

(2012) 05 GAU CK 0092
In the Gauhati High Court
Case No : Criminal Appeal No. 63 of 2008

Razak (MD.) and Others

APPELLANT

Vs

Central Bureau of Investigation (CBI)

RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:

Arms Act, 1959 — Section 25(1B)
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)(i), 313
Penal Code, 1860 (IPC) — Section 121, 121A, 302, 307, 326
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 2(2)(I)(II)
Unlawful Activities (Prevention) Act, 1967 — Section 13

Citation : (2012) 3 GLT 312

Hon'ble Judges : Iqbal Ahmed Ansari, J; Arun Chandra Upadhyay, J

Bench : Division Bench

Advocate : S. Chamaria and Mrs. N. Chandak Agarwal, for the Appellant; A.C. Buragohain, Standing Counsel, CBI, for the Respondent

Judgement

I.A. Ansari, J.—This appeal is directed against the judgment and order, dated 17.03.2008, passed by the learned Additional Sessions Judge (FTC) No. 4, Kamrup, Guwahati, in Sessions Case No. 199(K)/2001, convicting the accused-appellants under Sections 302, 307 and 326 IPC, read with Section 34 IPC, and sentencing each of them to suffer, for their conviction u/s 302 IPC, read with Section 34 IPC, imprisonment for life with fine of Rs. 5,000/- and, in default of payment of fine, undergo rigorous imprisonment for another period of 6 (six) months, and to suffer, for their conviction u/s 307 IPC, read with Section 34 IPC, rigorous imprisonment for 10 (ten) years with fine of Rs. 1,000/- and, in default thereof, undergo rigorous imprisonment for 3 (three) months and further suffer, for their conviction u/s 326 IPC, read with Section 34 IPC, rigorous imprisonment for 7 (seven) years and pay fine of Rs. 1,000/- and, in default of payment of fine, undergo rigorous imprisonment for a period of 3 (three) months, all the sentences having been directed to run concurrently. The prosecution's case, as unfolded at the trial, may, in brief, be described as under:

2. The case of the prosecution commences with the lodging of the First Information Report (in short, "FIR"), on 07.01.1995, by Inspector L. Ebopishek Singh, Officer-in-Charge, Lumphel Police Station, alleging to the effect, inter alia, that from reliable information, he had come to learn that on the very day, i.e., on 07.01.1995, at about 6-15 a.m., some suspected extremists had fired upon some CRPF personnel posted at the Regional Medical College Hospital (in short, "RMC Hospital") to guard some injured CRPF personnel, who had been lying under treatment at the said hospital, and that the firing by the extremists resulted into an encounter between the unknown extremists, on the one hand, and the CRPF personnel, on the other hand, the encounter having resulted into the death of 7 (seven) civilians and many other sustained injuries.

3. Based on the above FIR, Lumphel P.S. Case No. 6(1)/95, u/s 121/121-A/307/302/326 IPC, read with Section 25(1-B) of the Arms Act, Section 2(2) (I) (II) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, and Section 13 of the Unlawful Activities (Prevention) Act, 1967, was registered. During investigation of Lumphel P.S. Case No. 6(1)/95 afore-mentioned, another case came to be registered, at the said police station, as Lumphel P.S. Case No. 76(4)/95, the latter case having been registered on the basis of a General Diary Entry, dated 15.04.1995, made by the Officer-in-Charge, Lumphel Police Station, stating, inter alia, that an application had been received from the Superintendent of Police, Lumphel, for registering a case against some CRPF personnel, the application having been made by Sub-Inspector of Police, S.Z. Vinson TKL, Lumphel Police Station, to the effect that the investigation into the case No. 6(1)/95 aforementioned had come to an end and no material had been forthcoming to establish the identity of the persons, who had fired upon the CRPF personnel, but there were materials to establish that the incident of encounter took place on 07.01.1995, at about 7-15 a.m., and, thereafter, the CRPF personnel deliberately fired upon innocent civilians inside and outside the campus of the said RMC hospital, killing as many as 9 (nine) people, namely, (1) Wangkham Opendra Singh, (2) Laimayum Pradeep Sharma, (3) Momi Riba, (4) Saikhem Prem Chand Singh, (5) Anganu Devendra Singh @ Tomba Singh, (6) Toijum Rajendra Singh, (7) Md. Zakir, (8) R.K. Khogen Singh, and (9) Hijuri Khogen Singh @ Boi Singh, and seriously injuring another person, namely Nongthambau Sarat Singh. Based on the said General Diary Entry, made on 15.04.1995, as mentioned above, a separate case, being Lumphel Police Station Case No. 76(4)/96, u/s 302/326/34 IPC, was registered against CRPF personnel.

4. In course of time, a report, u/s 173(2)(i) CrPC, known as "police report", was submitted on completion of investigation into Lumphel P.S. Case No. 6(1)/95, which stood originally registered, the "police report" stating to the effect that no evidence had been found to identify the accused, who had allegedly attacked the CRPF personnel. This "police report", which is, ordinarily, called "final report", was submitted, on 22.04.1996, closing the original case, namely, Lumphel Police Station Case No. 6(1)/95. Thereafter, with the consent of the State Government, the Central Bureau of Investigation (in short, CBI") took over the investigation of

Lumphel Police Station case No. 76(4)/95 aforementioned, which, we have already indicated hereinbefore, was based on the General Diary Entry, made on 15.04.1995. On completion of investigation, a chargesheet was laid, on 29.11.1999, by the CBI seeking prosecution of the four present appellants as the accused.

5. To the charges framed, at the trial, against the accused appellants, under Sections 302, 307 and 326 IPC, read with Section 34 IPC, all the accused-appellants pleaded not guilty.

6. In support of their case, prosecution examined altogether 27 witnesses. The accused were, then, examined u/s 313 CrPC and, in their examinations aforementioned, while denying that they had committed the offences, which were alleged to have been committed by them, the accused took the plea that they had been attacked by extremists and, in the said attack, some CRPF personnel, too, opened fire from their arms, which had been issued to them and which they were authorized to use, and that during the process, some persons were killed and several persons, including CRPF personnel, were injured. The defence also adduced evidence by examining two witnesses, including one CRPF person, who had been, admittedly, injured in the said occurrence.

7. Having, however, concluded that the accused, facing trial, were guilty of the charges framed against them, the learned trial Court convicted them accordingly and passed sentences against them as mentioned above. Aggrieved by their conviction and the sentences passed against them, the four convicted persons have preferred this appeal.

8. We have heard Mr. S. Chamaria, learned counsel for the accused-appellants, and Mr. A.C. Buragohain, learned Standing counsel, Central Bureau of Investigation, appearing for the respondents.

9. While considering the present appeal, it needs to be pointed out, at the very outset, that the prosecution has not presented a definite and positive case against the present appellants. Though the prosecution started with the allegation of CRPF personnel having been attacked by extremists, the case ended by accusing the CRPF personnel of having intentionally and without sufficient cause, killed, attempted to kill and grievously injured several civilians as indicated above. Bearing this material aspect of the prosecution's case in mind, we are, now, required to marshal the evidence on record to determine if the evidence, adduced by the prosecution, are adequate to bring home the charges framed against the present appellants or against any one of them.

10. Considering the fact that there is no dispute that as many as 9 (nine) persons had been killed, whose names have been mentioned above, as a result of the injuries sustained by them from the bullets fired from various arms, we do not go into the details of the injuries, which the civilians sustained, for, suffice it is to point out, once again, that as many as 9 (nine) persons got, admittedly, killed in the occurrence aforementioned and several persons, including CRPF

personnel, were, admittedly, grievously injured.

11. The question, however, is: Whether in the face of the evidence on record the accused-appellants, or any one of them, could have been legally held guilty of the offences, which they stood charged with ?

12. The question, raised above, brings us to the evidence of PW4, who is an auto-rickshaw driver. His evidence is that, on 06.01.1995, he had been inside the campus of the RMC Hospital for the whole night and, on 07.01.1995, early in the morning, when he was present in front of the casualty department of the said hospital, he heard sound of bullets being fired, the sound coming from the direction of the gate of the hospital campus, where the public toilets stood situated, and, on hearing the sound of bullets being fired, when he was proceeding towards the shed, whereunder auto-rickshaws were parked, he found that all auto-rickshaws were rounded up by the CRPF personnel and the auto-rickshaw drivers were asked by the CRPF personnel to raise their hands up and that while the CRPF personnel were coming out of the said hospital, some CRPF personnel were going inside the hospital from outside the hospital and they started firing. PW4 has, however, clarified that he did not see if the CRPF personnel had killed someone or resorted to blank firing, but he deposed that as soon as he heard the firing, he lied down on the ground, closed his eyes and, when the firing was over, he opened his eyes and saw some dead bodies lying around him, and that he saw injured R.K. Khagen Singh running towards the casualty ward, crying, "save me, save me", whereupon he (PW4), too, started running after the said injured, but, ultimately, the said injured, who was one of the auto-rickshaw drivers, expired and, thereafter, he (PW4) left the place for his house leaving his auto-rickshaw at the very place of the occurrence.

13. While considering the above evidence of PW4, it needs to be noted that he has not identified any person, including the present appellants, as the ones, who had opened fire and killed the civilians. In fact, no Test Identification Parade (in short, "TIP") was, admittedly, held to identify any of the alleged assailants of the civilians.

14. Close on the heels of the evidence of PW4, PW6, who, too, was an auto-rickshaw driver, has deposed that, on 07.01.1995, at about 6-30 a.m., he parked his auto-rickshaw near the said hospital and, near his auto-rickshaw, one L. Kunjamani's auto-rickshaw stood parked with one tyre of said L. Kunjamani's auto-rickshaw lying punctured and when he (PW6) was helping the said L. Kunjamani, he heard sound of firing coming from near Sulabh Toilet of the said hospital and, then, a CRPF person came towards them and, when they introduced themselves as auto-rickshaw drivers, the CRPF person left. PW6 has also deposed that, later on, a CRPF person, who was behind the wall, fired from a distance of about 6/7 metres and he (PW6) sustained two bullet injuries, one on his left shoulder and the other on his right hand, and, on receiving the bullet injuries, he became unconscious and fell down and that he regained his senses in the RMC hospital and, later on, he was shifted to J.N. Hospital for treatment.

15. Even from the evidence of PW6, one can clearly notice that he did not reveal the identity of the person, who had allegedly fired from behind the wall, as described by PW6.

16. When we turn to the evidence of PW11, namely, L. Kunjamani Meetai, we find that, according to his evidence, he was an autorickshaw driver and, on 07.01.1995, when he was repairing his autorickshaw, at the auto-rickshaw stand, near the said hospital, PW6 came to him and told him that he had heard gunshots being fired near the toilet area and, on being so informed, both of them, namely, PW6 and PW11, lied down on the ground and, thereafter, they heard a voice, saying "Bhag gaya Sala, Sab Manipuri Ko Mar Dalo" (... Have fled away, kill all Manipuris).

17. What is, now, important to note, while considering the evidence of PW11, is that, according to him, thereafter, four CRPF personnel came out with guns near the gate and, at that time, there were three civilians near the wall, kneeling down, and the CRPF personnel started firing on those three civilians and though the said three civilians raised their hands to save themselves, they were still fired at and, then, the CRPF personnel fired towards the right side of one rickshaw driver though there were three rickshaw drivers and the remaining two rickshaw drivers remained silent and, thereafter, one CRPF person came to them (PW11 and PW6) and, when he (PW11) showed the CRPF person his (PW11's) auto-rickshaw licence, the CRPF person left, whereupon two CRPF personnel came towards them and started firing towards them. However, he (PW11) escaped and fled away, but he, later on, came to know that Sarat (PW6) received a bullet injury.

18. In his cross-examination, PW11 has clarified that he had not seen the person, who had shouted, saying "Bhag gaya Sala, Sab Manipuri Ka Mar Dalo". In fact, PW11 has conceded, in his cross-examination, that he left the place of occurrence, while the firing was still continuing. It is worth pointing out, once again, that even PW11 has not identified any person, or any of the appellants, as the CRPF personnel, who had opened fire.

19. When we turn to the evidence of PW13, who is an autorickshaw driver, we find that, according to his evidence, on 07.09.1995, at about 6-00 a.m., he was at the auto-rickshaw parking near the RMC Hospital and, upon taking tea, along with two others, namely, Khogen and Devendra, when they all came back to their auto-rickshaws, they heard sound of bullets being fired and when they proceeded towards the casualty ward of the said hospital, they saw some CRPF personnel taking out six auto-rickshaw drivers from the auto-rickshaws, the said auto-rickshaw drivers showed their licence to those CRPF personnel, but all the six autorickshaw drivers were shot at by the CRPF personnel, the auto-rickshaw drivers being Devendra, Rajendra, Premchand, R.K. Khagen, Khagen and Upendra and that R.K. Khagen (one of the six auto-rickshaw drivers) shouted for help and he (PW13) took him to the casualty dressing room, that R.K. Khagen told him (PW13) that CRPF men had fired at them and that, later on, R.K.

Khagen succumbed to his injuries.

20. While considering the evidence of PW13, we notice that even if the evidence of PW13 is accepted as true, his evidence does not show as to who had opened fire and killed the auto-rickshaw drivers.

21. We may pause here, for a moment, and take note of the evidence of PW12, whose evidence is that, on 07.01.1995, in the morning, when he was working as a care taker of Sulabh Toilet, he heard bullets being fired and he saw three youths having small fire-arms firing at the CRPF personnel and fleeing away, whereupon the CRPF personnel came out and shouted that their men (CRPF personnel) were being killed and, hence, kill all Manipuris and, thereafter, the CRPF personnel started firing, whereupon PW12 closed the gate of the toilet from inside and saw, through the gate, that two CRPF personnel came towards the toilet from backside and asked him to open the gate since there was CRPF man inside, PW12 opened the gate and the CRPF man went away and, thereafter, three persons came towards old gate of the hospital, one of whom was non-Manipuri and the other was from Arunachal Pradesh, both of them were shot down by the CRPF personnel. It is also in the evidence of PW12 that the CRPF personnel went out and he (PW12) saw one rickshaw puller being fired at.

22. In his cross-examination, PW12 has clarified that the three youths entered into the hospital and started firing first. We clearly see that the evidence of PW12 also do not advance the prosecution's case against the present appellants in proving that any of the present appellants had shot down the civilians in the manner as described by PW4, PW6, PW11, PW12 and PW13, for, identity of the persons, who allegedly shot the civilians, is not proved even by the evidence of PW12.

23. With the above limitation, which the case of the prosecution suffers from, we turn, first, to the evidence of PW25, namely, Umashankar, who is a CRPF person, and at the relevant point of time, he was, admittedly, attached to 119 CRPF Battalion and was posted at Imphal, Manipur. The evidence of PW25 is that, on 07.01.1995, he was posted at RMC Hospital, Imphal, and they were guarding some injured CRPF personnel, at the said hospital, that he had been issued one Self Loading Rifle (in short, "SLR") and ammunitions and that he was in the surgical ward of the hospital. It is the evidence of PW25 that on the day of the occurrence, he was on duty along with Ramdayal Shah, S.K. Pandey and V.H. Yusuf, and, at around 6-45 a.m., Ramdayal Shah, S.K. Pandey and V.H. Yusuf came to their ward and asked him to accompany them to answer nature's call, if required, whereupon he (PW25), along with the said three persons, went to the toilet meant for police personnel, but they were not allowed to use the toilet of the police personnel and they were directed to go to the Sulabh Toilet, whereupon all of them went to the Sulabh Toilet in the hospital complex and while S.K. Pandey went into the toilet, he (PW25), Ramdayal Shah and Yusuf (PW25) remained outside the toilet guarding the toilet. It is also the evidence of PW25 that all of them were in uniform and had arms and that PW25 also noticed

a lady washing cloths near the water tank and, during that very moment, three young boys came there, the lady spoke to the boys and, then, the lady went away and, thereafter, the said three young boys fired gunshots towards them (PW25 and his companions) and thereby V.H. Yusuf was hurt and, on being so hurt, V.H. Yusuf fired 3/4 rounds from his SLR and that Ramdayal Shah also fired some rounds. PW25 has also deposed that he did not fire as he did not see the extremists and that during that period, S.K. Pandey came out of the toilet and he, too, started firing. It is in the evidence of PW25 that the firing continued for about ten minutes and, then, stopped, whereupon injured Yusuf was carried to the Emergency Ward of the said hospital and, sometime thereafter, their Second Command, K.R. Brahma, reached the hospital and checked their arms and ammunitions, PW25 has further deposed that they, then, took the injured to J.N. Hospital, but they had come out of the J.N. Hospital as the J.N. hospital authority refused to admit the injured CRPF personnel and, hence, they took the injured CRPF personnel to Langing Group Centre for their treatment.

24. In his cross-examination, PW25 has clarified that, on 07.01.1995, they were on guard duty at the RMC Hospital, because a few days before the day of the occurrence, DSP, P.N. Singh, along with other stuff, had been attacked by extremists, who were wearing army uniform, and in the said attack, three CRPF personnel, including the said DSP and two constables, died and three other constables were injured and that the injured were taken to RMC Hospital, where they were under medical treatment. PW25 has also deposed that, on 07.01.1995, the boys, who had fired at the CRPF personnel, were also wearing army uniform and, having fired at them, the boys started running towards the auto-rickshaw stand near the RMC gate, that the boys continued their firing even while fleeing away. PW25 has clarified that they (PW25 and his companions) carried their arms and ammunitions to the toilet, because the atmosphere was volatile and firing could take place anytime anywhere and that they always carried their arms for their safety and self-defence. PW25 has also deposed that the local Manipur Police personnel did not cooperate with the CRPF personnel and they also did not allow the CRPF personnel to use their toilets.

25. While considering the evidence of PW25, we notice that it has been specifically stated by PW25, in his cross-examination, that, on 07.01.1995, the extremists started firing first and, thereafter, the CRPF personnel fired back at the extremists in their own self-defence, particularly, when one of the CRPF personnel, namely, Yousuf, was shot at and injured by the extremists.

26. Coning to the evidence of PW7, who is also a CRPF person, we find that in his evidence, PW7 has deposed that, on 07.01.1995, when he was on duty at RMC Hospital at Imphal, his Guard Commander, Md. Razak, Ashok Kumar, Kishan Lal Ramhanan Prasad were with him on duty. On 07.01.1995, at around 7-15 a.m., when he (PW7) was returning from toilet with Kishanlal and Salim Khan, there was firing, at RMC Hospital complex, near the toilet area and, on hearing the sound of the firing, Ashok Kumar and Md. Rajak went outside, but he (PW7)

remained with the patient and, thereafter, Ashok and Razak came there with their arms and when their officer checked their arms, it was revealed that some bullets had been fired by Razak in the crossfiring and, later on, he (PW7) came to know that Yusuf had sustained bullet injuries and that after 45 minutes of the incident, police arrived at the spot.

27. We notice that the evidence of PW7 substantially corroborates the evidence of PW25 and clearly indicates that the extremists had opened fire on the CRPF personnel, injured one of them, namely, Yousuf and, in order to save their own lives, the CRPF personnel had resorted to fire.

28. To the same effect is the evidence of PW8, who, too, is a CRPF person. In his evidence, PW8 has deposed that, on 07.01.1995, at about 7-15 a.m., when he was on duty at RMC Hospital, Kishan, Salim and Ramjanan, the then Commander, Md. Razak (Guard), were also on duty to guard some injured CRPF personnel, who had been admitted into the hospital for treatment, and that Salim and Kishanlal went out for toilet and, on return, they reported that some firing had taken place and, then, he (PW8) alongwith Razak went out and when they went out of the hospital, bullets started being fired towards them, whereupon Md. Razak fired some rounds, but he (PW8) did not fire any round, that when Razak was firing, he (PW8) was just behind Razak, and that at the time of firing, they were in lying position and he could not see the person firing at them. PW8 has also deposed that in the said firing, one of the CRPF personnel, namely, Yusuf Khan, received bullet injuries and that the firing continued for about 10 to 15 minutes and that, later on, when their arms and ammunitions were checked, it was found that 9 (nine) rounds had been fired by Md. Razak from his SLR.

29. In his cross-examination, it has been clarified by PW8 that Razak had fired towards the place from where bullets were being fired towards them. The evidence of PW8 completely rules out the possibility of civilians having been killed by Razak, or any of the present appellants, deliberately and without any excuse.

30. While considering the evidence of PW9, we find that the evidence of PW9 has a bearing on the evidence of the witnesses, particularly, the evidence of the CRPF personnel inasmuch as this witness, who is also a CRPF personnel, was posted, at the relevant point of time, at 119 Battalion of the CRPF and his duty was to issue arms and ammunitions to the CRPF personnel and to maintain record thereof. On examining the evidence of PW9, we find that this witness' evidence corroborates the evidence of PW7, PW8 and PW25, for, in his evidence, PW9 has deposed that at the relevant point of time, he was posted in 119th CRPF Battalion, at Langing Group Centre, Imphal and that his duty was to issue arms and ammunition to the CRPF jawans and to maintain record in the Arms & Issue Register. PW9 has proved the said Issue Register of arms as Ext. 29. PW9 has further deposed that, on 07.01.1995, S.K. Pandey, V.H. Yusuf, Uma Shankar Ram, and Ramdayal Sah were issued an SLR each, the numbers of their arms

having body Nos. 8253, 8993, 8394 and 4739 respectively. It is in the evidence of PW9 that, on 07.01.1995, while coming back from duty, Ramdayal Sah returned 50 live cartridges and 10 (ten) empty cases, S.K. Pandey returned 30 live cartridges and 27 fired empty cases, while Uma Sankar returned 60 live cartridges and V.H. Yusuf returned 56 live cartridges and 4 empty cases and that one Puttural, who had also been issued an SLR (body No. 8579), returned 58 live cartridges and 2 fired empty cases.

31. What thus, crystallizes from the above discussion is that the prosecution did not have a consistent case to present before the learned trial Court and, even if they have an inconsistent case, the fact of the matter remains that it is the admitted position that the CRPF personnel were fired at by extremists and, in order to save themselves and their associates, that the CRPF personnel had resorted to firing.

32. We may pause here to point out that even if the evidence of PW4, PW6, PW11, PW12 and PW13 are treated as true, one cannot ignore the fact that bullets having been, admittedly, fired at the CRPF personnel, including the present appellants, it cannot be said that they had, deliberately and without any lawful excuse, had opened fire from their respective arms. The bullets, which had been fired at and sustained by the persons, who died or injured, were not sent to Forensic Laboratory for examination and, therefore, it has not been established as to whose bullet(s) had caused whose death. Similarly, though PW4, PW6, PW11, PW12 and PW13 have been examined as eye-witnesses to the killing of the civilians without any lawful cause by the CRPF personnel, no TIP was held and, hence, it could not be ascertained that the present appellants were the ones, who had opened fire and killed the auto-rickshaw drivers.

33. In the backdrop of the fact that the prosecution failed to prove its case convincingly and beyond doubt, as indicated above, that the present appellants, or any of them, had, without any lawful excuse and intentionally, killed the auto-rickshaw drivers, when we turn to the evidence of the defence witness, i.e., DW2, we notice that, according to his evidence, on 07.01.1995, he, alongwith Commander Ramdayal Sah, Puttu Lal and S.K. Pandey, was at RMC Hospital, on guard duty, because some of their fellow constables had been injured and were admitted there for treatment. PW2 has also deposed that though, generally, they used the toilet of the police personnel in the hospital, but, on 07.01.1995, in the morning, the local Manipur Police personnel objected in using their toilet and, that is why, they had to go the "Sulabh Pay Toilet", that Pandey entered into the toilet and the three of them stood as guard outside the toilet. At that time, one woman was washing clothes and another person was warming himself with fire, that after some time, one person came there and talked to the woman and the man in their local language and, thereafter, both the lady and the person left the place and that, immediately, thereafter, 4/5 persons, having Manipuri Shawl on their body, and wearing army dress and carrying pistol and AK-47 rifles, came there and before they (DW2 and his companions) could react, those persons fired

indiscriminately on DW2 and his companions as a result of which DW2 received three bullet injuries on his body, one on the right side of his abdomen, on his chest and another on his cheek, below the eye. It is the categorical evidence of DW2 that in such circumstances, for their self-defence, he (DW2) and his companions opened fire at the extremists and, in the meantime, hearing the sound of firing, other colleagues of DW2 came out of the hospital and joined them in firing at the extremists, that the extremists had to run away through the main gate of the hospital campus, where the autorickshaw stand was situated, and that at the time of fleeing away, the extremists kept firing indiscriminately at whoever came on their way. DW2 has further deposed that he fired two rounds of bullets from his allotted SLR and that after having been hit by the bullet on his cheek, he became unconscious and he was admitted in the same hospital and, thereafter, he was shifted to CRPF Group Centre Hospital at Langing.

34. Though DW2 was cross-examined by the prosecution, his evidence, given in the cross-examination, went unchallenged, wherein he clearly deposed, as can be clearly seen, that he was hit, first, by the bullet on the right side of his abdomen and, then, on his chest and it was, then, that he fired at the extremists and, thereafter, he received a bullet injury on his cheek, below the eye, and, then, he became unconscious. DW2 has also deposed, in his cross examination, that all the three bullets passed through his body.

35. The entire evidence of PW2 has remained unchallenged by the prosecution. We see, therefore, no reason to discard his evidence or not to place reliance on his evidence, which has, otherwise, remained unshaken or unscathed and his evidence, thus, makes it more than abundantly clear that the CRPF personnel were under attack by the extremists and, if we may reiterate, that it was to save themselves from the bullets, which were being fired at them by the alleged extremists, that the CRPF personnel resorted to firing. Even if, thus, what PW4, PW6, PW11, PW12 and PW13 deposed were true, the fact of the matter remains, as we have already indicated above, that their evidence, coupled with the other materials on record, cannot be said to be sufficient and clinching, as against the present appellants", proving them, beyond reasonable doubts, as the assailants of the civilians, who died or sustained bullet injuries.

36. Therefore, the conclusion of guilt, which the learned trial Court has reached, suffers from serious infirmities inasmuch as the learned trial Court had not taken into account the fact that the question, which ought to have been considered for determination, was not as to whether the CRPF personnel had or had not fired, but the question was as to whether the firing was resorted to by the CRPF personnel without any lawful excuse and as to who was/who were the person(s), who had killed the auto-rickshaw drivers and injured others. On both counts, the learned trial Court has not cogently and minutely marshaled the evidence on record. We, therefore, find it impossible to sustain the conviction of the accused-appellants and the sentences passed against them in consequence of their conviction.

37. In the result and for the reasons discussed above, this appeal succeeds. The impugned judgment and order shall accordingly stand set aside. All the accused-appellants are hereby held not guilty of the charges, framed against them, and they are hereby acquitted of the same.

38. Let the accused-appellants be set at liberty forthwith unless they are required to be detained in connection with any other case.

39. With the above observations and directions, this criminal appeal stands disposed of. Send back the LCR.