
(2014) 09 DEL CK 0284

In the Delhi High Court

Case No : Crl. A. Nos. 901, 922, 954, 999, 1141, 1199, 1250 and 1562/2013

Dinesh Kumar

APPELLANT

Vs

State Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Arms Act, 1959 — Section 25, 27

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 164

Penal Code, 1860 (IPC) — Section 120B, 302, 307, 34

Citation : (2015) 2 AD 429 : (2014) 145 DRJ 465

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Sidharth Luthra, Hariharan, Sr. Advocates instructed by, Arjun Dewan, B.S. Mathur, Javed Alvi, Rajat Mathur, Kunal Aggarwal, Shristhi Bhatia, Mohd. Altaf, Bhupinder Mehtani, Surender Singh Dhaka, Anurag Jain, Nitya Ramakrishnan, Sarim Naved, Rohit, Soumya Jha, Ranjeet Panda, S.C. Bhuttan, Himanshu Bhuttan, Parvesh Bhuttan, D.K. Sharma and Dinesh Kr. Sharma, Advocate for the Appellant; Aashaa Tiwari, APP, Ishwar Singh, Insp. and Manoj Kumar, SI, Advocate for the Respondent

Judgement

Mukta Gupta, J.—Ring Road in Delhi is a two way carriage busy at all hours of the day. At the said Ring Road a wanton action of the occupants of two cars a Santro and an Accent intercepting an Indica car and the firing that ensued caused commotion, caught the attention of ASI Laik Ram posted at the PCR van Power-84 positioned near Shamshan Ghat, Ring Road, Punjabi Bagh. He sprung into action and noticed that the two cars have proceeded towards Raja Garden after firing which information he flashed. The injured were immediately removed to the ESI hospital at a very short distance from the place of occurrence. Bhupender and Raj Rani besides Sunil survived to narrate the incident resulting in the registration of FIR however, Brahm Singh later succumbed to his injuries.

2. By the common impugned judgment the appellants have been convicted for offences punishable under Sections 120B/307/302 IPC and sentenced to undergo

imprisonment for life for offence punishable under Sections 120B/302 IPC with a fine of Rs. 8,000/- each and Rigorous Imprisonment for ten years for offences punishable under Sections 120B/307 IPC with a fine of Rs. 5,000/- each. The appellants Surender @ Kaira, Anil, Naresh Kapra and Deepak have also been convicted for offences punishable u/s 27 Arms Act and directed to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs. 2,000/- each. Sonu, Sanjay resident of Mundka and Vijay @ Lamba are proclaimed offenders and thus not before this Court.

3. Some of the grounds taken by the learned counsels for the appellants are common and some distinct relating to them individually. Common grounds to assail the impugned judgment are that Bhupender Kumar PW-1 and Raj Rani PW-2 have a clear motive to falsely implicate the appellants. There are material improvements in the testimony of the two witnesses and on the strength of these improvements they have implicated the brother and paternal cousins of Raj Rani. Though the appellants have been convicted for conspiracy of murder and conspiracy of attempt to commit murder however, there is neither any evidence nor any finding by the learned Trial Court regarding hatching of the conspiracy. In the FIR no roles are assigned to any of the accused however, subsequently specific roles are attributed which are contrary to the medical evidence. Further in order to implicate more and more people, the number of vehicles which reached the spot have been added. The sequence of events as per Bhupender and Raj Rani on October 8th and 9th, 2010 can be divided into five and on each event the role and number of accused have been added up thereby implicating more people. As per the ballistic expert report three cartridge cases of 7.65 calibre found from the spot, were not fired from the pistol of 7.65 calibre recovered at the instance of Sonu @ Satyawan however the three empty cartridge of 9 mm calibre recovered from the spot were fired from the 9 mm pistol recovered from Bhupender. Thus Bhupender, Sunil and Brahm Singh were the aggressors. There is no material to show that Raj Rani was not in a position to make the statement on October 09, 2006. No reliance can be placed on her statements recorded belatedly on October 15, 2006 u/s 161 Cr.P.C. and thereafter u/s 164 Cr.P.C.

4. Learned counsels for the appellants except Anil urged that admittedly Bhupender knew the appellants by name and being conscious he could have disclosed their names in the first instance to the PCR official Laik Ram. Bhupender in his cross-examination admitted that Shri Pradeep Rana, Advocate a criminal lawyer was his maternal uncle and he had reached when his statement Ex. PW-1/A was being recorded on the basis of which FIR was registered. Thus on legal advice names of other assailants were added which were further improved by supplementary statement Ex. PW-1/DX recorded on October 10, 2006.

5. In addition to the above averments learned counsel for Sandeep submitted that there is no evidence on record to show that appellant Sandeep is also known

by the name of Samman. The arrest of Sandeep at Bahadurgarh is doubtful. No police custody remand was sought.

6. As regards Surrender @ Kaira it is submitted that the only role assigned to him was of sitting in the Accent car and without any conspiracy or overt act having been proved, Surrender cannot be fastened with the criminal liability of offence of murder or attempt to murder.

7. Learned counsel for Dinesh @ Desi submits that no role has been assigned to Dinesh @ Desi either on October 8 and 9, 2006 however, in view of enmity between the families his name has been subsequently added in the supplementary statement Ex. PW-1/DA.

8. Admittedly, Raj Rani did not know Naveen prior to the incident and thus TIP of Naveen ought to have been got conducted. Naveen is not named in the FIR. Thus, the appellant Naveen has been falsely implicated.

9. Learned counsel for Deepak submits that the information given by ASI Laik Ram from the PCR gives a complete account of the incident and has thus to be treated as FIR, so the statement of Bhupender on the basis of which FIR was registered is hit by Section 162 Cr.P.C. and cannot be considered. Bhupender is not a person with clean antecedents and has already been convicted for offence punishable u/s 307 IPC for an incident dated September 30, 2009. The version of Bhupender in the statement Ex. PW-1/DX that Deepak opened the window and put pistol in the mouth resulting in falling of the pistol in the car is highly improbable. No finger prints were taken from the pistol seized from Bhupender.

10. Learned counsel for Dinesh @ Kalu states that he has been attributed the role pursuant to introduction of the Honda car however, neither in the PCR call nor FIR there is any mention of Honda Car. Dinesh @ Kalu has nothing to do with the incident. Further there is no evidence adduced by the prosecution to prove that the Honda City Car allegedly involved in the incident belonged to Dinesh @ Kalu.

11. Learned counsel for Dinesh @ Desi submits that Dinesh @ Desi has not been named in PCR call or FIR. As per the PCR call the assailants were residents of Daryapur but Dinesh @ Desi is a resident of Prahladpur. To implicate Dinesh @ Desi even a motorcycle has been introduced in the deposition in Court.

12. Learned counsel for Anil while summing up the case of the Defence contends that Anil has been named by Bhupender as he had rivalry of business and by Raj Rani because admittedly there was a dispute regarding sale of plot between the family of Raj Rani and Anil. Raj Rani had no mobile phone as per her testimony and thus there is no material to show how Raj Rani contacted Bhupender so that they could meet at a fixed place. Archana, the friend of Raj Rani to whose house she stated to have gone has neither been cited as a witness nor her phone number proved. The ocular testimony does not tally with the medical evidence. Though there is no averment in the FIR with regard to Anil giving exhortation or

sitting in the Indica car however, the same has also been introduced in the supplementary statement. From the PCR records it is apparent that the incident took place at the Ring Road in a span of two-three minutes and in that time it was not possible for Anil to have sat down in the car along with Raj Rani and Bhupender on the rear seat.

13. Learned APP for the State on the other hand contends that the prosecution has proved its case beyond reasonable doubt on the strength of testimony of Bhupender and Raj Rani who are injured eye-witnesses and whose presence at the spot cannot be disputed. Both Bhupender and Raj Rani had narrowly escaped death. Brahm Singh died. Even Sunil Nandal PW-7 the fourth occupant of Indica car suffered injuries. There are no material improvements in the testimony of these witnesses rather immediately after the incident having received number of bullet injuries and a narrow escape Bhupender could not be expected to give a detailed statement. Thus immediately on the next day detailed statement was given and further facts were revealed. The prosecution has proved on record that the Accent Car involved in the incident belonged to appellant Anil. The arrest memo of Samman @ Sandeep was signed by his brother and there was no protest to his name or place of residence. The appellants were against the marriage of Bhupender and Raj Rani being the brother, cousins and their friends and for this reason they attacked Bhupender, Raj Rani and Bhupinder's friends Brahm Singh and Sunil resulting in the death of Brahm Singh. Thus the appeals be dismissed.

14. Heard learned counsel for the parties at length and perused the record.

15. SI Laik Ram PW-26 was on duty in PCR van Power 85 on October 09, 2006 and positioned near Shamshan Ghat, Ring Road, Punjabi Bagh. He sent three wireless messages which speak for themselves as per the PCR Log Book entry Ex. PW-26/B. The PCR information sent at 1.25 PM records "self call by ASI Laik Ram at Shamshan Bhumi, Punjabi Bagh one Accent Car _____ and Santro White colour have proceeded towards Raja Garden after committing a fire incident." The second PCR log entry from ASI Laik Ram at 1.28 PM informs that "there are three injured of whom two are being taken in their PCR vehicle and a second vehicle or ambulance be sent on the spot." At 1.33 PM as per the Log Book, the PCR flashed a message that "three injured have reached ISI Hospital of which two have been brought by them and third has come in a Maruti van. The injured has handed over a pistol which was used in the incident. There is a lady amongst the injured and the number of Santro White Colour has been noted as 0105. The assailants involved were Sonu and Anil resident of Daryapur". The words noted in vernacular are "Vardat wale Sonu va Anil shamil he jo Darya Pur ke rehne wale he".

16. Since some words are missing in the photocopy of the wireless log book retained on record relating to information sent at 1.25 PM (because while photocopying the writing at the place the pages were bound could not get photocopied) we would like to record the corresponding DD No. 16A received at

PS Punjabi Bagh at 1.40 PM which is exhibited as Ex. PW-18/D which notes an information by ASI Laik Ram from I/C Power-85 that "at a short distance from their base at Shamshan Bhumi an Accent Black Car No. DL 4CS-7509 and Santro White No. 0105 have fled away towards Raja Garden after committing a firing incident."

17. DD No. 16A has been exhibited by PW-18 W/Head Constable Pushpa who has not been cross-examined. Further nothing material could be elicited from the cross-examination of SI Laik Ram who appeared as PW-26 to discredit his flashing of the make and number of the cars and the firing incident. Raj Rani and Bhupender were admitted at ESI Hospital at 1.30 PM and Bhram Singh at 1.35 PM. The history given in three MLCs notices gunshot wounds while travelling in Indica Car, intercepted by two vehicles at Punjabi Bagh going towards Raja Garden.

18. Bhupender Kumar who was conscious was declared fit for statement at 2.00 PM and his statement was recorded by ASI Mahender Singh PW-12 on the basis of which FIR No. 887/2006 under Sections 307/34 IPC and 25/27 Arms Act was registered at PS Punjabi Bagh. Bhupender Singh made the following statement loosely translated vide Exhibit PW-1/A on the basis of which FIR was registered:

I reside at the aforesaid address along with my family and I am a student of 12th class in the open school and I also work in Cables and Finance. I had been in love with Raj, D/o Prem Singh, R/o Village Shampura, Delhi. We were to get married and his family members were also ready for the same. But her brother Naresh, her cousins (Bua's Sons) Sonu, Anil, Deepak and Surender were not agreeing. All five of them came to our house at Village Dariyapur yesterday and threatened me and my family, "refuse the marriage proposal of Raj otherwise we will destroy you and your family". I agreed with them and said that I would decline Raj. All of them left after threatening us. Today in the morning Raj's mother telephoned me, "take with you Raj otherwise her brothers Sonu, Anil, Deepak, Surender and Naresh have planned to kill her". Hearing this, I along with my friends Brahm and Sunil @ Sonu started in Brahm's Indica car bearing registration No. DL-4SH1942 from my village Dariyapur and reached Raj's village Rampura. I saw that in the street, Raj's brother Naresh and Surinder were beating her in front of her house. When Raj saw me she ran to me. Naresh and Surender also followed her. I stopped them and got Raj hopped in my vehicle at her request. Raj was very perturbed and was requesting me to save her from her brothers. I immediately took Raj in my aforesaid vehicle and left her village Rampura. Brahm was driving our vehicle. Naresh, Surinder and their other brothers Deepak, Sonu and Anil and friends Sanjay, the Mundkae Wala and Summan of Gola village whom I knew since earlier started chasing us in their Accent and Santro cars and intercepted our car on the Ring Road at Shamshan Ghat, Punjabi Bagh by way of stopping one of their cars in front of us and the other one at our back. Sonu, Anil, Deepak, Surender and Naresh were carrying arms with them and they started firing bullets at us which hit me, Raj and

Brahm. I snatched Deepak's pistol which is lying there itself on the spot. Sonu, Deepak, Anil, Surender, Naresh, Sanjay, the Mundkae wala and Summan of village Golae with common intention fired at me and my friends leading a murderous attack on us. The incident occurred at about 1 O'clock. Appropriate legal action may be initiated. I heard the statement and found the same to be correct.

19. The MLC Ex. PW-13/A of Bhupender was prepared by Dr. Parmod Gandhi PW-13 who found Bhupender conscious at that time and responding to all his commands. He noticed the following injuries:

- "1. Penetrating wound on the left side of the chest.
2. Penetrating wound at the base of left thumb
3. Penetrating wound at the left side of the neck."

20. The MLC of Raj Rani Ex. PW-20/A was prepared by Dr. S.C. Jain PW-20 who found a gunshot wound over the scalp near right ear and over left forehead with haematoma piercing and exit wound. In the cross-examination Dr. S.C. Jain clarified that since there was urgency of treatment he did not mention in the MLC that there was any blackening or tattooing around the gunshot wound.

21. The MLC of Brahm Singh Ex. PW-14/A was prepared by Dr. Girish Arora PW-14 who noted that on local examination he found a bullet injury on epigastrium and a bullet injury on right hypochondrium region rounded in shape approximately 1 cm in diameter. Thereafter Brahm Singh was referred to Surgical Team and a bullet recovered from the body of Brahm Singh was handed over to ASI Mahender Singh. Bhram Singh was declared unfit for statement.

22. Brahm Singh was later admitted in St. Stephens Hospital on the mid night of 13th-14th October, 2006 with the history of gunshot injury four days back where he was again operated. Some of his internal organs had damaged due to injuries and he died on October 17, 2006. Dr. Rakesh PW-15 deposed that the appellant was on ventilator during operation and after operation and he was not able to speak.

23. The post-mortem of Brahm Singh was conducted by Dr. Manoj PW-9 who noticed the following external injuries on the body of Brahm Singh:

- "1. Stitched wound of size 5 cm present over right elbow and 1.5 cm over neck.
2. Stitched operated wound present over front of abdomen 18 cm from epigastrium below umbilicus.
3. Two stitches lacerated wound present on left anterolateral side of lower chest and abdomen of size 2 cm each one in anterior axillary line at about 10th rib and one on axillary line 3 cm below and 6 cm lateral to first rib.
4. One stitched wound of size 2 cm present on right side of posterior axillary 4 cm below axilla."

24. On internal examination Dr. Manoj found chest wall hematoma present on the left side rib at 6th intercostals space and recovered a metallic body bullet noticed in the X-ray plates of chest with injury on lower part of the left lobe. He also noticed laceration of liver right lobe. He also noticed radio opaque foreign object in the X-ray plate of lateral view of abdomen. He exhibited the post-mortem report vide Ex. PW-9/A and opined the cause of death to be due to shock as a result of multiple injuries which were ante mortem in nature. The metallic bullet, x-ray and blood sample of the deceased duly sealed were handed over to the Investigating Officer with sample seal and were seized vide memo Ex. PW-9/B.

25. Before discussing the evidence of four main witnesses around whom the entire prosecution case rests i.e. Bhupender PW-1, Raj Rani PW-2, Sunil Nandal PW-7 and SI Laik Ram PW-26 it would be relevant to note the recovery of bullets seized from the spot and the report of the Ballistic Expert. As per the seizure memo Ex. PW-12/C three live cartridges of 9 mm, three empty cartridge cases of 9 mm and one damaged bullet piece were recovered from outside the Indica car at the place of occurrence. Further three empty cartridge cases of 7.65 bore and one damaged bullet piece were recovered from inside the Indica Car. The Indica car with a hole on the left front side below the window was also seized vide Ex. PW-27/A. Further the glass of the window of the driver's side was also found broken. The back seat of Indica car was blood stained. An automatic pistol 9 mm was handed over by Bhupinder to ASI Laik Ram with two live cartridges and he was informed that the same was of the assailants.

26. It is the case of the prosecution that when Sonu was arrested he was earlier involved in a case under Arms Act and there was a recovery of 7.65 mm calibre pistol from him. Both the pistols i.e. the one handed over by Bhupender and the other recovered from Sonu and the live cartridges cases, bullets recovered from the spot and those recovered from the body of Brahm Singh and Bhupender were sent to Ballistic Expert. As per the report of PW-32 Dr. N.P. Waghmare the regular pistol 7.65 calibre had firearm discharge residue and was in normal working order. However, the three cartridge cases of 7.65 bore recovered from the spot from inside the Indica car were not fired from this pistol as the firing pin marks and breech face marks on these cartridge cases did not tally with the test fired cartridge cases. Dr. Waghmare further opined that the three empty cartridge cases of 9 mm calibre recovered from the spot outside the Indica car were fired from the 9 mm pistol handed over to ASI Laik Ram as the firing pin marks and breech face marks on the three empty cartridge cases EC1 to EC3 recovered from the spot, tallied with the test fired cartridge cases. Though, no opinion with regard to the bullets could be given because of insufficient data however it was opined that they were of different calibre bullets. This evidence is sufficient to indicate that a number of firearms were used and the 9 mm pistol handed over by Bhupender which was stated to be used by Deepak was also used for firing.

27. Bhupender PW-1 deposed in the Court and we note in his words:

"PW-1 Bhupender Kumar on 28.07.2009

I was studying in 12th standard from Open School in the year 2006. In the year 2006, I was doing the work of Financing and Cable Networking. In May 2005, there was marriage of Sonu @ Satyawan, my co-villager. In that marriage, I met Raj, who was cousin of Sonu @ Satyawan (daughter of maternal uncle of Sonu @ Satyawan). We exchanged telephone numbers and started talking to each other. We also met each other. Later on, we decided to marry with each other. Raj talked at her home in this regard. Her family members agreed to marry her with me. But her three aunts (Buas) and their sons namely Anil, Sonu @ Satyawan, Deepak, Dinesh and Surender and her real brother Naresh objected to this marriage.

On 08.10.2006, Anil, Sonu @ Satyawan, Deepak, Dinesh and Surender came to my house at about noon time and threatened me. They said "Raj shadi ki jid kar rahi hai, aur ham nahi chahate ki tumare sath Daryapur me shadi ho, isliye man ja, hamari, tumhari parivar ki dusmani ho jayegi, aur hum Raj ko, aur tumhare parivar ko khatam kar denge". They went away after extending this threat. On the same day, in the evening, Dinesh @ Kalu and Anil came to my residence and threatened me. Dinesh @ Kalu asked me to accompany them and refused to marry. Dinesh @ Kalu is resident of my village Daryapur. Dinesh @ Kalu s/o Angrez Singh and Anil son of Rajender Singh, took me in their Honda City Car no. 0045 to the village of Raj i.e. Madan Park, Rampura. The car was stopped in front of house of Raj. Thereafter, Anil got down and went inside the house of Raj. Sonu @ Satyawan son of Rajender Singh, came out of the house of Raj and sat in that Honda City Car. He pointed a pistol on me and threatened me "Agar tune shadi ke liye mana nahi kiya, to hum Raj ko mar denge." Thereafter, Sonu @ Satyawan and Dinesh @ Kalu took me inside the house of Raj. All the aunts (Buas) were present there. Deepak, Naresh, Dinesh r/o Pehlad Pur and son of Aunt (Bua) of Raj, Summon @ Sandeep son of Aunt (Bua) of Sonu @ Satyawan, Surender and their two three friends were already there. Parents of Raj were also there. In presence of all of them, I refused to marry Raj. From there, Dinesh @ Kalu brought me to Daryapur. In the evening, I received a call from Raj. She told me, "Apke jate hi, in sabhi ne (the persons named above i.e. Deepak, Naresh, Dinesh, Sandeep, Sonu, Surender and her aunts) meri or mere Mummy, Papa ki pitai ki, kyonki me shadi ki jid kar rahi thi. Mene unse kaha ki tumne jabardasti unse (Bhupender) shadi ke liye mana karwaya hai." Thereafter, I made a call to Anil. I asked him why they have done like that even after, I refused to marry Raj. Anil told me that even after my refusal, she was insisting to marry with me and they do not want that this marriage shall take place. We would not allow this marriage to happen under any circumstance and they can go to any extent to stop this marriage.

On 09.10.2006, at about 7.00 am, Anil and Surender @ Kaira came to my house. They threatened me "Hamare parivar ke mamle me mat aa, hamara Mama ke

sath plot pe kuch jhagra chal raha hai, aur tum is mamle se door rah." They left thereafter.

On 09.10.2006, at about 9.30 am, mother of Raj called me on telephone. She told me "Raj ko bacha lo, iski bua aur uske ladko ne Raj ko marne ka plan bana rakha hai. Unke sath Dinesh @ Kalu, aur teen ladke aur hai" Unhone bataya ki isi dar se, Raj ghar se bhag gai hai" I told her if Raj contacted me, I will bring her to her home. At about 11.00 am, Raj telephoned me. Raj said to me "Uski Bua, unke ladke aur unke sathiyo ne, use marne ka plan banaya tha, me isi dar se, pichhle darwaje se, apni saheli ke ghar aa gai thi. Agar aap mujse payar karte ho, aur shadi karna chahate ho, to akar muje yahan se le jao. Hum iski complaint thane me karenge" I told her that I am reaching there.

At about 11.45 am, I started from my residence. My friend Brahm son of Partap Singh was with me. We left in Indica car no. DL-4SH-1942. One Sunil r/o Rohtak, who had come to meet me, was also with me in that Indica Car. We reached Madan Park, in front of Gurudwara at about 1.00 pm. I told Raj that I have reached there on telephone. As soon as, Raj reached there, her brother Naresh and Surrender came from behind and started beating Raj. I got down from the Car. On seeing me, Raj ran towards me. Raj asked me to save her from them. They would kill her. Raj sat on the rear seat of the Indica Car. I told Naresh that I am bringing her at her home and asked him to reach home. Brahm started driving the car. Sunil was sitting by his side. Raj was sitting behind the seat of Brahm and I was sitting behind the seat of Sunil. Brahm took the turn towards Ring Road. I and Raj were talking with each other. Brahm did not take the U-turn for going to the Police Station. I asked Brahm that he had already left the turn, on which Brahm said that he will take U-turn from the next turn. As soon as, we reached near Cremation Ground, Ring Road, one black colour Accent being driven by Anil and Surrender was sitting on the side seat, blocked our way. One Santro car came from behind. From that car, Sonu @ Satyawar, Sanjay r/o Mundka, friend of Satyawar, Deepak, Dinesh, Summon @ Sandeep got down. They all were armed with weapon. Anil came running and forcibly sat by the side of Raj, in Indica Car. In the mean while, Honda City car of Dinesh @ Kalu son of Angrez Singh stopped by our side. Dinesh @ kalu son of Angrez Singh was on the driver seat. Vijay @ Lamba son of Rajbir Singh and Naveen got down from that Honda City car. Both were having pistol in their hands. They all surrounded from all sides. On our left hand side, Naresh came on pulsar motorcycle. Dinesh @ Kalu son of Angrez Singh exhorted "Bat mat karo, jaldi se inhe khatam karo aur niklo" immediately thereafter, Anil fired on my neck on the right side. Sonu @ Satyawar fired on my front side. Vijay, Sanjay, Naveen also fired on me. They all were armed with pistols. Surrender was standing outside Indica where Anil was sitting. Summon @ Sandeep was standing behind that Indica Car. Dinesh and Deepak were standing by my side. They all started firing on us. The bullets hit me, my wife Raj and my friend Brahm. After firing on us, they started leaving, on which Anil said "kacha kam nahi rahna chahiye" On this, Deepak came. He opened the window of Indica car and inserted the barrel of his pistol in my

mouth. I pushed his hand, on which his pistol fell down in Indica Car. Thereafter, they all left thinking that we all are dead. They all with common intention, attacked on us with intention to kill. I was taken to ESI Hospital. Brahm Singh, my friend had died in this incident. My statement was recorded in ESI Hospital. Same is Ex. PW-1/A having my signatures at point A. While giving statement, my condition started deteriorated, on which doctor said that remaining statement be recorded later on. Police obtained my signatures on the statement, which I was able to give at that time.

On 10.10.2006, my statement was again recorded in Agarsen Hospital. I gave the entire statement to the police at that time. At that time, my signatures were not taken by the police and that was also not read over to me.

Accused Sonu @ Satyawar, Vijay @ Lamba and Sanjay r/o Mundka are not today present in the court. I can identify them, if produced. The other accused persons namely Summon @ Sandeep, Naresh, Naveen, Dinesh r/o Pehlad Pur, Surender @ Kaira, Anil r/o Darya Pur, Deepak r/o Pehlad Pur and Dinesh @ Kalu son of Angrez Singh are today present in the court. (correctly identified). I was wearing the jeans and shirt, at the time of incident. I would not be able to identify the clothes of my friend Brahm Singh and my wife Raj, which they were wearing at the time of incident. I would be able to identify my clothes, which I was wearing at the time of incident.

At this stage, a sealed parcel having seal, on which in the Center BIO and on the periphery, KOL are visible. The seal is opened and from the parcel, one polythene containing two cloth parcels having seals of Govt. of NCT of Delhi is taken out. From the gunny bag, one shirt of black colour having white strips is also taken out and same is shown to the witness, who identifies that it is the same shirt, which he was wearing at the time of incident. The shirt is Ex. P-1. Four seat covers, one pant, one shirt, one chunni and two baniyans are also taken out from the same gunny bag. Three white clothes having seals of ESI, MLC, HOSPITAL and one paper having seal of mortuary, SGM Hospital, Mangolpuri are also taken out from the said gunny bag.

Witness was sent downstairs in the parking outside the court complex, to see the car and the motorcycle. Witness stated that the Indica Car no. DL-4SH-1942 is the same car, in which he was travelling at the time of incident. Car is Ex. P-2. The motorcycle make pulsar Bajaj silver colour is shown to the him and he identifies that it was the same motorcycle, on which accused Naresh reached there at the time of incident. Number of motorcycle, I have not noted. The motorcycle is Ex. P-3.

Further examination-in-chief is deferred for want of Accent and Honda City Car, which are on superdari.

30.9.2009

Witness was sent downstairs in the parking outside the court complex, to see the

car brought by superdari Ram Niwas. Witness has come back and stated that the Honda City car of white colour bearing no. 0045 is the same car, in which I was firstly taken to the house of Raj and thereafter, it was used, when I was attacked. The car is Ex. P-4.

Further examination-in-chief is deferred for want of Accent Car.

24.8.2009

Today, I have seen the Car make Accent, colour-black, number of which I do not remember, in the parking of the Rohini Court Complex. It is the same car, in which accused Anil and Surender reached the spot. The car is now Ex. P-5. At the time of incident, I was not able to see the registration number of that car and today also, I did not notice the number of said car. (Accent Car bearing no. DL 4CS 7509 was shown to the witness)."

28. Ms. Raj Rani PW-2 deposed before the Court:

"Statement of Ms. Raj Rani, PW-2 on 19.9.2009

In the year 2006, I was doing B.A. Ist year through correspondence from Delhi University. Name of my father is Sh. Prem Singh and he had four sisters, one of them had expired. The eldest one is Ms. Santosh and she resides in Pehladpur. Deepak and Dinesh are her sons. The second bua's name is Krishna. Earlier she was resident in Bakhtawarpur and then she shifted to Daryapur. She was having two sons i.e. Rakesh @ Thambu and Surender @ Kaira. Rakesh had expired. My third Bua is Ishwanti and she has two sons Anil and Sonu and my fourth Bua had expired.

We are six brothers and sisters. Accused Naresh is my brother. Sonu was married in village Daryapur in the year 2005. I and my family attended the marriage of Sonu under the pressure of the relatives. Earlier, we were not on visiting terms with them. In the marriage, I met Bhupender Singh. Thereafter, we started talking each other on telephone.

In the month of June/July 2006, I met with Bhupender in Punjabi Bagh. There, we decided to marry each other. I told my parents near 15.09.2006 that I want to marry with Bhupender. Initially, they refused to marry me with Bhupender, but on my insistence, they agreed to marry me with Bhupender. My father told this fact to the relatives. Our other relatives agreed to this marriage, but my buas and their sons did not agree for this marriage. When my three buas and their sons came to know about this, they all came to our house and said "Ye shadi hum hone nahi denge, chahe iske liye jaan se kyon na marna pade" We were also having some dispute with Anil and Sonu over a plot. We had given a plot to Anil and Sonu, but as the full payment was not made by him, we refused to deliver the possession of the said plot to them.

On 07.10.2006, my three buas, their husbands, their sons along with their friends Kalu and Summon son of bua of Anil, came to our house. Anil told me "ye

shadi hum nahi hone denge" Maine jid kar rakhi thi" Anil slapped me and he attempted to strangle me with a chunni, which I was having. They also pressurized my parents not to marry me with Bhupender.

On 08.10.2006, my three brothers, Deepak, Dinesh, Surender, Sonu came to our house and Anil and Kalu brought Bhupender with them. Anil came to the first floor, where our house is situated and told Sonu "Ja, Main Bhupender ko le aya hoon" Sonu along with his pistol went down-stairs and brought Bhupender upstairs along with Kalu. After bringing, Bhupender upstairs, they forcibly made Bhupender to refuse to marry me. Thereafter, Kalu took Bhupender downstairs along with him. "Mere dubara jid karne par, ke tumne us se jabardasti na karyai hai, aur mujhe shadi usi se karni hai" They all gave beatings to me and my family members. They all stayed back at my home on that day i.e. My three brothers, their all sons, Kalu, one or two friends of Anil and Bua's son of Sonu. In the evening, they were planning "ki yet manegi nahi, ise khatam kar do.

Next day, on getting an opportunity, I left the home from back door and reached the house of my friend Archana, at Jaidev park. I was apprehending, if I did not leave the house, they would kill me. I made a call to Bhupender from the house of my friend Archana and asked him to come in the park situated in front of Gurudwara and that we will make a complaint in the Police Station.

Bhupender reached near Gurudwara at about 1.00 pm. I was just going towards Bhupender from the house of my friend Archana, Surender and Naresh started pulling me towards my house and they also gave beatings to me. I was insisting that I will not go to home. On this, Bhupender asked Naresh to go home and he will bring me to home. I sat in the Indica Car of Bhupender, on the driver seat of which, Brahm was sitting and by his side, one more boy was sitting. On the rear seat of the Indica car, I sat along with Bhupender. We had just reached near flyover in the Indica car, one Accent and Santro car followed us and overtook us. They forced us to stop our Indica Car. Accent Car was being driven by Anil and by his side, Surender was sitting and on the rear seat of that car, my two brothers, Krishna and Santosh were sitting. Anil got down from his Accent Car along with his pistol in his hand and he sat by my side in Indica Car. In the meanwhile, from the Santro car, Sonu, Deepak, Dinesh, Sanjay and Summon got down and all were having weapons in their hand. The mother of Sonu kept sitting in that Santro Car. In the meanwhile, one Honda city car came there, being driven by Kalu and his two friends were there in that car. His two friends got down from that Honda City car with weapons in their hands. In the meanwhile, Pulsar motorcycle stopped on our left side being driven by Naresh. Anil, who was sitting in our car, was talking with us, when Kalu came in Honda City car. Kalu exhorted "Bat mat karo, jaldi kam khatam karo aur niklo" On this, Anil made first fire on the neck of Bhupender. Immediately, after firing on Bhupender, Anil got down from the car. The other boys had surrounded our car from all side, i.e. Deepak, Dinesh, Surrender, Summon, Sanjay, Sonu who was sitting near the driver seat of the Indica car and two three boys, I do not know their names, but I can

identify the same were there. Sonu fired at Bhupender and thereafter, he fired on me, which hit on my head. While Sonu was firing, the other boys also started firing on us. After being hit with bullet, I became unconscious. I regained my consciousness in Safdarjung Hospital. I can identify the assailants. Sonu and two more assailants are not present in the court. All other assailants were present in the court. The witness has correctly identified all the assailants by their name except Naveen. She also identified him, but stated that she does not know him by his name and he was one of the assailants.

Since the day, Sonu jumped the parole, he is extending threats to Bhupender on mobile phone and asked him to change his statement, otherwise he would kill Bhupender and his family members. (objected to on the ground of admissibility).

On 08.06.2009, Sonu @ Satyawar after jumping the parole, committed the murder of my husband. (beyond the scope of this case)

Sonu had also given "supari" to sharp-shooter to kill my husband Bhupender and this news has also come in the Print Media. Our entire family is under threat, including my one year son.

I can identify my clothes, which I was wearing at the time of incident. At his stage, a sealed pullanda having court seal is produced and same is directed to be opened. Same is opened and from the gunny bag, one shirt of black colour having white strips is taken out and same is shown to the witness, who identifies that it is the same shirt, which Bhupender was wearing at the time of incident. The shirt is already Ex. P-1. Four seat covers, one pant, one shirt, one chunni and two baniyans are also taken out from the same gunny bag. Three white clothes having seals of ESI, MLC, HOSPITAL and one paper having seal of mortuary, SGM Hospital, Mangolpuri are also taken out from the said gunny bag and same are shown to the witness. Witness identifies her chunni, which she was having on the date of incident and the chunni is Ex. P-6. The four seat covers are of the Indica Car, in which they are travelling. The four seat covers are Ex. P-7 to P-10. The witness is not identifying the pant as to whom it belongs.

Witness was sent downstairs in the parking outside the court complex, to see the Indica car, Accent Car and the motorcycle. Witness stated that the Indica Car no. DL-4SH-1942 is the same car, in which she was travelling at the time of incident along with Bhupender. Car is already Ex. P-2. The motorcycle make pulsar Bajaj silver colour is shown to her and she identifies that it was the same motorcycle, on which accused Naresh reached there at the time of incident. Number of motorcycle, I have not noted. The motorcycle is already Ex. P-3. The Accent Car is also shown to the witness and she identifies the same. I have not noted down the number of the Accent car. The car is already Ex. P-5.

Further examination is deferred for want of Honda City car.

24.10.2009

Defence does not dispute the identity of Honda City Car of White Colour bearing

no. DL-8CT-0045. Same is already Ex. P-4. As the defence does not dispute the identity of the car, hence production of the car is dispensed with.

On 28.10.2006, I went to the PS to inquire about the case, where I identified accused Dinesh @ Kallu."

29. A perusal of the rukka, statement Ex. PW-1/DX and the deposition in the Court would show that Bhupender has made improvements though his testimony has a ring of truth in it and being an injured witness his testimony can't be discarded in toto. Though his version on the entire incident is consistent and in the Court in his deposition he has elaborated the incidents however he has made material improvements by introducing further assailants and consequently the number of vehicles. Similarly Raj Rani also has made improvements from her statement recorded u/s 161 Cr.P.C. and 164 Cr.P.C. to the one deposed in the Court but again she is also an injured witness and her testimony can also not be discarded totally. She is consistent in the broad contours of her version qua the incidents that took place in the course of two days however she has added Naveen in the deposition in Court. Thus dawns the task on the Court to separate the grain from the chaff.

30. The distinctions between the Rukka dated October, 10, 2006 Ex. PW-1/A culminating into FIR, statement u/s 161 Cr.P.C. dated October 10, 2006 Ex. PW-1/DX and deposition made in the Court by the Bhupender since confronted are noted as under:

31. The distinctions in the statement recorded u/s. 161 Cr.P.C. dated October 15, 2006 Ex. PW-2/D2, statement recorded u/s. 164 Cr.P.C. dated October 27, 2006 Ex. PW-2/D1 and the deposition made in the Court by Raj Rani since confronted are noted as under:

32. In his statement Ex. PW-1/A resulting in registration of FIR Bhupender has broadly stated the entire incident starting from October 08, 2006 culminating in the firing incident on October 09, 2006 at around 1.20 PM. The statement was recorded soon after Bhupender was taken to the hospital and declared fit for statement at 2.00 PM. He has not given the finer details of the events of the two days which he was not expected to give in the FIR. However, in his supplementary statement recorded on October 10, 2006 Ex. PW-1/DX besides renaming the assailants mentioned in the rukka i.e. Sonu, Anil, Deepak, Surender, Naresh, Sanjay (mundka wala) and Samman (Goyla Gaon Ka) and further details of their acts, he has also implicated Dinesh @ Kalu, Dinesh @ Desi and Naveen resident of Narela besides others. This is a major improvement and at the time of getting his statement recorded Ex. PW-1/A the condition of Bhupender was not that he would forget the names of some of the assailants. Though of course a FIR is not required to give detailed description of each and every act of each assailant, however in our opinion the introduction of additional names in the supplementary statement Ex. PW-1/DX was to rope in more and more accused. As more accused have been implicated it was thus natural that

Bhupinder had to bring in more vehicles in the form of Honda City car and motor cycle which is also contrary to the initial PCR calls made immediately which stated only about two cars having intercepted the Indica Car of Bhupender and Raj Rani i.e. an Accent and a Santro car. Though this fact finds mention in the statement of Raj Rani also recorded u/s 161 Cr.P.C. however, the introduction of more vehicles and additional accused is a material improvement and thus the evidence to this extent is required to be separated. There is no reason to disbelieve Bhupender and Raj Rani who are injured witnesses however, the tendency to add fringes and embroidery of untruth to the truth is not uncommon and thus lies the task with the Court to separate the grain from the chaff. In Krishna Mochi and Others Vs. State of Bihar, the Hon''ble Supreme Court in a matter involving number of accused observed:

"51. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence, prayer is to apply the principle of falsus in uno, falsus in omnibus. This plea is clearly untenable. Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove the guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali Vs. The State of Uttar Pradesh,) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh and Another Vs. State of Punjab, .) The doctrine is a dangerous one, specially in India, for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be

insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab and Another Vs. The State of Madhya Pradesh*, and *Ugar Ahir and Others Vs. The State of Bihar*, .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation, an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel Vs. State of Madhya Pradesh*, and *Balaka Singh and Others Vs. The State of Punjab*, .) As observed by this Court in *State of Rajasthan Vs. Smt. Kalki and Another*, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. Accusations have been established against the accused-appellants in the case at hand."

33. A perusal of the evidence on record would show that definitely there were more than two persons when the Indica Car wherein Bhram Singh (Deceased), Sunil PW-7, Bhupender Kumar PW-1 and Raj Rani PW-2 were sitting was intercepted by the Santro Car and the Accent Car. There is no merit in the contention of the learned counsel for the appellants except appellant Anil that even accepting the assailants' version only Anil and Sonu were involved in the incident who were named to PCR officials. The PCR Log Book which flashed the message at 1.33 PM noticed that the assailants also involved Sonu and Anil resident of Daryapur. To put it in the words of ASI Laik Ram "Vardat wale Sonu va Anil shamil he jo Darya Pur ke rehne wale he". This sentence itself implicates that there were more people besides Sonu and Anil. This was only a cryptic message sent by the PCR immediately when three occupants of the car having received injuries were required to be taken to the hospital. The contention of the learned counsel for the appellants Dinesh @ Desi, Naveen, Naresh, Sandeep @ Samman, Surender @ Kaira and Deepak that only accused residents of Daryapur were involved is also incorrect as the word "Daryapur Ke Rehne Wale" only qualifies the residence of Anil and Sonu and does not mean that no other person who is not a resident of Daryapur is not involved.

34. The incident took place at best within a period of two-three minutes.

Immediately at 1.25 PM the PCR van got alert reaching the injured at 1.28 PM. Bhupender Kumar, on the basis of whose statement FIR was registered, was admitted in the hospital at 1.30 PM and declared fit for giving the statement at 2.00 PM vide Ex. PW-13/A. After recording his statement the rukka was sent for registration of the FIR at 3.20 PM in which time the injured also got treatment. The fact that injured Bhupender admitted in his cross-examination that his uncle who was an advocate reached the hospital when his statement Ex. PW-1/A was being recorded would not belie his version in the rukka more so for a reason that it is the established case of the prosecution that two cars had intercepted the Indica car of injured and obviously when number of gun shots were fired Anil and Sonu would not be the only persons, one each in the two cars. As per rukka Raj Rani's brother Naresh, Raj Rani's cousins Sonu, Anil, Deepak, Surrender, Sanjay from Mundka, Sandeep @ Samman from Goyla Village were present and had fired on them while sitting in the Indica Car. The subsequent statement of Bhupender recorded vide Ex. PW1/DX on October 10, 2006 which further implicates Vijay @ Lamba, Naveen resident of Narela and Dinesh @ Desi is a clear after thought.

35. A perusal of the evidence would show that to Dinesh @ Kalu Bhupender has assigned no role at the firing incident either in the FIR or in his supplementary statement Ex. PW-1/DX. However, in the deposition in the Court it is stated that he fired at Bhupender, Raj Rani, Brahm and Sunil. Even Raj Rani has assigned no role to Dinesh @ Kalu at the time of firing in her statement u/s 161 Cr.P.C., however in her statement u/s 164 Cr.P.C. she stated that Dinesh @ Kalu instigated everyone to finish the job and in the deposition before the Court besides instigation she even assigned the role of firing to Dinesh @ Kalu. Naveen's name has been introduced by Bhupender in his supplementary statement Ex. PW-1/DX and in the Court deposition however Raj Rani has not named Naveen in either of her statements. Even in the Court she correctly identified all the assailants except Naveen, however later she also identified him and stated that she did not know his name and he was one of the assailants. As regards Dinesh @ Desi, Bhupender though assigned him role of his presence at the house of Raj Rani before she fled, for the first time in the Court it was deposed that Dinesh @ Desi was present during firing and that they all were armed with pistol and started firing, though Raj Rani stated about firing by Dinesh @ Desi. In view of the material contradictions in the statements regarding Dinesh @ Kalu, Dinesh @ Desi and Naveen who were not named in the FIR we are of the considered opinion that their names have been introduced subsequently and the testimony of the two injured witnesses is required to be severed on this count.

36. It is trite law that exaggerations per se do not render the evidence brittle. Normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Though mere marginal variations in the statements of a witness cannot be

dubbed as improvements as the same would be elaborations of the statement made by the witness earlier, however, the omissions which amount to contradictions in material particulars i.e. the ones which go to the root of the case are material contradictions and to that extent the evidence of an injured witness is also required to be discredited. (See (2014) 4 SCC 324 State of Uttar Pradesh Vs. Naresh & Ors.)

37. The FIR is attacked on the ground that no roles have been assigned to the accused and the supplementary statement of Bhupender is attacked on the ground that by alleging specific roles to the accused substantial improvements have been made and thus the witness is unworthy of credence. The present incident took place in a very short span of time i.e. around two-three minutes on a busy Ring Road when the Indica of the injured and the deceased was got halted by two cars, i.e. Accent and Santro. The assailants got down and fired indiscriminately. The version of all the witnesses including Sunil PW-7 is that on stopping the car there was firing on the car. The sitting position of the injured and the deceased and the location of injury on them show that there was indiscriminate firing from both the sides i.e. left and right and in this situation it would not have been possible for the victims to perceive the individual action of each and every assailant and depose regarding the same.

38. In Kuria and Another Vs. State of Rajasthan, the Court held:-

"16. In light of the above principles, we may revert to the evidence in the present case. A large number of persons had attacked one person. These witnesses cannot be expected to explain the role in the inflicting of injuries by each one of them individually and the weapons used. Such conduct would be opposed to the normal conduct of a human being. The fear for his own life and anxiety to save the victim would be so high and bothersome to the witness that it will not only be unfair but also unfortunate to expect such a witness to speak with precision with regard to injuries inflicted on the body of the deceased and the role attributable to each of the accused individually. In the present case, the result of the blunt injuries is evident from the report of the post mortem (Exhibit P/11), the ribs of the deceased were broken and they had punctured the lungs. The pleural cavities were full of blood and his body was dragged causing injuries on his back. In these circumstances, some blood would but naturally ooze out of the body of the deceased and his clothes would be blood stained. The post mortem report (Exhibit P/11), the inquest report, the statements of PW2, PW3, PW4, PW7 and PW15 are in line with each other and there is no noticeable conflict between them. The injuries on the body of the deceased were so severe that they alone could be the cause of death and the statement of PW6 in relation to cause of death is definite and certain. Thus, we see no merit in this contention raised on behalf of the accused."

39. A person fleeing with a lady away from her paternal home, being chased and on a sudden attack, would naturally be perplexed. Further when the gunshots were being fired from both sides it cannot be said that the victims would not take

a position to save themselves. Being overtaken by the course of events it was well-nigh impossible for any person to have known the role of each and every individual assailant when number of assailants fired from the different sides and specially in gunshot injuries while sitting in the car when the only mode to save themselves was to duck down.

40. It is also contended that since Bhupender knew all the accused by the name there was no reason why he should not name them all when the PCR call made. It is well settled that PCR calls are cryptic messages made in exigencies and alarming situations of the matter meant for immediate Police help. No individual can be expected to give complete narration of facts at that instance and thus the non-mentioning of the names of all the assailants in the PCR call would not absolve the appellants of the offences committed by them.

41. The belated recording of statement of Raj Rani u/s 161 Cr.P.C. is also assailed by the learned counsel for the appellants. Raj Rani was admitted in ESI Hospital on October 09, 2010 at about 1.30 PM and treated by Dr. S.C. Jain PW-20. Her MLC Ex. PW-20/A notices that when admitted she was semi-conscious and her general condition was not fair. The opinion of the doctor as to the fitness of Raj Rani to make statement was sought by the Investigating Officer however, the doctor opined that the patient was not fit for making statement. Only on October 15, 2006 at 8.00 AM Raj Rani was opined to be fit for making the statement and her statement u/s 161 Cr.P.C. Ex. PW-2/D2 was recorded on October 15, 2006 itself. Subsequently on an application being filed her statement u/s 164 Cr.P.C. was recorded before the learned Metropolitan Magistrate on October 27, 2006 vide Ex. PW-2/D1.

42. Learned counsel for the appellants have heavily relied upon the testimony of Sunil PW-7 the fourth occupant of Indica car. Presence of Sunil as the occupant of the Indica car is not disputed. Further Sunil had also received injuries as is evident from his MLC conducted though not exhibited however, his blood stained clothes were seized vide memo Ex. PW-27/B. In the witness box Sunil PW-7 did not support the prosecution case and was cross-examined by the learned APP. He deposed about the incident and also stated that when they reached near the cremation ground two cars came and stopped them. He further stated that one person alighted from each car and they started firing on their car and thereafter fled away. He named Sonu and Anil in this regard, however, that is not possible because each car would have atleast two persons one who would be driving the car and the other who got down to fire the shots. Thus reliance of learned counsel for the appellants except appellant Anil on the statement of Sunil is misconceived and it is apparent that this witness is not speaking the whole truth and is concealing material facts.

43. The contention that Brahm Singh, Sunil and Bhupender were the aggressors and thus to an extent the appellants, if at all, involved had fired in the right to private defence is an afterthought, the foundation of which has not been laid during the cross-examination of the witnesses. Bhupender and Raj Rani have not

been suggested that the occupants of the Indica car had first fired the gunshots and it is only in retaliation that the appellants had fired the shot. Even PW-7 Sunil Nandal who has not supported the prosecution case and is heavily relied upon by the defence counsels to state that his version is truthful has also not been suggested that act of the appellants was in the right of self defence.

44. As per the prosecution case the Santro Car and the Accent car halted the Indica car in which four injured were sitting leaving them in a hapless position. Appellants Anil, Deepak, Surender, Naresh and Sandeep @ Samman were the aggressors along with Sonu and Sanjay, who are proclaimed offenders. Acting in their right of defence has not been proved by the defence. In *Mano Dutt and Another Vs. State of U.P.*, the Supreme Court held:

"20. When a person claims exercise of right of private defence, the onus lies on him to show that there were circumstances and occasions for exercising such a right. In other words, these basic facts must be established by the accused. Just because one circumstance exists amongst the various factors, which appears to favour the person claiming right of self-defence, does not mean that he gets the right to cause the death of the other person. Even the right of self-defence has to be exercised directly in proportion to the extent of aggression."

45. Learned counsel for Deepak submits that the version of Bhupender and Raj Rani is not borne from the medical record as in case the firing was from close range there would be tattooing or blackening which was not noticed in the MLC. He relies upon the medical jurisprudence on this aspect. There is no quarrel to the proposition that when a gunshot is fired from a close range blackening or tattooing is found on the entry wounds however, in the present case the same was not noted by the Doctor and this fact has been clarified by Dr. S.C. Jain PW-20 who conducted the MLC of Raj Rani and treated her immediately. He deposed that since there was urgency, therefore, he did not mention if there was any blackening or tattooing around the gunshot wound and he could not say from what distance the firing took place resulting in injury to Raj Rani.

46. Learned counsel for Sandeep has contended that Sandeep was not named in the FIR and no evidence has been produced by the prosecution to show that Sandeep was also named as Samman. The rukka Ex. PW-1/A names Samman Goyla Gaon Ka. Bhupender and Raj Rani identified Sandeep @ Samman in the Court. In cross-examination Bhupender clarified that Sandeep was also known by the name Samman and at that time he knew his name as Samman only and later he came to know that his name is Sandeep. Even Raj Rani in the cross-examination clarified that she knew the name of Sandeep as Samman only and denied that Sandeep was never known as Samman. A perusal of the FIR itself would show that Samman has been further clarified to be of "Goyle Gaon ka". The arrest memo of Sandeep @ Samman Ex. PW-27/D notices the name and address as Sandeep @ Samman s/o Azad Singh, r/o Pana-Biparian, Village-Goyla Kalan, District Jhajjar, Haryana. The arrest memo has been signed both by Sandeep and his brother Kuldeep Singh and his being resident of Village Goyla

Kalan is not disputed.

47. The defence of Anil who is named in the first PCR call itself is that Bhupender has business rivalry with Sonu and Anil and admittedly Raj Rani's family has a property dispute with Anil and thus he has been falsely implicated. This contention deserves to be rejected. Raj Rani has not only named Anil and Sonu her cousins but her real brother Naresh as well. Her real brother Naresh acting in concert with Anil and Sonu would only show that despite dispute on the land there was no enmity between the families on that count. Further enmity is a double edged weapon if the same can be a reason for false implication it can also be the reason for commission of an offence as held by the Supreme Court in *Anil Rai Vs. State of Bihar*, :

"18. There is no doubt that PWs 1, 2, 5 and 6 relied upon and believed by the trial as well as the High Court are not friendly to the accused persons on account of previous existing enmity between them. The admitted position of law is that enmity is a double-edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinise their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity, held to be a double-edged weapon, may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eyewitnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eyewitnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime, cannot be made a basis to discard or reject the testimony of the eyewitnesses, the deposition of whom is otherwise consistent and convincing."

48. The contention of Anil that Raj Rani had no mobile phone and Archana, the friend of Raj Rani has not been cited as a witness nor her call records proved thus belying the prosecution case is required to be rejected. The fact in issue in the present case is not whether Raj Rani had a mobile phone or not but that Raj Rani in company of Bhupender received injuries in the incident. Thus this court is

not required to go into the aspect as to how Raj Rani communicated with Bhupender so that he picked her up. All that is required to be noted is that the incident took place on the Ring Road at Punjabi Bagh which place is quite near to the residence of Raj Rani, thus probalizing the version that Bhupender picked her up from near her house.

49. The contention of learned counsels for the appellants that the PCR information gave the complete details and hence the same has to be treated as FIR and consequently the rukka is hit by Section 162 Cr.P.C. is wholly fallacious. Though the PCR informed the name of two assailants and the car number, however the same did not give the version of the incident and all the accused involved. The same was the messages flashed by SI Laik Ram on seeing the commotion on reaching the spot. No statement was recorded at that stage and bit and bits of information which were received were flashed. Thus, such a cryptic message cannot be said to be FIR and consequently affecting the FIR registered to be hit by Section 162 Cr.P.C. (See: Tapinder Singh Vs. State of Punjab and Another, .)

50. Learned counsels for the appellants have seriously contended that though convicted with the aid of 120B IPC the learned Trial Court has neither considered the conspiracy involved in the matter in the present case nor returned a finding there on. Conspiracies are often hatched in secrecy and a direct proof thereof is seldom available. Whether the assailants have conspired to commit the offence has to be inferred from the facts of the case. In the present case Sonu (P.O.), Deepak, Anil, Surrender, Naresh, Sanjay (P.O.) of Mundka and Samman @ Sandeep belonging to Goyla Gaon had come together in two cars armed with guns and indiscriminate firing ensued. From the facts it can be easily inferred that the accused not only shared the intention but there was an agreement to commit the said offence. The conspiracy stands proved. The legal position on fastening criminal liability in a case of conspiracy is well settled as held by the Hon"ble Supreme Court in Firozuddin Basheeruddin and Others Vs. State of Kerala, :

"23. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organised crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of

conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of cooperation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.

24. Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy-- who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organisation, there is but one objective: to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast."

51. Consequently, the judgment of conviction and order on sentence qua Anil, Deepak, Surender, Naresh and Sandeep @ Samman are upheld. CrI. Appeal Nos. 1250/2013, 954/2013, 1562/2013, 1141/2013 and 999/2013 are dismissed. They will suffer the remaining sentence.

52. Appellants Dinesh @ Kalu, Dinesh @ Desi and Naveen are granted the benefit of doubt. Thus the impugned judgment of conviction and order on sentence are set aside qua Dinesh @ Kalu, Dinesh @ Desi and Naveen. CrI. Appeal Nos. 901/2013, 922/2013 and 1199/2013 are disposed off.

53. T.C.R. be returned.

54. Copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the others to be handed over to the appellants.