

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1) CRA-D-440-DB of 2013 (O&M)

Balwan and others

.... Appellants

Versus

State of Haryana

..... Respondent

(2) CRA-D-526-DB of 2013

Manjit alias Mahal

.... Appellant

Versus

State of Haryana

..... Respondent

**Reserved on : 29.10.2019
Date of decision : 13.11.2019**

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate, for the appellants.

Ms. Shubhra Singh, Addl. A.G., Haryana.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, i.e. CRA-D-440-DB of 2013 and CRA-D-526-DB of 2013, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 22.04.2013 and order dated 29.04.2013, rendered by learned Additional

Sessions Judge, Jhajjar, in Sessions Case No. RBT 56 of 2008/2013 dated 14.08.2008/01.02.2013. Appellants Balwan, Anil alias Chhota Dhaba, Vikrant alias Kala, Narender alias Jhabhu, Manipal alias Dheela, Parveen alias Jadugar, Rajesh alias Chhote and Manjit alias Mahal, along with co-accused Amit alias Babbal were charged with and tried for the offences punishable under Sections 148, 302, 307, 449, 452, 149 IPC and Section 25 of the Arms Act. They were convicted and sentenced as under :-

U/s 148 IPC	Three years rigorous imprisonment each.
U/s 120-B read with Section 302 IPC	Imprisonment for life and fine of ₹ 20,000/- each. In default of fine, six months rigorous imprisonment.
U/s 149 read with Section 302 IPC	Imprisonment for life and fine of ₹ 20,000/- each. In default of fine, six months rigorous imprisonment.
U/s 302 read with Section 120-B IPC and also read with Section 149 IPC	Imprisonment for life and fine of ₹ 20,000/- each. In default of fine, six months rigorous imprisonment.
U/s 307 read with Section 120-B IPC and also read with Section 149 IPC	Ten years rigorous imprisonment and fine of ₹ 10,000/- each. In default of fine, six months rigorous imprisonment.

All the substantive sentences were ordered to run concurrently. Co-accused Amit alias Babbal was acquitted of all the charges.

3. The case of the prosecution, in a nutshell, is that on 26.09.2007, ASI Naresh Kumar received information to the effect that the firing was going on in village Badli near the 'chopal'. ASI Naresh Kumar left for the spot. He did not find any eye witness. Then he went to Shivam Hospital,

Bahadurgarh. He moved an application before the Medical Officer of the said hospital for seeking opinion regarding the fitness of injured Jasbir alias Bulle. On getting the fitness report, ASI Naresh Kumar recorded the statement of Jasbir alias Bulle vide Ex.P30. According to him, Jaipal alias Dhanda, Sarpanch of village Badli, was murdered by firing near 'chopal of chowdran pana' in June, 2007. Manipal, brother of deceased Jaipal, had lodged the FIR against the complainant, his brothers Ranbir and Chini and Satya Pehalwan and others, totaling 14 persons. Sohanvir, Rohit, Chini and Vijay were found as the real culprits. Remaining accused persons were found innocent. After the murder of Jaipal, people of the group of Jaipal had a grudge against them. Yashpal son of Ishwar met with an accident. At about 9.00 AM, the complainant went to the house of Yashpal to enquire about his health. Jaimeet son of Satpal and Satpal son of Om Parkash were already present. All of them went to 'chobara'. In the meantime, Mainpal alias Dhillal, Ajit alias Kala, Parveen alias Jadugar, Balwan, Anil alias Dhaba, Bada Dhaba, Naveen and 3-4 other persons suddenly came there. They were carrying weapons in their hands. They indiscriminately started firing gun shots on them. Complainant hid himself behind the bed lying in the 'chobara'. However, they continued firing on them. He suffered bullet injuries on his right leg and little finger of right hand. His associates also suffered bullet injuries. The assailants were proclaiming that Bulla should not escape. Thereafter, all of them fled away. He came out of the house. He came to know that they had committed the murder of Satya Pehalwan by firing gun shots in the 'nohra' (cattle house). He further came to know that the assailants came in two vehicles. All the injured were taken to Shivam

Hospital at Bahadurgarh. FIR was registered. Spot was inspected by the police. Empty cartridges of different bore, bullets and mobile phone make Nokia were taken into possession. The Investigating Officer also lifted blood stains, 8 empty cartridges of 12 bore, 22 empty cartridges of 32 bore, 13 empty cartridges of 9 mm, 3 live cartridges of 32 bore and the bullets. The inquest report was prepared. The post mortem was got conducted. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined as many as forty witnesses in support of its case. The appellants were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

6. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

7. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

8. PW.1 Rajinder Singh led his evidence by filing affidavit Ex.P1. According to the averments made in the affidavit, on 26.09.2007, ASI Naresh Kumar had deposited four parcels, three parcels of bullet lead, with the monogram of doctor along with sample seal, two parcels of blood stain earth and two parcels of empty cartridges, cartridges with the monogram of

N.K along with the sample seal. On 01.12.2017, SI Shyam Narain had deposited one parcel of pistol with the monogram of J.B along with sample seal. On 03.12.2017, ASI Umed Singh had deposited one parcel of revolver with the monogram of U.S along with sample seal. On 21.04.2018, Inspector Jai Bhagwan had deposited one parcel of carbine along with five cartridges, one parcel of gun double barrel along with five cartridges and three parcels of revolver along with 5/5 cartridges with the monogram of T.R. These were deposited in the Malkhana with him. These parcels were handed over to Constable Raj Kumar for depositing in FSL Madhuban. Constable Raj Kumar deposited the same on the same day.

9. PW.2 Raj Kumar led his evidence by filing affidavit Ex.P2. In his affidavit, he deposed that the case property was handed over to him by ASI Rajinder Singh after taking out from the Malkhana on 28.04.2008. He deposited the same in the FSL Madhuban on the same day.

10. PW.3 Yashpal testified that on 23.09.2007, he met with an accident after falling from motor cycle. He was operated upon on 24.09.2007. He was discharged from the hospital on 25.09.2007. On 26.09.2007 at about 11.00 AM, he was taking rest at his house. Satpal son of Om Parkash had come to him. Four-five other persons also came there. He did not know them. They started firing upon him indiscriminately, as a result of which he fell down from the cot. Thereafter, he was shifted to Shivam Hospital, Bahadurgarh. The accused present in the court were not the assailants, who fired upon him. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination by the learned Public Prosecutor, he deposed that he had heard statement Ex.P3

word by word. However, he had never made any such statement before the police. He admitted that he sustained firearm injuries. He had not stated to the police that on 26.09.2007 at about 9.00 AM, Jaimeet and Jasbir came to his house to know about his health. The accused had not entered the house. He was confronted with portion A to A of Ex.P3, wherein it is so recorded. He had not stated to the police that after receiving injuries, they escaped themselves by hiding behind the door and under the bed and his companions sustained firearm injuries. When they came down, they came to know about the murder of Satte Pehalwan. He was confronted with portion B to B of Ex.P3, wherein it is so recorded.

11. PW.4 Satpal deposed that on 23.09.2007, Yashpal met with an accident after falling from motor cycle. He was operated upon. He was discharged from the hospital on 25.09.2007. He was taking rest in his house on 26.09.2007 and was lying on the cot. He had gone to his house to see him. 4-5 other persons had also come there. He did not know them. They started firing upon Yashpal indiscriminately. Yashpal fell down from the cot. Thereafter, he was shifted to Shivam Hospital, Bahadurgarh by the police. The accused present in the court were not the assailants, who fired upon Yashpal. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination by the learned Public Prosecutor, he deposed that he had heard statement Ex.P4 word by word. He never made any such statement before the police. He admitted that he had sustained firearm injuries. He had not told the police the manner in which the accused had come to the house of Yashpal and fired upon him. He was confronted with portion A to A of Ex.P4, wherein it is so recorded. He had

not told the police that they escaped themselves by hiding behind the door and under the bed, and his companions also suffered firearm injuries. They came down and came to know that these persons committed the murder of Sarpanch. He was confronted with portion B to B of Ex.P4, wherein it is so recorded.

12. PW.5 Satish Kumar deposed that he was posted in Police Post Badli on 26.09.2007. He went to Shivam Hospital, Bahadurgarh. Medico legal examination of Jasbir, Satpal and Jaimeet was undertaken. The doctor handed over three sealed parcels containing clothes of the injured persons.

13. PW.6 Satish Kumar deposed that ASI Umed Singh arrested accused Ravinder on 03.12.2007. During interrogation, accused Ravinder disclosed that he had kept concealed a pistol, with which he committed the murder of Satyawar. He offered to get the same recovered. His disclosure statement is Ex.P6. The portion that 'the weapon with which Satyawar was murdered' was deleted by the trial court. Remaining portion of Ex.P6 was treated evidence. Accused got the pistol recovered from village Chhara. It was taken into possession. Pistol is Ex.P9. He identified the same in the court.

14. PW.7 Umed Singh testified that accused Anil alias Chhota Dhaba made a disclosure statement Ex.P12 that he could get pistol recovered. He arrested accused Ravinder on 03.12.2007. Ravinder made disclosure statement Ex.P6. Accused got recovered a revolver along with license Ex.P10 from the place of concealment. It was taken into possession. Rough sketch of the revolver is Ex.P7. In his cross-examination, he deposed that no independent witness was joined by the Inspector while interrogating

accused Anil. Voluntarily stated that no independent witness was present in the Police Station.

15. PW.10 Jai Chand prepared scaled site plans Ex.P16 and Ex.P17. In his cross-examination, he denied the suggestion that he had not visited the spot.

16. PW.14 Ranbir deposed that on 26.09.2007, police came from Police Post Badli. He joined the investigation. The police inspected the place of occurrence and collected empties and bullets of separate bores from there. The police put all those empties and bullets in one bag. The police collected the blood in separate parcel. Both the parcels were duly sealed.

17. PW.15 Naresh Kumar deposed that he received information from the public that firing had taken place near Bari Chopal, Badli. He went to the spot. He came to know that firing had taken place in the house of Yashpal and Satte. He along with the police party went to the house of Satte. The dead body was lying there. He deputed Satish Kumar ASI and Raj Kumar HC to guard the dead body. Thereafter, he along with the police party went to the house of Yashpal. He was told that Yashpal, Jasbir, Satpal and Jaimeet, who had received injuries, had already been shifted to Bahadurgarh in some private vehicle. He visited the hospital. Statement of Jasbir alias Gulle was recorded vide Ex.P30. From the statement of Jasbir, he came to know that Satpal, Yashpal and Jaimeet were also admitted in the hospital. He moved applications Ex.P33, Ex.P34 and Ex.P35 seeking opinion of the doctor regarding condition of Satpal, Yashpal and Jaimeet. They were declared fit to make statement. He recorded their statements under Section 161 Cr.P.C. He came to the place where the dead body of

Satte was lying. He found Dayawanti wife of Chander Bhan and Manju on the spot. He summoned Surender Singh, photographer of the police department. He lifted blood stains, empty cartridges of different bore, bullet and mobile phone make Nokia. These were converted into parcels. These were witnessed by Dayawanti and Manju. He also prepared the rough site plan of the place of occurrence. Satish Kumar ASI handed over three parcels containing clothes of injured persons, namely Jasbir, Satpal and Yashpal. He also handed over two parcels containing bullets recovered from wound of Jasbir and Satpal, duly sealed with the seal of doctor. He took the same into possession. He recorded statement of Satish Kumar. The post mortem report was handed over to him by Raj Kumar HC. In his cross-examination, he deposed that he was informed by a truck driver about the incident. He did not stop the truck. He had reached the spot within ten minutes after the receipt of information. The injured persons were already removed to the hospital. The dead body of Satte was lying in the cattle shed. No member of his family was present. He admitted that in the MLR of Yashpal, it was mentioned that he was brought by the police but the name of the police official was not mentioned. He had collected the MLRs of three injured persons. He had seen the empties in the house of Yashpal, when he visited the house. He told the police to protect the spot. He denied the suggestion that no empty and Nokia mobile was lying on the spot.

18. PW.17 Surender Kumar had taken photographs Ex.P40 to Ex.P56.

19. PW.18 Jaimeet testified that on 26.09.2007 at about 9.00 AM, he was present at the house of Yashpal. Three persons came to the house of

Yashpal on motor cycle. They were armed with pistols. They fired shots. Yashpal received injuries on right side of his waist. Satpal was also present there. He also received gun shot injuries at the hands of those unknown assailants. He also sustained a gun shot injury on his right leg. The assailants left the spot. The accused present in the court were not known to him. They were not the assailants. He did not see them at the scene of occurrence. Jasbir was not present on the spot. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination by the learned Public Prosecutor, he deposed that he had heard statement Ex.P74 word by word. He had never made this statement to the police. He denied that he had named the assailants in his statement Ex.P74. He also denied that he had received injuries in the firing on his right knee. He also denied that they took shelter behind the bed and doors of the room. He admitted that he remained admitted in Shivam Hospital, Bahadurgarh, for treatment of his injuries.

20. PW.19 Jasbir alias Bulla deposed that on 26.09.2007 at about 9.00/9.30 AM, he went to the house of Yashpal. Jaimeet and Satpal were already sitting there. In the meantime, accused Mainpal alias Dheela son of Bhagwan Singh, Anil alias Dhabha son of Maha Singh, Parveen alias Jadugar son of Yadvinder, Balwan son of Mangli, Naveen nephew of Jaipal Sarpanch, Sunil alias Dhaba son of Maha Singh came there. They were carrying arms. They opened firing upon him. He sustained gun injuries on his legs and hands. He entered the 'chobara' of Yashpal and hid himself beneath the bed lying there. The accused ran away from the place of occurrence. He came down from the 'chobara'. Public told him that the

above named persons had committed the murder of Satte Pehalwan. The accused came in two vehicles. He was shifted to Shivam Hospital, Bahadurgarh by his family members. Yashpal, Jaimeet and Satpal also received injuries. They were also shifted to Shivam Hospital, Bahadurgarh. The police recorded his statement on 28.10.2007. Jaipal alias Dhanda Sarpanch of Badli was murdered on 05.06.2007. In that murder case, he along with his two brothers, namely Rajbir, Rajbir, and eleven others, were named as accused. He and his brother Ranbir were found innocent by the police. In his cross-examination, he admitted that name of Sunil son of Maha Singh was not mentioned in his statement before the police. The court was apprised that Bada Dhaba son of Maha Singh was the same person, who was Sunil son of Maha Singh. He was produced in the court with his father in compliance to the warrant of production. He denied the suggestion that he had obtained MLR from the doctor in collusion with the police and the doctor. The occurrence took place at about 9.00/9.30 AM. He did not remember the exact number of gun shots made by the accused persons.

21. PW.20 Dayawanti testified that she and her daughter-in-law Manju went to their cattle shed to lift the cow dung. Manju is the wife of her son Mainpal. Her son Satte was also in the cattle shed. Accused Mainpal alias Dheela, Parveen alias Jadugar, Balwan, Rajesh alias Chhota, all residents of Badli, Gabchu resident of Mandauthi, Manjeet alias Mahal, Bablu Sunar resident of Ghogha, Chhota Dhaba, Bada Dhaba and Naveen nephew of Jaipal Dhanda Sarpanch came there in their cattle shed. Naveen and Bada Dhaba were not present in the court. She identified all the accused. All the accused were armed with firearms. They opened firing

aiming at her son Satte. He was shot dead at the spot. The accused were proclaiming that they had taken the revenge of murder of Jaipal, Sarpanch. The accused ran away from the spot. They had come in the cars. The police recovered empties, blood stained earth and mobile phone of her son Satte from the place of occurrence. The police recorded her supplementary statement on 28.10.2007. In that statement, she mentioned names of four additional accused, namely Jhabu, Kala, Gapchu and Mahal. In her cross-examination, she admitted that the accused were armed with guns. Accused Jadugar, Gabchu and Chhota Dhaba alias Rajesh were armed with long guns. The remaining accused were having small guns. All the accused were known to her. She admitted that her son Satte was named as an accused in the murder case of Jaipal. She was re-called for re-examination in compliance of the order passed by this Court in Criminal Misc. No.M-5449/M-5450 of 2011. In her re-examination on 13.10.2012, she deposed that about five years back, she was sitting in the verandah. Her daughter-in-law Manju was cleaning the verandah of their cattle shed. Her son Satte was also with them. At that time, four-five unknown persons entered the cattle shed. They indiscriminately fired on her son. Her son succumbed to injuries at the spot. Accused ran away from the spot. The police obtained her thumb impressions on some blank papers. She was declared hostile and was cross-examined by the learned Public Prosecutor. In her cross-examination by the learned Public Prosecutor, she admitted that on 13.06.2009, she appeared and deposed before the Sessions Judge, Jhajjar. Volunteered, she was threatened by the police to make that statement. The police was standing outside the court. The statement made by her on 13.10.2012 was voluntary.

She admitted that she had not disclosed before the court that the police pressurised her to depose against the accused persons in the court. She admitted that on 13.06.2009, she deposed before the court that accused Mainpal alias Dhillal, Parveen alias Jadugar, Balwan, Rajesh alias Chhota, all residents of Badli, Gabchu resident of Mandothi, Manjeet alias Mahal, Bablu Sunar resident of Gohana, Chhota Dhaba and Bada Dhaba sons of Maha Singh and Parveen came to their cattle shed. All the accused were carrying firearms. They opened fire at her son. He was shot dead on the spot. She was cross-examined by the learned defence counsel. She deposed that her statement made on 13.10.2012 was truthful, correct and without any pressure. She had not mentioned any name before the police on 26.09.2007 and 28.10.2007.

22. PW.22 Shyam Narain also investigated this case. Accused Narender alias Jhabu made disclosure statement Ex.P75/F. Accused Vikrant alias Kala also made disclosure statement Ex.P75/H. He also arrested accused Dinesh alias Gabchu. Dinesh alias Gabchu got recovered pistol from the concealed place. It was taken into possession. He also interrogated Anil alias Chhota Dhaba. His disclosure statement led to the recovery of a car.

23. PW.23 Ram Kumar deposed that accused Dinesh alias Gabchu made a disclosure statement Ex.P77, on the basis of which he got recovered a pistol.

24. PW.28 Hanuman Singh testified that accused Mainpal alias Dheela was arrested in his presence. His personal search was carried out. A loaded revolver of .38 bore was recovered from his pocket. The revolver

and a cartridge were converted into parcel.

25. PW.29 Sushil Kumar deposed that accused Rajesh was arrested in his presence. A revolver of .38 bore in loaded condition was recovered from his possession.

26. PW.30 Azad Singh arrested accused Rajesh alias Chhotu. During interrogation, accused Rajesh alias Chhotu made disclosure statement Ex.89.

27. PW.32 Sudhir Pal deposed that he was joined in the investigation by Umed Singh ASI. Accused Parveen was in police custody in FIR No. 296 of 2007. He was interrogated by Umed Singh in his presence. He suffered disclosure statement Ex.P91 to the effect that the arm used by him in the present case was already recovered by the police of Police Station Najabgarh.

28. PW.33 Vijay Singh Constable deposed that accused Mainpal was interrogated by Sube Singh ASI in his presence. He suffered disclosure statement Ex.P90.

29. PW.34 ASI Anand Parkash testified that secret information was received about arrival of accused Mainpal along with his associates from the side of Bajghera. Rajesh alias Chhotu was apprehended. He conducted his personal search. One loaded revolver was recovered from his left *dub*. He unloaded the revolver and found five bullets in it. He prepared sketch of the recovered revolver.

30. PW.35 Sharat Kohli deposed that Mainpal was arrested. From the left side of his pant, one revolver of 38 calibre was recovered, which was found to be loaded with five cartridges.

31. PW.36 SI Nirbhay Singh deposed that he interrogated accused Rajesh and Parveen.

32. PW.37 SI Devender Kumar interrogated accused Mainpal. He made disclosure statement about his involvement in number of cases.

33. PW.38 Rajesh Kumar deposed that accused Rajesh was interrogated by ASI Ajad Singh. He suffered disclosure statement Ex.P89.

34. PW.39 SI Surrender deposed that they got the secret information that Mainpal alias Dheela along with his associates was coming from Bajgera side. One person was apprehended by him. He disclosed his name as Parveen alias Jadugar. He was carrying one bag of brown colour in his shoulder. It was checked. One US Carbine and one double barrel gun were found in it. The recovered double barrel gun was checked. Two live cartridges were found in its chamber. Three live cartridges were found from the pant of accused Parveen alias Jadugar. The recovered US Carbine was checked. It was having five live cartridges. Out of these cartridges, two were having marks as L.C-53 and rest three were having marks as WCC-43 on their bottom. The Carbine was measured.

35. PW.40 Jai Bhagwan deposed that he was posted as Inspector in CIA Staff, Bahadurgarh, on 28.10.2007. He visited village Badli and recorded the statements of Jasbir Singh alias Bulla and Dayawanti. Accused Balwan and Naveen were arrested by him on 10.11.2007. They were interrogated by him. Accused Balwan made disclosure statement Ex.PW.40/A. He admitted his involvement in this case. Accused Naveen was interrogated by him. He made disclosure statement Ex.PW.40/B. He also admitted his involvement in this case. Accused Anil alias Chhota

Dhaba was arrested by him on 13.11.2007. He made disclosure statement Ex.P12. Accused Surender alias Neetu was arrested by him on 14.11.2007. He made disclosure statement Ex.PW.40/C. Accused Amit alias Bablu was also arrested by him on 14.11.2007 and he made disclosure statement Ex.PW.40/D. Accused Manjeet alias Mahal was arrested by him on 24.11.2007. He was interrogated by him on 25.11.2007. Accused Manjeet made disclosure statement Ex.PW.40/E.

36. PW.12 Dr. N.K. Mundra conducted post mortem examination on the body of Satyawar alias Sattu. He noticed following injuries on his body :-

- (1) An oval shape lacerated wound of 1 cm x 1 cm on left side of cheek, 4 cm anterior to left ear. Margins were blackened and inverted.
- (2) A lacerated wound of 2 cm x 2 cm on right cheek, five cm anterior to right ear, with everted margins.
- (3) A lacerated wound of 1 cm x 0.7 cm oval in the shape on lateral part of left side of chest. 15 cm below mid axilla and margins were inverted.
- (4) A lacerated wound of 1 cm x 1 cm oval in the shape on lateral part of left side of chest. Five cm below and one cm anterior to injury No.3. Margins were inverted.
- (5) A lacerated wound of 1 cm x 1 cm on the left side of chest, 10 cm below injury No.3, with inverted margins.
- (6) A lacerated wound of 3 cm x 3 cm on the left side of chest, 14 cm below the nipple and 8 cms lateral to midline. Margins were inverted.
- (7) A lacerated wound of 4 cm x 3 cm x muscle deep on the right elbow.
- (8) A lacerated wound of 8 cm x 5 cm x muscle deep on anterior lateral aspect of upper part of right fore-arm.

- (9) A lacerated wound of 10 cm x 6 cm x bone deep on lower part of right fore-arm.
- (10) A lacerated wound of 8 cm x 2 cm x muscle deep on right hand.
- (11) A lacerated wound of 4 cm x 2 cm x skin deep on right hip.

The cause of death, in his opinion, was shock and haemorrhage because of firearm injuries, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. The time elapsed between death and post mortem was within 6 to 24 hours. In his cross-examination, he admitted that he had not mentioned the time between injuries and death. But in his opinion, patient would have died within half an hour after receiving so many injuries.

37. PW.16 Dr. Rakesh Oberoi deposed that Satpal was referred to Shivam Hospital, Bahadurgarh for C.T. Scan to Ganesh Diagnostic and Imaging Center, Sector 8, Rohini (Delhi). He attended him. It was a case of bullet injury. His report is Ex.P39.

38. PW.24 Dr. Vijay Tanwar medico legally examined Yashpal. He noticed following injuries on his person :-

- (1) A bullet injury on the left side of the back near the spinal cord.
- (2) A bullet injury on the left side below axilla.

He also medico legally examined Jasbir Singh alias Bulla and noticed following injuries on his person :-

- (1) A firearm injury on the right thigh.
- (2) A firearm injury below left knee joint.
- (3) A lacerated wound on right shin region.
- (4) A firearm injury on right third toe.

He also medico legally examined Jaimeet and noticed following injury on his person :-

- (1) A gun shot injury on right knee joint.

He also medico legally examined Satpal and found following injuries on his person :-

- (1) A firearm injury on left upper arm.
- (2) A lacerated wound on left thigh, anteriorly.

In his cross-examination, he admitted that all these patients were brought to the hospital by the police. He proved MLRs Ex.P35/A, Ex.P29/A, Ex.P33/A and Ex.P34/A.

39. According to the FSL report Ex.P79, exhibit-1 (pants), exhibit-3 (jeans pants), exhibit-4a (kurta), exhibit-4b (pyjama), exhibit-8 (cotton wool swab), exhibit-9 (cotton wool swab) and exhibit-10 (bundles of clothes) were stained with blood. According to the FSL report Ex.P80, the following parcels were sent for FSL examination :-

Parcel No.	No. & seal impression	Description of parcel (s)
I	3 of Doctor (S)	Stated to contain blood stained clothes of injured Jasbir @ Bulla. (Sent to Serology division in original packing)
II	1 of Doctor (S)	Contained one pellet, one bullet jacket piece. Stated to have been taken out from the body of injured Jasbir. (Marked bullet jacket piece as BC/1)
III	3 of Doctor (S)	Stated to contain blood stained clothes of injured Jaimeet. (Sent to Serology division in original packing)

IV	4 of Doctor (S)	Stated to contain blood stained clothes of injured Sat Pal. (Sent to Serology division in original packing)
V	3 of Doctor (S)	Contained one 9 mm fired bullet. Stated to have been taken out from the body of injured Sat Pal. (Marked bullet as BC/2)
VI	3 of N.K.	Contained eight black coloured plastic body fired cartridge cases, thirteen 9 mm fired cartridge cases, twenty two .30" rifle fired cartridge cases, two .30" rifle live cartridge, one .32" live revolver cartridge, eleven .38" fired bullets, five 9 mm fired bullets, seven 9 mm deformed and mutilated bullets/ jackets, three .32" lead fired bullets, four lead pieces/core of bullet, one deformed and mutilated lead chip and seven plastic air cushion wads and forty five small size pellets. Stated to have been recovered from the place of occurrence house of injured Yash Pal. (Marked cartridge cases as C/1 to C/43 & bullets/jackets as BC/3 to BC/32)
VII	3 of N.K	Contained ten .30" rifle fired cartridge cases, three .38" fired cartridge cases, nine 9 mm fired cartridge cases, six .38" fired bullets, three .30" rifle fired bullets, three 9 mm fired bullets, six 9 mm deformed and mutilated bullets, ten fired bullets/jacket pieces stated to have been recovered from the place of

		occurrence. (Marked fired cartridge cases C/44 to C/65 and bullets as BC/33 to BC/60).
VIII	3 of N.K.	Stated to contain blood stained earth lifted from the house of injured Yash Pal (place of occurrence). (Sent to Serology division in original packing).
IX	3 of N.K.	Stated to contain blood stained earth lifted from near the body of deceased Satyawar. (Sent to Serology division in original packing).
X	9 of SKS	Stated to contain blood stained clothes of deceased Satyawar. (Sent to Serology division in original packing).
XI	5 of SKS	Contained two .38" fired bullets, one .30" rifle fired bullet, .32" lead fired bullet. Stated to have been taken out from the body of deceased Satyawar. (Marked bullets as BC/61 to BC/64).
XII	4 of J.B	Contained one country made pistol (chambered for 7.65 mm cartridges) bearing Sr. No. 7111 Automatic pistol, made in China alongwith magazine. Stated to have been recovered from accused Dinesh @ Gabju. (Pistol marked W/1).
XII	7 of U.S	Contained one .32" revolver bearing Sr. No. FG-39534 of field Gun Kanpur of 2005. Stated to have been recovered from accused Ravinder. (Revolver marked W/2).

The Laboratory examination and results were as under :-

Laboratory Examination

Products of combustion of smokeless powder were detected from the barrels of country made pistol marked W/1 (chambered for 7.65 mm cartridges) & .32” revolver marked W/2. Test firings were done in the laboratory from weapons marked W/1 & W/2. Their firings mechanism were found in working order.

The class as well as individual characteristic marks present on fired cartridge cases marked C/1 to C/65, fired bullets marked BC/1 to BC/64 and those on test fired cartridges fired from .38” revolver marked W/1 to W/6, .30” carbine W/7, 12 bore DBBL gun W/8 (of case FIR No. 296/07, FSL No. 07/6743 U/s 148/149/302/34 IPC & A. Act PS Sadar B. Garh (JJR) & W/1 (chambered for 7.65 mm cartridges) .32” revolver W/2 (of case FIR No. 276/07 U/s 302 IPC PS Sadar Bahadurgarh) were examined and compared under stereo and comparison microscope with their respective bore/calibre.

The pellets contained in parcel No. II, VI were washed, dried, weighed and examined for their shape, size etc.

The plastic air cushion wads contained in parcel No. VI were examined for their length & diameter.

The lead chip contained in parcel No. VI was washed, weighed and examined under stereo microscope.

Based on the examination carried out in the laboratory, the result of analysis is as under :

Result

1. The country made pistol marked W/1 (chambered for 7.65 mm cartridges) & .32” revolver marked W/2 were found to be firearm as defined in Arms Act 54 of 1959. Their firings mechanism were found in working order.
2. The country made pistol marked W/1 (chambered for 7.65 mm cartridges) had been fired through. However,

scientifically the time of its last firing cannot be given.

3. 12 bore fired cartridge cases marked as C/1, C/2, C/4, C/6 & C/3, C/5, C/7, C/8 have been fired from left and right barrels resp. of 12-bore DBBL gun marked W/8 of case FSL No. 07/F-6743, FIR No. 296/07 U/s 148/149/302/34 IPC & A. Act PS Sadar B. garh (JJR) and not from any other firearm even of same make and bore, because every firearm has got its own individual characteristic marks.

4. 9 mm fired cartridge cases marked C/9, C/12, C/15, C/18 have been fired from one and the same firearm.

5. 9 mm fired cartridge cases marked C/11, C/16, C/59, C/61 have been fired from one and the same firearm.

6. 9 mm fired cartridge cases marked C/10, C/13, C/14, C/21, C/62, C/63 have been fired from one and the same firearm.

7. 9 mm fired cartridge cases marked C/17, C/19, C/20, C/57, C/58, C/60, C/64, C/65 have been fired from one and the same firearm.

8. .38" fired cartridge cases marked C/54, C/55, C/56 & .38" fired bullets marked BC/3, BC/4, BC/8, BC/10, BC/11, BC/48, BC/49 have been fired from W/2 of case FSL No. 07/F-6743, FIR No. 296/07 U/s 148/149/302/34 IPC & A. Act PS Sadar B. garh (JJR) and not from any other firearm even of same make and bore/calibre, because every firearm has got its own individual characteristic marks.

9. 0.30" fired cartridge cases marked C/22 to C/53 & .30" fired bullets BC/33, BC/34, BC/35, BC/63 have been fired from W/7 of case FSL No. 07/F-6743, FIR No. 296/07 U/s 148/149/302/34 IPC & A. Act PS Sadar B. garh (JJR) and not from any other firearm even of same make and bore/calibre, because every firearm has got its own individual characteristic marks.

10. .38” fired bullets marked BC/5, BC/7, BC/12, BC/13, BC/45, BC/47, BC/61, BC/62 have been fired from .38” revolver marked W/1 of case FSL No. 07/F-6743, FIR No. 296/07 U/s 148/149/302/120-B IPC & A. Act PS Sadar B. garh (JJR) and not from any other firearm even of same make and bore/calibre, because every firearm has got its own individual characteristic marks.

11. .38” fired bullet marked BC/9, BC/50 have been fired from one and the same firearm but no exact opinion could be formed regarding their linkage in respect of weapons marked W/1 to W/6 of case FSL No. 07/F-6743, FIR No. 296/07 U/s 148/149/302/120-B IPC & A. Act PS Sadar B. garh (JJR).

12. .32” fired bullets marked BC/26, BC/27, BC/28, BC/64 have been fired from .32” revolver W/2 and not from any other firearm even of same make and bore, because every firearm has got its own individual characteristic marks.

13. .38” fired bullets marked BC/6, BC/46 have been fired from one and the same firearm but no exact from .38” revolvers W/1 to W/6 of case FSL No. 07/F-6743, FIR No. 296/07 U/s 148/149/302/34 IPC & A. Act PS Sadar B. garh (JJR).

14. 9 mm fired bullets marked BC/2, BC/14, BC/17, BC/18, BC/19 have been fired from one and the same rifled firearm.

15. 9 mm bullets marked BC/15, BC/16, BC/20 to BC/25, BC/36 to BC/44 were found to be fired bullets fired from rifled firearms.

16. Bullet jackets/core contained in marked BC/1, BC/21, BC/22, BC/23, BC/24, BC/29, BC/30, BC/31, BC/32, BC/36, BC/37, BC/38, BC/39, BC/40, BC/41, BC/42, BC/43, BC/51, BC/52, BC/53, BC/54, BC/55, BC/56, BC/57, BC/58, BC/59 & BC/60 were found to be parts of fired bullets and no opinion could be formed regarding linkage with weapon (s) as they were found badly deformed and mutilated.

17. Lead chip contained in parcel No. VI was found to be part of fired bullet.
18. Pellets contained in parcel No. II & VI were found to be of size (6) and normally loaded in shotgun cartridges including 12 bore cartridges.
19. The white coloured plastic air cushion wads contained in parcel No. VI were normally loaded in shotgun cartridges including 12-bore cartridges.
20. Report in original from Serology division is enclosed herewith.

According to the FSL report Ex.P80/1, the following parcels were sent for FSL examination :-

Parcel No.	No. & seal impression	Description of parcel (s)
V	5 of S.N	Contained one .38” revolver bearing No. 849, along with twelve .38” live cartridges stated to have been recovered from accused Vikrant @ Kala. (Revolver marked W/1).
VI	5 of S.N	Contained one .38” revolver No. A 34333 alongwith eight number of .38” live cartridges stated to have been recovered from accused Narender. (Revolver marked W/2).
VII	5 of J.B	Contained one revolver (chambered for .38” cartridges) alongwith one .38” live cartridge stated to have been recovered from accused Manjeet @ Mahal. (Revolver marked W/3).
VIII	7 of T.R	Contained one .38” revolver bearing No. 482596 along with four .38” live cartridges and one .38” fired cartridge case stated to have been recovered

		from accused Vikram in case FIR No. 37 dated 21.01.08 U/s 25/54/59 A. Act PS Nazafgarh Delhi. (Revolver marked W/4).
IX	6 of T.R	Contained one .38” revolver bearing No. (sic) along with one .38” fired cartridge case and four .38” live cartridges stated to have been recovered from accused Rajesh in case FIR No. 39 dated 21.01.08 U/s 25/54/59 A. Act PS Nazafgarh Delhi. (Revolver marked W/5).
X	5 of T.R	Contained one .38” revolver No. 2911 & 44799 along with one .38” fired cartridge case and four .38” live cartridges stated to have been recovered from accused Mainpal in case FIR No. 38 dated 21.01.08 U/s 25/54/59 A. Act PS Nazafgarh Delhi. (Revolver marked W/6).
XI	5 of T.R	Contained one .30” U.S. Carbine No. STD PRO 2002128 along with magazine, one .30” fired cartridge case and four .30” live cartridges stated to have been recovered from accused Parveen in case FIR No. 40 dated 21.01.08 U/s 25/54/59 A. Act PS Nazafgarh Delhi. (Carbine marked W/7).
XII	3 of T.R	Contained one 12-bore DBBL gun No. 93072-Y-2003 of BHARAT SMALL ARMS (P) LTD. along with two 12-bore fired cartridge cases and three

12-bore live cartridges stated to have been recovered from accused Parveen in case FIR No. 40 dated 21.01.08 U/s 25/54/59 A. Act PS Nazafgarh Delhi. (DBBL gun marked W/8).

The Laboratory examination and result were as under :-

Laboratory Examination

Products of combustion of smokeless powder were detected from the barrels of revolvers marked W/1 to W/6, .30 carbine marked W/7 and 12-bore DBBL gun marked W/8. Test firings were done in the laboratory from weapons marked W/1 to W/8. Their firing mechanism were found in working order.

The class as well as individual characteristic marks present on .38" fired bullets already marked BC/1 to BC/5 and those on test fired .38" bullets fired from revolvers marked W/1 to W/6 were examined and compared under stereo and comparison microscope.

Based on the examination carried out in the laboratory, the result of analysis is as under :

Result

1. Revolvers marked W/1 to W/6, .30" carbine marked W/7 and 12-bore DBBL gun marked W/8 are firearms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.
2. Revolvers marked W/1 to W/6, .30" carbine marked W/7 and 12-bore DBBL gun marked W/8 had been fired through.
3. .38" fired bullets marked BC/1, BC/2, BC/4, BC/5 have been fired from .38" revolver marked W/2 and not from any other firearm even of same make and calibre/bore, because every firearm has got its own individual characteristic marks.
4. .38" fired bullet marked BC/3 has been fired from .38" revolver marked W/1 and not from any other firearm even of

same make and calibre/bore, because every firearm has got its own individual characteristic marks.

40. PW.3 Yashpal has categorically deposed that on 23.09.2007, he had met with an accident. Satpal had come to see him. Four-five other persons entered the room. They started indiscriminate firing upon him. He was shifted to Shivam Hospital, Bahadurgarh. Though he was declared hostile, but the fact of the matter is that he had made statement Ex.P3 to the police and categorically admitted that he had sustained firearm injuries. PW.4 Satpal admitted that he had gone to see PW.3 Yashpal. Four-five persons entered the room and started firing upon Yashpal. Yashpal fell down. He was shifted to Shivam Hospital, Bahadurgarh. Though he was declared hostile, but he admitted that he sustained firearm injuries. PW.18 Jaimeet also deposed that he had gone to see Yashpal. Three unknown persons came to the house of Yashpal. They fired at him. Satpal was also present there. He also sustained gun shot injuries. He also received a gun shot injury. He was declared hostile and was cross-examined by the learned Public Prosecutor. The fact of the matter is that he admitted that he, Satpal and Yashpal received injuries in the occurrence. PW.19 Jasbir alias Bulla also deposed that he had gone to see Yashpal on 26.09.2007. Jaimeet and Satpal were already sitting there with Yashpal. Accused Mainpal alias Dheela, Anil alias Dhabha, Parveen alias Jadugar, Balwan, Naveen, Sunil alias Dhaba came at the spot with arms. They fired upon him. He sustained gun injuries on his legs and hands. He hid himself. He came down. Public told him that these persons had also murdered Sattu Peahalwan. He was shifted to Shivam Hospital, Bahadurgarh. His statement was recorded vide

Ex.P30. The police also recorded his statement on 28.10.2007.

41. The incident was also witnessed by PW.20 Dayawanti. She named the accused in her statement recorded by the police. She also named them in her supplementary statement. She identified the accused in the court, when her statement was recorded on 13.06.2009. She had given entire sequence in which the accused came on the spot and shot dead her son Satyawar alias Sattu in her very presence. However, she was re-examined on 13.10.2002, on the basis of an order passed by this Court in Criminal Misc. No. M-5450-M of 2011. When she was re-examined, she did not support the case of the prosecution in entirety. According to her, four-five unknown persons entered the cattle shed. They shot dead her son and ran away. The fact of the matter is that in cross-examination by the learned Public Prosecutor, when she was re-examined, she admitted that on 13.06.2009, she appeared before the Sessions Judge, Jhajjar and deposed on oath. She voluntarily stated that she was threatened by the police to make that statement. However, she admitted that she had not disclosed to the trial court that she was pressurised by the police. She admitted that on 13.06.2009, she had named the accused who had shot at her son in the cattle shed. She was re-examined after five years of the occurrence. In the meantime, the accused and their families exercised influence upon her to dilute her statement. In case she had been threatened by the police at the time of her initial examination in the court on 13.06.2009, she should have mentioned this fact to the trial court. In her initial statement, she had named all the accused as assailants.

42. It was also brought to the notice of the court that one of the

witnesses, namely PW.19 Jasbir alias Bulla, who was the complainant in the case, supported the prosecution case, was murdered by the accused persons during the trial, and FIR No. 218 dated 21.05.2010 was registered at Police Station Sadar Bahadurgarh. The court can take judicial notice of the fact that PW.20 Dayawanti was terrified after the murder of one of the eye witnesses, who had supported the case of the prosecution. He was murdered in the month of May, 2010. Dayawanti was re-examined on 13.10.2012. She had admitted her presence in the cattle shed when the accused appeared on the spot.

43. One of the appellants, namely Mainpal alias Dulla had filed Criminal Misc. No. M-5449 of 2011. According to the averments made in the petition, during the pendency of the trial, panchayat of village Badli Khap Chaubisa was convened, in which the matter was amicably settled between the parties by way of panchayati compromise dated 12.12.2010. When the case was at initial stage of prosecution evidence, the appellants moved application for re-examining/re-summoning the witness under Section 311 Cr.P.C. It was dismissed by the trial court on 31.01.2011. Thereafter, Crl. Misc. No. M-5449 of 2011 was filed against the order dated 31.01.2011. Paras 6, 7 and 10 of the order dated 31.01.2011 rendered by the learned Single Judge of this Court in Crl. Misc. No. M-5449 of 2011 read as under :-

“6. As is evident from the record, that when the cases were at initial stage of prosecution evidence, the petitioners-accused moved an application (Annexure P9) under Section 311 Cr.PC, which was dismissed by the trial court. As

is clear from the impugned order that the main ground, which appears to have been weighed with the trial Court to dismiss the application, was that adequate opportunity to cross-examine was provided and defence counsel has cross-examined the witness, now sought to be re-summoned. Here, to me, the trial court committed a legal error in this respect. Annexure P8 is the affidavit of the witness sought to be re-summoned, wherein it was stated that he had wrongly named the accused under misapprehension and suspicion. Now he came to know about the real facts and wants to tell the truth in the Court without any kind of pressure. Section 311 Cr.P.C postulates that “any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

7. Keeping the categorical contents contained in the affidavit (Annexure P8) of the witness into focus, that he had wrongly named the accused under misapprehension and suspicion, now he came to know about the real facts and wants to tell the truth in the Court without any kind of pressure, to my mind, reexamination of the witness is essential to decide the real controversy between the parties. Not only that, the State of

Haryana, in its reply, has inter-alia reiterated that keeping in view the public peace and tranquility in the village, the re-examination of the witness is required to effectively decide the matter between the parties. Meaning thereby, even the State (prosecution) has conceded the prayer of the petitioners-accused in this respect. Moreover, this matter is not res-integra and is now well settled.

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10. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main cases, the instant petitions are accepted. Consequently, the impugned order (Annexure P10) is set aside. The trial court is directed to re-summon the witness for re-examination.”

The basis of passing the order dated 12.03.2012 was the compromise arrived at between the parties in panchayat of village Badli Khap Chaubisa. It is in these circumstances, PW.20 Dayawanti has wriggled out of her previous statement recorded on 13.06.2009. The criminal matters cannot be compromised in panchayats. The re-examination of witness was sought by the appellants only to dilute the statement made by PW.20 Dayawanti, mother of the deceased, being an eye witness.

44. Though we are not sitting in appeal over the order passed by the learned Single Judge in Criminal Misc. No. M-5449/M-5450 of 2011, but the law under Section 311 Cr.P.C. has been explained and enumerated in detail by their Lordships of the Hon'ble Supreme Court in **Rajaram**

Prasad Yadav Vs. State of Bihar and another, (2013) 14 Supreme Court

Cases 461, as under :-

“14. A conspicuous reading of [Section 311](#) Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a pre-fix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. [Section 138](#) of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of [Section 311](#) Cr.P.C. and [Section 138](#) Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under [Section 138](#), will have to necessarily be in consonance with the prescription contained in [Section 311](#) Cr.P.C. It is, therefore, imperative that the invocation of [Section 311](#) Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the

said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under [the Code](#) for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined is concerned, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

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17. From a conspectus consideration of the above decisions, while dealing with an application under [Section 311](#) Cr.P.C. read along with [Section 138](#) of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

17.1 Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under [Section 311](#) is noted by the Court for a just decision of a case?

17.2 The exercise of the widest discretionary power under [Section 311](#) Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3 If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

17.4 The exercise of power under [Section 311](#) Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.”

17.5 The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6 The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7 The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8 The object of [Section 311](#) Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

17.9 The Court arrives at the conclusion that

additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10 Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

17.11 The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12 The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13 The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14 The power under [Section 311 Cr.P.C.](#) must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

44. PW.12 Dr. N.K. Mundra conducted post mortem examination on the body of Satyawar alias Satte. He had noticed as many as eleven injuries on the body of the deceased. He proved the post mortem report Ex.P20. The cause of death, according to him, was was shock and haemorrhage because of firearm injuries, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. The time between death and post mortem was within 6 to 24 hours. PW.16 Dr. Rakesh Oberoi deposed that Satpal was referred to Shivam Hospital, Bahadurgarh for C.T. Scan to Ganesh Diagnostic and Imaging Center, Sector 8, Rohini (Delhi). He attended him. It was a case of bullet injury. His report is Ex.P39. PW.24 Dr. Vijay Tanwar medico legally examined Yashpal, Jasbir Singh alias Bulla, Jaimeet and Satpal. He proved their MLRs Ex.P35/A, Ex.P29/A, Ex.P33/A and Ex.P34/A, respectively.

45. PW.2 Yashpal, PW.4 Satpal, PW.18 Jaimeet and PW.19 Jasbir alias Bulla admitted that they had received bullet injuries. PW.18 Jaimeet also admitted in his cross-examination by the learned Public Prosecutor that he remained admitted in Shivam Hospital, Bahadurgarh, for treatment of his

injuries. He also admitted that he along with Satpal and Yashpal sustained injuries in the occurrence. PW.19 Jasbir alias Bulla deposed that Yashpal, Jaimeet and Satpal also sustained injuries in the chobara of the house of Yashpal.

46. PW.15 Naresh Kumar ASI moved an application Ex.P29 seeking opinion of the doctor in respect of condition of Jasbir alias Gulle. The doctor opined that Jasbir alias Gulle was fit to make statement. Thereafter, his statement was recorded vide Ex.P30. He also submitted applications Ex.P33, Ex.P34 and Ex.P35 seeking opinion of the doctor regarding condition of Satpal, Yashpal and Jaimeet to make statements.

47. The accused were arrested. They also made disclosure statements, on the basis of which recoveries were effected. The case property was sent for FSL examination. According to the FSL report Ex.P79, blood was found on the exhibits. It is also duly established as per the FSL reports Ex.P80 and Ex.P80/A that the weapons recovered from the accused were used in the commission of offence.

48. The motive attributed to the accused was that the complainant party was involved in the murder of one Jaipal alias Dhanda, Sarpanch of village Badli and the accused had taken the revenge of his murder.

49. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment of the trial court. There is no merit in these appeals and same are dismissed. The impugned judgment dated 22.04.2013 and order dated 29.04.2013 are upheld. Appellants Manjit alias Mahal, Narender alias Jhabhu and Rajesh alias Chhote are on bail. Their bail bonds

and surety bonds are cancelled. They are directed to surrender before the concerned Chief Judicial Magistrate forthwith to undergo remaining part of their sentences. Remaining appellants are already in custody.

(**RAJIV SHARMA**)
JUDGE

November 13, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes