

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 275 of 2007

1. Madari @ Abrar Ahmad, aged about 48 years.
2. Bachoo @ Israil, aged about 40 years.
3. Bafati @ Anwar, aged about 38 years.
4. Noora @ Nooruddin, aged about 38 years.

All son of Isthar Ahmad, resident of village Kamhariya, PS Maudaha, District Hamirpur (UP).

At present residing at Subhash Nagar, Maudahapara, Raipur, District Raipur (CG).

---- Appellants

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Moudhapara, Raipur, District Raipur (CG)

---- Respondent

And

CRA No. 429 Of 2007

- Sunil Bhalkar, son of Narayan Rao Bhalkar, aged about 36 years, resident of Kailashpuri, Near Saraswati School, PS Tikrapara, Raipur, District Raipur.

----Appellant

Vs

- State Of Chhattisgarh, through Thana In-charge, P.S. Moudhapara, Raipur, District Raipur (CG)

---- Respondent

And

CRA No. 874 Of 2011

- Rayeesuddin @ Bachcha Pradhan S/o Bashiruddin @ Basheer Ahmed, aged about 57 (54) years, R/o Village Kamhariya, P.S. Maudaha, Distt.-Hameerpur (Uttar Pradesh).

---- Appellant

Vs

- State Of Chhattisgarh, Through the District Magistrate, Raipur, C.G.

---- Respondent

And

CRA No. 477 Of 2013

- Nasim @ Nasimuddin S/o Karimuddin Musalman aged about 39 Years, R/o Huseniya Mohalla Moudha , P.S. Moudha , Distt. Hamirpur (U.P.)

---- Appellant

Vs

- State of Chhattisgarh,Through: Station House Officer, P.S. Moudhapara District Raipur (CG)

---- Respondent

And

CRA No. 1444 Of 2017

- Farida @ Farid Ahmed S/o Siddique Ahmed, Aged About 40 Years R/o Macha, Police Station Moudaha, District Hamirpur (U.P.)

---- Appellant

Vs

- State Of Chhattisgarh Through Station House Officer, Police Station Moudhapara, Raipur, District Raipur, Chhattisgarh

---- Respondent

And

CRA No. 872 Of 2011

- Sharifuddin, son of Shri Mohiuddin, aged about 41 (38) years, resident of village Kamhariya, PS Maudaha, District Hamirpur (UP).

---- Appellant

Vs

- State of Chhattisgarh, through the District Magistrate, Raipur (CG)

---- Respondent

And

CRA No. 864 Of 2011

- Shameem @ Shameemuddin, son of Shri Raziuddin, aged about 31 (28) years, resident of village Kamhariya, P.S. Maudaha, Distt. Hameerpur (Uttar Pradesh)

---- Appellant

Vs

- State of Chhattisgarh, through the District Magistrate, Raipur (CG)

---- Respondent

And

CRR No. 462 Of 2007

- Lakhwant Singh Gill S/o Surjit Singh Gill, 46 years, Shukla Colony Ravi Nagar, Raipur (C.G.)

---- Revisionist

Vs

1. State of Chhattisgarh, through District Magistrate, Raipur.
2. Md. Aslam @ Chacha, S/o Miya Sahab, 48 years, At & PS Maudahapara, Near Masjid, Raipur (C.G.)

---- Respondents

	<u>Cr.A. No.864/2011</u>
For Appellants	: Shri Surendra Singh, Sr. Advocate with Shri Badruddin Khan, Advocate.
For Respondent	: Shri Vivek Sharma, Government Advocate.
	<u>Cr.A. No.874/2011</u>
For Appellant	: Shri Kishore Bhaduri & Shri Pawan Kesharwani, Advocates
For Respondent	: Shri Vivek Sharma, Government Advocate.
	<u>Cr.A. No.275/07, 1444/2017 & 477/13</u>
For Appellants	: Shri Y.C. Sharma, Advocate
For Respondent	: Shri Vivek Sharma, Government Advocate.
	<u>Cr.A. No.275/2007, Cr.A. No.429/2007, 477/2013 & 872/2011</u>
For Appellants	: Smt. Fouzia Mirza, Advocate
For Respondent	: Shri Vivek Sharma, Government Advocate.
	<u>Cr.R. No.462/2007</u>
For Appellants	: Shri P.K. Verma, Sr. Advocate assisted by Shri Sumit Verma, Advocate.
For Respondent	: Shri Vivek Sharma, Government Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgement

Per P. Diwaker, J

26/07/2018

1. Since the above criminal appeals arise out of the same incident, they are being disposed of by this common judgment.
2. By filing Criminal Appeal No.275/2007 accused/appellants namely Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin have challenged the legality and propriety of judgment dated 8.3.2007 passed by the learned 12th Additional Sessions Judge, (FTC), Raipur in S.T. No.44/06 by which each of them has been convicted under Sections 147, 148, 302/149 & 120B r/w 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo RI 2 years, RI for 2 years, RI for Life & fine of Rs.500/- and RI for life & fine of Rs.500/- respectively, with a direction that the sentences of imprisonment shall run concurrently.
3. Appellant Shameem alias Shameemuddin has filed Criminal Appeal No.864/2011 challenging the judgment of conviction and order of sentence dated 20.9.2011 passed by the learned 2nd Additional Sessions Judge, Raipur in ST No.44/2006 by which he has been convicted under Sections 147, 148, 302/149, 120B-II/302 of IPC and Sections 25 (1-B) II & 27 (1) of the Arms Act and sentenced to undergo RI 2 years; RI for 2 years; RI for life & fine of Rs.500/-; RI for life & fine of Rs.500/-; RI for 1 year and fine of Rs.500/- and RI for 3 years & fine of Rs.500/-, with usual default clauses, respectively.
4. Appellant Sharifuddin has filed Criminal Appeal No.872/2011 against the judgment of conviction and order of sentence dated 20.9.2011 passed by the learned 2nd Additional Sessions Judge, Raipur in ST No.44/2006 thereby convicting him under Section 120B read with Section 302 IPC and sentencing him to undergo RI for life and fine of Rs.500/-, in default to

further undergo RI for 3 months.

5. Appellant Rayeesuddin @ Bachcha Pradhan has filed Criminal Appeal No.874/2011 assailing his conviction under Section 120B/302 of the IPC by the learned 2nd Additional Sessions Judge, Raipur vide impugned judgment dated 20.9.2011 passed in S.T. No.44/2006 and sentence imposed thereon.
6. Appellant Nasim @ Nasimuddin has filed Criminal Appeal No.477/2013 challenging the judgment dated 13.3.2013 passed by the 5th Additional Sessions Judge, Raipur in S.T. No.44/2006 convicting him for the offence under Sections 147, 148, 302/149, 120B/302 of IPC and Section 25 (1-B) (A) & 27 (1) of the Arms Act and sentencing him to undergo RI for 2 years, RI for 2 years, RI for life & fine of Rs.500/-, RI for life & fine of Rs.500/-, RI for 1 year & fine of Rs.500/- and RI for 3 years & fine of Rs.500/-, plus default stipulations, respectively with a direction that the sentences of imprisonment shall run concurrently.
7. Appellant Sunil Bhalkar has filed Criminal Appeal No.429/2007 assailing his conviction under Section 302/120B of IPC by the learned 12th Additional Sessions Judge, Raipur vide impugned judgment dated 8.3.2007 passed in S.T. No.44/2006 and sentence imposed thereon.
8. Appellant Farida alias Farid Ahmed has preferred Criminal Appeal No.1444/17 challenging the legality and propriety of judgment dated 15.9.2016 passed by 8th Additional Sessions Judge, Raipur in ST No.44/06 convicting him under Sections 147, 148, 302/149, 120B/302 of IPC and sentencing him to undergo RI for 2 years, RI for 2 years, RI for life & fine of Rs.500/- and RI for life & fine of Rs.500/-, plus default stipulations, respectively. All the sentences have been directed to be run concurrently.
9. Criminal Revision No.462/2007 has been filed by Lakhwant Singh Gill,

elder brother of deceased, against the judgment of acquittal dated 08.03.2007 passed by the 12th Additional Sessions Judge (FTC), Raipur in ST No.44/06 thereby acquitting accused Mohd. Aslam alias Chacha of all the offences.

10. As per prosecution story, Satwant Singh Gill alias Gappu (since deceased) and accused/appellant Madari alias Abrar Ahmed both were “Bus Operators” and running their business in Raipur in the name & style of “Mahindra Travels” & “Saddam Travels” respectively and on account of this, there was business rivalry between them. To put an end to such trade rivalry, a meeting of the Bus Operators Association was convened but nothing fruitful could be achieved and on the contrary, in the said meeting itself accused/appellant Madari and his brothers had threatened the deceased for life. Due to this business rivalry, accused Madari hatched up a conspiracy with co-accused Sharifuddin, Farida, Aslam & Sunil Bhalkar to commit murder of deceased Satwant Singh Gill @ Gappu, and for that purpose accused Naseemuddin & Shamimuddin of village Maudha, District Hamirpur (UP), the contract killers (hirelings), were engaged with the help of accused Sharifuddin. According to the prosecution case, accused/ appellant Madari agreed to pay an amount of Rs.2 Lakh to accused Naseemuddin & Sharifuddin after executing killing of Satwant Singh Gill and a sum of Rs.25,000/- was paid as an advance to them. It is further case of the prosecution that pursuant to the criminal conspiracy hatched, in the month of February, 2005 accused/appellants Madari & Sharifuddin arranged stay of contract killers in the hotel of the deceased in Raipur i.e. Hotel Sutlej, so that a watchful eye could be kept on his activities and accordingly the contract killers started keeping watch over day-to-day activities of the deceased. However, on sensing all this the deceased had disclosed to his brothers and relatives about his

elimination arranged by accused Madari & his brothers at the hands of contract killers. Deceased is also stated to have disclosed that if his apprehension came true, accused Madari and his brothers alone would be responsible for that. Apart from the brother and relatives, the deceased had also made aware of the apprehended activities of the accused persons to the Home Minister of the State and the police authorities by making application in this regard. Further case of the prosecution is that on 27.5.2005 at about 6.00 in the morning the deceased had come to his garage situated near Police Station Maudhapara. Mani alias Manthan (PW-1) and Jasbir Singh, who were following the deceased, also reached there. Accused/appellants namely Madari, Noora, Bachchu, Bafati, Farida, Naseemuddin & Shamimuddin armed with weapons like country-made pistol came there on three motorcycles, encircled Satwant Singh Gill and caused gunshot injuries to him. He was taken to the hospital where he was declared brought dead by the doctor. Intimation regarding death of deceased was sent by hospital staff to the Police Station based on which Merg Intimation (Ex.P-14) was recorded on 27.5.2005 at 7.10 am. According to the prosecution, Mani alias Manthan (PW-1), Gopal Rao (PW-10) & Jasbir Singh (not examined as eyewitness by the prosecution) saw that bullets were being fired at the deceased by the accused persons. Inquest on the body of deceased was conducted vide Ex.P-46 in the hospital itself. On 27.5.2005 at 7.30 a.m. Dehati Nalishi (Ex.P-1) was recorded by Vijay Gonthia (PW-24) at the instance of Mani alias Manthan (PW-1) in the Police Outpost situated at Dr. Ambedkar Hospital, Raipur. Post-mortem examination over the body of deceased was conducted on 27.5.2005 by Dr. R.K. Singh (PW-15) and he noticed following injuries on the body of deceased;-

- Contused lacerated wound on chest 8cm below left sterno clavicular joint.

- Contused lacerated wound below to left anterior axillary fold oblique transverse 2x1cm in size.
- Contused lacerated wound in the chest in mid axillary.
- Contused lacerated wound 8.5 cm above to Wound No.3 in some vertical plan of 1.2x10cm in size. Chest wall deep.
- Contused lacerated wound near elbow of 2.8x1.5 cm in size.

Cause of death of the deceased assigned in the post-mortem report (Ex.P-28) was due to shock and haemorrhage as a result of firearm injuries to the deceased. One bullet, one metallic foil and clothes were preserved. Skin tissues from the side of the wound were also preserved. While the post-mortem being conducted, FIR (Ex.P-48) was registered on 27.5.2005 at 8.30 a.m. at the instance of Mani (PW-1) under Sections 147, 148, 149, 302, 120B of the IPC and Section 25, 27 of the Arms Act against accused Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Sharifuddin, Sunil Bhalkar, Farida, Shamim alias Shamimuddin, Naseem alias Naseemuddin and two unknown persons.

Immediately after the incident, Gopal Rao (PW-10) went to the police station and informed PW-24 that gunshot had been fired and this information was recorded in the roznamcha sanha of Ex.P-54C at 6.02 a.m.

Memorandum of Sharifuddin was recorded on 21.6.2005 at 8.00 a.m. and based on which an amount of Rs.5,000/- was recovered at his instance from the suitcase kept in the house of Lal Mohammed, uncle of Sharifuddin. Memorandum of accused/appellant Madari alias Abrar Ahmed was recorded on 22.6.2005 at 9.00 a.m. vide Ex.P-20 and on the basis of disclosure statement of accused Madari, one country-made pistol, two cartridges, one fired cartridge stuck in the barrel of country-made

pistol at the bottom of which '8 mm & KF' was imprinted. Vide seizure memo (Ex.P-26) dated 1.7.2005 accused/appellant Madari also got recovered one silver colour Hero Honda Motorcycle bearing registration number CG04-CA-3316 which was kept in a room of his house, one blue colour Yamaha motorcycle bearing registration number CG04-CA-3369 from the house of his second wife namely Pushpa Guru and a letter (Article-F) allegedly written by accused Sunil Bhalkar to accused Madari. On the same day, memorandum statement (Ex.P-21) of accused Bachchu alias Israil was recorded and based on which one country-made pistol & two cartridges were recovered from a pit at his instance vide seizure memo Ex.P-24. At the instance of accused Sharifuddin, occupancy chart, bill book and registration form of Hotel Sutlej containing name of Ashutosh Singh, Naseem & Shamim were seized from Philips John (PW-17), Manager of Hotel Sutlej. In the course of investigation, plain soil and bloodstained soil, one cartridge, sleeper, Bajaj Scooter were seized from the spot vide seizure memo of Ex.P-15.

On the basis of memorandum of accused Madari that initially he had contacted Raesuddin for killing the deceased, who demanded Rs.3 Lakhs and therefore the deal could not be finalized, said Raesuddin had also been made accused.

On 27.8.2008 seized articles including weapons of offence were sent to the Central Forensic Laboratory, Chandigarh for examination vide Ex.P-32 and from where report of Ex.P-30 was received. According to report of CFSL, 0.315" / 8MM bullets marked as B-1, C-1 & C-2 were fired through the country-made pistol (Article-A). Letter of Article-F along with specimen handwriting & signatures of accused Sunil Bhalekar was sent to State Examiner of Questioned Document, Raipur for comparison and his

opinion (Ex.P-35) was to the effect that the letter was written in the same hand with which the specimen handwriting was written. Bloodstained soil, plain soil, clothes and skin of the deceased were sent for chemical analysis to the FSL from where report of Ex.P-40 was received and according to which, the holes present on Articles E1 & E4 are gunshot holes caused by the copper jacketed bullet with tattooing marks around the same. Partially burnt grains of powder into the skin of Exhibit-F & H causing a tattooing were present.

11. After completion of investigation, charge sheet for the offence punishable under Sections 147, 148, 149, 120B, 302, 212, 216 of IPC and Section 25, 27 of the Arms Act was filed against the accused persons and accordingly the charges were framed by the trial Judge against them.
12. Accused/appellants namely Madari @ Abrar Ahmed, Bachhu @ Israil, Bafati @ Anwar, Noora @ Nooruddin, Mohd. Aslam & Sunil Bhalkar were tried under S.T. No.44/06. The prosecution in order to bring home the charges levelled against them examined 27 witnesses in all. Statements of aforesaid accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. They have examined 20 witnesses in their defence.

The trial Court after hearing the parties in the matter and considering the material available on record, convicted and sentenced accused Madari @ Abrar Ahmed, Bachhu @ Israil, Bafati @ Anwar, Noora @ Nooruddin, by judgment dated 8.3.2007 as mentioned in Para-2 of this judgment. Accused Sunil Bhalkar has been convicted and sentenced in the manner as described above. However, accused Mohd. Aslam has been acquitted of all the charges.

13. Subsequently, accused persons namely Sharifuddin, Raeesuddin @ Bachcha Pradhan, Sabir & Naseemuddin were tried at the same sessions

trial i.e. ST No.44/07, and the prosecution in order to bring home the charges levelled against them examined seven more witnesses besides 27 witnesses already examined before the trial Court. The defence was given opportunity to cross-examine these witnesses. The accused persons have also examined seven witnesses in their defence. The trial Judge by the judgment dated 20.9.2011 found the aforesaid appellants guilty of the offences as mentioned in the opening paragraphs. However, co-accused Sabir @ Fatilla has been acquitted of all the charges.

14. Accused Nasim @ Nasimuddin was arrested on 25.3.2009 and he has also been tried separately under ST No.44/06. In order to prove the guilt of accused, the prosecution has examined 32 witness already examined by the trial Court. It is worthwhile to mention here that as PW-1 has died, therefore, he was not examined in the Court. The defence was given opportunity to cross-examine these witnesses. The trial Judge by the impugned judgment found this appellant guilty of the offences under Sections 147, 148, 302/149, 120B/302 of IPC and Section 25 (1-B) (A) & 27 (1) of the Arms Act and sentenced him as aforementioned.

15. After the arrest of accused Farida @ Farid Ahmed, he was also tried under S.T. No.44/06, out of 32 witnesses, 19 witnesses were examined and re-examined in this trial and vide judgment dated 15.9.2016 this accused was convicted under Sections 147, 148, 302/149, 120B/302 of IPC and sentenced in the manner as described above.

Criminal Appeal No.864/11;-

16. Learned Senior Counsel appearing on behalf of accused/appellants Shamim alias Shamimuddin submits that;

- Mani (PW-1) & Gopal Rao (PW-10), so called eyewitnesses of the incident, have actually not seen the incident and they have falsely implicated the appellants due to previous business rivalry since both

the sides have been operating buses on the same route. Further, statements of PW-1 & PW-10 are self-contradictory as both these witnesses have given different version regarding the incident and this also makes their testimonies unreliable and doubtful.

- Had the incident been actually seen by Gopal (PW-10), he would have disclosed the names of assailants to PW-24 at the time of recording of roznamcha itself, but he only disclosed about the gunshot firing without disclosing name of any of the assailants. Even at the time of recording of his statement under Section 161 CrPC, he did not disclose name of any of the appellants.
- Test identification of appellant Shamimuddin, who was brought from Hamirpur (UP) on 30.1.2008, was conducted on 3.2.2008 by Naib Tahsildar Shri Satish Chandra Sharma (PW-34) in which Gopal (PW-10) had identified him. Thus, the time gap between the date of occurrence and that of the identification parade is too large and therefore it is difficult to believe as to how Gopal (PW-10) would have identified him nearly about three years after the occurrence. It is difficult to believe that any human being would be remembering the features of any person after such long lapse of time.
- There is no evidence that the prosecution had taken any precaution to conceal the identity of appellant Shamimuddin when he was produced before the Court for taking him on remand. Thus it is apparent that he was exposed to the public before the identification parade and that the identifying witnesses had the opportunity to see him earlier for which reason the evidence regarding identification in the parade has to be rejected. Reliance is placed on the judgements reported in AIR 2001 SC 113; AIR 2004 SC 3055; AIR 1975 SC 1400; AIR 1989 SC 135.

- there is no concrete evidence that accused Shamimuddin stayed in Hotel Sutlej along with co-accused Nasimuddin between 10.2.2005 & 12.2.2005. Even the document of Ex.P-29 reveals names of Ashutosh & Javed only.

Criminal Appeal No.275/2007

17. Mrs. Mirza, learned counsel appearing on behalf of the appellants in this criminal appeal submits that;-

- alleged eyewitnesses have given false statement to falsely implicate the appellants and none of them was present at the time of occurrence and had they been present, they would have also been attacked & assaulted, hence their evidence being unreliable is liable to be disbelieved.
- testimonies of alleged eyewitness i.e. PW-1 & PW-10, are not reliable being full of omissions and contradictions, which show that they are not the witnesses of truth. According to Vijay Gotharia (PW-24), on coming to know about the occurrence from Gopal Rao (PW-10), he along with ASI S.R. Lahre (PW-22) rushed to the place of occurrence and after confirmation by the doctor regarding death of deceased, he instructed S.R. Lahre (PW-22) to carry out the formalities of inquest and post-mortem examination. It has also come in the statements of PW-10 that accused Madari, Noora, Bachchu & Bafati were known to him being the residents of the same locality where he was also residing. However, a perusal of inquest report Ex.P-47 prepared on 27.5.2011 shows that names of the assailants were not mentioned in it and it only states about commission of offence by two unknown persons. Similarly, in the application prepared for getting done post-mortem examination the names of assailants were not mentioned. If actually he had witnessed

the incident, as claimed by him, the names of assailants would have been mentioned in these papers. The absence of names of the assailants in these papers prepared by a police person casts a serious doubt about the truthfulness of the account of incident given by PW-10 Gopal Rao and it can be safely presumed that by that time the assailants were not known.

- FIR (Ex.P-48) was lodged after inquest, which is ancillary and afterthought, establishing that FIR is ante-timed.
- At the time of alleged murder of Satwant Singh Gill @ Gappu, accused Madari was not in Raipur and was in Bhopal (MP) and this fact is clear from the statements of DW-8, DW-13 & DW-15. According to DW-18, appellant Madari was admitted in the hospital three days prior to the alleged incident. Presence of appellant Madari at Bhopal at the time of alleged incident is further clear from the document Ex.D-16, a roznamcha entry made at Police Station Ashbag, Bhopal (MP). Likewise, appellant Bachchu was also not present at the place of occurrence on the date of incident and was in Jhansi. In the statement recorded under Section 313 CrPC, appellant Bachchu took the plea of alibi stating that he was not involved in the alleged incident as he was not present at the place of occurrence.

18. In respect of accused/appellant Noora & Bafati, Mrs. Mirza would contend that;

- the prosecution witnesses have concocted a false story due to previous enmity and professional rivalry with a view to wreck vengeance against accused Madari, owner of Saddam Travels, and all the employees of said Saddam Travels have been implicated in

the crime in question as a conspirator or accused.

- these appellants have been implicated with the aid of Section 149 of IPC by simply saying that they were present on the spot at the time of occurrence, but mere presence on the spot is not sufficient to make any person liable for commission of offence with the aid of Section 149 of IPC unless any specific role has been attributed to him.
- name of these appellants have been added subsequently in FIR (Ex.P-48).
- testimonies of PW-1 & PW-10 is totally inconsistent with the medical evidence which is a most fundamental defect in the prosecution case. Nature and position of injuries are not consistent with the evidence of alleged eyewitnesses i.e. PW-1 & PW-10. According to Dr. R.K. Singh (PW-15), the direction of bullet is from middle of neck towards right side which shows that bullets were fired from higher place, which is totally inconsistent not only with the version of PW-1 & PW-10 with respect to the place from where the assailants fired shot but also of the site plan Ex.P-16 & Ex.P-49. In support of this submission, she placed reliance on the judgment reported in (1988) 2 SCC 557 and Page No.357 of 22nd Edition of Modi's Medical Jurisprudence.
- PW-1 & PW-10 have given a different narration with regard to their presence on the spot. Thus, their statements are self-contradictory. Reliance is placed on the judgements reported in (1994) 4 SCC 289 & (1975) 4 SCC 497.
- Conduct of PW-1 & PW-10 also proves that they have not witnessed

the occurrence and it makes their evidence untrustworthy and unreliable. PW-1 being the employee of deceased used to be with him in order to give protection to him and when the firing started he instead of saving or protecting his master fled from there. Further, as per prosecution, all the accused persons were armed with deadly weapons like pistols, sword etc., but they did not inflict any injury either to PW-1 or PW-10.

- PW-10 a common man reached the police station before PW-1 and lodged report in roznamcha sanha (Ex.P-54C), which also cast a doubt regarding presence of PW-1 at the spot.
- Though PW-10 was acquainted with appellant Madari and his brothers but he did not mention their names in Ex.P-54C. This apart, in the statement recorded under Section 161 CrPC, this witness though mentions about the presence of his wife Phool Bai, but contradicted his version in the Court evidence.
- PW-10 has stated about blood trail from Mahendra Garage i.e. place of occurrence, to Vishwas Parisar, place where the body was found lying, is contradicted by Ex.P-15, Ex.P-16 & Ex.P-49.
- According to PW-24, he reached the place of occurrence at 6.10 a.m. and prepared the Crime Details Form in the presence of PW-1 but documents Ex.P-46 & P-47 have been lodged against unknown persons though mention of motorcycle was there in it.
- Referring to letter dated 16.5.2005 (Ex.P-3) written by the deceased, which says that threats were given by accused persons to the deceased and that the deceased was apprehending some action on the part of accused persons, it is submitted that this document has

been forged with a view to strengthen the prosecution case. Had it really been in existence on the date of registration of FIR & Dehati Nalishi, such a vital piece of evidence would not have been failed to be disclosed in the FIR & Dehati Nalishi.

- Bullets and cartridges recovered from the spot and body of deceased have been sent to the Central Forensic Science Laboratory after a lapse of three months from the date of incident and no explanation has been offered by the prosecution for such delay. Furthermore, there is no evidence to show that these articles were properly sealed or kept in a safe custody. Reliance is placed on the judgements reported in (2004) 10 SCC 657 & (2003) 12 SCC 485.
- As per Ex.P-30, the articles sent were sealed by firstly wrapping in envelopes and thereafter putting it in a cloth bag, but as per statement of PW-27, in the envelopes the articles were kept along with the sample seal, whereas according to Ballistic Expert (PW-18), the sample seals were together sent in separate sealed envelope. Reliance is placed on (2011) 15 SCC 546; (1976) 1 SCC 750 & (2011) 10 SCC 165.
- Seizure of cartridge case vide Ex.P-15 from the spot by PW-24, Katta vide Ex.P-22 & P-23 at the instance of accused Madari & Bachhu and memorandum (Ex.P-20 & P-21) have been made on plain papers, whereas proceeding of other seizures, which were not incriminating in nature, has been done on printed proforma of which false explanation has been given by the investigating officer in his evidence.
- lastly, there was no such immediate motive on the part of the

appellants for taking it into their heads to murder the deceased. Of course, the relations between the two sides were strained from before, but nothing of consequence had happened immediately before the incident which could actuate the accused persons to commit this crime.

Criminal Appeal No.477/2013

19. Adopting the submission of learned Senior Counsel appearing on behalf of appellant Shamimuddin in Cr.A. No.477/13, Mrs. Mirza, learned counsel appearing on behalf of accused/appellant Nasim alias Nasimuddin submits that;-

- he has been made accused on the basis of statement of Philips John (PW-17) showing him as the person who check-in in Hotel Sutlej along with Ashutosh, Javed & Shamim, however, there is no evidence of hatching up of any criminal conspiracy and thus ingredients required under Section 120B of IPC were not at all satisfied. Even said Philips John (PW-17) failed to identify this appellant.
- If appellant Nasim can be called as conspirator on the basis of statement of PW-17, then Ashutosh, signatory of bill book of Hotel Sutlej, should have also been arrayed as an accused in the matter, but for the reasons best known to the prosecution, he has not been charge sheeted.
- As no weapon has been seized either from this appellant, therefore, their conviction under the provisions of the Arms Act is bad in law.

Criminal Appeal No.429/2007,

20. As regards accused/appellant Sunil Bhalkar, Mrs. Mirza would contend that this appellant has been made accused solely on the basis of letter

(Article-F) recovered on 1.7.2005 vide seizure memo Ex.P-26 on the basis of memorandum statement (Ex.P-20) of co-accused Madari. Therefore, it is not admissible in evidence as per Section 10 of the Evidence Act. Reliance is placed on the judgements reported in AIR 1940 PC 176; (2005) 2 SCC 13 & (2005) 11 SCC 600. Apart from this, there is nothing to show that as to what role this appellant either jointly or separately played.

Letter of Article-F was allegedly seized on 1.7.2005 but the same was never sealed as required under the law, which is evident from Ex.P-26 which says that Article-F was not sealed after the recovery and thus possibility of tampering the document cannot be ruled out. Furthermore, said seizure was made on the second visit of the investigating officer to the house of Pushpa Guru after obtaining key of house from a girl at the police station without there being any panchnama proceedings to this effect.

On 22.8.2005 letter of Article-F has again been sealed and marked as questioned document No.1 and sent to the handwriting expert for analysis.

Criminal Appeal No.872/11

21. So far as accused/appellant Sharifuddin is concerned, it is submitted that only allegation against this appellant, as per statement of Philips John (PW-17), is that he came to Hotel Sutlej, owned by deceased, in the month of February, 2005 for booking a room but the guest register book does not reflect name of this appellant. Neither there is any evidence to show that this appellant hatched-up conspiracy with accused Madari for killing the deceased nor any seizure has been effected from him except recovery of cash of Rs.5,000/-. Reliance is placed on (2011) 10 SCC 165.

Criminal Appeal No.874/2011 (Rayeesuddin @ Bachcha vs. State)

22. Mr. Kishore Bhaduri, learned counsel appearing for the appellant would contend that;

- this appellant has been implicated solely on the basis of memorandum statement of accused Madari, which is not admissible in evidence against him and so legally there is no evidence against this appellant.
- Allegation against this appellant is that at a point of time some negotiation took place between him and accused Madari for hiring a professional shooter for murdering the deceased, but there is no positive material to substantiate the same. There is *prima facie* no indication of any role being played by this appellant in the murder of the deceased.
- Even if the entire evidence of PW-17 & PW-28 is accepted in totality, this appellant cannot be held liable for any offence much less the offences punishable under Sections 120B r/w Section 302 of IPC.

Cr.A. No.1444/2017

23. Mr. YC Sharma, learned counsel appearing on behalf of appellant Farida alias Farid Ahmed submits that since proceeding under Section 299 of Cr.P.C. has not been drawn against this appellant, statements of Mani (PW-1) & Gopal Rao (PW-10) cannot be read as evidence against him. The trial Court has committed an illegality in reading the statements of aforesaid witnesses in evidence against this appellant. Though the High Court has affirmed the order dated 10.5.2016 passed by the trial Court permitting the prosecution to read the statements of PW-1 & PW-10 in evidence, even then such plea can be raised at the appellate stage also.

PW-24 & PW-27 were re-examined by the prosecution but the trial Court has erred in law in not allowing their cross-examination by this appellant. There is interpolation in the FIR which is evident from Column No.7 of FIR itself.

Apart from above, it is also the submission of Mr. Sharma that the names of accused persons were not mentioned in the news relating to murder of deceased published in the daily newspapers after 2-3 days of the incident. In such circumstance, it cannot be denied that Dehati Nalishi (Ex.P-1), based on which FIR (Ex.P-48) was registered, may be ante-dated and may be an afterthought. In other words, till the publication of news item the name of assailants were not known and the appellants have been falsely implicated on afterthought. This casts a shadow of doubt on the prosecution story. While giving elaborate meaning of 'contract killing', an attempt has been made by learned counsel that why a person who had hired professional shooters would accompany with them to the place of occurrence.

24. Learned Government Advocate appearing on behalf of the State submits that;

- Evidence of Mani (PW-1) & Gopal Rao (PW-10) are reliable and trustworthy. From the evidence of these witnesses it is clear that the accused persons armed with deadly weapons like country-made pistols formed an unlawful assembly to commit murder of Satwant Singh Gill and in furtherance of common object of that assembly they committed murder of deceased by causing gunshot injuries. Their presence at the spot was natural. Their evidence stood corroborated by the medical evidence of the doctor who found gunshot injuries on the body of deceased. Therefore, there is no reason for this Court to

disbelieve testimonies of these witnesses.

On receipt of information regarding death of deceased from the Ward Boy (PW-13), Merg Intimation (Ex.P-4) was recorded at 7.10 a.m. in the Police Outpost, Medical College Hospital, Raipur. On coming to know about the death of deceased, said Vijay Gotharia (PW-24) came to the hospital and instructed PW-22 to carry out the proceedings of inquest and post-mortem examination. Accordingly, inquest (Ex.P-46) was prepared and body was sent for post-mortem examination vide Ex.P-47 at 8.00 a.m. which was conducted by Dr. R.K. Singh (PW-15) on 27.5.2005. Thereafter said Vijay Gotharia (PW-24) went to police outpost situated in medical hospital campus where he met Mani (PW-1) and thereafter he recorded dehati nalishi (Ex.P-1) at the instance of Mani (PW-1). Thus, it is clear that two parallel proceedings were going on at the same time i.e. one by PW-22 and another by PW-24, and for this reason the names of accused persons did not reflect in the inquest and application for post-mortem examination. Even otherwise, it is neither necessary in law nor in practice to mention names of assailants in the inquest as the purpose of preparing the inquest was merely to make a note of the physical condition of the body and marks of injury thereon noticed at that point of time.

- Dehati Nalishi was recorded in the police outpost situated at the hospital vide Ex.P-1 against five named accused persons and two unknown persons. Based on this Dehati Nalishi (Ex.P-1) & FIR (Ex.P-48) were recorded at 8.30 a.m. and therefore it cannot be said that there was any interpolation in Column No.7 of FIR which relates to details of known/unknown/suspected accused.

- As the Crime Details Form (Ex.P-49) was prepared after registration of FIR (Ex.P-48), therefore, crime number has been mentioned in it. Said fact has also been clarified by Vijay Gotharia (PW-24) in his cross-examination that after registering FIR, he again visited the spot and prepared crime details form (Ex.P-49) around 9.00-9.30 a.m.
- Nothing has come in the evidence showing that PW-1 & PW-10 were knowing each other and/or prior to the incident or recording of dehati nalishi (Ex.P-1), PW-1 had met with PW-10. Therefore, it cannot be said that these witnesses have falsely implicated the accused persons in the crime in question.
- So far as the time '6.10 a.m.' mentioned in the crime details form (Ex.P-49) is concerned, it is in respect of first visit of the officer concerned at the the spot.
- Gopal Rao (PW-10) immediately after the incident reached the police station and informed Vijay Gotharia (PW-24) about the incident of firing. Hearing this, said Vijay Gotharia (PW-24) along with PW-22 rushed to the spot after instructing his subordinate to make entry in this regard in roznamcha sanha and in pursuance of said direction, an entry was made vide Ex.P-54C. On reaching the spot and seeing condition of the deceased, he immediately sent him to the hospital along with PW-22 hoping against hope that he may survive where the doctor (PW-8) declared him brought dead. He submits that prime duty of a police officer should be to provide medical aid to the injured in order to save his life than to got the FIR recorded. Thus, there is nothing unnatural in the conduct of PW-24 in leaving towards the spot instead of registering FIR because to save the life of victim it was most urgent to admit him in hospital for proper treatment than to

record FIR.

- That, information given by PW-10 Gopal Rao was incomplete and verification of the same was required, therefore, PW-24 immediately proceeded to the spot. Reliance is placed on the judgment reported in (2008) 5 SCC 368.
- On the basis of memorandum statement (Ex.P-20) of accused Madari, one country-made pistol & two cartridges were recovered vide seizure memo Ex.P-22. Same were sent to the Central Forensic Science Laboratory, Chandigarh vide Ex.P-32 for ballistic examination and as per report of Ex.P-30 received from there, the country-made pistol marked as 'A' & 'A1' were in working condition, the bullet recovered from the body of deceased was fired from the country-made pistol (katta) i.e. Article 'A' recovered from accused/appellant Madari and cartridge cases marked as C1 & C2 were also fired from the country-made pistol recovered at the instance of accused Madari. The gunshot hole which was found on the clothes of the deceased could have been caused by the bullet which was recovered from the body of the deceased.
- So far as the discrepancy pointed out by the defence regarding direction of bullet in the body of deceased is concerned, bullet could have been fired from higher pedestal, but in the course of evidence, no such question was put on behalf of the appellants to the eyewitnesses or autopsy surgeon in the trial and is being raised for the first time at the appellate stage. He submits that as the accused persons have failed to raise any such plea before the Court below during the course of trial, now they cannot raise that plea at the appellate stage. He submits that a specific plea is required to be

proved by leading supporting evidence and in absence thereof the same cannot be entertained.

- After conducting the post-mortem on 27.5.2005, the doctor handed over the bullet recovered from the body of deceased to the investigating officer in sealed condition. A bare look at the report of CFSL (Ex.P-30) shows that four sealed parcels containing fired 0.315"/8mm rifle bullets, country-made pistol, rifle cartridges, rifle cartridges case etc. were sent in the sealed condition to the CFSL. The CFSL in its report (Ex.P-30) dated 30.9.2005 stated that the CFSL had received four sealed parcels in an intact condition and the specimen seals tallied with the seals affixed on the samples.
- fired bullet recovered from the body of deceased could be sent only after recovery of pistol from the possession of accused Madari on 22.6.2005 and under these circumstances it cannot be said there is any delay in sending the bullet for examination to CFSL because in absence of any firearm it was not possible to ascertain that the bullet that was discharged was fired from which weapon. Even, for this delay the investigating officer offered explanation that as he was transferred to Abhanpur in respect of another investigation, therefore, the same could not be sent for examination.
- Deceased Satvinder Singh Gill was engaged in the business of plying buses on Jagdalpur route. Accused Madari and his brothers were also engaged in the same business. There was business rivalry between them and even prior to this incident, accused Madari had threatened the deceased for life in the meeting called by the association of bus operators in the first week of May, 2015. In order to enjoy rival-free business, accused Madari and his brothers have

felt that causing the death of deceased would be an effective method. Letter of Ex.D-3 written by the deceased to the Home Minister of the State with a copy to the police authorities clearly shows that he was apprehending his elimination by accused Madari through contract killers. Thus, it is apparent that they were on logger heads and their relations were strained. Hence, the motive stands proved without any iota of doubt.

- Philips John (PW-17), Manager of Hotel Sutlej owned by the deceased, has stated that due to business rivalry, there was bitter relationship between accused Madari and deceased Satvinder Singh Gill. Despite that, in the month of February, 2005 accused Madari got booked two rooms in the hotel of deceased in the name of his guests and they stayed there for about three days. By producing bill book of the hotel containing signature of Ashutosh, the prosecution has proved beyond reasonable doubt that rooms in the hotel of deceased were booked by accused Madari and that his guests were occupying the same during the aforesaid period. This shows that the rooms were booked in the hotel of the deceased just to keep a close watch on the activities of the deceased.
- So far as accused Shamim @ Shamimuddin is concerned, this accused was arrested on 30.1.2008 and his test identification parade was conducted on 3.2.2008 and during this period he was kept *baparda* (covered face) which is clear from Ex.P-100 i.e. application for conducting TIP proceeding. Test identification parade was conducted by Naib Tahsildar Satish Chandra Sharma (PW-34) in which Gopal (PW-10) has duly identified him. Furthermore, PW-10 has duly identified accused Shamim in the Court. DoC identification

in a Court is a substantive piece of evidence and there is no rule of law to hold DoC identification as inadmissible in evidence. There is nothing on record to doubt testimony of this witness regarding identification of this accused.

- In respect of accused/appellant Naseem @ Naseemuddin, he submits that he was arrested on 25.3.2009 and the proceedings of test identification parade was conducted on 29.3.2009 by Naib Tahsildar Prabhat Kumar Bamhi (PW-30) in which witness Gopal Rao (PW-10) has correctly identified him. Accused Naseem has been duly identified in the Court also by PW-10. This accused was kept *baparda* (covered face) during the aforesaid period and the same is evident from document Ex.P-110.
- Statement of Gopal Rao (PW-10) can be read in evidence against accused Naseem as on 6.11.2009 when this witness was examined in the Court, the trial in respect of this accused was pending and counsel appearing for accused Naseem had cross-examined Gopal Rao (PW-10) on that day. Trial of accused Naseem was separated only on 28.8.2010 i.e. after examination-in-chief and cross-examination of PW-10 from the side of accused Naseem. Thus, the testimony of PW-10 recorded in presence of this accused can be used to contradict or corroborate the statements of witnesses recorded in the trial against this accused.
- In respect of accused Sunil Bhalekar, it is submitted that on the basis of memorandum (Ex.P-20) of accused Madari, letter dated 27.5.2005 (Article-F) has been seized at the instance of accused Madari from the house of his first wife Pushpa (DW-8) vide seizure memo Ex.P-26. This letter (Article-F) is admissible against this accused in

evidence as per Sections 10, 17 & 21 of the Evidence Act, as he made admission in this letter addressed to accused Madari that he had made payment of Rs.1 lakh to the shooters as directed by accused Madari. This letter along-with admitted handwriting of accused Sunil has been sent to handwriting expert for comparison and the handwriting expert confirmed that the letter Article-F is in the handwriting of accused Sunil Bhalekar. Memorandum (Ex.P-20) and seizure memo (Ex.P-26) contain signature of accused Madari and he has not disputed the same. Even the memorandum & seizure witness i.e. PW-14, has duly supported the prosecution case.

He further submits that the report of handwriting expert is not in dispute, therefore, the alleged non-sealing of this letter cannot be fatal to the prosecution. It does not advance the case of accused at all. The judgements relied upon on behalf of this accused in this regard, are not applicable in the present case because both these cases deal with the confession made by accused therein, whereas present is not a case of confession rather it is a case of admission made by this accused regarding his involvement in the crime in question that too much prior to his arrest.

- Accused Farida @ Farid Ahmed was declared absconder by the Committal Court on 9.1.2006, he was arrested on 14.2.2011 and as Mani (PW-1) had expired and Gopal Rao (PW-10) was not traceable, therefore, the trial Judge has relied upon their testimonies recorded in earlier trial against this accused also as contemplated in Section 299 of CrPC. The objection with regard to admissibility of statements of PW-1 & PW-10 raised on behalf of this accused has been turned own by the trial Court vide order dated 10.5.2016 against which a

criminal revision bearing No.511/2016 has been filed before this Court and the same has also been dismissed vide order dated 28.6.2016 and this order having not been challenged attained finality. Thus, now this appellant is estopped from raising such objection at this stage. Moreover, it could not be shown that any prejudice had been caused to accused Farida and that being so this contention has no force.

- the trial Judge acted legally and properly in allowing the witnesses to refresh their memories by referring to the statements made earlier by them. Such a course is specifically permitted by Section 160 of the Evidence Act. Even a criminal revision filed on behalf of accused Farida bearing No.847/14 has been dismissed by this Court vide order dated 24.12.2014. Once a question has been raised and the matter has been decided, the same issue or prayer cannot be agitated again.
- In the light of statements of Mani (PW-1) & Gopal Rao (PW-10) specifically deposing name of accused Farida as one of the assailants, non-conduction of test identification parade or Doc identification in the court is not fatal to the prosecution case.
- Referring to Page No.325 of Paper Book, it has been argued by the State Counsel that most of the accused persons have criminal record and therefore no leniency is required to be shown to them.
- the trial Court was justified in not permitting accused Farida to re-examine three prosecution witness as no new fact was brought in their re-examination. He has also not shown that any prejudice was caused to him in denying such opportunity to him.

- sufficient opportunities were given to the defence to adduce evidence in support of its case and having failed to do so, the trial Court proceeded further.

25. Mani alias Mathanlal (PW-1) is an eyewitness to the incident. Firstly he was examined on 2.5.2006 in connection with trial of accused Madari @ Abrar Ahmed, Bachhu @ Israil, Bafati @ Anwar, Noora @ Nooruddin, Mohammed Aslam (acquitted accused) & Sunil Bhalkar. According to this witness, he knew accused Madari, Noora, Bafati, Bachhu, Farida, Sharifuddin. Accused Madari is proprietor of Saddam Travels and engaged in the business of plying buses on Raipur-Jagdalpur route. Saddam Travels has 15-16 buses. On the date of incident at about 5 in the morning, he along with Jasbir Dhillon (not examined) was present in the booking office of Mahedra Travels situated at Bus Stand, Pandri. At that time, deceased Satwant Singh Gill alias Gappu was also there. Satwant Singh left the place saying that he is going to workshop, which is situated near Anand Talkies, Raipur. He along with said Jasbir Dhillon followed the deceased on motorcycle and the reason to do so was to provide him security as there was continuous threat from accused Madari & others to the deceased. He has further stated that he saw from the distance of 20-30 steps from garage of the deceased that accused persons namely Madari, Bachhu, Bafati, Noora, Farida and two others came there on three different motorcycles and all of them surrounded the deceased. After pointing his finger towards the deceased, accused Madari asked co-accused not to leave him alive today and thereafter firing started. When he along with Jasbir Dhillon rushed to save the deceased, accused Noora & Farida, who were armed with sword & country made pistol, shouted that they should also be done away with. Due to fear, both of them ran towards Jai Stambh Square. Thereafter they went to the

police station and told the police personnel that incident of fire had taken place whereupon they were informed that information regarding firing has already received and the police party had proceeded to the spot. He has further stated that they again rushed to the spot and found the scooter of the deceased lying in front of garage and the blood spread over there. The persons present there informed them that the deceased had taken to the hospital. He has further stated that at the time of firing, they saw Gopal Rao (PW-10) near the gate of Mahendra Garage. On reaching hospital, they came to know about the death of deceased. In Para-5 this witness has stated that about 3-4 months prior to the incident there was a quarrel between the deceased and accused Madari over the timing of running buses and accused Madari used to say that he will shoot him any time. In Para-7 he has deposed that accused Sharifuddin, who was working with Madari, along with his associates used to stare at the deceased as if he would not leave him alive. He has further stated that at his instance report of Ex.P-1 was lodged. Prior to 15-20 days of incident in the meeting of Bus Association an attempt was made to resolve the dispute between Saddam Travels & Mahendra Travels, but of no avail. In the said meeting also, accused Madari and the deceased had quarrelled and in that process, accused Madari has said that he is ready to go jail after shooting him. He has further stated that he was informed by Philips John (PW-15), Manager of Hotel Sutlej, that the persons known to accused Madari had stayed in Hotel Satlej. He has further stated that about 20 days prior to the incident, the deceased said to him that his elimination had been arranged by accused Madari & brothers at the hands of contract killers and if anything untoward is happened with him, accused Madari and his brothers alone would be responsible for that. Thereafter the deceased had made a complaint to the Home Minister,

Superintendent of Police, Inspector General of Police and Police Station Civil Lines & Ganj. Copy of said complaint was seized from him by the police. Clothes of the deceased i.e. Kurta, was also shown to this witness and he identified the same to be that of the deceased. He has also correctly identified two motorcycles used by the accused persons in commission of offence. He has further statement that his statement was recorded by the police on the date of incident itself.

In the cross-examination this witness has admitted that deceased was the holder of licensed pistol. He had also offered an explanation for not going directly to the police station by saying that on being chased by accused persons, he ran towards different direction due to fear and terror of the accused. In Para-35 this witness has denied in categorical terms the suggestion that complaint made to the Home Minister etc. were prepared subsequent to the incident. This witness was put to a very lengthy cross-examination but nothing substantial could come out from him which might be said to be a serious contradiction causing any doubt in the prosecution story.

26. Bhavesh Dubey (PW-2), Pritam Singh (PW-4), Anjay Kumar Sahu (PW-5), Raju Rai @ Rajkumar (PW-13), Pramod Dubey (PW-16) & Lakhwant Singh (PW-23) have been examined by the prosecution to prove motive behind the murder of deceased. They have stated that there used to be dispute between the employees of Mahendra Travels and Saddam Travels in connection with timing of buses and passengers. They have also stated about the meeting of Bus Association held to resolve the dispute between them and in the said meeting accused Madari had threatened the deceased for life and for this he is ready to face the consequences of going in jail. Bhavesh Dubey (PW-2), Pritam Singh (PW-4) have admitted

that letter dated 16.5.2005 (Ex.P-3) was shown to them by the deceased before despatching it and Ex.P-3 is the same letter which was shown to them. Despite the lengthy cross-examination, nothing could be extracted from the statements of these witnesses, which might have caused a dent in the prosecution version.

Bhavesh Dubey (PW-2) was again examined in the Court on 4.12.2009 in connection with trial of accused Sharif, Raes, Shamim, Nasim and Sabir. He has correctly identified accused Sharif in the Court. According to this witness, accused Sharifuddin used to roam with accused Madari. Even he used to come with accused Madari in the meetings of Bus Association. Raju Rai @ Rajkumar (PW-13), who was again examined on 5.12.2009, has also identified accused Sharifuddin.

27. Dr. Alpana (PW-8) is the doctor who sent intimation (Ex.P-13) regarding death of the deceased through the Ward Boy. Shyamlal Pathak (PW-9) is the Ward Boy who, took memo of the doctor (PW-8) to the police station based on which Merg Intimation Ex.P-14 was recorded.

28. Gopal Rao (PW-10) is another eyewitness of the incident. He has stated that at the relevant point of time he was working as Peon in Vikas Parisar situated near Mahendra Garage of the deceased. He has stated that he knew accused Madari, Noora, Bachchu and Bafati being the residents of the same locality. He also knew accused Farida and deceased. On the fateful morning when he was cleaning the drain near Vishwas Parisar, the deceased came there and asked me to remove debris lying there. During the said conversation, about 6-7 persons came towards them from the side of Anand Talkies on three motorcycles. At the same time, Mani (PW-1) and one Sardar came there on motorcycle from the side of Bagiya Restaurant. The persons who alighted from the motorcycle were carrying

weapons like sword & country-made pistol. When accused Madari exhorted with the words “ *Gappu ko maro, sala aaj bachne na paye*’, one of them, fired on Gappu Bhaiya (deceased) which hit him. When Gappu Bhaiya rushed towards Vishwas Parisar to save himself, accused Madari and his associates chased him and on reaching inside Vishwar Parisar, they again fired on Gappu Bhaiya (deceased). He has also identified accused Madari and his brothers namely Bachchu, Bafati & Noora as assailants. He also recognized Farida to be one of the assailants. He has further stated that two of the assailants went towards the place where Mani and Sardar Ji were standing and seeing them coming towards them, they fled from there. Thereafter he went to the Police Station Maudhapara and informed the police that firing had taken place near the garage. He went to the police station on foot. Thereafter he returned back to the spot and found the deceased lying in unconscious condition in Vishwas Parisar. His clothes were drenched in blood. The police had taken him to the hospital in rickshaw. He stayed at the spot for about 10-15 minutes and thereafter left for his house to bath. He is also a witnesses of certain articles seized from the spot like scooter & sleeper of deceased, bloodstained soil, cartridge case etc. vide seizure memo of Ex.P-15. He is also a witness to the spot map (Ex.P-16) prepared by the Patwari. In the cross-examination this witness has stated that the police station is situated at a distance of 40-45 feet from the spot. He has reiterated as to the manner in which the deceased was assaulted by accused persons. He has stated that as he was nervous and the police did not ask from him about the assailants of the deceased, therefore, he did not disclose to the police that the deceased was shot by 6-7 persons including accused Madari, Nooran, Bafati & Bachchu had shot the deceased. In the cross-examination, he claimed that he could recognize two assailants who fired

shots at the deceased when they would come in front of him. He has denied the suggestion that he had not seen accused Madari, Noora, Bafati & Bachchu on the spot at the time of occurrence and that some unknown persons had committed the incident.

On 6.11.2009 this witness was again examined in the Court in respect of trial of accused Sharifuddin, Bachcha Pradhan, Shamimuddin, Sabir & Naseemuddin. This witness identified accused Shamimuddin & Naseemuddin in the Court by touching them by saying that at the time of incident they were also present at the spot along with other assailants. He has also proved the identification parade proceedings of accused Shamim alias Shamimuddin & Naseem alias Naseemuddin conducted vide Ex.P-100 & P-101 respectively. According to this witness, he had sufficient time during the incident to watch the physical features of accused Shamim. He has denied the suggestion that accused Shamim was shown to him prior to asking him to participate in the TIP proceedings. In the lengthy cross-examination nothing could be elicited to doubt the presence and veracity of the testimony of this witness.

29. Bhikam Prasad Soni (PW-11) is the Patwari who prepared the spot map vide Ex.P-17.

30. Santosh Nishad (PW-12) has stated that after some days of the incident, on being called by the police, he had gone to the Police Station Maudhapara and there he was informed by the police that accused Farida, who is involved in murder of the deceased, is hiding in the house of Aslam. Thereafter he along with the police party reached the house of said Aslam to arrest accused Farida. On door being knocked by the police, Aslam opened the door, however, seeing the police he again closed the door. He has further stated that accused Farida somehow

managed to escape from the house of said Aslam. He has stated that Aslam informed him that Madari used to make telephone calls to him and at the instance of accused Madari, Bafati, Noora & Bachchu, he had sent through his person a sum of Rs.25,000/- and clothes twice to Uttar Pradesh. This witness remained firm in his cross-examination and nothing could be elicited by defence which makes his testimony untrustworthy or unreliable.

31. Amanpreet Singh (PW-14) is the witness of memorandum and seizure memos Ex.P-18, P-20, P-21, P-22 & P-23. He has duly supported the prosecution case.

32. Dr. Rajkumar Singh (PW-15) is the person who conducted post-mortem examination over the body of deceased. According to this witness, on 27.5.2005 he was posted at Pt. Jawahar Lal Nehru Medical College, Raipur as Medical Officer and on that date he did post-mortem on the dead body of deceased and noticed the injuries as described above. According to him, death of the deceased was due to shock and haemorrhage as a result of firearm injuries to the body. He preserved and sealed the bullet and metallic foil found in the body of deceased. He also preserved and sealed the clothes and skin tissues from the side of the wound.

33. Philip John (PW-17), Manager of Hotel Sutlej owned by the deceased, has stated that the hotel is under the supervision of the deceased. He used to visit the hotel thrice in a day i.e. firstly at about 5-6 in the morning, thereafter at about 10-11 in the morning and lastly at 6-6.30 in the evening. He knew accused Madari who is proprietor of Saddam Travels. He also knew Sharifuddin as he used to visit Hotel Sutlej often. He has further stated that in the month of February, 2005 accused Madari and

Sharifuddin had come to Hotel Sutlej and booked two rooms for the stay of their guests. They were allotted Room No.107 & 108. The guest registration form was filled and signed by one of the guests namely Ashutosh Singh. According to this witness, accused Madari and his guests, who stayed in the hotel, have vacated the rooms on the third day of booking. According to him, during their stay, the accused persons used to talk to the deceased and used to gather information from the deceased as to his activities and as to when he keeps his licensed pistol with him. He has further stated that the deceased had informed the accused persons that he did not keep pistol in the morning time as he feels uncomfortable due to kurta pajama. He has admitted that the police had seized guest registration form from him. He has further stated that the entire hotel bill was paid by accused Madari.

34. B.P. Singh (PW-18) is the Ballistic Expert. He has stated that at the relevant point of time he was posted as Junior Scientific Officer (Ballistic). On 12.9.2005 four sealed parcels were received in the Central Forensic Laboratory, Chandigarh. The seals on the parcels were intact and tallied with specimen seal. On opening the parcels, it contained one fired 0.315"/ 8MM rifle cartridge case, which was marked as C-1; one fired 0.315"/ 8MM rifle bullet and one metallic case, which was marked as B-1; one country-made pistol chambered with one fired 0.315"/ 8MM rifle cartridge case, which were marked as 'A' & C-2 respectively; two 0.315"/ 8MM rifle cartridge case which were marked as L-1 & L-2; one country-made pistol which was marked as 'A-1', one 0.315"/ 8MM rifle cartridge case which was marked as 'L-3 & L-4' respectively. After examination, he prepared a detailed report which is Ex.P-30. To quote from his report, he opined as under:-

- the country-made pistols marked as 'A' & 'A-1' are in working condition;
- .315" / 8MM rifle cartridges marked as 'L-1 & L-2' were test fired through the country-made pistols marked as 'A' & 'A-1' respectively and found to be live.
- On thorough examination and comparison of individual characteristics marks present on crime and test fired cartridges cases under the comparison microscope, I came to the conclusion that .315" / 8MM rifle cartridges marked as 'C-1 & C-2' had been fired through the country-made pistol marked as 'A' and they could not have been fired through any other firearm because every firearm has its own individual characteristics marks.
- On thorough examination and comparison of individual characteristics marks present on crime and test fired bullets under the comparison microscope, I came to the conclusion that .315" / 8MM rifle bullet marked as 'B-1' had been fired through the country-made pistol marked as 'A' and it could not have been fired through any other firearm because every firearm has its own individual characteristics marks.

35. O.P. Bilgaiyan (PW-19) is the State Examiner of Questioned Documents, Raipur who stated about examination of documents referred to him i.e. letter written by accused Sunil Bhalekar to accused Madari and recovered at the instance of accused Madari. According to this witness, the questioned document i.e. letter, was marked as 'Q1'; natural handwriting of accused Sunil Bhalekar was marked as 'N1 to N6' and specimen handwriting and signature of accused Sunil Bhalekar were marked as 'S1 to S6'. This witness has stated that after careful and thorough examination with the help of necessary scientific aids available in the

laboratory, he has found that the person who wrote the red enclosed writings and signatures stamped marked as 'N-1 to N-6', which are the admitted handwriting of accused Sunil Bhalekar, and SI to S6, which are the specimen writing of accused Sunil Bhalekar, has also wrote the red enclosed writing and signature similarly stamped and marked as Q1. Thus he identifies the questioned writing to be that of accused Sunil Bhalekar. His report is Ex.P-35.

36. D.R. Verma (PW-21) is the police person who assisted in the investigation.

37. S.R. Laharey (PW-22) is the police person who took the body of deceased to the hospital where he was declared brought dead by the doctor. Thereafter he filled up inquest form (Ex.P-46) and made a request for post-mortem examination vide memo (Ex.P-47).

38. Vijay Gothariya (PW-24) is the Sub Inspector who registered Dehati Nalishi (Ex.P-1) and also filled the Crime Details Form (Ex.P-49). He is the one who first received information from Gopal Rao (PW-10) regarding firing incident. While supporting the prosecution case, he has stated that immediately after receiving the information of firing, he rushed to the spot after giving instruction to the Constable for making entry in the roznamcha sanha regarding his departure to the spot. On reaching the place of occurrence, he saw that deceased was lying near the stairs in unconscious condition and he was drenched in blood. He made arrangements for sending the injured to a hospital. He remained at the spot after sending the deceased to the hospital and examined the spot. While he was examining the spot, he received information that the deceased has expired in Dr. Ambedkar Hospital. Thereafter he sent the aforesaid information to Police Station Maudhapara pursuant to which one Constable came to the place of occurrence. While leaving the said

Constable to guard the spot, he reached Dr. Ambedkar Hospital and on coming to know that body of deceased was taken to the Mortuary for post-mortem examination, he went there and directed Laharey (PW-23) to carry out the inquest and post-mortem proceedings. When he was returning from Mortuary, he noticed that some people were talking that Mani had witnessed the incident. Thereafter he met Mani who admitted to have seen the incident whereupon he brought him to the police outpost situated in the hospital and on the basis of report lodged by him, he recorded Dehati Nalishi (Ex.P-1). On reaching police station, he registered FIR (Ex.P-48) on the basis of Dehati Nalishi (Ex.P-1) and copy of FIR was forwarded to the Magistrate concerned. He has further stated that after registering FIR, he again went to the spot and prepared the spot map Ex.P-49. He had seized certain articles like Bajaj Scooter, 315 bore empty cartridge, bloodstained & plain soil, cotton etc., which were lying on the spot, vide seizure memos of Ex.P-10 & P-15. He recorded diary statements of witnesses namely Mani, Jasbir & Gopal on 27.5.2005. He also recorded statements of other witnesses on 29.5.2005 & 3.6.2005 respectively. He along with other staff had gone to the house of Aslam in search of accused Farida, but he managed to flee from there. He has further stated that the articles seized vide seizure memos Ex.P-10 & P-15 were sent by him to the State Forensic Science Laboratory, Raipur for chemical examination. He has further deposed that property mentioned in Ex.P-32 were also sent to the Central Forensic Science Laboratory, Chandigarh for examination and the report received from there is Ex.P-30. On being asked as to why he did not enquire about the incident from Gopal Rao, he replied that witness Gopal Rao came at the police station in perplexed condition and having come to know that the incident had occurred, he immediately rushed to the spot.

39. L.B.K. Shrivastava (PW-27) is the investigating officer and he has supported the case of the prosecution in its material particulars. He has stated that a special team was constituted by the Superintendent of Police for investigation of this case. On 9.6.2005 he received information that accused Farida is in the house of one Aslam. On 10.6.2005 he along with staff and witnesses left for the house of Aslam in police Jeep. They left the Jeep on the road and went to the house of Aslam on foot. He has further stated that though they chased accused Farida but could not catch hold of him. He has stated that during the course of investigation, he recorded memorandum statements of accused persons namely Sharifuddin, Madari alias Abrar, Bachchu alias Israil and in pursuance to memorandums, recovered articles including weapons from the places pointed out by them under the panchnama at their instance. He also obtained specimen handwriting and signature of accused Sunil Bhalekar. Nothing could be brought in the cross-examination of Investigating Officer so as to suggest that he was, in any way, interested in securing the convictions of the appellants on absolutely false grounds.

40. Satnam Singh (PW-28) is also engaged in the business of plying buses. On coming to know about the murder of Satwant Singh Gill, he had gone to the Medical College Hospital, Raipur and saw the body of deceased. He is also a witness to inquest Ex.P-46. He has further stated that when he was returning from the mortuary, he was informed by Mani that Madari, Bachchu, Bafati, Noora, Farida & two others have killed the deceased. He has further stated that he met with the deceased 8-10 days prior to his death and at that time he informed him that accused Madari had given contract for killing him and he may be murdered at any time. On being asked, the deceased further told that he has already made complaint to the Home Minister, Superintendent of Police and concerned police station.

41. Prabhat Kumar Bamhi (PW-30), who was posted as Naib Tahsildar at the relevant point of time, has stated that he got conducted test identification proceedings of accused Naseem alias Naseemuddin on 29.3.2009 and in which witness Mani alias Manthan (PW-1) & Gopal Rao (PW-10) have duly identified accused Naseem alias Naseemuddin. According to this witness, he mixed six persons of similar physique and features as that of accused Naseem and thereafter Mani alias Manthan (PW-1) & Gopal Rao (PW-10) have been asked to identify the suspect. The entire procedure adopted by PW-30 in conducting parade have been detailed in Ex.P-101.
42. Mohd. Ismail Khan (PW-31), R.N. Yadav (PW-32) & R.S. Pandey (PW-33) are the police personnel who has assisted in the investigation.
43. Satish Chandra Sharma (PW-34) is the Naib Tahsildar who had conducted test identification parade of accused Shamim alias Shamimuddin. He has stated that on the basis of letter (Ex.P-113) written by Police Station Maudhapara in which a request was made to conduct Test Identification Parade of an accused, the Tahsildar directed him to conduct test identification. In compliance of said direction, the test identification parade was conducted by him on 3.2.2008 in the Tahsil Office, Raipur and in which the witnesses have correctly identified accused Shamim as one of the assailants. Identification memo is Ex.P-110 and he signed the identification memo at the place 'B-B'. PW-10 Gopal Rao also signed on the identification memo Ex.P-110 at the place 'A-A'.
44. So far as the complicity of accused/appellants Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed, Naseem @ Naseemuddin & Shamim @ Shamimuddin is concerned, these appellants have been convicted for the murder of deceased with aid of Section 149 of IPC. In order to convict any accused

with the aid of Section 149 of IPC, the existence of an unlawful assembly is a necessary and where the existence of such an unlawful assembly is not proved, the conviction with the aid of Section 149 of IPC cannot be recorded or sustained. In other words, whenever a Court convicts any person of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but that in pursuance of such common object the offence was committed. There is no manner of doubt that before recording the conviction under Section 149 of IPC, the essential ingredients of this Section must be established. An assembly of five or more persons and a common object to commit the same offence or to compel any person by criminal force are the essential ingredients for the offences of membership of an unlawful assembly and rioting. Once the essential ingredients of Section 149 of IPC were established, it would not be open to the Court to see as to who actually did the offensive act or which of the members did which of the offensive acts. This Section provides for vicarious liability.

45. According to Gopal Rao (PW-10), an eyewitness to the incident, on the fateful morning when the deceased was instructing him over cleaning of debris, 6-7 persons which includes accused namely Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed, came there on separate motorcycles. All the riders of motorcycles were carrying weapons like swords & revolver like country-made pistol. When accused Madari exhorted with the words “गप्पू को मारो, साला आज बचने न पाए” (kill him, he should not be left alive today) one of them, fired on the deceased which hit him. The deceased with a view to save his life ran towards Vishwas Parisar, but accused Madari and co-accused managed to catch hold of the deceased and again fired

gunshot on him. He has further stated that after firing on the deceased, accused Madari and co-accused came out of Vishwas Parisar and on seeing him, one of them after pointing towards me said that “मारो इसको, यह भी बचने न पाए” (kill him, he should also not be left alive). In order to save his life, he ran from there towards the police station. In the test identification parade, this witness had identified Naseem @ Naseemuddin & Shamim @ Shamimuddin to be persons present on the spot at the time of occurrence. He has further deposed that he had sufficient opportunity at the time of incident to observe the distinctive features of accused Shamim & Naseem.

Version of Gopal Rao (PW-10) gets corroboration from the testimony of Mani alias Manthan (PW-1), who saw him on the spot at the time of occurrence. According to Mani alias Manthan (PW-1), another eyewitness of the incident, he and Jasbir Dhillon saw from a distance of 20-30 steps from the garage of the deceased that accused persons namely Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed and two others came there on three different motorcycles and all of them surrounded the deceased. After pointing his finger towards the deceased, accused Madari said to co-accused persons that he should not be left alive today and then co-accused persons fired on the deceased. According to him, when he tried to save the life of deceased, accused Noora & Farida, who were carrying sword & country-made pistol, tried to assault him and therefore due to fear he along with Jasbir Dhillon ran towards Jai Stambh Square.

The incident took place in front of Vishwas Parisar where PW-10 Gopal Rao was working as Peon and as such, his presence on the spot cannot be doubted. Similarly, the conduct of Mani (PW-1) in following the

deceased is natural because there was continuous threat from the side of accused Madari to the deceased, therefore, it would have been quite natural in the ordinary course of things for him to follow the deceased. Thus, the presence of Mani (PW-1) on the spot was also natural and cannot be disputed.

46. From the above statements of PW-1 & PW-10 it is established that a group of miscreants numbering more than five persons including accused Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed and two others, reached the spot with intent to commit deceased Satwant Singh Gill and in their pursuit, co-accused persons fired shots at the deceased which resulted in his death. Evidence on record also reveals that accused Madari was exhorting with the words “गप्पू को मारो, साला आज बचने न पाए” (kill Gappu, he should not be left alive today). Thus, keeping in view the behaviour of the members of the assembly at the scene of incident where one of them was saying that “the deceased should not be left alive today”, the arms carried by the members and considering the firearm injuries found on the body of the deceased, we are of the considered view that common object of the assembly was to make murderous attack on the deceased and to accomplish that objective the aforesaid appellants along with others armed with swords & country-made pistol reached the spot and caused gunshot injuries to him which ultimately led to his death. Thus, there is sufficient evidence to prove beyond any doubt that the above accused persons have formed an unlawful assembly common object of which was to kill the deceased and in execution of common object of that assembly they committed murder of the deceased.

47. So far as the challenge to the evidence relating to identification of accused

Shamim @ Shamimuddin & Naseem @ Naseemuddin on the ground that the test identification parade was conducted after long lapse of time, therefore, it is difficult to believe that any human being would be remembering the features of any person after such delay is concerned, the power to identify varies in terms of power of observation and memory of identifying person. Another relevant circumstance in this regard is as to for how much time the witness had seen the accused. If, for instance, he had only a glimpse of the accused, he may not be in a position to firmly recall his identity, but if he had interacted with the accused for a substantial time and had ample opportunity to observe him, he may face no difficulty in identifying him at a later date. In the present case, according to Gopal Rao (PW-10), he saw the assailants of the deceased including the aforesaid accused persons in a day light for sufficient time i.e. for about 10-15 minutes. Thus, PW-10 had definitely reasonably good opportunity to see the accused persons and to fix their appearance in his mind. In other words, since this witness had easily seen the faces of persons assaulting the deceased, their identity would well remain imprinted in his minds especially when the incident took place in a day light.

Record reveals that during the course of investigation accused Shamim @ Shamimuddin & Naseem @ Naseemuddin were languishing in District Jail, Hamirpur (Uttar Pradesh) and they could be arrested only on 30.1.2008 & 25.3.2009 respectively and thereafter their test identification parade was conducted on 3.2.2008 & 29.3.2009 respectively. From the contents of memo Ex.P-110, an application made to the Sub Divisional Magistrate concerned to appoint Executive Magistrate for conducting test identification parade of accused Shamimuddin, it is clear that he was kept *baparda* after the remand. Identification memo (Ex.P-100) of accused

Shamim alias Shamimuddin also goes to demonstrate that at the time of parade no police officer was present, the suspect was given liberty to stand at any position as per his desire and the witness had correctly identified him by touching his hand. Likewise, identification memo (Ex.P-101) of accused Naseem @ Naseemuddin reveals that he was produced *baparda* (covered face) for identification, he was mixed with five other persons of similar features and physique. The witness had identified accused Naseem by saying that there is no change in the facial expression of the accused. Thus, it is apparent that test identification parade was conducted without any waste of time and all possible safeguards and precautions were taken to ensure that the identity of accused is not disclosed to anyone or that the accused and witness do not come face to face before the test identification parade. No defence evidence was led to even remotely show that aforesaid accused persons were shown to the witnesses prior to conduction of test identification parade. No suggestion to this effect was given to the investigating officer of the case during his cross-examination that these accused were shown to the witnesses. It was for the accused persons to show that they had been shown to the witnesses prior to the TIP. Moreover, there is nothing on record to suggest that Gopal Rao (PW-10) was interested witness or he had any grievance against these accused/appellants and thus there is no reason as to why he would falsely identify these appellants as the perpetrators of crime if they had not actually committed the offence.

As regards the submission that testimonies of eyewitnesses are self-contradictory in nature. We have minutely perused the testimonies of eyewitnesses namely Mani (PW-1) & Gopal Rao (PW-10) and found that the narration of incident by them is consistent and believable. They have, more or less, deposed before the Court in an identical manner and that

there has been no contradiction in material particulars amongst their testimonies. Minor contradictions are bound to appear in the statements of witnesses as memory sometimes plays false and the sense of observation differ from person to person. No particular set of reaction can be expected from the witnesses when they witnessed a ghastly incident of murder and if five persons witness one incident there could be five different types of reactions from each of them. Most importantly, nothing has emerged to show that prior to the incident, eyewitness Gopal Rao (PW-10) was having any animosity with accused persons or special relationship with the deceased prompting him to falsely rope in the accused persons for the serious offence like murder.

Therefore, the finding arrived at by the trial Court that accused Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed, Naseem @ Naseemuddin & Shamim @ Shamimuddin have formed unlawful assembly with deadly weapons and the common object of that assembly was to commit culpable homicide amounting to murder of deceased Satwinder Singh Gill @ Gappu and in furtherance of common object of that assembly, they have committed murder of the deceased, is based on legal, clinching and credible evidence sustainable under the law.

48. The next point is the conspiracy because accused/appellant Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed, Naseem @ Naseemuddin & Shamim @ Shamimuddin have also been held guilty for the offence punishable under Section 302 read with 120-B of the IPC.

49. As conspiracy is primary charge against accused persons, it would be profitable to advert to the law relating to conspiracy, essential features and

proof. Section 120A of the Indian Penal Code defines criminal conspiracy which is as under:

"Definition of Criminal Conspiracy- When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

Section 120-B of the Indian Penal Code provides punishment for criminal conspiracy and the following facts require to be proved by the prosecution for a criminal conspiracy: -

"120-B. Punishment of criminal conspiracy.- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment or such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeded six months, or with fine or with both."

50. Thus a cursory look to the provisions contained in Section 120A of IPC reveals that a criminal conspiracy envisages an agreement between two or more person to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with proviso to Section 120-A of IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary.

The conspiracy can also be proved either by direct evidence or by circumstantial evidence. Usually both, existence of conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. Every incriminating circumstance must be clearly established by reliable evidence and the circumstance so proved must form a chain of events from which the only irresistible conclusions about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. It is simultaneously correct that in most cases, proof of conspiracy is largely inferential and the inference must be founded on solid facts. Direct evidence with regard to conspiracy in most of the cases is remote. Therefore, the entire facts and circumstances and the evidence on record is to be visualised and scrutinised with care and caution so that

no innocent should be punished or the inference, if drawn, should not cause miscarriage of justice.

51. Now coming to the facts and circumstances of the case in hand. The evidence on record indicates that deceased Satwant Singh Gill alias Gappu and accused Madari alias Abrar Ahmed were 'bus-operators' and running their business in the name and style of "Mahindra Travels" and "Saddam Travels" at Raipur respectively. There used to be frequent quarrels and hot exchange of words between their employees. A meeting of the Bus Operators Association took place in which accused Madari, his brothers, the deceased and other persons participated to resolve the dispute between the deceased and accused Madari, but the same could not be resolved in the said meeting and on the contrary, accused Madari threatened the deceased for life in the said meeting and for this he is ready to face the consequences of going in jail also. The suspicious activities of accused Madari and his brothers were noted by the deceased and expecting untoward from their hands, he brought the same to the notice of not only his family members & friends but also to the Home Minister of the State and concerned police authority in written and this fact has been brought on record by the prosecution witnesses. Evidence further shows that though there was bitter relationship between accused Madari & deceased, but accommodation was arranged by accused Madari for the hired shooters in the hotel of deceased with a view to make them familiar with him. It has also come on record that during the stay in the hotel, the accused persons used to talk to the deceased and used to gather information from him as to his activities and as to when he keeps his licensed pistol with him. This apart, accused/appellant Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed, Naseem @ Naseemuddin & Shamim

@ Shamimuddin reached on the spot and only after exhortation being made by accused Madari with the words “गप्पू को मारो, साला आज बचने न पाए”, one of them fired on the deceased which hit him and when the deceased rushed towards Vishwas Parisar to save himself, they chased him and on reaching inside Vishwas Parisar, they again fired on the deceased.

The above facts and circumstances, if taken at their face value, sufficiently indicate the commission of criminal conspiracy. In other words, the evidence led by the prosecution in the present case *prima facie* show that there was direct animosity between the deceased and accused Madari as both were dealing in the business of plying buses on Raipur-Jagdalpur route. The deceased being highly competitor in the business, accused Madari was apprehending that his business will be ruined and therefore he along with co-accused Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, and co-accused Farida @ Farid Ahmed conspired to kill deceased Satwant Singh Gill alias Gappu and for that purpose he engaged co-accused Naseem @ Naseemuddin & Shamim @ Shamimuddin, contract killers. Thus, on 27.5.2005 at about 6 in the morning, in furtherance of their common intention, all of them forming themselves into an unlawful assembly, arming with deadly weapons like sword, country-made pistol, attacked the deceased and thereby committed murder of the deceased.

That apart, on the memorandum statement (Ex.P-20) of accused Madari, country-made pistols & cartridges were recovered vide Ex.P-22. The same were sent to the Central Forensic Science Laboratory, Chandigarh vide Ex.P-32 for ballistic examination. As per ballistic report (Ex.P-30), the country-made pistol recovered pursuant to disclosure

statement made by accused Madari was in working condition and the bullet recovered from the body of the deceased had been discharged through it. Recovery of country-made pistol is also duly proved by the prosecution by examining Amanpreet Singh (PW-14), a witness to memorandum of accused Madari and seizure memo by which recovery of country-made pistol was effected. He has duly supported the prosecution case and deposed that accused Madari disclosed that he kept concealed country-made pistol and cartridges beneath the shrubs near Mahadev Ghat temple and could lead to its recovery. Thereafter the recovery of weapon was made in accordance with his disclosure statement. Thus, the recovery of country-made pistol, which was got recovered by accused Madari pursuant to his disclosure statement, coupled with the report of the ballistic expert that the bullet which had been retrieved by the autopsy surgeon was fired from the country-made pistol recovered at the instance of accused, leaves no room for doubt that the finger of guilt points to none other than accused/appellants without any reasonable shadow of doubt.

So far as the argument submitted on behalf of the accused that seized firearms and ammunition were not kept in safe custody and there being undue delay in sending the seized articles for ballistic examination is concerned, to ascertain from which type of weapon - pistol or revolver, the bullets which were found from the body of deceased were fired, it was really necessary for the prosecution to obtain possession of that pistol or revolver, and without the weapon concerned, it would not be possible to test and analyse. In the case in hand, the accused persons were absconding after the incident and accused Madari & others were arrested only on 22.6.2005 and on the very same day, their memorandum statements were recorded wherein they admitted that they have planned and committed murder of deceased and the pistols which they had used in

the crime were concealed beneath a tree near Mahadev Ghat Temple. Pursuant to such disclosure, the country-made pistols and cartridges were recovered and seized. Thereafter, the country-made pistol and bullets were sent to the CFSL for ballistic examination.

Of course, the seizure of country-made pistols had been effected on 22.6.2005 and it was sent to the ballistic expert through Vijay Gauthariya (PW-24) on 12.9.2005, but there is an explanation offered for such delay by PW-24 that as he was transferred to Abhanpur in respect of another investigation, the seized articles could not be sent immediately for ballistic examination. Therefore, the delay in despatching the seized articles for examination by the ballistic expert, in the facts and circumstances of this case coupled with the explanation offered by Vijay Gauthariya (PW-14), is not fatal and does not affect the credibility of the prosecution case.

Seizure memo Ex.P-10 clearly records that one bullet & metal piece had been received in a sealed parcel in the police station. Ex.P-22 & P-24 are the seizure memos by which two country-made pistols were seized at the instance of concerned accused and it clearly records that the country-made pistols, which had been recovered, were seized after sealing it in presence of the witnesses. Seizure witness has also duly supported the prosecution case. Report of the ballistic expert also shows that he had received the parcels in a sealed condition and that the seal tallied with the specimen of seal as fixed on the requisition memo. There is nothing on record to show that there was any tampering with the samples as well as the seals. Although there is no documentary evidence like Maalkhana register on record to support the oral evidence of Vijay Gautharia (PW-24) regarding deposit of seized articles of this case in safe custody, but the facts and circumstances of the case, as discussed above, sufficiently

establish the prosecution case against the appellants beyond any shadow of reasonable doubt. This apart, during the examination of Dr. R.K. Singh (PW-15), the person who conducted post-mortem examination over the body of deceased, the Court itself summoned the seized articles of this case from the Maalkhana through its Reader, the seized articles were found to be in sealed condition. Therefore, only on the ground of a trivial issue like non-production of Maalkhana register before the Court, the entire prosecution case cannot be discarded. Non production of Maalkhana Register is only a lacuna on the part of the prosecuting agency and the entire trial and the proceedings cannot stand vitiated only on this ground .

As regards the non-disclosure of names of assailants by Gopal Rao (PW-10) to Vijay Gautharia (PW-24). True it is that eyewitness Gopal Rao (PW-10) did not disclose the names of assailants at the earliest opportunity to Vijay Gautharia (PW-24), he however has tried to clarify that on account of being in turbulent state of mind he could not disclose to the police as to by whom the gunshot was fired. According to PW-10, even the police did not put to him such a question. According to Vijay Gautharia (PW-24) also, on coming to know that the deceased had been shot in front of his garage, he, instead of lodging FIR or enquiring about the assailants from Gopal Rao (PW-10), immediately rushed to the spot after instructing one Constable to make entry in the roznamcha sanha regarding his departure to the spot. On reaching the spot and seeing the condition of deceased, he immediately sent him to the hospital for providing him medical aid. In our opinion, this was a natural behaviour. In such cases, the first priority must be to take the victim to the hospital immediately in order to save his/her life. In such a situation, every moment is precious and no time should be lost in getting the medical attention. Thus, Vijay

Gautharia (PW-24) was justified in assuming that other things would be performed in due course. Therefore, in the facts and circumstances of the present case, the explanation offered by Gopal Rao (PW-10) for not disclosing the names of assailants at the earliest opportunity appears genuine, reasonable and probable and it does not make his testimony doubtful, unreliable or unbelievable.

52. So far as the discrepancy pointed out by the defence in the statement of evidence regarding direction of bullet in the body of deceased is concerned, the record reveals that such a plea had never been raised by the accused at any stage either before or after the evidence was recorded by the trial Court. There was even no suggestion about that aspect. Had such a plea been raised during trial, both the parties could have been afforded to lead evidence to substantiate the same and in rebuttal thereof and thereafter the trial Court would have recorded a finding thereon. In this view of the matter, we are of the view that appellants cannot be allowed to raise the same for the first time at the appellate stage.

53. Now coming to the submission that Inquest (Ex.P-46) and application for post-mortem examination (Ex.P-47) were prepared against unknown persons although Crime Details Form (Ex.P-49) had been prepared at 6.10 in the fateful morning. A perusal of application for post-mortem examination (Ex.P-47) & Crime Details Form (Ex.P-49) would show that there is no column for mentioning the names of accused and therefore there was no occasion for the police personnel to have mentioned the names of the accused in these documents. Likewise, it was not necessary in law to mention the names of accused in the inquest as the purpose of preparing the inquest report was merely to make a note of physical condition of the body and the marks of injury thereof noticed at that point of time. Even otherwise, the above said discrepancy shall not

be enough to disbelieve the entire prosecution story. The said discrepancy is insignificant and not capable of causing any reasonable doubt in the story of the prosecution.

On the basis of above discussions, we are of the view that the trial Court has rightly convicted the accused/appellant Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid Ahmed, Naseem @ Naseemuddin & Shamim @ Shamimuddin for the offences under Section 302 with the aid of Section 120B of the IPC.

54. Now we come to the plea of alibi taken by accused Madari @ Abrar Ahmed. It is now well settled that plea of alibi is to be established by the accused who takes it. The accused can do so either by adducing necessary evidence or he can establish that plea even from the evidence of the prosecution, oral as well as documentary. In case the plea of alibi taken by an accused is accepted by the Court then evidence of even the eyewitness of some incident will have to be discarded. In the case in hand, document Ex.D-15 was mainly relied upon by accused Madari in support of plea of alibi that on the date of incident he was present in the police station Ashbagh, Bhopal (MP). This document would show that there is an entry in roznamcha sanha at Sr. No.1452 dated 27.5.2005 to the effect that accused Madari was brought to the police station Ashbagh and after necessary formalities, he was allowed to go home. In order to verify the fact about the arrest of accused Madari at Bhopal in the night intervening 26th & 27th May, 2005, an enquiry was conducted by Shri G.K. Pathak (PW-26), the then Additional Superintendent of Police of Bhopal (MP). In the course of enquiry he recorded statements of the Assistant Sub Inspector and Head Constable, who allegedly found twice a person

roaming, and according to them, Shobha Guru informed them telephonically that the person caught by them during night patrolling is Abrar Ahmed and he is resident of Maudhapara, Raipur. According to this witness, both of them have admitted that they did not bring said person to the police station. Said Shobha Guru is none else but the sister-in-law of accused Madari. According to PW-26, in the course of enquiry he could not lay hand on any document showing that the aforesaid two police personnel were on night patrolling duty at the relevant time. PW-26 has further deposed that on inspection of SS Roll Register, which is used for making entry in respect of an outsider having found roaming in suspicious condition, he does not find any entry to the aforesaid effect in it.

From the above material it is apparent that accused/appellant Madari has tried to create a false evidence of alibi as the document Ex.D-15 was a concocted & forged document. This document was got prepared with the help of Shobha Guru, sister-in-law of accused Madari, in order to help in creating a plea of alibi to be used in the event of his getting implicated in the case of murder of deceased Satwant Singh Gill alias Gappu. In these circumstances, we are of the view that the plea of alibi raised by accused Madari alias Abrar Ahmed is totally false. Hence, the said defence is not tenable and does not help to accused/appellant Madari.

55. As regards the conviction of accused/appellant Sunil Bhalkar under Section 120B/302 of IPC. On the basis of memorandum of co-accused Madari recorded vide Ex.P-20, one letter (Article-F) has been recovered at the instance of accused Madari from the house of Pushpa Guru, wife of accused Madari. According to accused Madari, this letter was written to him by accused Sunil Bhalkar. As per contents of this letter, pursuant to

the direction of accused Madari, an amount of Rs.1 lakh was paid by this accused to the shooters. It further demonstrates that this accused was well aware of the conspiracy of accused Madari to finish the deceased, which was subsequently materialized. Upon discovery of this letter, this accused/appellant was arrested, his original handwriting was obtained and the same along with handwriting appearing on the letter (Article -F) was sent for CFSL examination from where report of Ex.P-35 has been received. As per report of CFSL, handwriting of the letter (Article-F) tallied with the handwriting of accused Sunil Bhalekar. Thus, it was duly established by the prosecution that this accused had written the said letter to accused Madari. It is well settled that essence of criminal conspiracy is an agreement to an illegal act and it is not necessary that there should be express proof of agreement, but from the acts and conduct of the parties, the agreement can be inferred, because direct evidence to prove conspiracy is rarely available. It is also not necessary that a person should be a participant in a conspiracy from start to finish. Conspirators may appear and disappear from stage to stage in the course of conspiracy. In the case in hand, from the acts of omission and commission on the part of this accused, which can be culled out from the letter (Article-F), which has been well proved to have been written under his own handwriting, it is clear that since beginning this accused was well aware of conspiracy hatched by accused Madari for committing murder of deceased Satwant Singh Gill and that he also acted in pursuance of the said object. In other words, he was well aware that the murder mystery was prevailing in the minds of accused Madari and he also acted in furtherance of the same. The act of this accused is also hit by Section 10 of the Evidence Act which reads as under:-

“Things said or done by conspirator in reference to common

design- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

So far as the law laid down in Navjot Singh Sandhu's case (Supra) and Mirza Akbar's case (Supra) relied upon by the learned counsel for accused Sunil Bhalkar does not help him. In both the cited cases, the point for consideration was whether confessional statement of an accused can be used against co-accused, whereas in the present case, the prosecution has relied upon the letter Article-F which on comparison by the State Examiner of Questioned Document was found to be in the handwriting of accused Sunil Bhalkar. The contents of this letter amounts to admission of this accused/appellant in terms of Sections 17 & 21 of the Evidence Act about his active participation in the crime in question.

In view of the above, we come to the conclusion that conviction of accused Sunil Bhalkar under Section 120B r/w 302 of IPC is based on due appreciation of evidence available on record and the trial Court has not committed any illegality or irregularity in doing so.

56. Insofar as conviction of accused Raesuddin alias Bachcha under Section 120 read with Section 302 of IPC is concerned, after thoroughly going through the material on record, we find that there is no other evidence except the fact that name of this appellant finds place in the memorandum given by co-accused Madari under Section 27 of the Indian Evidence Act

wherein co-accused Madari has stated before the police that it was this accused who had agreed to arrange for the shooters. Only on the basis of memorandum statement of co-accused recorded under Section 27 of the Evidence Act, this appellant cannot be grilled, particularly when there is not an iota of evidence to show that he was part of conspiracy playing any role in the murder of the deceased. Hence, he deserves to be acquitted by extending him benefit of doubt.

57. Insofar as conviction of accused/appellant Sharifuddin under Section 302 with the aid of Section 120B of IPC is concerned, it has to be established by the prosecution that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew leading to the commission of a crime by one or persons to the agreement, of that offence. In the instant case, the hatching of conspiracy between accused/appellant Sharifuddin and other accused has been sought to be proved on the ground that after receiving advance amount of Rs.25,000/- from accused Madari, this accused had arranged two shooters i.e. accused Shamimuddin & Sharifuddin, for killing the deceased and that thereafter he along with accused Madari got arranged the accommodation for the hired shooters in the hotel of deceased with a view to make them familiar with him. However, after evaluating all the circumstances very anxiously and alertly, we do not find any material indicating a link between accused Sharifuddin, accused Madari and the killers or that this accused had agreed to pursue a course of conduct, which he knew leading to the commission of crime by one or more persons to the agreement, of that offence or that he had some knowledge about accused Madari indulging in hatching a conspiracy to kill the deceased. Even the presence of this accused is not alleged at the time of attack upon the deceased. Mere allegation that this accused had visited the hotel of the deceased along

with accused Madari for booking rooms for his guest cannot be held an incriminating circumstance against him. Likewise, recovery of Rs.5,000/- at the instance of this accused will not be sufficient to raise presumption against him, particularly when the evidence of existence of conspiracy between them and of the participation of this accused in the crime in question, is lacking. In such a situation, the benefit of doubt must go to accused Sharifuddin and he is also deserves to be acquitted by extending him benefit of doubt.

58. Now coming to the submission made on behalf of accused Farida regarding Section 299 of CrPC. A perusal of the record shows that the prosecution has filed the challan against the arrested accused persons showing this accused/appellant as absconder. Record further reveals that in the course of trial, on the basis of material on record, the Court arrived at a conclusion that there is no immediate prospect of arrest of this accused/appellant and thus, after recording statement, he was declared as an absconder and permanent warrant of arrest was ordered to be issued. Trial of some of the accused persons, who were arrested and put to trial, has culminated. This accused/appellant could be arrested only on 14.2.2011 and by that time eyewitness namely Mani @ Manthanlal (PW-1) & Gopal Rao (PW-10), who were examined and cross-examined at an earlier point of time, had either expired or not traceable and for this reason these witnesses could not be produced before the Court as prosecution witnesses in the trial of this accused/appellant. In these circumstances, the trial Court has taken into consideration the evidence of aforesaid eyewitnesses for the purpose of this accused/appellant also. From the language of Section 299 Cr.P.C. it is clear that if it is proved that there is no immediate prospect of arrest of accused, the Court may in his absence examine the witness produced by the prosecution and record their

depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial, for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, which under the circumstances of the case, would be unreasonable. Thus, we are of the view that in the given facts and circumstances of the case, the trial Court was justified in reading the statements of aforesaid witnesses in evidence against accused/appellant Farida. Needless to mention here that a criminal revision bearing No.511/2016 has been preferred by this accused against rejection of his prayer for not accepting the statements of the witnesses whose statements have been recorded in the first trial and who now have either expired or are not traceable and the same has also been dismissed by the Single Bench of this Court vide order dated 26.8.2016 and this order has not been challenged by accused Farida and thus the same has attained finality. Observation contained in order dated 26.8.2016 is reproduced below;-

“13. The accused person who avoids trial at the initial stage by remaining absconding and subsequently at a later stage when he knows that the material witnesses are not available on account of their death or being not traceable cannot be given the benefit of the evidence which was recorded at the first instance detrimental to the interest of the prosecution. If such an analogy is brought into force then the entire criminal jurisprudence system itself would get jeopardized and it would rather give a premium to the accused person wherein there are more than one accused available. They would make the accused against whom the gravity of offence is less to surrender and undergo the trial and thereafter the main accused

after a considerable period of time when the material witnesses have either expired or are not traceable subject him to trial and in whose case the material witnesses already examined cannot be taken into consideration. It would result in the main accused getting scot-free easily and such a situation in the larger perspective would be dangerous in a civilized society governed by the rule of law.”

Thus, now this appellant is estopped from raising such objection at this stage. Moreover, it could not be shown that any prejudice had been caused to accused Farida and that being so this contention has no force.

59. As regards the conviction of accused Shamim @ Shamimuddin & Naseem @ Naseemuddin under the Arms Act. No weapon is shown to have been recovered from these accused persons in this case and therefore we are of the considered view that the prosecution has not been able to prove the charge under Sections 25 (1-B) II & 27 (1) of the Arms Act against these accused beyond reasonable doubt and this being the position, they are entitled to the benefit of doubt.

60. In view of the above discussions, we are of the view that the trial Court did not commit any illegality or irregularity in recording a finding that accused/appellants Madari alias Abrar Ahmed, Bachhu alias Israel, Bafati alias Anwar, Noora alias Nooruddin, Farida @ Farid, Nasim @ Nasimuddin, Sharif @ Sharifuddin are guilty of the offence under Sections 147, 148, 302/149, 120B/302 of IPC. Likewise, conviction and sentence of accused Sunil Bhalkar under Section 120B/302 of IPC are also based on proper appreciation of evidence available on record. Consequently, we uphold the judgment of the trial Court as far as the conviction of aforesaid accused and sentences awarded thereunder are concerned. However, in our view, the conviction and sentence of accused Raeesuddin alias Bachcha Pradhan, Sharifuddin under Section 120-B read with

Section 302 of IPC and that of accused Shamim @ Shamimuddin and Naseem @ Naseemuddin under the Arms Act are liable to be set aside because the prosecution had failed to prove these charges against them beyond reasonable doubt.

61. So far as the criminal revision against acquittal of Mohd. Aslam alias Chacha is concerned, we are of the opinion that in revision, no reappraisal of the evidence is possible. Even, the revisionist had failed to point out any legal infirmity in the impugned judgment of acquittal because of which it can be said that the same suffers from illegality or material irregularity. It is trite law that a judgment of acquittal should not be interfered with unless and until, it is found that the same suffers from patent error of law and the opinion recorded by the acquitting court is so patently absurd that it cannot be sustained at all. Involvement of acquitted accused by way of conspiracy or otherwise, in the murder of deceased Satwant Singh Gill alias Gappu, has not been proved by the prosecution beyond reasonable doubt. In other words, there is not an iota of evidence on record sufficient to establish the charge of conspiracy against acquitted accused or that he was well aware that the murder mystery was prevailing in the mind of accused Madari and he also acted in furtherance of the same. Acquittal of accused Mohd. Aslam is well merited and the opinion expressed by the trial Judge cannot be said to be patently absurd or not borne out from the record. Therefore, revision against acquittal preferred by the brother of deceased Satwant Singh Gill alias Gappu being without substance is

liable to be dismissed.

62. In view of above discussion, we are of the view that none of the judgements cited on behalf of respective accused/appellants to negate the testimonies of eyewitnesses and other incriminating evidence is rendering any help to them being altogether distinguishable on facts involved in the present case.

63. In the result;-

- Cr. Appeal No.275/07 (Madari alias Abrar Ahmed & ors vs. State) fails and dismissed. Judgment of conviction and order of sentence dated 8.3.2017 passed by the Court below convicting & sentencing accused/appellants under Sections 147, 148, 302/149, 120/302 of IPC are hereby maintained. Accused Madari @ Abrar Ahmed & Nooruddin @ Noora are reported to be on bail. They be taken into custody forthwith to serve out remaining part of jail sentences.
- Criminal Appeal No.429/2007 (Sunil Bhalkar v. State) fails and dismissed. Judgment of conviction and order of sentence dated 8.3.2007 passed by the Court below convicting and sentencing accused in this appeal under Section 120/302 of IPC are hereby maintained. Accused is reported to be on bail. He be taken into custody forthwith to serve out the remaining part of jail sentences.
- Criminal Appeal No.1444/17 (Farid @ Farid Ahmed v. State) fails and dismissed. Judgment of conviction and order of sentence dated 15.9.2016 passed by the Court below convicting and sentencing accused in this appeal under Section 120/302 of IPC are hereby maintained. Since this accused is in custody, no direction regarding his surrender etc. is needed.
- Criminal Appeal No.864/2011 (Shameem alias Shameemuddin vs. State) is partly allowed. While maintaining his conviction and

sentence under Sections 147, 148, 302/149, 120/302 of IPC, he is acquitted of the charges under Section 25 (1-B) II & 27 (1) of the Arms Act. Since this accused is in custody, no direction regarding his surrender etc. is needed.

- Criminal Appeal No.477/2013 (Nasim alias Naseemuddin vs. State) is partly allowed. While maintaining his conviction and sentence under Sections 147, 148, 302/149, 120/302 of IPC, he is acquitted of the charges under Section 25 (1-B) II & 27 (1) of the Arms Act. Since this accused is in custody, no direction regarding his surrender etc. is needed.
- Criminal Appeal No.872/11 (Sharifuddin vs. State) stands allowed. Conviction and sentence of accused/appellant Sharifuddin under Section 120B r/w 302 of IPC vide judgment dated 20.9.2011 are hereby set aside. He is acquitted of the charge by extending him benefit of doubt. Since he is already on bail, no further direction regarding his release etc. is needed.
- Criminal Appeal No.874/11 (Raesuddin @ Bachcha Pradhan vs. State) stands allowed. Conviction and sentence of this accused under Section 120B r/w 302 of IPC vide judgment dated 20.9.2011 are hereby set aside. He is acquitted of the charge by extending him benefit of doubt. Since he is already on bail, no further direction regarding his release etc. is needed.
- Criminal Revision No.462/2007 preferred by Lakhwant Singh Gill, brother of deceased Satwant Singh Gill, being devoid of any substance is hereby dismissed.

Sd /-
(Pritinker Diwaker)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

roshan/-