

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

+ **Crl. Appeal 1110/2013**

Reserved on: 21st April, 2015

% **Date of Decision: 10th August, 2015**

DILSHAD THR. HIS PAROKAR GULZAR Appellant
Through Mr. Riaz Mohd., Adv.

versus

STATE Respondent
Through Mr. Varun Goswami, APP for the state.
IO ACP Ved Bhushan, Insp. Harender Singh, PS Welcome.

+ **CRL.A. 1184/2013**

NAUSHAD Appellant
Through Mr. Ashutosh Bhardwaj, Adv.

versus

STATE Respondent
Through Mr. Varun Goswami, APP for the state.
IO ACP Ved Bhushan, Insp. Harender Singh,
PS Welcome.

+ **CRL.A. 1390/2013**

NAUSHAD Appellant
Through Mr. Chetan Anand, Adv.

versus

STATE (GNCT OF DELHI) Respondent
Through Mr. Varun Goswami, APP for the state.
IO ACP Ved Bhushan, Insp. Harender Singh,
PS Welcome.

+ **CRL.A. 1389/2013**

HASIN HUSSAN Appellant
Through Ms. Pankhuri Mehndiratta, Advocate.

versus

STATE (GNCT OF DELHI) Respondent
Through Mr. Varun Goswami, APP for the state.
IO ACP Ved Bhushan, Insp. Harender Singh,
PS Welcome.

+

CRL.A. 354/2015

STATE

..... Appellant

Through Mr. Varun Goswami, APP for the state.

IO ACP Ved Bhushan, Insp. Harender Singh,
PS Welcome.

versus

RANU KUMAR @ PRASHANT KUMAR &ORS Respondents

Through Mr. Yogendra Singh, Adv. for R1.

Mr. Riaz Mohd., Adv. for R2 & R3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J.

Dilshad, Naushad s/o Kamaluddin (hereinafter referred to as 'Naushad-1') Naushad s/o Mohd. Rafiq (hereinafter referred to as 'Naushad-2'), and Hasin Hussan (also referred to as Hasin Haider) assail the judgment dated 26th July, 2013, convicting them under Sections 302/307/449 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short). Dilshad and Hasin Hussan also impugn their conviction under Sections 25/27 of the Arms Act, 1959.

2. The State has preferred a cross appeal against the impugned judgment dated 26th July, 2013 acquitting Ranu Kumar @ Prashant Kumar, Shamim and Israr.

3. The four appellants, i.e. Dilshad, Naushad-1, Naushad-2 and Hasin Hussan, vide order dated 29th July, 2013 have been sentenced to imprisonment for life and fine of Rs.50,000/- each for the offence under Section 302 IPC; imprisonment for life under Section 307 IPC; and rigorous imprisonment of seven years and fine of Rs.30,000/- each for the offence under Section 449 IPC. The sentences are to run concurrently and Section 428 of the Code of Criminal Procedure,

1973 (Cr.P.C., for short) shall apply. Imprisonment of life, it is clarified, would mean the remainder of the natural life of the convict. 70% of the fine, if realized, it is directed would be paid to the injured Heena (PW2), and the legal heirs of the deceased Anisha and Pappu, while 15% was to be defrayed as costs and paid to the State.

The accused Dilshad and Hasin Hussan have also been sentenced to rigorous imprisonment of 1½ years, fine of Rs.5,000/- each and in default, rigorous imprisonment of nine months, for the offence under Section 25 of the Arms Act, 1959; and, rigorous imprisonment of 3½ years, fine of Rs.6,000/- each and in default, rigorous imprisonment of one year, for the offence under Section 27 of the Arms Act, 1959. Substantive punishments are to run concurrently.

4. The impugned judgment arises from the charge-sheet filed in FIR No.136/2006, P.S. Welcome.

5. On 27th March, 2006, DD Entry 24A (Ex.PW22/X) regarding trespass and quarrel and DD Entry 25A (Ex.PW22/X1) regarding two murders at House No. C-389, Gali No. 11. Janta Colony, Welcome, Delhi were recorded. Insp. Ved Bhushan (PW22), who was entrusted with the task to verify and ascertain, reached the spot and found Pappu, Anisha and Heena (PW2) in an injured condition. They were taken to the GTB Hospital where Pappu and Anisha were declared 'brought dead' vide MLCs marked Ex.PW11/C and Ex.PW11/B, respectively. Heena (PW2) who had multiple incised wounds on her neck, was admitted for treatment vide MLC marked Ex.PW11/A, but was declared unfit for statement. Insp. Ved Bhushan (PW22) met Mohd. Imran, who has appeared as PW3, and recorded his statement (Ex.PW3/A). Thereafter, PW22 had sent *rukka* via Ct. Arun Kumar

pursuant to which FIR No.136/2006 (Ex.PW5/A) was registered at 2.00 AM on 28th March, 2006 by HC Bijender Singh (PW5).

6. Dr. Banarsi (PW11), Chief Medical Officer, GTB Hospital, had appeared and proved the MLCs of Heena (Ex.PW11/A), the deceased Anisha (Ex.PW11/B) and Pappu (Ex.PW11/C). Heena was referred to Sr. Resident ENT and Surgery as she had multiple incised wounds in front of neck which were horizontally placed with tracheal cut. PW11 has deposed that Heena (PW2) was discharged on 10th April, 2006 as per the discharge report (Ex.PW24/A).

7. Dr. K.K. Banerjee (PW12) had conducted post-mortem on the dead body of Pappu on 28th March, 2006 and vide report Ex.PW12/A, opined that the cause of death was shock as a result of ante-mortem injuries to the brain and skull caused by a missile from a fire-arm fired from a contact range. The injury was sufficient in ordinary course of nature to cause death. Dr. Arvind Kumar (PW16) had conducted post-mortem on the dead body of Anisha and has deposed that she died as a result of shock due to ante-mortem injuries to the head produced by a projectile from a fire-arm fired from a contact range. The injuries were sufficient in ordinary course of nature to cause death. Post-mortem report of Anisha is marked Ex.PW16/A.

8. In addition to the aforesaid medical evidence, we have testimonies of Insp. Ved Bhushan (PW22), Heena (PW2), Mohd. Imran (PW3) and Shabnam (PW4) on the question of injuries suffered by Heena (PW2) and fire-arm injuries suffered by Pappu and Anisha. We will elaborate on their testimonies at a later stage. However, we have no doubt in view of the aforesaid evidence that the deceased Pappu and Anisha had met homicidal deaths due to fire-arm injuries

and Heena (PW2) had suffered injuries by way of multiple incised wounds on her neck.

9. The primary issue which arises for consideration in the present appeals relates to the question whether the four appellants herein are perpetrators who had committed the said offences and the second question which arises for consideration is whether the trial court was right in acquitting Ranu Kumar, Shamim and Israr.

10. We begin with the undisputed facts or facts proved beyond pale of any doubt; (a) The place of occurrence, i.e. house no. C-389, Gali No.11, Indira Gali, Janta colony, Welcome, Delhi was the place of residence where Heena (PW2), the deceased Pappu and Anisha used to reside; (b) Shabnam (PW4) is daughter of Shamim (acquitted) and sister of Dilshad, Naushad-1 and 'I' (name withheld. 'I' being a minor was tried as a juvenile). Israr (acquitted) is step-son of Shamim; (c) There is also ample evidence to show and establish the cause or the motive behind the said offences, which was the love marriage between Shabnam (PW4) and Ishrat Ali (PW1), which was fumed and objected to by Shamim (acquitted) and her family. The said fact is deposed and established from the testimonies of Ishrat Ali (PW1), Shabnam (PW4), Mohd. Imran (PW3) and Heena (PW2); (d) Aforesaid witnesses have also proved beyond doubt that Shamim (acquitted) and her family used to reside in front of house No. C-389, Gali No.11, Janta Colony, Welcome, the place of incident.

11. Mohd. Imran (PW3) is the informant. In his examination-in-chief, he identified the appellants and also Shamim, Israr and Ranu Kumar who have been acquitted. Ranu Kumar, he deposed, was a friend of the appellant Dilshad. On 27th March, 2006, at about 10.30 PM, while returning home after visiting Ishrat Ali (PW1), PW3 had

seen “all the accused persons” coming out of his house with blood-stained clothes. Naushad-1 was having blood-stained *ustara* (razor) in his hand. “All the accused persons” had entered the house of Shamim and, thereafter, came out, entered a *gali* and ran away. On seeing “all the accused”, PW3 became perplexed as his family was not on visiting terms with Shamim’s family due to the love marriage between Ishrat Ali (PW1) and Shabnam (PW4). He entered his house, and noticed that the light on the first floor was switched off. Using the light of his mobile phone, PW3 saw his mother in a pool of blood. He came down, raised alarm and made a call to police on number 100. The police van arrived and, thereafter, PW3 along with police went to the first floor. Hands of Heena (PW2) were found tied to a *takhat*. They untied Heena’s (PW2) hands and legs. Neck of Heena (PW2) had been slit. Heena (PW2) had then pointed towards the house of accused persons by making gestures with her hand. The police had removed his mother Anisha, brother Pappu and Heena (PW2) to the hospital. PW3, Ishrat Ali (PW1) and Shabnam (PW4) had also accompanied the police to the hospital. On the way to the hospital, Heena (PW2) who was unable to speak, had gesticulated that one of the perpetrators had small hair. In the hospital, Pappu and Anisha were declared as brought dead. Heena (PW2), PW3 accepted, could not speak after the occurrence. Heena slowly began to speak 2/4 days after her operation and had remained in the hospital for about a month.

12. Mohd. Imran (PW3) was subjected to extensive cross-examination and confronted with his statement (Ex.PW3/A), on the following facts:

- (a) The clothes of Shamim were blood-stained (this aspect is examined below in paragraph 42);
- (b) The perpetrators had entered the house of Shamim;
- (c) Thereafter, they came out of the house of Shamim and entered the *gali* and ran away.

13. Some other minor contradictions and exaggerations were also pointed out, which to our mind are not material. On cross-examination by counsel for Israr and Naushad-2, PW3 accepted that at the time of incident, it was not in his knowledge at the time of incident that Israr and Naushad-1 were step brothers. PW3 had also professed that he did not know that Israr was living in village Bhopa, Distt. Muzaffarnagar and claimed that he had seen him residing in Delhi. However, PW3 did not remember the date, month or year when he had seen Israr living in Delhi. PW3 in his cross-examination had asserted that Heena (PW2) was in her senses when she was taken to the vehicle but after pointing out by gestures, she became unconscious.

14. At this stage, we would like to refer to the statement of Mohd. Imran (Ex.PW3/A) which became the substratum of the FIR (Ex.PW5/A). In the statement (Ex.PW3/A), Imran (PW3) had stated that at 10.45 PM, when he returned to his house after visiting the house of his brother and sister-in-law (Ishrat Ali (PW1) and Shabnam (PW4)), he had seen Shamim (acquitted) standing in front of their house and Naushad 1, Dilshad, Israr, I (juvenile), Hasin Haider and Naushad 2, coming out of his house. Their clothes were blood-stained. He had suspected foul play and when he went upstairs, he noticed that his mother Anisha had been murdered and was tied to the

cot. Her left temple was torn and a cloth was tied along her neck. Neck of his sister, Heena (PW2) had been slit and she was crying, lying on the bed. His brother Pappu had sustained bullet injury on his temple and he was lying on the cot. He informed the Police Control Room from his mobile phone. Mohd. Imran (PW3) was in the PCR van along with his brother and sister-in-law when Heena (PW2) had narrated that Naushad-1, Dilshad, Israr, I (juvenile) Hasin Haider and Naushad-2, had committed the offence by firing bullets and using knives. Shamim had helped and instigated them to commit the murders.

15. Ranu Kumar has not been named in Ex.PW3/A, as one of the persons seen by Mohd. Imran (PW3), either standing with Shamim or coming out with Naushad-1, Naushad-2, Dilshad, Israr, Hasin Haider and I (juvenile).

16. Heena (PW2) was about 12 years of age on the date of occurrence. Her testimony is crucial and pivotal, for she had suffered incised wounds on her neck and as per the prosecution had seen the perpetrators using the firearms to kill Anisha and Pappu. Relevant portion of PW2's testimony reads as under:-

“On 27.3.06 at about 10.30 p.m I was standing at Chajja of my house. Accused Shamim and Naushad her neighbour were standing out side our house. When I went in side our house all the accused persons present in the court alongwith Irshad (facing trial in juvenile court) entered in our house at first floor. They bolted the door from in side. Accused Dilshad then asked my mother about my brother Ishrat @ Guddo. My mother replied that she did not know about Ishrat. Accused Dilshad then asked co accused persons “IN KE HATH PAUV BANDHO AUR KHATAM KAR DO”. Then Irshad (Juvenile) tied hand and leg of my mother Anisha. Then accused Dilshad fired a shot on the head of my mother with gun. Then accused Naushad neighbour tied hand and legs of my brother Pappu. Then accused Hasin Haider fired a shot on his temple with a gun.

At this stage witness started weeping.

When my brother Pappu was crying in pain (TarapRahaTha), the accused Ganja @ Ranu gagged the mouth of my brother with his hand as a result of which my brother Pappu died. Witness pointed out towards a person who is present in the court and has not been challaned by the police and stated that he tied my hands and legs.

(Court has inquired from that person present in the court to whom the witness is pointed out regarding his name and address. He has given his name as Raju @ Hasim son of Shafiq r/o village Alahapur District Bidayu UP) objected to by counsel for accused persons Sh. R.K. Kochhar and Sh. A.K. Singal.

Then accused Naushad brother of Shabnam inflicted injuries on my neck with a raizer (Ustre se gala kat diya). Then accused Shamim came up stair and told to her co accused (Iss Ko Bhi Thanda Kar Do). Then accused Naushad brother of Shabnam again inflicted raizer injury on my neck. When accused Shamim was going (Us Ke Pair Mere Pair Mein Atak Gaya and WO Mere Upar Gir Gaye). Thereafter all the accused persons ran away from there. My mother Anisa and my brother Pappu had died. Before two days of 27.3.06 I saw Ranu, Dilshad and Hasin Haider in street. After about 10 minutes my brother Imran came. He informed to police on phone. Police reached there and police released our hands and legs. PCR van came there and removed me to hospital where I was medically examined.”

17. We have reproduced relevant portion of the examination-in-chief of Heena (PW2) for the reason that she has attributed specific roles to the appellant Dilshad, Naushad-2, Hasin Haider and Naushad-1. She did identify Ganja @ Ranu as the person who gagged the mouth of her brother Pappu with his hands, and had pointed towards a person standing in the court but had not been charge-sheeted. On court questioning, the said person had given his name as Raju @ Hasim, s/o Shafiq. Thus, it is apparent that PW2 had identified Raju @ Hasim as Ganja @ Ranu, as one of the persons who had committed the crime. In the later portion of the examination-in-chief, PW2 had stated that two days before she had seen Ranu, Dilshad and Hasin Haider in the street. She had also not named or attributed any act to Israr (acquitted) in her statement. In her cross-examination, Heena (PW2) accepted as correct that Imran (PW3) and Shabnam (PW4)

were present with her in the PCR Van when she was taken to the hospital and she had gesticulated with hands to reveal the identity of the assailants. PW2 in her cross-examination, once again accepted that she was unable to identify Israr (acquitted) by name, stating that she did not know him before or at the time of the incident. She was not asked by the police to identify Israr. She acknowledged that Israr (acquitted) was step-brother of Dilshad and Naushad-1, but Israr was not residing in the house of Shamim (acquitted). In her cross-examination, PW2 reiterated that the appellant Dilshad had caused injuries to Anisha and the said appellant and Hasin Haider were carrying pistols. She asserted that Naushad 1 had an *ustra* (razor). She had, at one stage, claimed that Israr was having an *ustra* (razor), but subsequently on the same day, i.e. 22nd August, 2007 when cross-examined by the counsel for Ranu and others, asserted that she did not tell the police in her statement that Ishrar (*sic*, Israr) was having an *ustra* (razor). Thus, on the aspect whether Israr was present or had an *ustra* (razor) in his hand, there is ambiguity and contradiction. In her cross-examination, PW2 also accepted that in her statement under Section 161 Cr.P.C. (Ex.PW2/DA), she had not mentioned/stated to the police that two days before occurrence, she had seen Ranu (acquitted) and the appellants Dilshad and Hasin Haider in the street.

18. Irshat Ali (PW1) and Shabnam (PW4) had reached the spot only after they were informed by Mohd. Imran (PW3). Therefore, they are not eye-witnesses to the offence. While we accept that PW3 and PW4, had within 10-20 minutes reached the place of occurrence, we have grave doubt on whether they were eye-witnesses who had seen any of the appellants or Shamim, Israr or Ranu Kumar after the occurrence. PW1 has testified that Imran (PW3) had called on his mobile phone to inform that his mother Anisha, brother Pappu and

sister Heena had been murdered and, thereafter, he had reached the spot. PW1, however, claimed that on the way near a toilet, he had seen the appellants Dilshad, Naushad-1 and Naushad-2, Israr, 'I' (juvenile) and Shamim, talking to Ranu and Hasin Haider, whom he did not identify. He had overheard them talking that they had murdered Anisha, Heena (PW2) and Pappu and they would kill Ishrat Ali (PW1) and Shabnam (PW4) too. He got perplexed, nervous and sat there. Subsequently, he reached C-389, Indira Gali No.11, Janta Colony, Welcome. This portion of testimony of PW1 deserves rejection and complete elimination. It would be incongruous to accept the said statement, for as per the prosecution version, both Ranu and Hasin Haider were present at the place of occurrence when fire-arm and knife wounds were inflicted on Anisha, Pappu and Heena (PW2). There was no cause or reason for anyone to state and inform Ranu and Hasin Haider about facts which were already known to them or about an offence in which they had participated. Ishrat Ali (PW1), in his examination-in-chief, has accepted that he could not identify Ranu and Hasin Haider because he did not know them. This statement was confirmed by PW1 in his cross examination on 18th March, 2008, when he accepted that he did not know Ranu Kumar or Hasin Haider by name prior to 27th March, 2006. He, however, claimed that he knew them by face. He voluntarily added that he came to know Ranu Kumar and Hasin Haider when he had overheard the conversation near the toilet and they were being addressed as Hasin Haider and Ranu Kumar. PW1 was confronted with his statement under Section 161 Cr.P.C. (Ex.PW1/DA) where it is not recorded that he came to know the names of Hasin Haider and Ranu Kumar when he overheard the conversation between them and others.

19. Ishrat Ali's (PW1) assertion that the appellants and Israr, Shamim and Ranu Kumar (all acquitted) had stopped near the toilet and recapitulated what had happened, is thus unnatural and unfathomable. The said version is imaginary and it does not appeal to reason, for the perpetrator after committing an offence would not wait and narrate the occurrence, rather would normally flee or run away from the spot after they had seen Mohd. Imran (PW3) at the spot. We, thus, disbelieve and do not accept the prosecution version that PW1 had overheard the conversation near the toilet. We, however, notice that Ishrat Ali (PW1) in his cross-examination on 28th May, 2008 had stated that it was correct that he had not seen Shamim (acquitted) standing near the toilet. Further, he did not know the house number, or whether Naushad-2 had sold their earlier house. He volunteered that Naushad-2 was living at his in-laws house which was 2-3 houses away from his house. Israr (acquitted) used to live in village Bhopa, Distt. Muzaffarnagar.

20. Shabnam (PW4) is also not an eye-witness to the occurrence. Her testimony is about the injuries suffered by the victims and to this extent, she has corroborated the testimony of Heena (PW2), the injured eye-witness and also Ishrat Ali (PW1) and Mohd Imran (PW3). Shabnam (PW4) asserts that on 27th March, 2006, Imran (PW3) had informed her husband about the murders on telephone. They then left, but she had reached the place of occurrence before Ishrat Ali (PW1) as she had taken a short-cut. Several persons had collected in the *gali*. She went to the first floor, which was dark and from the balcony she saw Shamim (acquitted). Shamim (acquitted) had then stated that because of PW4, her mother-in-law, sister-in-law and brother-in-law had been killed and her (PW4's) brothers and friends were now looking for PW4 and her husband (PW1). She

(Shamim) would see how PW4 would live with her husband (PW1). PW4 has accepted that the police had reached the spot. This part of the aforesaid testimony of PW4, reflects an attempt by PW4 to invigorate and proliferate her version as an eye-witness to implicate and attribute specific statements to her mother. PW4 had suffered and seen tragic and piteous loss of her mother-in-law, brother-in-law, and near fatal injuries on her sister-in-law caused by her mother, brothers, others, all because she had married Ishrat Ali (PW1). This explains her exhortation and, therefore, we would not rely upon her version as to the statements made by Shamim (acquitted). PW4 has accepted that the police had reached the spot and several persons had gathered in the *gali*. Any vicious warning and ravenous outburst at that time by Shamim (acquitted) would have resulted in immediate and striking response from the public and the police. Imran (PW3) has also affirmed that a number of persons were in the *gali* (street). This is plausible and should be accepted as a heinous crime had been committed in a crowded residential colony. The public or the police would not have allowed Shamim (acquitted) to utter the said words without any immediate reaction. PW4, in her cross-examination, has accepted that she had not informed the police who had arrived, about the purported conversation between her and her mother. In her cross-examination, PW4 accepted that Naushad 2's name was not recorded or mentioned in her statement under Section 161 Cr.P.C. (Ex.PW4/DA).

21. ASI Vijay Pal Singh (PW15) has stated that he was on PCR duty between 8.00 PM to 8.00 AM on 27th March, 2006 and on receiving the information, had reached C-389, Gali No.11, Indira Gali, Janta Colony and had taken Heena (PW2) and Pappu (who had died) in his PCR van to the GTB hospital. One relative, i.e. the

brother of the injured also accompanied them to the GTB hospital. The third injured was shifted to the GTB hospital in the vehicle of the SHO Ved Bhushan (PW22). Heena (PW2) was not in a position to speak and did not tell anything to PW3. PW15 in his cross-examination, has accepted that he did not tell the Investigating Officer that Heena (PW2) had informed or revealed to Imran (PW3) that the appellants Naushad-1 and Naushad-2, Dilshad, Israr and Hasin Haider had fired at her and given her the injuries, though this fact is mentioned in his statement recorded under Section 161 Cr.P.C. (Ex.PW15/A). He also denied as incorrect that he had stated to the IO that Heena (PW2) had told Imran (PW3) that Shamim (acquitted) had helped them, though this is recorded in Ex.PW15/A.

22. ASI Vijay Pal Singh (PW15) also denied various other suggestions made by the Additional Public Prosecutor referring to his statement under Section 161 Cr.P.C., marked Ex.PW15/A. However, he has accepted as correct that the doctor concerned had declared that Pappu was brought dead to the hospital and that Heena (PW2) was unconscious at the GTB Hospital. In his cross-examination, PW15 affirmed that 100-150 people were present at the spot. He had seen Anisha, Pappu and Heena lying on the floor in an unconscious condition in different directions, but he had not seen whether the hands and legs of the injured were tied and the mouths gagged. A photographer had reached at the spot at about 11.14 PM and had taken photographs in his presence. The SHO and the Additional SHO were also present.

23. Ct. Sushil Kumar (PW6) had reached the spot at about 11.30 PM on 27th March, 2006 along with Crime Team In-charge. He had taken photographs of the bed on which the blood-stained clothes were

lying and also of one *khokha* (empty cartridge) and one *sikka* (lead) (Ex.PX9). He proved photographs marked Ex.PW6/1 to Ex.PW6/6 and negatives as Ex.PW6/1A to Ex.PW6/6A. A large crowd had gathered there and SHO Ved Bhushan (PW22) was also present there.

24. Insp. Ved Bhushan (PW22) was posted as the SHO, Police Station Welcome and had conducted investigation upon receipt of the DD entries 24A (Ex.PW22/X) and 25A (Ex.PW22/X-1). PW22 had reached the place of occurrence with the staff and noticed the three injured persons, namely, Anisha, Pappu and Heena (PW2). Two were removed to the GTB Hospital in a PCR van and one was taken to the hospital by PW22 in his official vehicle. In the hospital, PW22 met one Mohd. Imran (PW3) and after inquiries, his statement (Ex.PW3/A) was recorded, and PW22 had prepared the *rukka*. PW22 had sent the papers for registration of the FIR (Ex.PW5/A). He had obtained the MLCs marked Ex.PW11/B and Ex.PW11/C of Anisha and Pappu, respectively, who were declared brought dead and Ex.PW11/A of Heena (PW2), who was at that time unfit for statement. He returned to the spot where the crime team was already present and had seized one blood-stained pellet (Ex.PX7), one empty cartridge (Ex.PX8), one slipper of plastic (black and sky blue colour) (Ex.PX3), blood-stained mattress (Ex.PX1) and bed sheet (Ex.PX2). These were seized and duly sealed as recorded in the seizure memo (Ex.PW19/C). Site plan was also prepared at the instance of Mohd. Imran (PW3) marked Ex.PW22/B. On 28th March, 2006, PW22 had arrested Shamim (acquitted) and Naushad-2 from Idgah Road, Janta Colony, Welcome and had recorded disclosure statement of Shamim (acquitted) marked Ex.PW8/B and, thereupon, recovered one blood-stained *chunni* (Ex.PX10), one lock (Ex.PX15) and key (Ex.PX16) from a gunny bag from house No. D-272, Indira Gali, Janta Colony.

Seizure memo (Ex.PW19/D) was accordingly recorded. Naushad-2 had taken them to his house at E-222, Indira Gali No. 11, Janta Colony and from his room on the first floor, they had recovered a blood-stained shirt (Ex.PX14), which was seized vide seizure memo (Ex.PW19/B). PW22 claimed that Israr was arrested on 29th March, 2006 from *Theka Sharab*, Loni, Ghaziabad and, thereafter, disclosure statement (Ex.PW19/F) was recorded. Israr had then taken them to his house at D-272, Indira Gali No.11, Janta Colony and from the first floor room, one blood-stained shirt (Ex.PX13) kept in an iron box was recovered and seized vide seizure memo (Ex.PW19/G). At this stage, we would like to record and observe that Israr was not a permanent resident of D-272, Indira Gali No.11, Janta Colony, but resident of village Bhopa, District Muzaffarnagar, U.P. He is not the son of the Shamim (acquitted) but step-brother of Dilshad, Naudhad-1, etc. We shall be subsequently referring to the contention raised on behalf of Israr that he was arrested on 29th March, 2006 from his village and not in the manner as indicated above.

25. On 4th April, 2006, Dilshad was arrested from Karawal Nagar area by PW22 and his disclosure statement (Ex.PW19/I) was recorded. Dilshad had taken them to his house at B-272, Janta Colony and from his room behind the iron box, a blood-stained shirt (Ex.PX12) of *kathai* colour was recovered. On checking the shirt, one *desi katta* (country-made pistol) (Ex.P4) with four live cartridges (Ex.PX5/1 to Ex.PX5/4) were found and seized. A private photographer was called to the spot and photographs of the shirt along with the country-made pistol and cartridges were taken and seizure memo (Ex.PW19/C) was prepared. Ranu was arrested on 7th April, 2006 from Idgah Road, Janta Colony on the basis of information given by a secret informer and after interrogation disclosure statement

(Ex.PW9/E) was recorded. However, as nothing was recovered, the said disclosure statement is of no relevance. Naushad-1, Haseen Haider and I (juvenile) were arrested on 26th April, 2006, and disclosure statements of Naushad-1 and Haseen Haider, Ex.PW19/M and Ex.PW19/N, respectively, were recorded. On the basis of disclosure statement by Naushad-1, one blood-stained *ustara* (razor) (Ex.PX11), wrapped in a polythene bag, was recovered from the roof of the *Sulabh Shauchalya*, and seized on 26th April, 2006 by memo (Ex.PW19/Q). Sketch of the *ustara* (Ex.PX11) was prepared and marked (Ex.PW19/P). Pursuant to the disclosure statement by Haseen Haider (Ex.PW19/N), a polythene bag containing *desi katta* (country-made pistol) (Ex.PX17), four live cartridges (Ex.PX18 and Ex.PX19/1 to 3) and one empty cartridge (Ex.PX19) were recovered from the roof of *Sulabh Shauchalya* and seized vide seizure memo (Ex.PW19/T). Sketch of the said pistol, four live cartridges and an empty cartridge was prepared and marked Ex.PW19/S. PW22 also proved the FSL report (Ex.PW22/Y) dated 29th August, 2006, and two other FSL reports, both dated 16th January, 2007 (Ex.PW22/Y1 and Y2). As per the FSL reports, human blood was detected on the full-sleeve T-shirt, lock-and-key, *chunni*, full-sleeve shirt and the razor with a plastic handle. The blood-soaked gauze of the deceased Anisha and the deceased Pappu was of group 'B'. Blood of group 'B' was found on the full-sleeve T-shirt (Ex.9) and blood group could not be ascertained on the other articles due to disintegration of blood specific substances. The aforesaid T-shirt was recovered pursuant to the disclosure statement of Naushad-2. The ballistic report confirms that the two fire-arms recovered pursuant to disclosure statements, Ex.PW19/I of Dilshad and Ex.PW19/N of Haseen Haider, were in working order and fire-arms could fire 8 mm calibre cartridges. Two

deformed bullets were examined and were found not to be having rifling marks and, therefore, it could not be ascertained whether deformed bullets were fired from the country-made pistols. Firing pin impression on the empty cartridge case, found at the place of occurrence, was compared with characteristic firing pin impression present on test fired cartridge cases of the two country made pistols. Based upon microscopic examination, the FSL report opines that the empty cartridge case was fired from country-made pistol (Exhibit 16), i.e. the pistol recovered at the behest and on the disclosure statement of Dilshad. However, for the purpose of record, we also note that blood was found on the two pellets and the blank cartridge case as per the FSL report. On 4th April, 2006, photographs were taken showing location of a box at the house of Dilshad (Ex.PW22/23), recovery of the shirt at the instance of the appellant Dilshad (Ex.PW22/22), and recovery of the blood-stained shirt, country-made pistol and four cartridges from the house of Dilshad (Ex.PW22/24). Another photograph (Ex.PW22/25) shows location of the box in the house of Dilshad behind which, the shirt containing the country-made pistol and the cartridges was kept.

26. Learned counsel for the appellants have submitted that PW22 has accepted that he had met Mohd. Imran (PW3) for the first time in the hospital and, thereafter, he was with them till 2.30 A.M. He did not notice any blood on the clothes of Mohd. Imran (PW3) and his statement was recorded between 1 to 1:30 AM. The aforesaid contention is raised to assert that Mohd. Imran's (PW3) statement (Ex.PW3/A) is false and dubious, as PW3 was not present at the spot when the police had arrived and, therefore, he would not have seen the appellants or Shamim, Israr and Ranu. The said contention has to be rejected for the reason that the injured were taken to the hospital in

two separate vehicles. Mohd. Imran (PW3), it is apparent, had gone to the hospital in the PCR van and not in the vehicle in which PW22 was sitting. PW22, in his testimony, has repeatedly asserted that when he had reached the spot he had seen that the injured were bleeding. Heena (PW2) was bleeding profusely and was not in a position to speak. He had, therefore, rushed the injured to the hospital and one of the injured was taken in his own vehicle. They had reached the hospital by 11:45 and, thereafter, PW22 started ascertaining the facts to identify the perpetrators. PW22 has stated that Shamim (acquitted) was arrested at about 7.30 A.M, next morning.

27. Learned counsel for the appellants, have submitted that Shabnam (PW4) in her cross-examination has accepted that Imran (PW3) was not present when she reached the spot/place of occurrence. Thus, it should be assumed that Imran (PW3) was not present and his deposition is untrustworthy and not reliable. This, to our mind, is a mistake and an inadvertent error. It was Imran (PW3) who had informed Ishrat Ali (PW1) on the telephone and PW3 had called the police. He was the first person to reach the place of occurrence and notice the crime. Shabnam (PW4) in subsequent portion of her examination has accepted that Imran (PW3) was present when the police reached the spot. This portion of her testimony is correct and is the true version.

28. Another contention raised on behalf of the appellants and Shamim, Israr and Ranu Kumar (all acquitted) is that details of mobile phone and call record details of Mohd. Imran (PW3) and Ishrat Ali (PW1) have not been brought on record. This is factually correct but we do not think that it is good and sound reason to

disbelieve either Ishrat Ali (PW1) or Mohd. Imran (PW3). Presence of Mohd. Imran (PW3) at the spot is natural as he used to reside in property number C-389, Indira Gali, Janta Colony, Welcome, where the offence had taken place. Both of them had left the place of the occurrence along with the two deceased persons and injured Heena (PW2), and had proceeded to the hospital. Mohd. Imran (PW3) in his cross-examination on 1st August, 2007, had denied the suggestion that he had not informed the police on number 100 from his mobile number 9910416132. He asserted that before making a call to the police at 10.30 PM, he had made a call to his brother Ishrat Ali (PW1) on his mobile phone.

29. Ishrat Ali (PW1) and his wife Shabnam (PW4), after information that Anisha, Pappu and Heena (PW2) had been brutally attacked, had reached the spot almost simultaneously with the police. This is an indicative and establishes that somebody had informed them. Thus, the version given by Mohd. Imran (PW3) and Ishrat Ali (PW1) that the former had called latter, is duly corroborated and finds affirmation on the basis of incontrovertible facts.

30. Another contention raised is that the *rukka* (Ex.PW3/A) does not mention or record the presence of Ishrat Ali (PW1). This is correct, but would not constitute good and sufficient reason to disbelieve testimony of Ishrat Ali (PW1) to the effect that he had reached the spot after the occurrence and had proceeded to the hospital along with deceased Anisha and Pappu and injured Heena (PW2). Ishrat Ali (PW1) is not an eye witness and was not present at the time of occurrence. We have already rejected as unacceptable, the deposition of Ishrat Ali (PW1) that he had overheard conversation between some of the assailants near the toilet.

31. The contention that ASI Vijay Pal Singh (PW15) has not accepted and deposed that Ishrat Ali (PW1) and Mohd. Imran (PW3) were present at the spot, does not affect the core of the prosecution case. At that time, the police team was in the process of shifting Anisha, Pappu and Heena (PW2) to the hospital to try and save their lives. Anisha and Pappu, however, were declared brought dead. Heena (PW2) because of timely response and treatment survived.

32. One of the contentions raised by the appellants and also on behalf of Shamim, Israr and Ranu is that Heena (PW2) was seriously injured as her throat was slit. Heena (PW2) was not in a position to speak, when she was taken to the hospital. She was operated and, thereafter, discharged on 10th April, 2006 as per record (Ex.PW24/A (colly) and Ex.PW11/P1). However, even after discharge she was not in a position to speak because of the injuries, surgeries, etc. which is established beyond doubt vide documents; application dated 12th May, 2006 by Insp. Ran Singh (PW20), Additional SHO, PS Welcome requesting the Metropolitan Magistrate to record statement of Heena (PW2) under Section 164 Cr.P.C. and noting dated 15th May, 2006 to the effect that brother of Heena (PW2) had stated that she was not well and notice dated 21st May, 2006, under Section 160 Cr.P.C. to Mohd. Imran (PW3) by Insp. Ran Singh, Additional SHO, PS Welcome, wherein Ishrat Ali (PW1) had noted in his handwriting that his sister Heena (PW2) had suffered a neck injury and as a nail had been fixed on her tongue, she was not in a position to speak. Insp. Ran Singh (PW20) has deposed that he had taken over the investigation with effect from 11th May, 2006, and had filed charge-sheet on 20th June, 2006. As per the prosecution version, Heena's statement under Section 161 Cr.P.C. was recorded by PW20 on 17th April, 2006. There is merit in the contention of the appellants,

Shamim, Israr and Ranu that if Heena (PW2) was not able to speak even in May, 2006, then her statement under Section 161 Cr.P.C. could not be recorded on 17th April, 2006. The appellants and Shamim, Israr and Ranu have also drawn our attention to the testimony of Heena (PW2) wherein she had initially accepted that the police had not recorded her statement. Our attention was specifically drawn to the court observations recorded on 22nd August, 2007, whereby the statement of Heena (PW2) under Section 161 Cr.P.C. was not allowed to be confronted, for she had stated on oath before the court that no such statement was recorded by the police. Subsequently, during the course of Heena's cross-examination on the same day, PW3 had testified that the police had recorded her statement and her earlier version to the contrary was incorrect. Be that as it may, even if we accept and agree that Heena (PW2) had not made any statement to the police on 17th April, 2006, it would be incongruous and illogical to not rely upon her court deposition. She is certainly an injured witness, who had knowledge about the perpetrators, who had committed the said crime. Having suffered a slit-throat and, thereafter, having undergone surgical procedure, she could not speak. Possibly, charge-sheet had to be filed within the period stipulated. However, as recorded, it would be a perversion and distortion to erase and ignore her court testimony. Appropriate in this regard would be reference to the decision of the Supreme Court in *Ashok Debbarma versus State of Tripura*, (2014) 4 SCC 747 wherein it has been held:-

“22. The mere fact that the appellant was not named in the statement made before the police under Section 161 Cr.P.C. and, due to this omission, the evidence of PW 10 and PW 13 tendered in the court is unreliable, cannot be sustained. Statements made to the police during investigation were not substantive piece of evidence and the statements recorded under Section 161 Cr.P.C. can be used only for the purpose of contradiction and not for

corroboration. In our view, if the evidence tendered by the witness in the witness box is creditworthy and reliable, that evidence cannot be rejected merely because a particular statement made by the witness before the court does not find a place in the statement recorded under Section 161 Cr.P.C. The police officer recorded statements of witnesses in an incident where 15 persons lost their lives, 23 houses were set ablaze and large number of persons were injured. PW10 lost his real brother and PW 13 lost his daughter as well as his wife and in such a time of grief, they would not be in a normal state of mind to recollect who all were the miscreants and their names. The witnesses may be knowing the persons by face, not their names. Therefore, the mere fact that they had not named the accused persons in Section 161 statement, at that time, that would not be a reason for discarding the oral evidence if their evidence is found to be reliable and creditworthy.”

The aforesaid paragraph though not entirely appropriate, does indicate that the Court deposition of a witness should not be disregarded and erased only because her statement under Section 161 Cr.P.C. as propounded by the police may not have been recorded.

33. In *Dayal Singh versus State of Maharashtra*, (2007) 12 SCC 452, the Investigating Officer had failed to record statement of two witnesses, who had deposed before the court. It was observed that this failure would hardly have any bearing once the court was satisfied that their testimonies were relevant and they were reliable and credible witnesses. The Court had actually seen what they had deposed. Reference was made to an earlier decision in *Tilkeshwar Singh and Others versus State of Bihar*, (1955) 2 SCR 1043 wherein the Investigating Officer had recorded joint statements of three witnesses contrary to mandate of Section 161(3) Cr.P.C. The Supreme Court even in this case had relied upon the testimony of the three witnesses repelling the contention to the contrary holding that the aforesaid failure or lapse might affect the weight to be attached to the evidence of the said witness, but it would not render it inadmissible.

34. Now, we would like to examine role of each of the appellants on the basis of the testimony of Heena (PW2) and Mohd. Imran (PW3) after excluding the depositions of Ishrat Ali (PW1) to the effect that he had overheard the conversation near the toilet and deposition of Shabnam (PW4) of her conversation with Shamim (acquitted), when she had reached the spot in question. Mohd. Imran (PW3) has clearly implicated Naushad-1, Naushad-2, Dilshad, Israr, I (juvenile), Haseen Haider and Ranu Kumar in his court testimony. He had also stated that Shamim (acquitted) was standing outside when the aforementioned persons came out of their house with blood-stained clothes. It is noticeable that Mohd. Imran (PW3) in his statement (Ex.PW3/A) has mentioned and named the appellants, as well as Shamim and Israr, but he had not named Ranu Kumar. It is a case of the prosecution that Mohd. Imran (PW3) had named and implicated Ranu Kumar subsequently in his statement recorded under Section 161 Cr.P.C. We have doubts on the said assertion. Ranu Kumar, as noticed above, was arrested on 7th July, 2006. The appellant Naushad-2 and Shamim (acquitted) were arrested earlier on 28th March, 2006. Israr (acquitted) was arrested on 29th March, 2006 and the appellant Dilshad was arrested on 4th April, 2006. After arrest of Ranu Kumar, an application dated 7th April, 2006 for police remand for one day was made. In this application, Insp. Ved Bhushan (PW22) has recorded that “the name of Ranu @ Prashant was (*sic*) surfaced during the interrogation of the other accomplice of this case”. It, therefore, appears that name of Ranu had come up on interrogation of the persons mentioned above. We acknowledge that the statement made in the application for police remand may not be sufficient to discredit the statement made by Mohd. Imran (PW3), but we find that the said position gets corroboration and support from

Ex.PW3/A, i.e. the first statement by Imran (PW3). Case diary dated 27/28th March, 2006, also does not mention the name of Ranu Kumar. It does mention that supplementary statement of Mohd. Imran (PW3) was recorded, but the gist or the contents thereof are not reflected or reproduced in the case diary notings. Case diary No.2 dated 29th March, 2006, does not have the name of Ranu Kumar and does not indicate his involvement. Same is the position in case diary No.3 dated 30th March, 2006 and case diary No.4 dated 4th April, 2006. Case diary No.5 dated 5th April, 2006, records that the appellant Dilshad was produced for medical examination and was sent to judicial custody remand up to 13th April, 2006. Case diary No.6 dated 7th April, 2006 records that Ranu @ Prashant had been apprehended and interrogated and had disclosed his involvement in the murder case. During the course of investigation, a raid was conducted at Karawal Nagar Chowk from where Ranu had purchased two country-made pistols and 10 live cartridges on payment of Rs.10,000/-. He pointed out a '*thiya*' (*patri*/ a stall on sidewalk), where one Pappu would usually meet him, but the said person could not be traced. Raids were conducted at Loni, Ghaziabad in search of the remaining accused but no one could be arrested/detained.

35. We have referred to the case diary for a limited purpose as we wanted to satisfy and be sure whether or not Ranu Kumar had participated in the occurrence. Though it is not so stated in the charge-sheet, what is apparent is that Ranu Kumar was the person who had procured the country-made pistols and 10 cartridges, which were subsequently used by the perpetrators to commit the offence. This apart, we record that Heena (PW2) had not attributed any specific role to Ranu Kumar in her examination-in-chief. In fact, she had identified a third person as Ganja @ Ranu the culprit, who had

gagged mouth of her brother Pappu. It is, therefore, clear that Heena (PW2) had not identified Ranu Kumar and had perceived the perpetrator named by her, to be somebody else. Noticeably, no test identification proceedings were held for identification of Ranu Kumar. Mohd. Imran (PW3) has claimed that Ranu was a friend of the appellant Dilshad, but there is no other material and it is difficult to accept PW3's version without PW3 elaborating and stating how did he know or ascertain the said fact. Ishrat Ali (PW1) had also oscillated and stated that he could not identify and did not know Ranu and had claimed that he came to know his name only when he overheard the conversation near the toilet. We have set out several discrepancies in the said version of Ishrat Ali (PW1) regarding the overhearing near toilet and disbelieved this part of his testimony.

36. In these circumstances, it is not possible to accept that the prosecution has been able to establish and show that Ranu had committed the offences, with which he was charged. He has been rightly acquitted by the trial court and the appeal filed by the State questioning and challenging his acquittal, therefore, must fail.

37. The appeal filed by the State challenging acquittal of Israr should also fail but for different reasons. Name of Israr is mentioned in the first statement made by the informant Mohd. Imran (PW3), which became substratum of *rukka* marked Ex.PW3/A. To this extent, his case is different from that of Ranu Kumar. There are, however, good and cogent reasons why we doubt involvement of Israr. Israr, as noticed above, is a step brother and Shamim (acquitted) is not his mother. He was a resident of district Muzaffarnagar. Shabnam (PW4) on 17th August, 2007, in her cross-examination had stated that Israr (spelt as Ishrar) used to visit the

house of the mother and meet her, but in same breath deposed that he had visited the house of her parents six months before her marriage and after her marriage, he had not met him. Shabnam (PW4) also accepted the suggestion that in 1998, there were disputes between her mother and Israr regarding a property.

38. However, the most important facet in favour of Israr is the court deposition of Heena (PW2), the relevant portion of which we have quoted above. She has not given and assigned any specific role to Israr. In her cross-examination, she has oscillated and accepted that she did not recognize Israr and she did not know any person by this name before or at the time of incident. She even claimed that she did not know that Israr was arrested by the police and he was not residing in the house of Shamim (acquitted). [See deposition of Heena (PW2) on 18th August, 2007]. Subsequently, on 22nd August, 2007, when cross-examined by the counsel for Ranu Kumar, Dilshad, Naushad-1 and Haseen Haider, PW2 had testified that Israr and Naushad-1 were having *ustras* (razors) but on the same day, during the course of cross-examination by the counsel for Naushad-2 and Israr (spelt as Ishrar), PW2 has stated that she did not tell the police that Israr (spelt as Ishrar) was having a *ustra* (razor). Thus, there are contradictions galore about the presence of Israr, if we read and examine the statement of Heena (PW2). This substantially dents the prosecution case against Israr. Thus, we do not think that it will be appropriate and proper to reverse the finding of acquittal recorded by the trial court in favour of Israr.

39. There is evidence to show that Israr was arrested at about 5 – 5.30 PM on 28th March, 2006, from Village Bhopa, District Muzaffarnagar (U.P.). Izhar Ahmed (DW2) has deposed that 5 police

officials including Insp. Ran Singh from Delhi Police had apprehended Israr in the said village and had brought him to the house of one Iqbal Ahmad Ansari. Public had gathered and had protested. Photographers were present and had taken photographs one of which is marked Ex.DW20/DA. In this photograph, DW2 and another person Hazi Shamshad and Insp. Ran Singh could be seen. In his cross-examination, DW2 deposed that he was *ex-pradhan* of the village and had good relations with Israr and his family. He also accepted as correct that Israr could not be seen in Ex.DW20/DA. Iqbal Ahmad (DW3) had similarly deposed relying upon two other photographs which were taken on 28th March, 2006 at his house. He has deposed about presence of the police team from Delhi in the village and the arrest of Israr.

40. This brings us to the question whether Shamim has been rightly acquitted. We are inclined to accept the appeal of the State and reverse the finding of the trial court acquitting Shamim. Heena (PW2) has specifically implicated and assigned specific role to Shamim in her narration. PW2 has also mentioned that before the occurrence, she had seen Shamim and Naushad-2 standing outside their house. Mohd. Imran (PW3) in his Court testimony is also categorical and affirmative as to the presence of Shamim. Her name is mentioned in Ex.PW3/A. We have also noted the motive of the crime and the fact that it was Shamim, who was perturbed and had strongly opposed the marriage and expressed her rancour and animosity.

41. As we are reversing the judgment of acquittal of Shamim, we would like to record and take notice of the reasons recorded in the impugned judgment for acquitting her. The said reasoning records:-

(i) There is nothing in Ex.PW3/A to show that clothes or

chunni of Shamim were having blood stains or she was having lock and key in her hands.

- (ii) Ishrat Ali (PW1) in his statement under Section 161 Cr.P.C. (Ex.PW1/DA) had not mentioned her name or claimed that she was present near the toilet. However, Ishrat Ali (PW1) in his court deposition had spoken about PW1's presence near the toilet. Referring to the deposition of Shabnam (PW4), the impugned judgment records that Shamim could not have spoken to PW4 after the occurrence if she was also present near the toilet, for one person cannot be present at two places at one point of time.
- (iii) Heena (PW2) has claimed that Shamim had fallen on her and her clothes/*chunni* had blood stains but neither Ishrat Ali (PW1) nor Shabnam (PW4) has averred or stated that Shamim was wearing blood-stained clothes.

42. Learned counsel appearing for Shamim has drawn our attention to Ex.PW3/A and the statement of Heena (PW2). He submits that there are inherent contradictions, for the version given by Mohd. Imran (PW3) in Ex.PW3/A is irreconcilable with the version given by Heena (PW2) that Shamim was present with others when the offence was actually committed. Ex.PW3/A, on the basis of statement of Mohd. Imran (PW3), records that at about 10.30 PM on 27th March, 2006, PW3 had returned home and found that the house was locked. Believing that his family members might have gone to meet Ishrat Ali (PW1) and Shabnam (PW4) at Idgah Road, Mohd. Imran (PW3) proceeded to their house and had enquired about his mother and others. PW3 was informed that they had not come there. He returned

at 10.45 PM and had then seen Shamim standing in front of his house and Naushad-1, Dilshad, Israr, I (juvenile), Hasin Haider and Naushad-2 were coming out of his house. Their clothes were blood-stained and he suspected foul play. As noticed above, on the basis of disclosure statement of Shamim (Ex.PW8/B), blood-stained lock and key and *chunni* were recovered. Hence, the finding of the trial court that blood-stained clothes of Shamim were not recovered is factually incorrect and wrong. The said recoveries were made on 28th March, 2006, i.e. immediately on the next day. The trial court has, therefore, incorrectly assumed that the clothes of Shamim were not blood-stained. Even in Ex.PW3/A, the exact words used by Mohd. Imran (PW3) are that “their clothes were blood-stained”. In Ex.PW3/A, PW3 had stated that Shamim was standing in front of their house and Naushad-1, Dilshad, Israr, I (juvenile), Hasin Haider and Naushad-2, were seen coming out of his house. The words, ‘their clothes’ could refer to others and not Shamim. It is noticeable that Heena (PW2) had professed that Shamim had tripped and fallen on her. Heena (PW2) had suffered extensive wounds on her neck, i.e. upper part of her body. It is possible that Shamim’s clothes other than the *chunni* might not have suffered blood-stains. Hence, recovery of the blood-stained *chunni* assumes significance as corroborative and supporting evidence. It would be speculative and presumptuous to disbelieve Heena’s (PW2) ocular statement for the reasons given in the impugned judgment. Shamim as per the testimony of PW3 was the only woman present. We also do not think that there is any inherent or irreconcilable contrariety between the version given by Mohd. Imran (PW3) in Ex. PW3/A and the court deposition of Heena (PW2). Heena (PW2) has specifically referred to presence of the appellants and has pointed Shamim as one of the perpetrators. It is apparent that

the offence in question had taken place sometimes before 10.45 PM for Heena (PW2) was profusely bleeding but was conscious when she was rescued. She had not suffered fire-arm wounds, whereas Anisha and Pappu had suffered projectile wounds and had died. Shamim, as per PW2, had come upstairs, after others had come and injuries had been inflicted. At her instance, Naushad-1 had inflicted another razor wound on Heena's (PW2) neck. Thus, the narration by PW2 does not contradict but supports PW3's statement that their house was locked from outside and when PW3 had returned, he had seen Shamim standing outside. We do not see any good and cogent ground to disbelieve the testimony of Heena (PW2). Shamim would be equally liable under Section 34 IPC as she had stood guard outside the house and had locked the same, while the offence was being committed upstairs. It is in this context that the statement of Heena (PW2), that prior to the occurrence she had seen Shamim and Naushad-2 talking to each other outside their house, becomes relevant and material. Looking from all angles, we do not think that the trial court was justified in acquitting Shamim. Accordingly, we accept the appeal of the State and set aside acquittal of Shamim and hold that she is guilty under Section 302 read with Section 34 IPC for murder of Anisha and Pappu and for the offence under Section 307 read with Section 34 IPC for the injuries caused and suffered by Heena (PW2) and under Section 452 read with Section 34 IPC for trespass.

43. We are conscious and aware that the judgment of acquittal should not be lightly interfered with unless there are good and sound reasons to hold that the trial court judgment suffers from latent defects and failure to appreciate evidence and law applicable. Appellate courts while hearing appeals against acquittal have to be cautious, for an accused tried and acquitted is presumed to be

innocent until proven guilty and is entitled to a fair trial and investigation, which in a case of judgment of acquittal gets reinforced. However, this does not mean that the appellate courts cannot disturb and upset finding of acquittal, and convict. For reversal, there should be compelling rationale and clear and cogent evidence. For this, the appellate court has full power of review and should appreciate and consider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure, 1973 does not put any fetters, restriction or condition on exercise of the said power by the appellate court. For in any appeal, the Court can reach its own conclusion both on facts and of law. Referring to the earlier judgments and reflecting on the case law on the subject in *Chandrappa versus State of Karnataka*, (2007) 4 SCC 415, it has been observed that use of expressions, like substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, are not intended to curtail extensive powers of the appellate court, but reflect and emphasize on the reluctance of the appellate court to interfere with the acquittal, rather than denude and deny power of re-examination of evidence and reach its own conclusion. Thus, the appellate court has full power to arrive at its own conclusion, if the findings of the court below are contrary to the evidence on record, if the approach of the trial court while dealing with the evidence is found to be patently illegal, leading to miscarriage of justice or is based on erroneous understanding of law and on facts of the case [see *State of Punjab versus Madan Mohan Lal Verma*, (2013) 14 SCC 153 and *Sidhartha Vashishta @ Manu Sharma versus State*, (2010) 6 SCC 1].

44. On the question of involvement of the convicted appellants, we have primarily relied upon statements of Heena (PW2) and that of

Mohd. Imran (PW3) distinctly and comprehensibly implicating the said appellants. On the question of involvement of Dilshad, the ballistic report affirms his involvement. The said report opines that the pistol recovered pursuant to his disclosure statement marked Ex.PW19/M, was a pistol from which the empty cartridge found at the spot was fired/misfired. The said report confirms that the pistol in question was used in the offence in question. On the *ustara* or the razor recovered at the behest of Naushad-1, human blood was found though blood group could not be ascertained.

45. We also do not see any reason to set aside the conviction of the appellants-Dilshad and Haseen Haider under Section 27 of the Arms Act.

46. On the question of sentences awarded by the impugned order on sentence dated 29th July, 2013 to Dilshad, Hasin Hussan, Naushad-1 and Naushad-2 as detailed in paragraph 3 above, we do not see any reason to interfere or modify and the same are upheld, except that their cases for remission can be considered after they have undergone 25 years of incarceration. We clarify that the State would retain 30% of the fine recovered as costs, while 70% would be paid to the injured Heena (PW2) and legal heirs of the deceased Anisha and Pappu. The sentences awarded to the appellants will run concurrently and Section 428 Cr.P.C. would apply.

47. In view of the aforesaid discussion, we dismiss CrI.A. No.1110/2013 filed by Dilshad; CrI.A. No.1389/2013 filed by Hasin Hussan; CrI.A. No.1184/2013 filed by Naushad-2, i.e. s/o Mohd. Rafiq and CrI.A. No.1390/2013 filed by Naushad-1, i.e. s/o Kamaluddin, except for the modification made in the order of sentence. We dismiss the Criminal Appeal No.354/2015 filed by the

State against acquittal of Ranu Kumar and Israr. However, we allow the Criminal Appeal No.354/2015 filed by the State against acquittal of Shamim. She is held guilty under Section 302 read with Section 34 IPC for having committed murder of Anisha and Pappu and for the offence of attempt to murder of Heena (PW2) under Section 307 read with Section 34 IPC.

48. On the question of sentence to be awarded to Shamim, we direct that the appeal filed by the State will be listed on 12th August, 2015 at 4 PM.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

August 10th, 2015
Kkb/VKR