mohammad firing at the house of Tauseef, wherein Rizwan was armed with rifle, while the others were armed with countrymade pistols. Third, he proved, he saw Jamshed, Aslam, Foozi and Mahboob, all armed with rifles and two other unknown assailants armed with countrymade pistols, fired at the house of Khurshed. Fourth, he proved, Jamshed, Aslam and Mahboob fired at him. He was hit on his hand. He ran and took shelter in the house of Ahsan.

88. During his cross-examination, he did not alter his stand to the extent that he did not make any statement as to how Khurshed was killed. Though cross-examined as to distances between the different places where the assault took place (as narrated by him), no contradiction or discrepancy emerged as may lead to any doubt as to his presence at that place. In the first place, it is not doubted, the injured had his residence in the same area and that he knew the assailants and the victims, from before. He was also aware of the old animosity existing between the parties and their current disputes. It is not in doubt, the said witness had attended college on that day or that he was returning on foot, having started from his college at 3:00 p.m. Absolutely, no doubt exists as to the time it may have taken the witness to walk back to the place of

occurrence from his college, as may have allowed him the opportunity to witness the occurrence caused before 4:00 p.m. He explained why he had taken a particular route to return home and not the shortest route - owing to animosity between the parties. Then, during his cross-examination, he was specifically asked about the time when he was injured in the occurrence. He described that time to be 3:30 p.m. He was not confronted with his previous statement as to the time of the occurrence. His description of that time remained undoubted.

89. In view of such facts, we note, the witness did not try to improve on his statement that may have been made to the Investigation Officer to the extent he neither digressed from the statement nor tried to name any other or further statement. To that extent, his testimony made to the Court appears to be truthful and wholly reliable. In the absence of any confrontation offered to him with any previous statement that may have been made by him, the only further description of the time when the injury was suffered by the deceased at 3:30 p.m. also does not create any doubt. Seen in that light, the presence of the said witness was wholly natural and was not effectively doubted. We find the witness to be wholly reliable.

90. The fact that he gave certain other descriptions about his hospitalization for 4-5 days and other such statements with respect to the time between firing caused at one or two places may not make any material difference. The further facts stated by him as to two deaths caused inside houses or enclosures, where he was not present, may also not create any reasonable doubt in his narration, to the extent, he never claimed he was present at such places. Apparently, while questioned during his cross-examination as to who was killed where, he shared his information as may have been derived in that regard after the occurrence, as well. To that extent, we look to his statement recorded during his examination-in-chief. In that, as noted above, he saw the assault made inside the house of Khurshed and from outside, as well as

the assault caused at the house of Tauseef. We have no reason to doubt his statement, made to the Court, to that extent.

91. The presence of the second injured witness, Gulista (P.W.-3), at the house of Haneef also cannot be doubted. She is the daughter of Haneef and was, therefore, present at that house alongwith her father Haneef, brother Mustafa and sister-in-law Ansar. She saw the accused Tahir, Jahid, Akil, Noor Hasan, Zulfiquar and Hasnain enter her house. In that, Tahir, Jahid, Noor Hasan and Akil were wielding long-barrel rifles, while Hasnain and Zulfiquar were armed with countrymade pistols. They assaulted the inmates of that house. In that, Haneef was hit. As he ran inside the house, he was shot again and killed. She too was hit. In that, she claimed she lost consciousness and was admitted to the hospital for 15 days. During her cross-examination, though some doubts may have arisen as to her hospitalization, there is absolutely no doubt that she was examined as an injured by Dr. Dushyant Tyagi (P.W.-7). The Injury Report of the said witness has also been duly proven at the trial. No doubt exists that she had received firearm injuries, which were examined on the same day. Keeping in mind the presence of the witness at her parental home is wholly natural, and further keeping in mind the proven nature of the firearm injuries suffered by her, her presence may not be doubted. She too is a wholly reliable witness. She neither offered any material improvement, nor her statement is found contradicted.

92. The fact that the other injured, Mustafa and Ansar, were not examined at the trial may not be crucial or relevant to doubt the evidence led by Rashid Ali (PW-2) and Gulista (PW-3). It is the quality of the evidence led, and not its numeric value, that may be examined to prove the occurrence beyond reasonable doubt. To the extent, the testimony of the said Rashid Ali (PW-2) and Gulista (PW-3) is free from any reasonable doubt, it may not be diluted for reasons of the brother and sister-in-law etc. of those witnesses who were also similarly injured in that occurrence, were not examined.

93. The further fact of her admission to the hospital and some delay of 15 days in her statement being recorded also does not carry weight, the deficiency or delay on the part of the Investigation Officer may not work to the benefit of the defence, in the present facts of the prosecution case. To the extent there is no delay in the medical examination of Rashid Ali (PW-2) and Gulista (PW-3), and to the extent there is no doubt about the preparation of the Injury Reports by Dr. Dushyant Tyagi (PW-7), and further, to the extent there is no doubt that the two injured witnesses received a gunshot injuries, we are not in a position to discard their testimony or to treat them as unreliable or partially reliable witnesses. All we are required to do is not readily entertain doubts in their truthful accounts, solely for the reason of minor inaccuracies or partial embellishments expressed as to her hospitalization, after the occurrence etc. Thus, it remains proven that the accused named by the two injured witnesses had participated in the occurrence wherein seven deaths were caused and four persons were injured, all with deadly weapons.

94. All doubts expressed in the deposition of Munkad Ali (PW-5) may be seen accordingly. He had not seen the occurrence but prepared the Written Report on the instructions of Ilyas (since deceased). Similarly, the fact that Munkad (PW-6) was declared hostile is of no consequence. As to the statement of Shahadat (PW-4), though doubt has been raised regarding all the facts proven by him, we are not in a position to discard his testimony as that of a wholly unreliable witness. Merely because he was a teacher at the local Madarsa and his attendance was found recorded at that Madarsa on 09.02.1989, it would be dangerous, therefore, to accept that he remained present at the Madarsa the whole day. To the extent, his statement is consistent to the facts proven by the two wholly reliable/injured witnesses, his evidence does not create a reasonable doubt, in the prosecution story.

95. We are also mindful, the present appeals are those filed by Tahir, Rizwan, Aas Mohammad, Mahboob and Zulfiquar (the appellants in jail) and Akil, Foozi and Jahid (released by the State Government). All seven accused persons had been clearly identified and named by two injured witnesses, namely, Rashid Ali (P.W.-2) and Gulista (P.W.-3). Seen in that light, the evidence led by Shahadat (P.W.-4), to the extent it wholly corroborates the narration offered by the two wholly reliable injured witnesses, adds to the weight of the evidence led by the prosecution, but not to its quality. To that extent, we find the evidence led by Shahadat (P.W.-4) to be corroborating the account presented by the said two injured witnesses.

96. To the extent the evidence led by Shahadat (P.W.-4) has not found acceptance with the learned trial Court, or to the extent it is now no longer relevant as the other accused have died and Yamin, who died during pendency of these appeals, the discussion as to the credibility of that evidence would largely be of academic worth only.

97. Before parting, we may note, the occurrence was grave, having characteristics of a diabolical nature. Pre-planning of an act like this by more than a dozen assailants in broad daylight involves a high element of daring. However, further discussion may not be required, as the learned Court below awarded sentence for life, only.

98. For the reasons noted above as also on the issue of sentencing, the appeal lacks merit and is, accordingly, **dismissed**.

99. The appellants are in jail. They shall serve out the remaining sentence.

100. Learned Amicus Curiae appearing on behalf of the appellant no. 3 has rendered his valuable assistance to the Court. He be paid Rs. 25,000/-, towards his fee for the able assistance provided by him in hearing of the present appeal.

101. Let the trial court record along with a copy of this order be transmitted to the court concerned.

(Tej Pratap Tiwari, J.) (S.D. Singh, J.)

September 04, 2025

PS/ Anurag / Manoj