2025:AHC:189123-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CAPITAL CASES No. - 7 of 2019

Mohd. Sharif @ Suhail @ Sazid @ Anwar @ Ali ……Appellant(s)

Versus

State of U.P. ……Respondents(s)

Counsel for Appellant(s)	:	From Jail,Imran Ullah
Counsel for Respondent(s)	:	AGA

WITH

CAPITAL CASES No. - 3 of 2020

Mohd. Sharif @ Suhail @ Sazid @ Anwar @ Ali And 3 Ors. ……Appellant(s)

Versus

State of U.P. ……Respondents(s)

Counsel for Appellant(s)	:	Raj Raghuvanshi, Sikandar Khan
Counsel for Respondent(s)	:	GA

WITH

CRIMINAL APPEAL NO. 31 OF 2020

Jang Bahadur Khan @ Baba Khan ……Appellant(s)

Versus

State of U.P. ……Respondents(s)

Counsel for Appellant (s)	:	Raj Raghuvanshi, Sikandar Khan
Counsel for Respondent(s)	:	GA, Sanjeev Kumar Pandey

WITH

REFERENCE NO.6 OF 2019

RESERVED
AFR

Court No. - 42

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. The above Appeals being Capital Case No. 7 of 2019 *(Mohd. Sharif @ Suhail @ Sazid @ Anwar @ Ali vs. State of U.P.)* and Capital Case No. 3 of 2020 *(Mohd. Sharif @ Suhail @ Sazid @ Anvar @ Ali And 3 Ors. vs. State of U.P.)* have been filed against the judgment and order 1.11.2019 and 2.11.2019 passed by the Additional District & Sessions Judge, Court No.3, Rampur in Session Trial No. 208 of 2008 (State vs. Mohd. Sharif @ Suhail and Ors.) *(Leading Case)* connected with Session Trial No. 338 of 2009 (State vs. Mohd. Sharif and Ors.), Session Trial No. 664 of 2009 (State vs. Imran Shahjad and Ors.), Session Trial No. 09 of 2010 (State vs. Imran Shahjad and Ors.) and Session Trial No. 179 of 2011 (State vs. Sabauddin). Since in Session Trial No. 208 of 2008, Session Trial No. 09 of 2010 and in Session Trial No. 179 of 2011 the accused Mohd Sharif, Imran Shahjad, Mohd. Farooq and Sabauddin were awarded capital punishment, reference being Reference No. 6 of 2019 has been sent for confirmation on 4.11.2019 to this Court.

2. Against the capital sentence, Mohd. Sharif filed Capital Case No. 7 of 2019 while Capital Case No. 3 of 2020 was filed by Mohd. Sharif alongwith Imran Shahjad, Mohd. Farooq and Sabauddin. Criminal Appeal 31 of 2020 was filed by Jang Bahadur Khan against his conviction which was of life imprisonment. All the accused persons were awarded punishments in the following manner:

(1) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh were convicted under Section 302 read with section 149 of I.P.C. and were punished with death sentence and a fine of Rs. 50,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for three months.

(2) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh were convicted under Section 27(3) of Arms Act for death sentence.

(3) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @

Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh were to be hung by the neck until they died.

(4) The accused person namely Jang Bahadur Khan was convicted under Section 302 read with section 149 of I.P.C. for life imprisonment with a fine of Rs. 50,000/-. In the event of default, he was to undergo an additional imprisonment for three months.

(5) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were also convicted under Section 148 of I.P.C. for imprisonment of three years.

(6) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were, in addition to the above, convicted under Section 307 read with section 149 of I.P.C. for imprisonment of 10 years and a fine

of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for three months.

(7) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 333 read with section 149 of I.P.C. for imprisonment of 7 years and a fine of Rs. 20,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(8) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh and (5) Jang Bahadur Khan @ Baba were convicted under Section 4 of Prevention of Damage to Public Property Act, 1984 (herein after referred to as “PDPP Act”) for imprisonment of 5 years and a fine of Rs. 20,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(9) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @

Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh and (5) Jang Bahadur Khan @ Baba were convicted under Section 121 read with section 149 of I.P.C. for life imprisonment and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(10) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh and (5) Jang Bahadur Khan @ Baba were convicted under Section 16 of Unlawful Activities (Prevention) Act, 1967 for life imprisonment and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(11) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh and (5) Jang Bahadur Khan @ Baba were convicted under Section 20 of Unlawful Activities

(Prevention) Act, 1967 for life imprisonment and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

3. Upon an incident which took place in the mid night of 31.12.2007 and in the wee hours of 01.01.2008 at around 02:00 to 02:30 AM an F.I.R. was got lodged by one Sub-Inspector Om Prakash Sharma at Police Station Civil Lines, District – Rampur on 1.1.2008 with the averment that on that day he himself, Sub-Inspector Om Prakash Sharma, having a revolver, Constable 533 Indrapal Singh, 751 Jitendra Singh and Home Guard 1497 Aftab Khan moved out on a government jeep U.P.22G0019 with driver Constable 118 Jaswant Singh from the thana and had reached the place of incident at around 12:25 AM for maintaining law and order and for a general surveillance. In the FIR, it had been stated that the moment they reached the CRPF toll barrier they heard, from the side of the Gate No.1 of CRPF Group Centre, incessant firing taking place. At the toll barrier the first informant met Sub-Inspector Bihari Lal, Constable 764 Nasir, Constable 491 Virendra Rana, Home Guard 1459 Ganpat and Home Guard 1480 Ram Gopal. They also informed the first informant of the sound they had heard of the incessant firing taking place near the CRPF Group Centre Gate No.1. At around 02:30 AM in the light of electricity bulb, they saw 4-5 persons who were having modern automatic weapons firing towards the group centre on the CRPF personnel. Having seen the firing on the CRPF personnel with automatic weapons, they were convinced that they were terrorists. At this moment, the first informant ordered to fire towards the terrorists.

The first informant with his revolver fired twice while Constable 533 Indrapal Singh fired eight times, Constable Jitendra Singh fired seven times, Constable Virendra Rana fired five times and Home Guard Aftab Khan fired five times with their rifles. These firings were done virtually with a view to protect themselves. When the terrorists realised that firing was taking place from the side of the first informant then with an intention to kill the entire team of the police, which had reached there, the terrorists fired on them and in the process Constable Indrapal Singh and Home Guard Aftab Khan were seriously injured. The rifle of Indrapal Singh was also damaged. Having over-powered the police team the terrorists entered the CRPF Centre and there also they started firing. They also hurled hand grenades. In the interregnum, the first informant with the help of the wireless set in the jeep informed the thana and the other higher officials about the incident. He also asked for help. During the incident, the CRPF personnel also fired towards the terrorists. Thereafter, the police personnel also unsuccessfully tried to follow the terrorists. When the firing from the side of the terrorists stopped and quite a few police and CRPF personnel had collected on the spot then the CRPF *jawans* informed that in the terrorists' attack from their side, Constable Devendra and Constable Vikas Kumar along with one more unknown person had died. It was also informed that Constable Kendra Singh and Pradeep were grievously injured. Inside the Campus Havaldar Rishikesh Rai, Afzal Ahmad, Ramjeet Saran Mishra, Constable Anand Kumar, Constable Manveer Singh had died and one Constable Niranjan was also grievously injured. The constable who had been injured inside

the Campus was taken to the hospital of the CRPF. In the end of the F.I.R., it was stated that all the police personnel and the CRPF personnel had seen the terrorists in the light of the electricity bulb and that if they were produced before them, they could recognise them. Because of the incident, the people living in the neighbouring areas were terrified. It was thus stated that the crime committed was an offence under Sections 147, 148, 149, 307, 302, 332 of I.P.C. and Section 3/5 of the PDPP Act. Also the F.I.R. was registered under Section 3 of Explosive Substances Act, 1908. In the F.I.R. it was stated that the empty cartridges could not be located in the night and that as and when they would be recovered, they would be taken into custody. After the F.I.R. was lodged, a report was also submitted from the office of Additional Deputy Inspector General of Police, CRPF with regard to the incident which had occurred on 1.1.2008 at 02:25 AM in which it was stated that from the Campus through the gate no. 1 an attack had happened in which seven personnel of the CRPF had died and three were grievously injured. The details was given as under:

Dead personnel :

(i) Constable Anand Kumar

(ii) Havaldar Rishikesh Rai

(iii) Havaldar Afzal Ahmad

(iv) Havaldar Ramji Saran Mishra

(v) Constable Manveer Singh

(vi) Constable Devendra Kumar

(vii) Constable Vikas Kumar

Injured CRPF personnel :

(i) Constable Kendra Singh

(ii) Constable Pradeep Kumar

(iii) Constable Ranjan Lal

and it was also stated that still further two employees of the Department had been injured. It was also informed that the CRPF men had fired around 68 rounds of SLR and 3 rounds of A.K.M.K. In Clause IV of the communication the places where the deaths had taken place were given out. On the main gate/ guard room, 4 CRPF jawans had died. In the central control room 2 CRPF jawans had died and in the other control room 1 jawan had died. It was also stated that in the terrorists' attack probably grenades were used. From the terrorists 1 magazine of AK-47, 29 live rounds and 7 empty cartridges were taken into custody and 1 lever of a hand grenade was recovered. In the incident it was also stated that one SLR rifle (body no. 16142833) had got damaged alongwith a magazine of 40 rounds and a request was made that an F.I.R. be lodged to that effect. When on 2.1.2008, apart from the earlier recoveries, further recoveries were made of a safety pin of a grenade, four empty cartridges of AK-47 and six flat bullets, then they were also handed over to the police. The AK-47 magazine with 29 live rounds of ammunition, 7 empty cartridges and the lever of hand grenade which were found on 1.1.2008 were also handed over to the police. So far as the police was concerned, it had on 1.1.2008 in the presence of various witnesses, from the place of incident and from near the railway gate, 1 damaged SLR rifle of 10 rounds of live ammunition, 1 SLR number 5747 and 2 empty

cartridges of SLR with one missed cartridge of SLR alongwith a Nokia mobile, sim number 9927846448, were taken into custody. The recovery memo was prepared and was numbered as Exhibit Ka-65. On 1.1.2008, the police, on the directions of the Thana In-charge, Sub-Inspector S.C. Sharma from the place of incident had collected 32 empty cartridges of AK-47. Also 2 magazines were recovered and they were taken into custody. Also, Sub-Inspector S.C. Sharma on 1.1.2008 had recovered the ash mud and concrete and plain mud from the site where the deceased Kishan Lal was killed by the hand grenade. Also a blanket which had blood of deceased Kishan Lal was taken into custody. On the same day i.e. on 1.1.2008, S.C. Sharma from the guard room had collected half burnt cap, belt, certain particles of a hand grenade, a broken glass and other relevant objects. The recovery memo of it was prepared and numbered as Exhibit Ka-68. Similarly, Exhibit Ka-69, Exhibit Ka-70, Exhibit Ka-71, Exhibit Ka-72, Exhibit Ka-73, Exhibit Ka-74, Exhibit Ka-75 and Exhibit Ka-76 were the recovery memos of various other articles which were found from the place of incident.

4. The postmortem of Constable Ramji Saran was done and its report was kept on record as Exhibit Ka-61.

5. Exhibit Ka-62 was the postmortem report of Rishikesh Rai.

6. Exhibit Ka-58 was the postmortem report of Constable Anand Kumar.

7. Exhibit Ka-56 was the postmortem report of Vikas Kumar.

8. Exhibit Ka-57 was the postmortem report of Constable Devendra Kumar.

9. Exhibit Ka-63 was the postmortem report of deceased Kishan Lal.

10. Exhibit Ka-59 was the postmortem report of Constable Afzal Ahmad.

11. Exhibit Ka-60 was the postmortem report of Constable Manveer Singh.

12. Similarly, the medical reports of the injured Constable Indrapal Singh, Rajjanpal, Pradeep Chaudhari, Home Guard Aftab and Constable Kendrapal Singh were prepared and were kept on record as Exhibit Ka-51, Exhibit Ka-52, Exhibit Ka-53, Exhibit Ka-54 and Exhibit Ka-55 respectively.

13. So far as the arrests were concerned, three accused persons namely Baba @ Jang Bahadur, Mohd. Sharif @ Sohail @ Sajid @ Anwar @ Ali and Faheem @ Arshad @ Hasan Ahmad @ Aakil @ Abu Zarrar @ Sahil @ Samir Sheikh were arrested on 9/10.2.2008 in the night by Additional Superintendent of Police, Ashok Kumar Raghav and the accompanying police personnel. They were arrested alongwith weapons and with regard to the weapons a recovery memo was prepared as Exhibit Ka-64. On 10.2.2008 at around 06:20 AM the accused Imran Shahjad, Mohd. Farooq @ Abu Zulfeqar Nain @ Abuzar @ Amar Singh and Sabauddin @ Shahabuddin @ Shaba @ Sanjid @ Farhan @ Shaba @ Abu-al-Kasim @ Babar @ Mobassir @ Samir @ Iftekar were arrested alongwith their weapons in Lucknow. From the possession of these three accused persons also were recovered various weapons, the memos of which were prepared. The spot map of the place of incident was

prepared by the Investigating Officer which was marked as Exhibit Ka-88.

14. Upon the investigation having been completed a charge-sheet was filed. Thereafter various supplementary charge-sheets were also filed. Thereafter the trial commenced.

15. From the side of the prosecution as many as 38 witnesses appeared and they testified before the court.

16. PW-1 Sri O.P. Sharma had come to the court and testified after he had retired from service and had stated that in the mid night of 31.12.2007 and 1.1.2008 he was posted as a Sub-Inspector at Thana Civil Lines, District Rampur. He had stated that the incident was of 1.1.2008 and had occurred at around 02:30 AM. In the same strain he had mentioned that on 1.1.2008 he had started from the thana at around 12:25 AM alongwith Constable Indrapal (PW-6) who was carrying a service rifle and was also having 30 cartridges. Alongwith these two, Jitendra (PW-38) another constable was also there and was having a service rifle with 30 cartridges. Home Guard Aftab Khan also was there and he had a rifle with 30 live cartridges. They were on a government jeep (UP22G0019) and the jeep was being driven by Constable 118 Jaswant Singh. PW-1 himself was having a service revolver of 38 bore and had 12 live bullets with him. After having done the regular round, the entire team had reached Kosi Bridge and was stationed at the toll of the CRPF. At the CRPF toll the picket duty was being done by Sub-Inspector Bihari Lal, Constable Nasir Ali, Constable Virendra Rana, Home Guard Lakhpat and Ram Gopal. They were all carrying weapons

provided by the State. When the PW-1 alongwith his policemen reached the CRPF Camp and had commenced their duties, then from the Gate No. 1 they heard the sound of firing. This prompted the PW-1 to believe that at Gate No.1 some incident had taken place and therefore they all reached the CRPF Gate No.1 and parked the jeep alongside the road. They got out of the jeep and somehow reached the CRPF Gate No.1 and in the light of the electricity bulb they saw 4-5 persons with modern automatic weapons and that they were aiming at the jawans of the CRPF and were firing upon them. The way the firing was going on, the PW-1 and his team was convinced that they were all terrorists. He had then stated that from amongst the various terrorists one Jang Bahadur who was at Gate No. 1 of the CRPF Camp had a little ahead of him Irfan Shahjad and Mohd. Farooq. They were all having AK-47 rifles and were incessantly firing towards the CRPF Camp and they were also throwing grenades. Jang Bahadur had incited and exhorted the two other friends of his and was giving strength to them. He had then stated that a little away from the spot near the CRPF Camp, Sabauddin @ Shaba was also standing with an AK-47 rifle and they were all firing from their guns and were throwing grenades. Just near Sabauddin, Mohd. Sharif was also standing. He was also targetting the CRPF Camp with grenades. Jang Bahadur, he had heard, was saying to Imran and Sharif that they may move a little from the place where they were standing and from there they may throw grenades. To Farooq he was saying that he may hurl the grenades and kill the *kafirs*. Jang Bahadur was also directing Mohd. Sharif to throw grenades from behind. Jang Bahadur was all the time

inciting his friends and was encouraging them and he was also passing on all the informations of the camp to his men. The PW-1 realising that he had to confront a very powerful set of people directed his own men that while they may protect themselves, they had also to kill the terrorists. The Sub-Inspector also fired twice from his revolver towards the terrorists. Indrapal fired eight rounds from his rifle. Jitendra fired seven rounds and similarly Virendra fired five rounds. Aftab also fired five rounds. When the police party fired from a particular point then the terrorists aimed at them and threw a grenade towards them which hit Constable Indrapal. Not only that, one particular ball of fire also hit the Home Guard Aftab Khan and they both got injured. Also the rifle of Constable Indrapal got damaged. The terrorists Imran Shahjad and Mohd. Farooq while firing with their AK-47 rifles entered the CRPF Camp. First Imran entered thereafter Farooq entered and they continued to fire and also continued to throw grenades. From both sides since firing was taking place, the PW-1 could hear the sounds of the firing loud and clear. At this juncture, the Sub-Inspector (PW-1) informed the control room about the terrorists' attack and he prayed for more help. It had been stated that the incident was of 1.1.2008 and had occurred at around 02:30 AM. He reiterated that in the light which was there he alongwith his companion police personnel had recognised the terrorists. After sometime the firing stopped. Thereafter the police team tried to chase the terrorists unsuccessfully. He then had stated that thereafter the police team entered the CRPF Camp and by that time Satya Prakash Sharma alongwith other police personnel had reached the place of incident. The

officials of the CRPF also reached the place of incident. Outside the Gate No. 1, the CRPF jawan Devendra Singh and Constable Vikas alongwith one rikhshaw puller Kishan Lal had been hit with bullets fired by the terrorists and they had died and their dead-bodies were lying outside the CRPF Gate No. 1. At this place he had stated that Constable Pradeep Kumar, Constable Ranjan Lal and Havaldar Afzal Ahmad had also been hit by bullets and they were also injured. Afzal Ahmad while going to the hospital of the CRPF, died. The Constable Kendra Singh who had been injured inside the CRPF Camp alongwith Havaldar Ramji Saran Mishra, Havaldar Rishikesh Rai, Constable Manveer Singh and Constable Anand Singh had also died and their dead-bodies were lying inside the CRPF Camp. Near the CRPF Gate No. 1, the SLR of a CRPF jawan had got damaged and was lying there. Since, the terrorists had thrown grenades on the control room of the D.I.G. the marks of the grenades where they had hit were to be seen. He had stated that a lot of people who were passing by the main highway had got terrorised. The Constable Indrapal and Home Guard Aftab Khan had got injured because of the bullets hitting them and they were taken to the Rampur District Hospital. Their medical reports were sent through Constable Mahipal. The injured Indrapal and Aftab had submitted their damaged weapons and the bullets, which they had, in Thana Civil Lines Rampur. He had stated that he had lodged the F.I.R. in his own handwriting, which was numbered as Exhibit Ka-1 and the F.I.R. upon being lodged had given rise to Case Crime No. 8 of 2008, under Sections 147, 148, 149, 332, 307, 302 of I.P.C. read with section 3/5 of PDPP Act and it was

also lodged under Section 3 of Explosive Substances Act, 1908. On the F.I.R., he had stated, that his signatures were there. He had stated that Jang Bahadur and Mohd. Sharif were residents of Moradabad and Rampur respectively. On 10.02.2008, he had stated that he had recognised them in the thana Civil Lines and had stated that they were the accused who were there at the CRPF Gate No. 1. He had stated that Mohd. Sharif was throwing the grenades and Jang Bahadur was giving directions to all the other terrorists. He thereafter had stated that Jang Bahadur and Mohd. Sharif were present in the court and he recognised them very well. On 22.2.2008, the terrorists Imran Shahjad and Mohd. Farooq who were earlier detained by the ATS team, Lucknow were brought to Rampur on remand. He had stated that he had recognised them at the Police Line. He had stated that he had seen the photograph of Sabauddin @ Shaba which was there in the Kotwali, Rampur and had stated that he was present in the Court. Mohd. Sharif was a resident of District Rampur and that he had committed the crime after a full reconnaissance with Jang Bahadur. Because of the reconnaissance which he had been doing, certain news items had been published in the newspapers and, therefore there was vigilance on the spot. The empty cartridges of the two firings which the PW-1 had done were there at the spot and they had been collected by Sub-Inspector Virasat Ali. The PW-1 had stated that he had taken empty cartridges from Virasat Ali and had given them to the Investigating Officer. The empty cartridges of the firing done by Jitendra and Virendra were also found from the spot. However, only ten of them could be found and they were also handed

over to the Investigating Officer, Satya Prakash Sharma. The damaged rifle of Indrapal Singh was also handed over to the Investigating Officer Satya Prakash Sharma and he had on the spot kept them in two separate cloth pieces and had sealed them. On the bundles which were prepared, the PW-1 had also signed. The signature of Satya Prakash Sharma who had prepared the memo was known to the PW-1 and he had recognised his handwriting. The Investigating Officer Satya Prakash Sharma had collected the empty cartridges of 38 bore revolver and the 10 empty cartridges. The memo of these articles was prepared. The memo of recovery of the magazine was also prepared in the presence of PW-1 and other witnesses. The paper which had the memo was numbered as 7Ka/5 and it had the signatures of PW-1 and other witnesses.

17. Further the Sub-Inspector Omprakash (retired) had stated that the PW-1 was confronted by the statement recorded by the 2nd Investigating Officer O.P. Tripathi which was dated 16.9.2008, on which date the PW-1 had got recorded his statement under Section 161 of Cr.P.C. again. The first time the Inspector PW-1 had got his statement recorded under Section 161 of Cr.P.C. was on 1.1.2008. He reiterated that the five terrorists whom he had seen in the incident could be recognised by him as well as by his accompanying constables. He had stated that they were present in the court. He had stated that he had handed over the rifle of Constable Indrapal Singh, which had got damaged, to the 1st Investigating Officer Satya Prakash Sharma. Alongwith the damaged rifle, he had also handed over the broken magazine. The other rifle of Home Guard Aftab Khan which had got damaged at the place of incident

was also kept in the Thana Civil Lines and that the two rifles could be recognised by the PW-1. In the cross-examination done on behalf of the accused persons, the PW-1 had stated as to how and why he had reached the place of incident around one hour before. He had stated on that date while patrolling, he had got an information of a dead-body lying in the neighbourhood at around 12:30 PM and that dead-body was sent with a constable who was on duty and thereafter he had stated that he had reached the place of incident about half an hour thereafter. He had stated that while patrolling he had not come across any suspicious vehicle which might have been parked at the place of incident. He then had stated that when he had reached the place of incident the firing had already commenced and upon coming to know of the incident, the PW-1 alongwith his other companions had reached the CRPF Gate No. 1 and thereafter they had taken position. After looking at the site plan he had stated that he had taken position at the place marked as D1. He had further stated that in the F.I.R. he had not given out as to where the two accused persons were standing/stationed. He had stated that he had not stated anything which was peculiar about the description of the accused persons in the F.I.R. and that he had only given the description while recording his statement under Section 161 Cr.P.C. to the 1st Investigating Officer. He had stated that he had, while giving the description, not given any special features of the accused and that he had only stated that they were young men. In the F.I.R., he had stated that there were 4-5 accused persons. He had stated that he had not given out in the F.I.R. about the AK-47 and that he had only stated that the terrorists were

carrying modern weapons. In his statement under Section 161 Cr.P.C. on 1.1.2008 also he had not stated anything about the AK-47. He had stated that in the F.I.R. and also in the statement recorded on 1.1.2008 he had not stated anything with regard to the fact as to which of the accused person was exhorting the other accused persons and as to which of the accused person was encouraging the other accused persons. He had stated that on 22.2.2008 even though no statement of his was recorded but he was on duty, and was guarding the accused persons who had got arrested. He had stated that he had not prepared any note with regard to the recognition of the accused persons. He had stated that he had seen the photograph of Sabauddin on 22.3.2008. He had stated that he did not know as to how the photograph of Sabauddin had reached the police station. He had stated that he had known the name of Sabauddin as it was written below the photograph. This witness upon being asked as to where the dead-bodies of the deceased were lying, he had stated that he could look into the map and tell as to where the dead-bodies were lying and in fact after looking at the map he had stated that at points D1, D2 and D3 outside the gate and at points D4 and D8 inside the compound the dead-bodies were lying. The points D1, D2 and D3 were along the railway crossing. He had stated that he had given the exact name of the deceased in the F.I.R. He had stated that it was wrong to conclude that no incident had taken place in his presence. He had further stated that injured Constable Indrapal Singh and Home Guard Aftab Khan were taken in jeep (UP 22 G 0019) at 03:15 AM in the morning and this was the jeep by which he had come from thana to the place of incident. He

had stated that he had not stated in the general diary that Constable Indrapal and Home Guard Aftab Khan were taken to the hospital. He had stated that while chasing the assailants he was accompanied by Constable Jitendra and Constable Virendra and that for around 15 minutes the three had followed the assailants for a distance of about 500 meters alongside the railway line. While following them they had not shot at the assailants and in fact the PW-1 had tripped on the railway track. However, the accompanying constables had fired 12 times. The assailants and the police party were separated by a distance of 200 steps. He had stated that immediately after Indrapal Singh and Aftab Khan had got injured, he had informed the Headquarter on wireless which was recorded on GD No. 9. He had stated that he had deposited the empty cartridges at the thana. The empty cartridges of his revolver were also given to Sub-Inspector Virasat Ali. After being deposited at the thana they were entered in the GD. The other used cartridges were also submitted in the police station on the same GD number. On the spot he had categorically stated that he had not prepared any memo of recovery. He had stated that when the accused were arrested, he did not remember that whether their faces were open or hidden. He had denied the fact that there was no incident which had taken place and that the entire incident was a result of the new year day celebration.

18. PW-2 was C.P**.** Satish Sharma who had in his examination-in-chief stated that on 1.1.2008 he was posted at Thana Kotwali Civil Lines as Constable Clerk and that he had registered the F.I.R. submitted by Sub-Inspector Omprakash Sharma at 5:50 AM and that had given rise to

Case Crime No. 8 of 2008, under Sections 147, 148, 149, 332, 307, 302 of I.P.C. read with section 3/5 of PDPP Act and under Section 3 of Explosive Substances Act, 1908. The chick was numbered as 1 of 2008. He had also proven the fact that on 1.1.2008 at around 02:30 AM the information on the wireless was received. Thereafter in his cross-examination by the accused persons he stood firm with what he had stated in the examination-in-chief.

19. PW-3 was the Sub-Inspector Sumair Lal who had proven the panchayatnama which was of the deceased Afzal Ahmad, jawan of the CRPF. He had also prepared the panchayatnama of the deceased Manveer Singh and these he had proved.

20. PW-4 was one Sub-Inspector Omprakash Akela and he had also proven the panchayatnama with regard to the deceased Ramji Saran Mishra and others.

21. PW-5 was the Sub-Inspector Shawabul Hasan who had also prepared the panchayatnama of the deceased persons and had proven them and had also proved the receiving of certain recovered empty cartridges and a hand grenade’s lever.

22. The PW-6 was the injured Constable Indrapal Singh. He had stated that on the date of the incident i.e. on 1.1.2008 he was posted in Civil Lines Thana. On that date he alongwith the Sub-Inspector O.P. Sharma had gone at around 12:00 in the mid night along with the other constables. Sub-Inspector had a revolver with him. While the entire group was approaching the CRPF Camp they had heard sounds of incessant firing. It is at this place that they met the other policemen

already on duty namely Bihari Lal, Nasir Husain, Virendra Rana, Home Guards Ganpat and Ram Gopal. Both the teams together decided to go towards the place from where the sounds of firing were coming and at that point of time Constable Virendra Rana was also sitting in the jeep. The others who could not find place in the jeep were coming on foot. Just before a particular point which was the railway quarters, the jeep was stopped and the police personnel got off it and it was seen by the PW-6 that 4-5 persons were firing towards the CRPF Headquarter. This he states that he had seen in the light of the electricity bulb. One person who was on the road near the railway quarter was laden with blood. He had stated that the entire team was convinced that the persons who were firing were all terrorists. The Sub-Inspector, O.P. Sharma had directed the entire team to spread out and from there hidings fire on the assailants. He had stated that he had also fired. He himself had stated in his examination-in-chief that he had also fired and while he was firing from somewhere a bullet came and hit the rifle of the PW-6. At that point of time, a grenade also came and hit the PW-6 which injured him grievously. While he was running away from the spot after getting injured, he reached a tea kiosk where a man was sitting and as soon as he asked the man to run away, a bullet came and hit the the man sitting near the tea kiosk and he also died on the spot. He had stated that while he was hiding under the wooden cot *(takhat)* at that point of time two persons wearing jackets, which resembled the jackets which were worn by military personnel, came near the *(takhat)* and the PW-6 saw them from a close range. He had then stated that one person who was named

Jang Bahadur was exhorting Imran and Farooq to fire and throw grenades respectively. At that point of time, Sri Satya Prakash Sharma Inspector of the local thana reached with more force and took the PW-6 from there to get him admitted in the District Hospital, Rampur. From the District Hospital, Rampur, the PW-6 had stated that he was shifted to the Medical College, Meerut, his condition being very serious. In the Medical College, Meerut he was treated for around ten days. Thereafter, he had gone on rest and had joined duty after a month. He had stated that after the terrorists were arrested he had gone to the police line to have a look at them and had stated that they were named Imran and Farooq. He had stated that he had also seen Jang Bahadur after his arrest and had also recognised him. After the revolver which had got damaged in the operation was shown to the PW-6, he recognised the same. The PW-6 also recognised the accused persons as Farooq and Jang Bahadur who were present in the court. On 12.4.2013 PW-6 was permitted to be cross-examined. In the cross-examination, he had answered various questions and had stated that the first time he heard the sound of firing he was around 50 meters away near the Kosi River and till such time they reached check post, the firing had continued. At the check post, they stopped for around one to 1 hour and 30 minutes and that the police team was ten in number. He had stated that when he had taken position to fire, the closest person was Sri O.P. Sharma, Sub-Inspector. He had stated that he had injuries of pellets in his entire body. He had stated that the persons whom he was targetting were around 50 meters away. He had further stated that the terrorists were firing from both sides. Those who

were inside the CRPF Gate were firing towards the CRPF Headquarter and those who were outside the CRPF Gate were firing towards the other side. He had stated that he could not tell as to how many persons were inside the premises. However, he had counted three persons who were outside the premises and that they were firing towards the road. After the police personnel had taken position and had fired, the three terrorists who were outside the premises started firing towards the police team. He had stated that he had worked in the police department for the past 26 years and he knew that when the Investigating Officer was inquiring about the description of the accused then he had to give the description properly as it was important. However, he did not remember as to what description of accused he had given as he was grievously injured. He had stated upon seeing the statement under Section 161 of Cr.P.C. that he had actually not given the description of the accused to the police. He had stated that on 29.10.2012 i.e. on an earlier occasion he had stated about the fact that Jang Bahadur was exhorting Imran and Farooq to fire and to throw grenades. However, this statement he had not given in his recorded statement under Section 161 Cr.P.C. He had stated that it was wrong to say that he had recognised the accused when the police had tutored him in the court.

23. PW-7 is one Kuwar Pal Singh. He had in his statement-in-chief stated that on 1.1.2008 he was posted in Thana Civil Lines, Rampur as Sub-Inspector. He had stated that on the oral information of O.P. Sharma he alongwith Sub-Inspector Virendra Singh and his team had reached the site in question where he had found that the dead-body of Vikas Kumar

Constable of the CRPF was lying. There was a lot of crowd there. At that point of time, the panchayatnama was prepared and the opinion of the panches was also taken. The dead-body was, with the help of Constable Udayveer and Ashok Kumar, sent to the District Hospital. In the court, he had stated that in the panchayatnama and the related papers which were in front of him, his signature was there in the panchayatnama and on the other papers which accompanied the panchayatnama while the body was being taken for postmortem.

24. PW-8 is the Constable Pradeep Kumar. He had stated that on 31.12.2007 he was posted at the CRPF Campus. He had stated that the incident of 1.1.2008 had occurred in the early hours at around 2:00 to 2:30 AM. Along with him Head Constable Afzal Ahmad, Constable Devendra Kumar, Constable Rajjan Lal were present. While Constable Vikas Saini alongwith his SLR for some work had gone to the guard commander, at that point of time AK-47 was fired on them and also hand grenades were thrown. He had stated that one terrorist was shouting from behind that the other terrorists had to keep on firing and he was mentioning the names of Farooq and Imran and was insisting that they throw hand grenades on the camp. He had stated that he himself had fired from his rifle and had stated that the bullets which were being fired by the terrorists had also hit his leg. However, he had fallen in the kiosk which was there at the spot but still he had continued to fire on the terrorists. Vikas was also near the Gate No. 1 and he had also been injured by the bullets fired by the terrorists and he had fallen there itself. Firing had continued for quite sometime but thereafter it had stopped. He

had stated that he had seen the entire incident in the light of the electric mercury bulb. On the place of incident, lot of Officers of the CRPF and of the Civil Police had reached and that during the incident he himself, the Constable of the CRPF Rajjan Lal and few police personnel of the civil police and the Home Guard had got injured. He himself was taken in a vehicle to the district hospital and thereafter he was taken from Rampur to Moradabad where he was properly treated. He had stated that he had seen Imran, while he was both firing and also throwing grenades. He had stated that there was one more person whose name he did not remember and that in the court he had recognised him. This witness had pointed towards the accused Imran and had stated that he was there in the incident. However, he did not recognise anyone else. He had stated that he was injured on the left knee and that his leg had also to be amputated while treatment was going on. He was having a transplanted leg. He had stated that his statement was taken once by the civil police and at another time by the A.T.S. He had stated that during his treatment, he had come to know about the deaths of the various constables etc. On 19.12.2012, the PW-8 asked for an adjournment and thereafter his cross-examination was continued on 29.3.2013. He had stated that after he was admitted in the hospital called Sri Ganga Ram, he was discharged from the hospital either on 25 or 27.2.2008. For taking rest, he was also admitted to the CRPF Hospital, Rampur. He was thereafter transferred to Lucknow in June, 2009. He had thereafter very comfortably answered questions as to where he was posted on the date of incident etc. He had upon a specific question being asked as to whether he had stated the

names of the terrorists in his statement under Section 161 Cr.P.C., he had answered definitely that he had not done so.

25. PW-9 was one Kendra Singh. With regard to the occurrence of the incident he had narrated the entire event in the same manner as the other witnesses had. He was also injured and had fallen on the ground. In his statement-in-chief, he had stated that he was injured by the bullets of AK-47. He had mentioned the name of Farooq in his statement-in-chief. He had stated that he was a person who was throwing the grenades. From the Gate No. 1, he had stated that he had heard that a particular terrorist was taking the name of Imran Shahjad and he was exhorting him to fire. He had stated that this very person was also exhorting Farooq to throw the grenades. He had stated that when on 22.2.2008 the terrorists were taken towards the Kosi River then he had also gone out of curiosity to see as to which of the accused persons were there and he had recognised Gulab, Shahjad and Mohd. Farooq. He had thereafter given the details of the persons who had died. He had also given the details of the policemen of the civil police who had got injured. He had, however, not recognised any of the accused persons who were present in the court. In his cross-examination, he had stated that he had not told the CRPF officials that Imran Shahjad was carrying AK-47 and he was firing and he had also not told about Farooq who was throwing grenades. He had categorically stated that he had not stated in his statement under Section 161 Cr.P.C. which was recorded by the police that Imran Shahjad was firing and that he had an AK-47. He had also not told anything about Farooq that he was throwing grenades. He had stated that he had also

stated in his statement under Section 161 of Cr.P.C. that he had not seen any of the accused as his back was facing them.

26. PW-10, Virendra Singh Valian, in his statement-in-chief has stated about the fact as to how the panchayatnama of the deceased Kishan Lal was prepared and how the dead-body was taken for postmortem by Constable Ashok Kumar and Constable Udaiveer Singh.

27. PW-11 was Dr. Mohd. Ashraf Ali of District Hospital, Rampur. He had stated that he had examined the injuries of Indrapal and he had thereafter proved the injury report and had given a statement with regard to the injuries. He had also stated about the medical examination of the injured Rajjan Lal, Pradeep Gurjar, Home Guard Aftab and Constable Kendra Singh. In his cross-examination, he had stood firm with what he had stated in the examination-in-chief.

28. PW-12 was Santosh Kothari, Constable of the CRPF. He had also stated as to how he was standing on the guard room and had heard about the firing and how the CRPF Headquarter was attacked. He himself was injured with a grenade and about that he elaboratory explained. He had also stated that apart from him three other Constables Kendra Singh, Rajjan Lal and Pradeep Kumar of the CRPF had got injured and that seven jawans had got killed. This witness was declared hostile. He had stated that he did not remember the names of the deceased and he had also stated that when he tried to see out of the window from where the bullets were entering and the bombs had got blasted, he could not see any of the terrorists.

29. PW-13 was Dr. N.D. Arora who was on the relevant date posted in Rampur in the District Hospital as a Medical Officer. He had also stated how the injured were brought and treatments were given to them. He had also proved the postmortem reports of the deceased.

30. PW-14 is one Navendu Kumar, Inspector Special Task Force (Special Task Force) U.P. Field Unit. In February, 2008 he had stated that he was posted in Lucknow in the Special Task Force for searching out the terrorists who had attacked in the CRPF Camp. On 1.2.2008, SSP of the Special Task Force Sri Amitabh Yash had constituted a team. In that team alongwith the PW-14 there were other police officials as well namely Jaiprakash Additional SSP S. Anand Additional SP, Jai Narayan Shukla, Avinash Mishra and Ashok Kumar Banerji. The team had collected information with regard to the terrorists' activities from its various sources. They had also collected information with regard to the terrorists who were responsible for the incident on 1.1.2008 at the CRPF Camp, Rampur. After the formation of the Special Task Force, on 9/10.2.2008, there was an information of three dreaded terrorists who had connections with lashkar-e-taiba and that they were also involved in the CRPF Camp incident and that they were to reach Lucknow by Nauchandi Express at around 5:00 AM. They were to meet someone in Lucknow and thereafter they had to go to Bombay. This information was also confirmed by the other team of the Special Task Force which was present at Rampur. The other team which was at Rampur had also informed the Lucknow team that out of three terrorists who were to reach Lucknow one had a blue & red bag; the other had a red & black

bag and the third had a green air bag and the information was also given that the three were carrying extremely modern weapons alongwith other explosive substances. Believing the information, the team consisting of PW-14 himself, Indrajeet Chaturvedi, Jaiprakash Pandey, Sandeep Mishra, Dharmendra Shahi, H.C. Gajendra Pal, H.C. Pramod Kumar Singh, H.C. Himmat Singh, Constable Usman etc. alongwith Commandos Faheem, Upendra Singh, Omveer and other employees in a Tavera Car numbered as UP32BG2017 with the help of a driver Vijay Prakash left for the railway station. All the police personnel were accomodated in the tavera and the other cars and they were all carrying government weapons. In this manner it has been stated that three cars alongwith the three drivers namely Vijay Prakash, Suresh and Shailendra and the team comprising Satya Prakash Sub-Inspector, Sandeep Mishra Sub-Inspector, Devendra Singh Sub-Inspector, Jaiprakash Pandey Sub-Inspector, Ajay Chaturvedi Sub-Inspector, D.K. Shahi Sub-Inspector, Head Constables Dhirendra, Head Constables, Pramod Sachan, Gajendra Pal, Himmat Singh, Pankaj Dwivedi and Constables Neeraj Kumar, Satya Prakash, Amit Kumar, Vinod Mishra, Mohd. Usman, Commandos Faheem, Omveer, Vinod Yadav, Santosh, Sunil and Vinod reached the railway station at 04:00 AM and at the railway station the informer *(mukhbir)* was found. The PW-14 had stated that after having talked to the informer present at the railway station and with the other team at Rampur and after believing at the information of the Rampur team, the team at Lucknow commenced with its work. The public was requested for becoming a witness but no one was prepared for doing that job and

therefore the team after having checked each other with regard to any prohibited articles, got on to the job. The team was divided into three parts. The first team included the PW-14 had Sub-Inspectors Satya Prakash, Sandeep Mishra, Head Constables Dhirendra Pratap Singh, Pradeep, Pramod Sachan, Constables Neeraj, Satya Prakash, Virendra Pal Singh, Commandos Omveer Singh, Faheem. The second team comprised Sub-Inspector Jaiprakash Pandey, Sub-Inspector Satendra Singh, Head Constable Gajendra, Head Constable Raj Kumar Singh, Constable Neeraj Kumar, Constable Vinod Mishra, Commandos Vinod Yadav and Tripathi and the third team comprised Sub-Inspector Ajay Chaturvedi, Sub-Inspector D.K. Shahi, Head Constable Himmat Singh, Head Constable Pankaj Dwivedi, Constable Usman, Commandos Upendra Singh, Rajiv and Santosh. On all the relevant points, the three teams were properly briefed. The three teams were informed of the work they have to do and that they had to use minimum force and were directed to commence with their work. After the teams were properly briefed, the first team of which the PW-14 was a member alongwith the informer stationed itself at the Reservation Office of the Charbagh Railway Station. The second team stationed itself on the Ravindralay Gate which was on the road which ran between Charbagh and Husainganj and it had stationed itself on the footpath there. The third team stationed itself on the stadium situate on the road which ran from Charbagh to Husainganj. The three vehicles were parked alongwith their drivers at the Ravindralay Gate at around 06:20 AM. From the side of the Mazar Gate the three persons who were to come out of the

Nauchandi Train were sighted and they were carrying their air bags. The informer had recognised them. He had stated that they were the persons who had committed the crime at the Rampur CRPF Camp. He had also informed that they were carrying modern weapons alongwith various explosives. The three passengers who came out of the train walked passed the first team with their bags and reached the main gate and thereafter reached the Ravindralay Gate and were waiting for some vehicle. The three persons who had come out of the train were followed by the team. The informer had already confirmed that these were the three persons who had started from Rampur. When the first team was to reach the Ravindralay Gate, the PW-14 had indicated the other teams also to reach the place from where the three individuals who were being followed by the first team had reached. The three individuals/accused got suspicious and they tried to open the zip of their bags and started running towards Husainganj from Charbagh. They also took out the weapons from their bags and took their positions. Thereafter the PW-14 had stated that he in a bold voice asked them to surrender but when they started taking further position, the three teams apprehended the terrorists alongwith their weapons. They could not run from the place where they were standing and waiting for their vehicle. The first team took the AK-47 and the magazine which was being carried by the person who had been held by the PW-14. The bag was also taken into custody. When his name was asked, he informed that he was Sabauddin @ Shaba @ Farhan @ Mohd. Shabir @ @ Sanjid @ Barrar @ Samir @ Iftekhar @ Abu-al-Kasim @ Ali son of Bashir Ahmad resident of Gram and Post Gandhwar,

Thana Shakri, District Madhubani, Bihar. In the bag which was nabbed from Sabauddin who was carrying the blue and black bag certain papers, clothes and a long key was found and from his purse a ticket from Agra Cant to Mumbai of the Punjab Mail Train was found which had the date 11.2.2008. Rs. 500 to 700 were also recovered. The second team had apprehended the terrorist whose name was Abu Asam @ Imran Shahjad @ Umesh @ Adil @ Ajay @ Hasan son of Mohd. Azam resident of Shivni Thana Chauki Sadar Dinbani, POK. In his right hand, an AK-47 alongwith the magazine was recovered and the magazine had nine live cartridges of 7.62 bore. On his left shoulder there was an air bag with colours red and black and when that was opened and checked then some used clothes, some papers and Pankistani passport were found. The passport was in the name of Imran Shahjad and it also had a photo of Imran Shahjad. It was valid till 2012. The purse, he was carrying was also checked and it had also a reservation ticket from Agra Cant to Mumbai by Punjab Mail which was dated 11.2.2008 and Rs. 500 to 700 were also recovered. The third team had apprehended a person who upon asking, told his name as Mohd. Farooq @ Amar Singh son of Buta Patti resident of Kamdariwala Hujrawal, Punjab, Pakistan. In his right hand there was a black hand grenade and in left shoulder was a green coloured air bag. When it was opened then it was found that it had a black coloured live hand grenade. From the bag a Pakistan’s passport was also recovered which was in the name of Mohd. Farooq and the photograph of Mohd. Farooq was also affixed on it and the passport was valid till 11.03.2012. The bag also had some used clothes and some papers. When

the purse was checked it also had a reservation ticket which was from Agra Cant to Mumbai of 11.2.2008. The train was Punjab Mail. He had stated that the three apprehended persons when were questioned initially and they kept quiet but subsequently told that they were connected with lashkar-e-taiba and on the directions of the chief of that organisation, they had fired on the CRPF Camp at Rampur and they had also stated that they had been sent to India for committing further terrorist attacks. They also informed that they were to meet the chief of the lashkar-e-taiba at Lucknow and were to receive some money. After receiving the money, they were to leave for Mumbai. Sabauddin upon being further questioned had told that in 2002 while he was in the Aligarh University then he had met there one Dr. Urf Salarjang who had been killed in terrorists' activities. Being motivated by the doctor he said that he had gone to Pakistan where he had met the chief of the lashkar-e-taiba and there his training was done. In 2004 he had gone to Jammu and Kashmir and from there he had attacked the Auditorium of the Institute of Science. He had stated that one Hamza was alongwith him when he had attacked the auditorium and that on that date he had an AK-47 with three full magazines and four hand grenades. In that incident a scientist was killed, while many others were injured. He had gone to Pakistan thereafter. Being happy with the incident, the chief of the lashkar-e-taiba awarded him by making him the commander of Nepal. Directions were given to him in 2007 to commit certain terrorist activities in India. One of the activities was to attack on the kawarias who were going from Bareilly to Rampur but that could not be done. Thereafter, in 2007 he

was asked to attack the CRPF Camp at Rampur. Alongwith him Imran Shahjad and Mohd. Farooq were sent to Rampur and they, in a combined manner, inspected the area. He had stated that he was the one who in the night on 31.12.2007 had asked Imran Shahjad and Mohd. Farooq @ Amar Singh @ Suhail son of Ayub resident of Rampur to go to the CRPF Camp to commit the offence of firing at the jawans in the CRPF Campus. Thereafter, he had stated that the weapons and the hand grenades which remained were deposited at the house of Kamran @ Jang Bahadur resident of Moradabad and further had stated that from there itself he had picked up the weapons and now had come to Lucknow. In this manner, PW-14 states that all the three terrorists had admitted that the weapons which they were carrying were used in the CRPF Camp attack. Thereafter the three were told the reasons for their arrests at around 06:30 AM and were also arrested. The confiscated weapons were taken into custody. The confiscated weapons were sealed and a recovery memo was prepared thereafter. Thereafter, the teams reached the Thana Husainganj, Lucknow at around 09:30 AM. The confiscated articles and the accused were housed in the police station there. The PW-14 recognised the accused Sabauddin, Imran Shahjad and Mohd. Farooq in the court itself and had stated that these were the persons who had been apprehended. On 2.12.2014, the PW-14 once again gave his examination-in-chief. He had stated that the memo *(fard)* of the recovered articles was dictated to Head Constable Himmat Singh at the spot itself and that on the spot the articles recovered were wrapped in two cloth pieces and the two bundles were sealed and on the memo of

the recovery, he himself and other employees of the police department had signed. On the memo of recovery, the accused were also made to sign. On the basis of the recovery memo at Thana Husainganj, Lucknow, the case was instituted and the original paper was restored in Case No. 95 of 2009 in the court of Special Judge (Gangsters Act), Lucknow and was titled as State vs. Sabauddin and others, Thana Husainganj Lucknow. He had stated that in that case he had led his evidence and had proved the memo and that the original memo was being filed by him in the instant case which had been brought by the *pairokar* of the anti-terrorists squad. This memo was brought from the court of Gangsters Act, Lucknow and was handed over to PW-14 in accordance with law and it was thereafter placed on record as Exhibit Ka-83. In the court, the sealed materials were opened and shown to the PW-14 and he testified that those were the articles which were recovered from the accused persons. The AK-47 which was recovered from Sabauddin was exhibited as Exhibit Ka-186. The magazine was exhibited as Exhibit Ka-187. The recovered bullets which were of AK-47 and were nine in numbers were exhibited as Exhibit Ka-188 to 196. The cloth cover in which the entire sealed articles were sealed was exhibited as Exhibit Ka-197. The other sealed bundle was also opened and from it an AK-47 rifle, magazine and nine bullets came out and upon seeing them the witness PW-14 stated that these were the articles which were recovered from the accused Imran Shahjad. The rifle was numbered as Exhibit Ka-198, the magazine was numbered as Exhibit Ka-199 and the nine bullets were numbered as Exhibit Ka-200 to 208. The cloth in which the entire material was sealed

was exhibited as Exhibit Ka-209. From the accused Farooq @ Amar Singh two live hand grenades were recovered which were, through the police of Husainganj, sent to the bomb disposal squad and there they were diffused. From the accused Farooq, a passport of Pakistan was also recovered and one railway ticket from Agra Cant to Mumbai of Punjab Mail was also recovered alongwith some cash and some papers. An identity card of the Lucknow University by the name of Ahmad Ali was also recovered. The PW-14 recognised the passport of Pakistan and it was exhibited as Exhibit Ka-210. Ticket was numbered as Exhibit Ka-211. I.D. Card was numbered as Exhibit Ka-212 and the purse in which the cash was recovered was numbered as Exhibit Ka-213 and the cash of Rs. 400 (4 Notes of Rs. 100, 3 Notes of Rs. 10 and 1 Notes of Rs. 5) were numbered as Exhibit Ka-214 to Ka-221. The cloth in which the entire recovered articles were sealed was numbered as Exhibit Ka-222. Similarly, the articles which were recovered from Imran as passport, purse, currency and the railway ticket alongwith one Pakistan's identity card and one Lucknow Univerty's identity card were numbered in the following manner:

> Passport numbered as Exhibit Ka-223, railway ticket numbered as Exhibit Ka-224, purse numbered as Exhibit Ka-225, I.D. Card passport numbered as Exhibit Ka-226, I.D. Card of Lucknow University numbered as Exhibit Ka-227, the currency notes of Rs. 500 was numbered as Exhibit Ka-228 and the other currency notes were numbered as Exhibit Ka-229 to Ka-230 and

the clothes in which the entire articles were sealed and were numbered as Exhibit Ka-231.

The other articles which were recovered from Sabauddin were also recognised by this witness and he said that the key, railway ticket, maps, photographs, visiting card, purse and the currency all were recovered from him and that they were numbered as Exhibit Ka-232 to Ka-247. He had stated that the three accused persons who were arrested in Lucknow were present in the court and that he recognised them all. From the side of the accused persons, the PW-14 was cross-examined and the various questions were answered by him. He had stated that the entire exercise had taken around 2 hours and 45 minutes. He had stated that all the articles were carefully seen by him. He had also stated that he had been inspecting firearms for the past 16 to 17 years. He said that the Exhibit Ka-198 was AK-47 and not AK-56. He had stated that in fact the number 56-1015161165 was embossed on the rifle. He had stated that the number which was there on the rifle was not very clear then he had stated that he had got information that three persons were coming by Nauchandi Express at 05:00 AM in the morning and that they would be meeting somebody and that thereafter would head for Mumbai and that they were all dreaded terrorists of the group lashkar-e-taiba. He had stated that he had also the information that they were connected with the attack on the CRPF Camp and that they were carrying modern weapons and explosive articles. He had stated that he had not received any information as to where exactly they had started their journey from. The information that they were coming was given by a Senior Superintendent

of Police of the Special Task Force who himself had got this information from the informers. Before the accused persons were apprehended, the PW-14 already had information that they were carrying three bags and description of which were known to the PW-14. However, he had not known the exact description of the three persons. From the three persons there was no ticket recovered by which they had travelled uptill Lucknow. He had then stated that he was not aware as to whom the three of the accused persons were to meet in Lucknow. The informer had met him at the railway station who had met the PW-14 at around 2:30 to 3:00 hours. The informer knew about the three accused persons and he had informed the PW-14. When the informer had seen the three of them coming out from Lucknow Station, none of the police personnel had any idea as to how the three accused persons looked like. He had stated that he had no idea as to when the team which had operated in Lucknow, had communicated with the Rampur team. He had stated that after tallying all the informations, the SSP of the Special Task Force had alongwith the police team asked the PW-14 to take action in accordance with law. He had stated that he had not known that Mohd. Farooq had his ticket booked on 9.2.2008 at 12:08 hours at Nizamuddin and that Imran Shahjad had got his ticket booked on 9.2.2008 at 11:18 hours. He had also not known that the tickets of Farooq and Imran Shahjad were booked at Noida and Sahabuddin’s ticket was booked on 9.2.2008 at 10:15 hours at Ghaziabad. He had stated that the investigation of the CRPF attack was never given to Special Task Force. Whether the work was assigned to the Special Task Force in writing, the PW-14 had stated

that he had no idea. He had categorically stated that in the Office of the Special Task Force there was a G.D. Register which was maintained. He had also stated that the fact that the team had gone out to apprehend the terrorists was noted in the G.D. However, that G.D. was not produced in the court. For the purposes of apprehending the terrorists, this team was specially constituted. The second team was constituted on 9.2.2008 in the evening. He had stated that what had to be done by the specially constituted team was told to him by the S.S.P. of the Special Task Force. The team at Rampur had informed the team at Lucknow about the reaching of the three terrorists through S.S.P. of Special Task Force. He had stated that he had no idea about the activities of the team at Rampur and he did not known about the three persons apprehended by them also. He had stated that when the Lucknow team was constituted, no one from the GRPF or CRPF was consulted. In the Lucknow station, he had stated that there were three entries. For exiting the station there were three exit points. How one could get out from the back side of the railway station, the PW-14 was not aware but at all the points from where one could go out from the railway station the team of PW-14 was present. He had stated that it was correct that from the backside of the Charbagh Railway Station, Lucknow, there were many ways to exit after one got out of a train. However, the PW-14 had stated that he was not aware as to what were those methods by which one could go out from the backside of the railway station. The train Nauchandi had arrived at Lucknow on platform no. 1. He had denied the fact that the distance between the gaps from which one could go out from Lucknow Charbagh

Railway Station were separated by 100 meters. He had stated that it was wrong to say that the gates at the Charbagh Railway Station were separated by 100 meters. He had stated that he had stationed his team at three places and the distance between the three places was separated by 70 to 100 steps. He had stated that it was correct to say that there was no other security measure taken at the railway station. He had also stated that he had no information that the accused persons would come out only from the Mazar Gate. Upon being questioned as to whether the firearm AK-47 had a lock, he had stated that it did have a lock. When Sahabuddin was apprehended then he had taken a position and very near him the PW-14 himself was stationed with his team and in between them there was only a difference of 2 to 3 steps. He had stated that he himself had snatched the weapon and that after snatching the same the gun had remained in his hand and he himself had also unloaded it and thereafter had sealed the same. He had stated that he did not remember as to how the other squads of his team had taken the other AK-47 rifles. He had stated that he had inspected both the weapons and it took 10-15 minutes for doing that. He had stated that definitely in the memo of recovery there was no statement of this fact that the fingerprints on the firearm were preserved or that any effort was made to do that. He denied the suggestion that there was no preparation to apprehend the accused persons. He also denied the fact that the tickets were brought by the team of Special Task Force and thereafter was planted. He had also stated that it was wrong to say that no weapon at all was recovered from the accused persons. He had also denied the fact that the accused were never

arrested by him and they were not arrested from Lucknow on 10.2.2008. He had also stated that it was wrong to say that much before the arrest, the three accused persons were already in the custody of the Special Task Force and that only a sham arrest was made.

31. PW-15 was Rajjan Lal, the injured CRPF Jawan. He had stated that he was recruited in the year 1.1.1997 and that in July, 2007 he was posted at the Group Centre of Central Reserve Police Force at Rampur. On 31.12.2007 and on 1.1.2008 his duty was in between the railway crossing and the highway which was near the CRPF Gate No. 1. He had stated that he was on duty just outside the gate. He had stated that alongwith him there were the guards called Commander Afzal, Constable Pradeep and Devendra Kumar. All the three had with them SLR rifles. At that point of time Constable Vikas Kumar alongwith his rifle also reached the place where they were posted. At around 2:30 AM from the side of the highway incessant firing started and two of the terrorists entered the Camp and the others kept throwing grenades on them. The bullets had hit him at the left leg and the right hand. Pradeep Gurjar, Afzal Ahmad and Devendra Kumar alongwith Vikas Kumar who were at the railway station, they were also hit by bullets. After they were injured by the bullets they had laid down on the spot. They tried to fire however since they had got injured they could not do so. However, Pradeep Gurjar kept on firing. Two terrorists who had entered the CRPF Campus were seen by this PW-15 and he had also recognised them. Apart from these two there were 2-3 more persons. However, they could not be properly noticed by him and therefore he had said that he would

not be able to recognised them. There was sufficient light of the mercury bulb. Someone was shouting and taking names of Farooq and Imran and was saying that they had to fire and to throw grenades. He had stated that even though he was injured he had later on found that seven jawans had lost their lives. He had stated that one rikshaw puller had also lost his life. In the CRPF Campus three persons had got injured who were Rajjan Lal himself, Pradeep Gurjar and Kendra Singh. He had further stated that one police constable of the U.P. Police and one home guard had also got injured. When he got injured by a bullet he had gone down in a pit. Later on he was taken to the district hospital where he was given primary medication. Subsequently, he was referred to the Sai Hospital, Moradabad. He had specifically stated that the attack on the CRPF Campus was that of the terrorists. He looked at the accused persons and stated that out of the four he was recognising two of them. He had stated that these were the two persons who had entered the gate. Imran was correctly recognised. However Farooq was not recognised correctly. The reason he gave for not recognising Farooq correctly was that a long time had passed and that he had also problem with his eye sight. In the cross-examination, he had stated that such of the accused persons who had crossed him on the fateful night were recognised by him. Those who were far away he could not recognise. He had stated that the entire incident of the terrorists' firing, entering the premises and hitting the PW-15 took around a minute and it was difficult to note down the time. He had stated that at the moment he had not got the certificate which would prove that he was on duty on the fateful night. New year's

celebration was being done by the gazetted officers and not by the policemen. He had stated that he was posted on the designated spot on that date and he was not moving around. Whoever entered the gate was checked by him. He had stated that if anyone entered the premises with firearm then extra caution had to be exercised. He had stated that when the attack had taken place Pradeep Gurjar had fired. He had stated that he was trained at shooting. He had also stated that he had not seen the accused persons in the thana even though he had known that the accused had been arrested. However, he had stated that he had seen them once or twice while coming to the court. He had denied the fact that he was shown the accused persons before he reached the court. He also stated that it was wrong to say that the officials had shown him the photographs of Imran Shahjad and he was made to recognise him.

32. PW-16 is the Constable Uday Veer Singh. He has also stated that he, on 1.1.2008, was posted at Police Station Civil Lines, District Rampur and had informed the Court about his role in taking the dead bodies of the deceased for post mortem.

33. PW-17 is the witness Ashok Kumar Raghav, Superintendent of Police, Hapur. He had stated on oath that in February 2008 he was posted as Additional Superintendent of Police of STF, Lucknow and was also looking after the work of the STF Unit at Meerut. He had stated that on 10.2.2008 at the Headquarters of the STF, he had received information that prior to the attack on the CRPF Camp, a person called Jang Bahadur @ Baba along with one other person was seen strolling outside the Camp. This information was got confirmed by the PW-17

from other sources as well and all sources had informed that this person was of a suspicious character. In the same sequence, he had stated that on 9.2.2008 at around 8.00 pm he had received the information that this person Jang Bahadur @ Baba was to meet some other terrorists. On this information, he had stated that, he reached the Civil Lines Police Station, Rampur at around 8.15 pm and at the police station the In-charge Inspector Sri S.P. Sharma was informed about this feedback and there he got constituted five teams. In the first team, he himself was there along with Inspector Sharma. He had stated that all the five teams went to the village of Jang Bahadur @ Baba. The village was named Milak Kamas, Police Station Munda Pandey, District Moradabad. While reaching the destination, on the way the informer was also taken and from the Police Station Munda Pandey, one Sri Raghuraj Singh, Station House Officer along with the police force was also taken and he was also informed of all the developments. Along with all the police force, he had stated, he had reached village Milak Kamas. Upon reaching the village, they abandoned their vehicles and themselves took position. The second team which comprised Ram Badan Singh, Deputy Superintendent of Police and his associates was also taken by the PW-17 and both the teams reached the house of Jang Bahadur @ Baba and were waiting. At that moment, one person came out from the house and upon seeing him, the informer stated that he was the person who was called Jang Bahadur @ Baba. Thereafter the informer went away. At 10.30 pm Baba was interrogated with regard to the CRPF Camp attack at Rampur. Upon being questioned at leisure, he had stated that one person called Shareef

@ Suhail who had taken training in Pakistan and was a member of Lashkar-e-Taiba and was included in the team which attacked the CRPF Camp had kept his arms in the house of Jang Bahadur @ Baba. He then informed that a little before the meeting he had come to the house of Jang Bahadur with four of his friends and had taken away the weapons and that he had gone towards the Rampur bus stand to proceed for Delhi. He had also stated that if the police force hurriedly went to the bus-stand, then they might meet him. Thereafter, PW-17 had stated that along with all the teams, he left for Rampur bus-stand and the police teams took positions at the bus-stand. The vehicles by which they had gone there were kept some distance away. He had stated that no local person was ready to be witness of the incident. Jang Bahadur @ Baba had also accompanied the police teams and at a tea-stall near the bus-stand Jang Bahadur pointed out that the person who was carrying a maroon bag was Mohd. Shareef @ Suhail and the other person was his friend. PW-17 thereafter had stated that after using a little force with the help of the police, this person known by the name of Shareef @ Suhail was surrounded and apprehended on 10.2.2008 at 12 hours and 10 minutes. Upon being apprehended, this person told his name as Shareef @ Suhail @ Sazid @ Ali @ Anwar @ Saneep Baranwal son of Ayyub, resident of Badanpuri, Police Station Khajuriya, District Rampur. In the maroon bag which he was carrying, there was a green polythene and from it three grenades were recovered. From the pocket of his pant, Rs.250/- was recovered and a ticket for 12.2.2008 was also recovered. The ticket was for travelling from Delhi to Mumbai. The other person who was

apprehended revealed his name as Faheem @ Arshad @ Abu Zar @ Saqib @ Hasan Ammar @ Sahil Palaskar and he gave the information about this residence as Chal No.303, Room No.2409, Moti Lal Nagar No.2, M.G. Road, Goregaon West, Mumbai. He was also searched and from him a pistol was recovered which had a cartridge in it and there were six bullets of .30 bore. From the left pocket of his pant 15 live bullets were also recovered. The pistol was manufactured in the Arms Factory, Peshawar. From his back pocket, a pass-post of Pakistan which was in the name of Hasan Hammar, was having the photograph of Faheem and an Identity Card of Pakistan which too was having the photograph of Faheem were recovered. Apart from that, Rs.470 was also recovered. From his pocket, also a ticket for travelling from Delhi to Mumbai by Punjab Mail on 12.2.2008 and a ticket for travelling from Bandra Tarminal to Muzaffarpur by Awadh Express on 10.2.2008 were recovered. Apart from that, various papers, nine maps which were made by a fountain pen was also recovered. Two other papers were recovered which had some information from some computer. On the spot the recovered articles were sealed and a recovery memo was prepared. The memo was written by Sub-Inspector Kuldeep Tiwari on the dictation of PW-17. The two accused namely Shareef and Faheem were taken into custody. The memos which were prepared were numbered as 3Ka/9 and 3Ka/14. He had also stated in Court that he recognized the recovered articles from Shareef. The railway tickets along with cash were also recognized by the witness. All these were exhibited as Exhibits 22 to 30. He had thereafter stated that the articles which were recovered from

Faheem @ Arshad also could be recognized by him. Similarly, the pistol was also recognized by this witness and was exhibited as Exhibit-31. The bullets and the cartridge were also recognized by him and they were also exhibited during trial. The pass-port and the identity card were also opened in the Court and they were also exhibited as Exhibits 54 and 55. The tickets which were recovered were also opened and were exhibited. The maps which were recovered were also opened in the Court and were also exhibited during trial.

The cross-examination of PW-17-Ashok Kumar Raghav was done by the defence and upon being asked as to how long the accused from their arrest from bus-stand were interrogated, it was stated that it had taken two hours to do that. Jang Bahadur was arrested at 10.30 pm. As per the departmental order, he had stated that the STF was helping the investigating agencies to work out the case. He had stated that **there was no order in writing to investigate the case**. He had stated that he was posted in the Meerut Unit of STF which was also having the jurisdiction at Rampur. Upon a question being asked as to whether when he and his team had left the Civil Lines Police Station then any entry had been made, he had stated that he did not know about that. He had stated that he had visited the site on 1.1.2008 itself and had seen the spot along with the CRPF personnel. At the time of inspection, he had remained at the site for 6-7 hours. He had stated that when he had visited the CRPF Camp, he had not been able to get the description of the terrorists. He had stated that it did not occur to him that the empty cartridges were there with the CRPF personnel. He had also upon being questioned as to

whether he remembered the names of CRPF officials, he had stated that he did not remember them. He, however, had stated that he had met the eye-witnesses and the injured personnel. However, he could not tell the names of those persons. He had also stated that no-one in the village Milak Kamas had seen Faheem while he was entering or leaving the village. He had stated that Milak Kamas village was around 19 kilometers away from Rampur bus-stand. Though two teams of STF were working, one was his and the other was at Lucknow. He had stated that Inspector Navendu Kumar was not in his team. However, Ram Bhajan was in his team. For the first time on 9.2.2008 he had got information from an informer (mukhbir) regarding the accused persons. He had stated that inadvertently in the examination-in-chief the date has been given as 10.2.2008 while it ought to be 9.2.2008. He had stated that the In-charge for the Lucknow team was one Jai Prakash and that PW-17 was always in touch with him. He had stated that it was correct that the ticket which was received from Faheem was booked on 8.2.2008 at 7.24 pm and the tickets recovered from Shareef was booked on 8.2.2008 at 7.27 pm at Ghaziabad. He had stated that on 9th, an information was received that the terrorists were to reach on 9.2.2008 itself. He had stated that at that point of time, he was at Rampur. However, when exactly he had met the informer, is not written in any memo. He had stated that there were many shops in front of the CRPF Camp gate and people were all the time visiting them. He had stated that he had deployed certain informers to get information. He had stated that after the team had reached the house of Jang Bahadur, about half an hour later they arrested

Jang Bahadur. He had stated that his office was at Meerut but he did not have any record as to how much of petrol was consumed while travelling and also what was the expense of his stay etc. Sri Ram Badan Singh, the Deputy S.P. was the incharge of the other team. He had, upon a question being asked as to who was the investigator who was doing investigation for the police, to begin with he had stated that he did not remember but later on he had stated that it was Satya Prakash Sharma. He had stated that after the accused had been arrested, the Headquarter at Lucknow was informed. Then he had stated that Amitabh Yash was informed at about 12.40 am. However, he did not remember on which mobile he had rung up Amitabh Yash. On 11.2.2008, he stated, he had returned to his Unit. Thereafter he had stated that his statement was recorded at STF Office on 24.3.2008. He had stated that it was wrong to suggest that Shareef and Faheem were arrested independent of the indication given by Jang Bahadur. He has stated that Rampur bus-stand, as compared to Moradabad bus-stand, was nearer to village Milak Kamas. He had also, upon a question being asked as to how far the house of Jang Bahadur was from highway, he had answered that it was around 500 meters away. He had stated that he had come to know the names of the terrorists as Faheem and Shareef when they had told him their names. There were no documents to show their names. He had stated that it was wrong to say that Faheem was arrested earlier on 1.2.2008 from Lucknow and that from the sources of STF, fabricated pass-ports and identity cards were prepared with the photographs of Fahim Ansari. He had also stated that it was wrong to say that he himself had obtained the tickets for Shareef and

Faheem. He has stated that in fact it was correct that no-one from the public had come to witness the action of the STF.

34. PW-18 was one Suresh Chandra Sharma who was a Sub-Inspector at the Police Station Civil Lines, District Rampur. He had stated that on the date of occurrence i.e. in the mid night of 31.12.2007 and 1.1.2008 he alongwith Constable Vinod and one Home Guard was busy in the patrolling around the police station. A message had come on the wireless that on CRPF Group Centre there was a terrorist attack and that the PW-18 had to immediately rush to the CRPF Guest House. Upon reaching, he found that Satya Prakash Sharma, the In-charge Inspector alongwith force was present. Upon reaching the spot on the directions of the In-charge Inspector, the PW-18 alongwith Sub-Inspector Sabakul Husain, Sub-Inspector Bihari Lal, Constable Jugal Kishor and Constable Nasir etc. got deployed for the security of the area and on the directions of the Inspector, the PW-18 also collected from the site of incident the scattered empty cartridges rifle etc. He had stated that from the spot he had collected thirteen different items which were as under :

(i) He had collected a damaged rifle SLR Rifle No. 16142833, two empty cartridges, two missed cartridges and ten live cartridges. Apart from these firearms, he had collected one Nokia mobile also. The empty cartridges and the missed cartridges were packed in a cloth and were sealed in the presence of witnesses. The memo of which was prepared in the handwriting of PW-18. This was the memo which was produced as Exhibit Ka-65 in the court.

(ii) On that very date from the spot he had recovered 32 empty cartridges of AK-47. Two magazines were also recovered. They were wrapped in a cloth and were sealed in the presence of witnesses. The memo was prepared and was numbered as Exhibit Ka-66.

(iii) From besides the dead-body of the deceased, Kishan Lal, where a grenade had exploded, soil, concrete, soil laden with blood were recovered. Also a woollen blanket was recovered. These were all sealed and a memo was prepared which was numbered as Exhbit Ka-67.

(iv) On that very date and time, the PW-18 had collected from the CRPF Camp a half burnt belt, one cap and some *nivar*. From inside the guard room certain splinters of grenades and glass were also recovered. All other articles recovered were collected and were sealed. The memo of which was prepared and was numbered as Exhibit Ka-68.

(v) From the side of the deceased, Hawaldar Afzal Ahmad, soil laden with blood, concrete and plain soil were recovered and placed in boxes. The recovery memo was prepared and was exhibited as Exhibit Ka-69.

(vi) From the side of the deceased Constable, Manveer Singh who had covered himself in a blanket, blood stained blanket and plain blanket were taken into custody. The recovery memo was prepared and was numbered as Exhibit Ka-70.

(vii) From the side of the deceased, Rishikesh Rai, the plastic mat containing blood and the one which was not having blood, both were taken into custody and the recovery memo was prepared and was numbered as Exhibit Ka-71.

(viii) From the side of the deceased, Hawaldar Ramjeet Saran, again plain mud and mud with blood were taken into custody and the memo was prepared as Exhibit Ka-72.

(ix) From the side of the deceased, Constable Anand Kumar, also the plastic floor with blood and without blood were taken into custody and the recovery memo was prepared as Exhbit Ka-73.

(x) Similarly, the concrete with blood and without blood from the side of the deceased Constable Devendra Kumar were taken into custody and the recovery memo of which was prepared and was numbered as Exhibit Ka-74.

(xi) From the side of the deceased, Constable Vikas Kumar, also blood laden soil and plain soil were taken into custody and memo was prepared and was exhibited as Exhibit Ka-75.

(xii) From the side of the deceased Kishan Lal (rikshaw puller) also blood laden soil and plain soil were taken into custody and the memo was prepared as Exhibit Ka-76.

(xiii) Two empty cartridges of .38 bore were also recovered. Also ten empty cartridges of SLR rifle were discovered and a memo was prepared. Alongwith these, a magazine of steel was recovered and a memo was prepared which was numbered as Exhibit Ka-2.

When he was shown the articles which he had recovered vis-a-vis the police, he had stated that he had recognised the same. In the court, the damaged rifle (16142833) SLR with magazine, ten live cartridges and two empty cartridges with other parts were brought and shown to the PW-18. He was also shown the Nokia mobile and when he saw the articles which were exhibited as Exhibit Ka-77 to Ka-92 they were also recognised by the PW-18. The other articles which were also recovered by the PW-18 were numbered as Exhibit Ka-93 to Ka-126.

Similarly, the other articles were opened in the court and they were recognised by the PW-18. In the cross-examination, he had stood firm with what he had stated in his examination-in-chief.

35. PW-19, Sri Ram Badan Singh, was the Deputy Superintendent of Police at district Rampur. He had stated that he was in the team of Additional Superintendent of Police Ashok Kumar Raghav. He had stated that the Additional Superintendent of Police Sri Raghav had told him that on 9.2.2008 one accused Baba @ Jang Bahadur who was involved in the attack was to be arrested. The PW-19 had stated that he had taken the Station House Officer at Police Station Mudha Pandey District Moradabad at around 10:30 PM and had arrested the accused Baba @ Jang Bahadur. He had stated that upon getting the information from Baba @ Jang Bahadur, the accused Faheem and Suhail were also arrested. From the possession of the accused Suhail, three hand grenades were recovered and from the accused Faheem thirty bore star pistol and

twenty one live cartridges were recovered. From both of them, tickets for travelling to Mumbai were recovered. From the possession of accused Faheem one Pakistani passport was also recovered. From the possession of these two accused persons, a map prepared by computer and other informations were also obtained. He had stated that both the accused persons had informed on inquiry that they were going to commit another terrorists' attack in Mumbai. They had stated that they were responsible alongwith their associates to have attacked on the CRPF Camp at Rampur. He had stated that on their information the other accused were arrested from Lucknow. From the accused at Lucknow also various recoveries had taken place. At the time of the arrest of Faheem and Jang Bahadur, there were no independent witnesses from the public. The recovered articles were sealed at the spot and Sub-Inspector Kuldeep Singh Tiwari had prepared the memo on dictation. The memo was exhibited as Exhibit Ka-64 and it contained the signature of PW-19. On the memo, prepared of the articles recovered, the witnesses from the public had signed.

36. In the cross-examination, he had stated that by his team the G.D. was not signed and no entries were made anywhere. Additional Superintendent of Police, Sri Raghav had not accompanied the PW-19 to the Police Station Mudha Pandey. He had stated that the Additional Superintendent of Police Sri Raghav had created five teams even before the PW-19 had proceeded from Police Station Mudha Pandey. He had stated that out of the five teams, one team was lead by PW-19. The memo was prepared on the spot where Jang Bahadur's house was and

then he had stated that the house was inside the road. The memo with regard to arrest of Suhail and Faheem was prepared at the place where they were arrested. The memo of arrest of Jang Bahadur was not prepared at the place of incident. The information with regard to the arrest of Jang Bahadur was given to his family members. He had stated that immediately after the arrest of Jang Bahadur, he had proceeded towards Rampur. The bus stand from where buses went to Rampur were 10-15 km. away from the house of Jang Bahadur. No memo was prepared with regard to the inquiry (पूछताछ) which was done from Jang Bahadur. When the team had gone to raid the house of Jang Bahadur then the Additional Superintendent of Police Sri Raghav was present and was leading. Upon a question being asked as to whether he had inquired from the arrested accused persons Faheem and Suhail, almost the description of the accused persons who were arrested in Lucknow then he had stated that he had not put any question to that effect from the arrested accused persons. At Rampur Bus Stand there were shops of other local people. He had stated that how, when, where and in whose presence the Investigating Officer had prepared the site plan, he did not know. He denied the fact that the memo of arrests and memo of recovery were prepared at the police station. He also denied the fact that in fact Faheem was arrested on 1.2.2008 and not on 10.2.2008. He had also denied a suggestion that Sharif was arrested from his in-laws' place at Jaunpur on 8.2.2008.

37. PW-20 was one Rajesh Kumar who had stated that in March, 2008 he was in the office of the prosecution in the Finger Print Department.

On 12.3.2008, on the directions of Inspector ATS O.P. Tripathi he had gone to take the finger prints of the accused Sabauddin @ Saba, Mohd. Farooq and Imran Shahjad. These finger prints were numbered as Exhibit Ka-77, Ka 78 and Ka-79. In his cross-examination, he had stated that it was definitely not verified by the jailer as to which finger print was of which accused.

38. PW-21 was the Head Constable 25 Mahesh Chandra. He had stated that when the incident had taken place in which seven CRPF jawans and one rikshaw puller were killed and various civil police and other jawans were injured, the case was registered in the Civil Lines, Rampur and to investigate, people from the Fingerprint Bureau and also from the Dog Squad, Moradabad had come at the spot. He had stated that when they had come, they had taken from inside the CRPF Camp finger prints from the glass panes which contained the fingerprints and thumb impression and those were kept in sealed cover in the presence of the Investigating Officer, Inspector S.P. Sharma. On 3.4.2008 those impressions in sealed cover were handed over to Sri S.P. Sharma on his request. This handing over on 3.4.2008 at 8:35 AM was recorded in the G.D. numbered as 26.

39. In his cross-examination, he had stated that he himself had reached the spot at around 7:00 AM on 1.1.2008. At around 2-3 hours thereafter he had returned to the police station and he had stated that on the directions of the In-charge Inspector S.P. Sharma he had taken fingerprints from 5-6 places. He had further stated that whenever fingerprints were taken they were so taken only on a direction. Upon

again a question being asked as to which all places he had taken the finger prints, he had stated that he had no idea. He had denied the suggestion that he had never taken the fingerprints from the main spot.

40. PW-22 was one Nand Kishor who was having a kiosk selling ground nuts. He had stated that on the fateful night he had slept on the wooden cot beside his kiosk at around 11:00 PM. He woke up on hearing the sound of firing. From under the cover by which he had covered himself, he had seen that the bullets were being fired near the CRPF Gate. This witness had also stated various facts about how the bullets were being fired and how Kishan Lal who was sleeping just four steps away from him had been hit by a bullet and he had died. He had stated in his cross-examination that his statement was recorded by the police after 20 days.

41. PW-23 was one Sri N.P. Singh who had stated that he had been posted in the Group Centre of CRPF, Rampur since September, 2006 on the post of Sub-Commandant. He had categorically stated that in the month of November, 2007 there was some information that there could be a terrorist attack on the camp and therefore guards were posted on various places. He had received the information on 31.12.2007/1.1.2008 at 2:25 AM on the telephone about the terrorists' attack and therefore he had reached immediately on the spot. Alongwith him was the Additional Superintendent of Police at the place of incident. He had stated that because of the fact that the place of incident was spread out in a very big area the investigation had commenced with the police and the CRPF together. The articles which were collected by the jawans of the CRPF

were handed over to the Superintendent of Police in his office. On the next day when the sun light was there then again the incident was examined in detail and whatever articles were recovered were handed over to the Investigating Officer. He had stated that he had also made a request for an F.I.R. being lodged. This document of request he had stated was marked as Exhibit Ka-84. Also he had stated that from the place of incident the AK-47 rifle, the empty cartridges and the safety pins of the grenades were recovered. Alongwith all these articles, the flat bullets and 29 live AK-47 cartridges alongwith magazines were recovered. Empty cartridge of AK-47 and the hand grenades' lever were sent to the police on 2.1.2008 under the signature of the PW-23. He had stated that all details of the amunition which was still there and the one which had got lost was sent to the police. In the cross-examination this witness was consistent.

42. PW-24 was Sri Satya Prakash Sharma who had stated that on 1.1.2008 he was posted as the In-charge Inspector at Police Station Civil Lines and at the time of handing over of the investigation, all the relevant documents were given by him.

43. In the examination-in-chief he had stated the manner as to how he had taken the statements of the police personnel. He had also stated the manner in which he had prepared the spot map. He had thereafter stated in his examination-in-chief as to in what manner the investigation had commenced. He had stated that the Chief Commandant of the CRPF Sri N.P. Singh had given the various articles, which were recovered from the spot, in the form of a memo. The recovered articles were also sent to the

Investigating Officer. In the court he had recognised all the articles which were sent to him and were kept in safe custody. He had then in his examination-in-chief confirmed as to in what manner he had questioned and inquired from various people about the incident. He had commenced the investigation of the incident himself and had continued to take statements of various people present on virtually everyday basis till 14.2.2008. From the recovery of various articles till the arrest of the accused, he had stated everything in his examination-in-chief.

44. In the cross-examination, he had stated that he was the Investigating Officer since 1.1.2008. Further, upon being asked as to whether the CRPF people had cooperated with the investigation, he had stated that they had not given any cooperation and that they had picked the magazine themselves and that the CRPF personnel had not allowed the police to enter their premises. On 14.2.2008, he had stated that investigation had been taken away from him and that thereafter he was not a part of the investigating team. On 11.2.2008 the custody of the accused persons Sharif and Jang Bahadur was handed over to the PW-24. There was a question put to him as to whether the accused when they were produced for remand then whether they had their faces covered, then to that he had answered that there was no request for covering the faces of the accused persons. He had stated that during his investigation he had collected certain fingerprints on 1.1.2008, about the collection of which mention was there in the C.D. However, when the fingerprint was kept in the thana was not recorded in the C.D. He had stated that it was a possibility that it was mentioned in the malkhana register or in the

general diary. However then he had stated that the general diary was maintained only for a certain period and upon completion of that period, it had to be destroyed. He had still further stated that it was wrong to say that the fingerprint was taken forcefully after the arrest.

45. PW-25, Sri O.P. Tripathi, had stated that on 17.2.2008 he was the In-charge Inspector of the Police Station of the Anti Terrorist Squad, Lucknow. He had stated that on 17.2.2008 the then Deputy Director General of Police, A.T.S. had handed over the investigation to him. Before him, Sri S.P. Sharma and Sub-Inspector Hindveer Singh were the Investigating Officers. He had stated that after the investigation was handed over to him, the accused were brought before him for investigation. He had stated that despite the fact that the accused were being questioned ever since 13.2.2008, he had interrogated Mohd. Farooq on 17.2.2008. This accused, as per the PW-25, had stated that he belonged to Pakistan from District Gujarwala Punjab (Pakistan). He had stated that Mohd. Farooq had informed him that he was from the organisation, lashkar-e-taiba. He had told certain other facts about his life also. He had also stated that after he had got his passport made, he had gone from Muzaffarabad to Islamabad and from there he had gone to Nepal. He had then stated with regard to the incident which was being investigated into and as to how he had got connected with the accused Sabauddin. He had also informed as to how he had contacted Sabauddin on phone, thereafter, he had also informed about how Imran Shahjad the co-accused had travelled from Kathmandu to Pokhra and thereafter to Bhutwal and thereafter he had entered Rampur. He had also admitted

that he had committed the crime on the date of the incident i.e. on 31.12.2007/1.1.2008 alongwith the other co-accused persons. He had stated that the arrested accused had informed him everything about as to how they had run away on 1.1.2008 and thereafter how they were arrested alongwith the firarms on 10.2.2008. He had stated that the accused Imran Shahjad had admitted his guilt and had also stated as to for which reasons he had got connected to the organisation lashkar-e-taiba. He had also informed how he had got twenty days' training from lashkar-e-taiba. The accused Imran had informed him that he had travelled on 21.10.2007 from Karanchi to Kathmandu on Qatar Airways. In kathmandu he had met the commander of the terrorists' group lashkar-e-taiba. The admission which the accused Imran Shahjad had made on 18.2.2008 was recorded in the case diary on that date. On 18.2.2008 the complainant in the case Sri Navendu Kumar, Inspector had also got his detailed statement recorded in the case diary. The accused Sabauddin had informed that he was an active member of the lashkar-e-taiba and was the area commander of Nepal. This accused, Sabauddin, had also told about his personal education and training. He had also stated that how he had met Jang Bahadur Khan in Kathmandu. This witness had thereafter informed again as to how he had continued with the investigation and had then informed that how on 12.3.2008 the accused had been arrested and had been put in prison at Husainganj. It had been stated that on 12.3.2008 upon the order of the Chief Judicial Magistrate, Lucknow the fingerprints of these three accused were taken. He had stated that on 4.4.2008 in the continuation of the investigation and upon

the orders received from the Chief Judicial Magistrate, Rampur, the articles which were recovered from the place of incident on 1.1.2008 were sent through one Constable 121 C.P. Kallu Singh for verification to the forensic laboratory. He had thereafter in his statement-in-chief continued to inform about the investigation. On 17.5.2008 again in his examination-in-chief he had stated that he had prepared the charge-sheet against the accused persons on 5.5.2008. He had further informed as per the report of the forensic laboratory the fingerprints of Imran Shahjad, Sabauddin and Mohd. Farooq were found to have matched with the fingerprints at the place of incident. He had informed that on 28.6.2008 Sri Rajesh Kumar Srivastava Additional Superintendent had joined the instant witness and thereafter he had taken the statement of Pradeep Kumar Gurjar, Constable Indrapal Singh and Homeguard Aftab Khan as they had mentioned earlier that they had recognised the accused persons and they had also mentioned their names. This was done on 19.7.2008. On 12.8.2008 he had, on the instructions of the Chief Investigator, reached the home town of accused Kausar at Kunda Pratapgarh where the statements of his family members Mohd. Sartaj and neighbour Sabhasad Zubair Husan were recorded. On the pointing of Sartaz, a map was prepared with regard to the place where the used weapons were hidden. The map which was prepared was exhibited as Exhibit ka-95. On 13.8.2008 this prosecution witness had again taken the statements of Constable Rajjan Lal Paswan, Constable Laxman Singh Dasila and Constable Santosh Kuthari. These were the constables who had stated that they had recognised the accused and had mentioned their names. On

14.8.2008 the instant prosecution witness visited the home town of accused Gulab Khan at Bareilly where the statement of Rajiv Kumar, Amit Kumar and accused Gulab Khan, younger brother of Saba Khan, were recorded and on their pointing the place where the black bag was hidden with the dangerous weapons, a map was prepared and this was numbered as Exhibit Ka-96. On that date itself the statement of Constable Hukum Singh was recorded. On 16.9.2008 this prosecution witness reached the CRPF Camp and took the statement of Jawan Kendra Singh and thereafter the statement of the Sub-Inspector Om Prakash Sharma, witness S.I. Sri Bihari Lal, Constable Jitendra Kumar, Constable Indrapal Singh, Constable Virendra Rana and Constable Nasir Ali were again recorded in the case diary. This prosecution witness on 31.10.2008 reached Sri Ganga Ram Hospital and took the statement of Dr. Promod Jindal and Mahesh Mangal and saw the reports of Pradeep Gurjar and Kendra Singh. On 1.11.2008 he took the statement of Dr. M.P. Singh. He had stated that he had taken the requisite permission to prosecute Mohd. Farooq, Sabauddin, Mohd. Sharif and Jang Bahadur Khan to prosecute them under the Explosive Substances Act, 1908. Thereafter the cross-examination of PW-25 continued. Amongst the various questions which were put during the cross-examination, the PW-25 was asked as to when the fingerprints were taken from the CRPF Camp. To this he had answered that he had taken them on 1.1.2008. He had stated that it was correct to say that it was not recorded in the statement of Constable Mahesh Chandra that how many fingerprints he had taken from the place of incident. Upon being questioned further as to

whether the fingerprints were taken from the glass of the gate, he had answered that the gate was around 50 meter inside from the main gate. Upon a specific question being asked as to when exactly the fingerprints were taken from Constable Mahesh Chandra and were deposited in the malkhana, to this question the answer was that the PW-25 did not know as to when the fingerprints were brought to the Kotwali. He had stated with regard to this aspect he had not put any question to the earlier investigating officer and that there was no mention about this fact in the G.D. or C.D. However, he had stated that it was his information that the fingerprint impressions which were lifted by Constable Mahesh Chandra on 1.1.2008 were as per the G.D. No. 26 deposited only on 3.4.2008 at 8:35 AM in the malkhana of Civil Lines Police Station. On 4.4.2008 the fingerprints were sent on the order of the Chief Judicial Magistrate, Rampur to the Forensic Laboratory. He had stated in his cross-examination that it was right to say that he himself had no knowledge that the fingerprints which were taken on 1.1.2008 were in whose custody till 3.4.2008 ***(Page 449 of the paper book)***. He had stated that he had got no record in his possession to show as to where the fingerprint impressions which were lifted on 1.1.2008 and were sent on 3.4.2008 to the police station were kept initially. He had stated that it was wrong to say that the fingerprints of the accused were forceably taken and thereafter kept in the malkhana. He had stated that before the incident neither the injured nor the various witnesses knew nor recognised or were even knowing the names of the accused persons. He had stated that he had not placed any application for the identification parade of the

accused persons. Again upon a question being asked as to whether he was aware as to which person the accused were going to meet in Lucknow, he had stated that he did not know the name of any person whom the accused person were going to meet while they were in Lucknow. He had stated that the question was not relevant as to where the accused had stayed in between 1.1.2008 to 10.2.2008. He had stated that it was correct to say that there was no map recovered of the CRPF from Faheem Ahmad Ansari.

46. PW-26 was one Kulveer Singh Rawat who on 17.3.2008 was working in the Bomb Disposal Squad.

47. PW-27 was Zubair Hasan (Sabhasad) who was the resident of Kunda Pratapgarh and the neighbour of accused Kausar. He had stated that he had recognised the accused Kausar who was present in the Court and had also stated that his family and he himself resided in Kunda Pratapgarh and that Mohd. Kausar had visited Saudi before 2008. He had stated that he had no idea whether he had met Mohmmad Sharif in Saudi Arabia. He had stated that he had no idea that the weapons used in the incident were hidden in a bag thereafter kept by Mohd. Kausar in his new house in Mohalla Saryu Nagar. He had stated that on 11.2.2008 he had neither met Mohd. Kausar nor had he talked to him. In his cross-examination this witness stood firm with what he had stated in his examination-in-chief.

48. PW-28, Mohd. Sartaj, was the tenant of the house where Mohd. Kausar allegedly had hidden his firearms. He was however declared hostile. When he had denied the fact that he had brought any firearm etc.

to hide he was declared hostile. In his cross-examination he had been confronted with the statements recorded under Section 161 of Cr.P.C. and had stated that he had never got those statements recorded.

49. PW-29 was one Vakil Ahmad who was also brought into the witness box to establish the fact that Mohd. Kausar had hidden some firearm in the house of Sartaj but when he denied this fact then he was also declared hostile. In the cross-examination he had categorically stated that he had no knowledge about the case.

50. PW-30 was one Hukum Singh who had been brought from District Bareilly to recognise the accused Gulab Khan and he had stated that he had not known him and had also stated that he had no talks with him in Bareilly. He was also declared hostile.

51. PW-31 was one Rajiv Kumar who had been brought from Bareilly to recognise Gulab Khan and Mohd. Sharif and when he had denied having known those two accused persons, he was also declared hostile. In his cross-examination he stood firm with what he had stated in his examination-in-chief.

52. PW-32 was Chhote Lal who had stated that he was a gang man in the railways and had stated that he alongwith one Jagnandan was on duty and when the two of them were patrolling towards the Kosi Bridge then they had met one Kailash at the railway crossing and while they were around one kilometer away from the CRPF gate then they had heard the sounds of firing. He said that they sounded like fire cracker. In his cross-examination he stood firm with what he had stated in his examination-in-chief.

53. PW-33 was one Naval Kishor Srivastava. He had stated that he was the forensic expert for fingerprints and had stated that the fingerprints picked from the place of incident alongwith the fingerprints of the accused reached him on 5.4.2008. They were brought by Inspector O.P. Tripathi. He had stated that the fingerprint of Imran Shahjad matched with the preserved fingerprint. Similarly, he had stated that the fingerprint of Mohd. Farooq had matched. The fingerprints had not matched with the third accused namely Sabauddin.

54. PW-34 is again the expert of the Forensic Laboratory at Lucknow. He had also stated that on 5.4.2008 one Constable Kallu Singh had brought certain bundles for matching of cartridges with the firarms. The first bundle which was with regard to Sabauddin contained 7.62 caliber rifle numbered as R-11245 alongwith a magazine with 9 mm live cartridges. Similarly, another bundle with regard to Imran Shahjad was received with the bundle of 7.62 caliber rifle AK-56 numbered as 15161165 and with it a magazine of 9 mm live cartridges were found and that was also brought.

55. Alongwith the above two, one bag with two empty magazines was received. From the spot of the incident there was a recovery of two empty magazines and 32 empty cartridges of AK-47. They were also got received. From the site of the incident one steel magazine with 29 bullets of AK-47 was received. From the live magazine 29 live cartridges were received. Seven empty cartridges were received and one metal of “L” shaped which was said to be a lever of the hand grenade was received. Also from the site of the incident a bundle was got received having four

empty cartridges of AK-47, seven jackets of bullets and three pieces of metal and one ring which could be the safety pin of the hand grenade which were found at the spot. Also received in the forensic laboratory was a rifle marked as 1/08 and 2/08. The result of the forensic laboratory was that the empty cartridges marked as 5, 6, 18, 25, 27, 28 and 30 which were shot by rifle marked as 1/08 compared favourably with the rifle. The empty cartridges 4, 8 and 16 compared favourably with the rifle 2/08. The empty cartridges EC-1, EC-3, EC-10, EC-14, EC-15, EC-17, EC-20, EC-21, EC-22, EC-23, EC-24, EC-31 and EC-32 did not match with the rifles. The empty cartridges EC-2, EC-7, EC-9, EC-11, EC-12, EC-13, EC-19, EC-26, EC-29, EC-33 to EC-43 also did not match with the TC-1 to TC-6 which were fired from the rifle 1/08 and 2/08. The magazine marked as MG-1 to MG-7 fitted with the rifles marked as 1/08 and 2/08.

56. The net result of the forensic laboratory was that the EC-5, EC-6, EC-18, EC-25, EC-27, EC-28 and EC-30 were fired from rifle of 7.62 caliber numbered as R-11245 embossed on it and which was marked as 1/08. The empty cartridges EC-4, EC-8 and EC-16 were fired from the rifle of 7.62 caliber numbered as 15161165 embossed on the body and marked as 2/08. The empty cartridges EC-1, EC-3, EC-10, EC-14, EC-15, EC-17, EC-20, EC-21, EC-22, EC-23, EC-31 and EC-32 were not fired from the rifles marked as 1/08 and 2/08. The empty cartridges EC-2, EC-7, EC-9, EC-11, EC-12, EC-13, EC-19, EC-26, EC-29, EC-33 to EC-43 were again not fired from rifles marked as 1/08 and 2/08. The magazines 1 to 7 were the magazines which matched with the rifles AK-

47 and AK-56. Whether the magazines were fitting into the rifles 1/08 and 2/08 could not be said with certainty. The other findings were non-conclusive.

57. PW-35 was Rajesh Kumar Srivastava, the Additional Superintendent of Police, A.T.S., Lucknow, Uttar Pradesh and he had stated that he had taken over the investigation as per the order of the Director General of Police, ATS, Uttar Pradesh (CA-DIG-ATS 42/08/126) dated 13.5.2008 in Case Crime No. 08 of 2008 under Sections 147, 148, 149, 332, 307, 302, 332, 120-B, 34, 121, 121-A, 122 of I.P.C., Sections 16/17/18/19/20/23 of Unlawful Activities (Prevention) Act, 1967 and Section 3/5 of PDPP Act. Alongwith these sections the case was also registered under Section 3/4/5 of Explosive Substances Act, 1908 and Section 7/27(A) of Arms Act at Police Station – Civil Lines, District Rampur. He had stated that he had taken over the investigation from Om Prakash Tripathi the earlier Investigating Officer.

58. PW-35 further has stated that from the fingerprint impressions lifted by the first Investigating Officer Satya Prakash Sharma, the arrests made by Om Prakash Tripathi, the subsequent Investigating Officer of the accused Sabauddin, Mohd. Farooq and Imran Shahjad and thereafter on the basis of the reports of the fingerprint expert, it was proved that the accused Imran Shahjad and Mohd. Farooq were present on the spot on 31.12.2007/1.1.2008 at the CRPF Group Centre, Rampur. He had thereafter stated that he had got compared the various empty cartridges, live cartridges and the hand grenades connected with the Case Crime No. 8 of 2008 with the firearms etc. which were recovered upon the

arrests of Imran Shahjad, Mohd. Farooq and Sabauddin. He had stated that the examination of the fingerprints and the result of the examination sent by the office of the Director of the Fingerprints Bureau by a Communication No. 69/2008 Lucknow dated 8.5.2008 was also seen by him. Thereafter the concise statement in the form of a chart prepared by him on which chart his signature was there and was numbered as Paper No. 500-Ka and Exhibit-Ka 183 was also proved by him. On 28.6.2008 again while investigating the documents with regard to the Case Crime No. 47 to 52/2008, under Section 121, 121A, 122, 123 of I.P.C. read with section 2/3 of Gangster Act, Section 14A/5/7A of Foreigners Act, 1946, Section 25(1-B) of Arms Act and Section 3/4/5 of Explosive Substances Act, 1908 he had perused all the evidence. He had stated that from the accused Imran Shahjad, Mohd. Farooq, Sabauddin @ Saba were recovered firearms AK-47 alongwith magazine, hand grenades, AK-47, live cartridges and the magazine the details of which could be found in Case Crime No. 47 to 52/2008. Alongwith all these the other articles recovered in the Case Crime No. 8/2008, Police Station – Civil Lines, District – Rampur were also seen by him. He had stated that he had sent to the Forensic Laboratory, Agra in Case Crime No. 8/2008 and in Case Crime No. 47 to 52/2008 all the recovered firearms, live cartridges, hand grenades and the firing pin and thereafter he had seen the result sent from there. The summary of it was prepared by him and was noted in the case diary. The reports received from the forensic laboratory were numbered as 34-क/28 & 34-क/29 and they were earlier exhibited as Exhibit Ka-181. He had then stated that he had seen the report of the

forensic laboratory dated 2.5.2008 numbered as 374-EXP-08/3135-वि0-08 in which the articles which were picked up from the place of incident were displayed as Exhibit(1) and Exhibit(3) and as per that report the explosive articles were comprising TNT and the report was submitted as Paper 447-Ka and which was displayed as Exhibit Ka-94.

59. The earlier Investigating Officer Sri Om Prakash Tripathi was appointed alongwith him as the Assistant Investigating Officer and this witness had stated that all the statements etc. recorded by him was seen by him. He had stated that the Assistant Investigating Officer as on 1.1.2008 had appeared before the District Magistrate, District – Rampur Sri Shanker Lal Pandey and had produced all the papers before him and thereafter under Section 8 of the Explosive Substances Act, 1908, the District Magistrate had given the permission to prosecute the accused Imran Shahjad, Mohd. Farooq, Sahabuddin @ Saba, Mohd. Sharif and Jang Bahadur Khan @ Baba to be prosecuted in the relevant court. He had thereafter stated that he had sought permission to prosecute the accused Imran Shahjad, Mohd. Farooq, Sabauddin @ Saba, Mohd. Sharif, Jang Bahadur Khan @ Baba, Mohd. Kausar and Gulab Khan to be prosecuted under Sections 121, 121A, 122 of I.P.C. read with section 16/17/18/19/20/23 of Unlawful Activities (Prevention) Act, 1967 from the Additional Director General of Police, ATS Sri Rajeev Krishna and after having looked into all the papers the then Secretary Home on the orders of the Governor by his order dated 31.12.2008 had given permission to prosecute the accused Imran Shahjad, Mohd. Farooq, Sabauddin @ Saba, Mohd. Sharif, Jang Bahadur Khan @ Baba, Mohd.

Kausar and Gulab Khan to be prosecuted under the Unlawful Activities (Prevention) Act, 1967. The Assistant Investigating Officer Sri Om Prakash Tripathi had submitted his report dated 24.2.2009 in which he had stated that in the Case Crime No. 8/2008 under Sections 147, 148, 149, 307, 302, 332, 120-B/34, 121, 121A, 122 of I.P.C. read with section 16/1718/19/20/23 of Unlawful Activities (Prevention) Act, 1967, Section 3/5 of PDPP Act, Section 3/4/5 of the Explosive Substances Act, 1908 and Section 7/27 of Arms Act he had submitted his reports and a perusal of that report clearly showed that the clothes which were worn by the deceased were torn as a result of the firing from a rifle of 7.62 caliber and by the bullets of the AK-47/AK-56. That report was also on record. He had thereafter stated that a perusal of those reports which were prepared upon an analysis of all the evidence it was evident that the attack on the CRPF Group Centre, Rampur was done in a planned manner by Pakistan by using its terrorists organisation lashkar-e-taiba and for this purpose they had trained Mohd. Farooq and Imran Shahjad who were sent to India. The main purpose was to attack on the various Defence Organisation of the Indian Nation in a planned manner. He had stated that in this manner Pakistan had wanted to shake the confidence of the Indian Soldiers. He had stated that when information was elicited from the terrorists arrested then it transpired that they had also planned to attack Mumbai in the year 2008 itself and the Uttar Pradesh ATS had informed the Mumbai ATS Chief Sri Hemant Karkare about this information. He had stated that the main object of lashkar-e-taiba was to have an islamic state in Southern Asia and also to get Kasmir, declared

independent. He had stated that Pakistan's ISI in a planned manner was giving assistance and security to the members of lashkar-e-taiba and that the political wing of this organisation jamat-ud-dava was active in Pakistan. He further elaborated on the role of the lashkar-e-taiba and stated that on 28.3.2001 by an order numbered as 1261, the British Home Ministry had included this organisation amongst the list of terrorists' organisation. On 26.12.2001 the United States of America had also done the same thing. Also, Australia had done the same work. On 2.5.2008 the United Nation Security Council (UNSC) by its Resolution No. 1267 had declared lashkar-e-taiba as an assisting organisation of alkaida and had called them a terrorists' organisation. Similarly, under the Unlawful Activities (Prevention) Act, 1967 in India also they were declared as a terrorists' organisation. He had therefore stated that on 31.12.2007/1.1.2008 for the purposes of destabilizing the country, attack had been made and therefore the charge-sheet which was forwarded on 13.3.2009 under his signature also had stated that the arrested accused had to be tried under the Unlawful Activities (Prevention) Act, 1967 and under Sections 121, 121A, 122 of I.P.C.

60. In the cross-examination, he had stated that he had not gone to Pakistan to investigate and had also not made any efforts to go to Pakistan to investigate the matter. Upon a specific question being asked as to whether in the charge-sheet, it was stated that lashkar-e-taiba's main object was to have an islamic state in Southern Asia, he had answered in the negative. In fact he had stated that there was evidence which made him mention this fact in the charge-sheet. He had further

stated that the resolutions of United States of America, United Kingdom, Australia and the UNSC were not there on the record so as to enable him to include them in the charges. He had further stated that during investigation he had not made any efforts to find out as to when Imran Shahjad and Mohd. Farooq had reached India and in India where all they were staying. He had thereafter stated that he did not remember that he had inquired as to whom Imran Shahjad, Mohd. Farooq and Sabauddin @ Saba who were arrested in the Lucknow were going to meet at Lucknow on their arrival there. He had stated that he had also not investigated in that regard. He had further stated that it was correct to say that there was no witness who had seen all the accused together. The Mumbai ATS had investigated the accused persons but there was no discussion with regard to the investigation in the case diary and the charge-sheet. No investigation in that regard was also done in his presence. During investigation he had stated that he had not seen the place of incident. He had thereafter stated that the CRPF had also done some administrative enquiry at their level and to obtain that enquiry report, no effort was made by PW-35. He had thereafter again stated that he had not personally interrogated any of the CRPF jawans or officials. None of the eye-witnesses was questioned by him. He had thereafter stated that it was wrong to say that on the directions of the higher officials, charge-sheet was prepared.

61. PW-36 was Sri Kumar Kamlesh who had given the approval to prosecute the accused persons before the court under Sections 121, 121A, 122 of I.P.C. read with section 16/17/18/19/20/23 of Unlawful

Activities (Prevention) Act, 1967. He had stated that all the papers relevant to the approval were received by him on 20/22.8.2008. He had stated that he was not aware as to when the sections under the Unlawful Activities (Prevention) Act, 1967 were added. He had also stated that he had not called any of the Investigating Officers to enquire anything. In fact he had stated that at the moment he did not even remember as to under what provisions the approval had been asked for. Upon being asked whether he had given the approval under Section 196 of Cr.P.C., he had answered that he did not know whether that had been done. He had also stated that whether the approval under the Unlawful Activities (Prevention) Act, 1967 could be given under Section 196 of Cr.P.C., he was not aware. He had stated that the approval was given without giving the usual background of the case. A question was asked as to who was the authorised officer to give the approval then he had answered that in that regard the rules had to be seen. He had of course said that the approval had the signatures of the authorised officials and had stated that the signature could not be shown.

62. PW-37 was one Sub Inspector Hindveer Singh of Thana Nai Mandi, District – Muzaffar Nagar. He had stated that in the year 2007-08 he was posted at ATS, Western Zone. On 1.1.2008 when the incident had occurred at the CRPF Camp, he had also reached the spot with the ATS team and that the In-charge Inspector S.P. Sharma was investigating there. He had stated that during that investigation, the Investigating Officer had picked up the fingerprints with the help of the expert team. He had seen Satya Prakash Sharma reading and writing and that he was

his controlling officer till two months ago. He had stated that the four set of fingerprints which were F1, F2, F3 and F4 had the signatures of Sri S.P. Sharma. Along with him there were signatures of Sub-Inspector Sabibul Hasan. He had stated that these were the signatures which were picked up by Sri S.P. Sharma from the place of incident.

63. In his cross-examination, he had stated that the CRPF Camp was known to him and that it was near the railway track. He had stated that when he had gone to the CRPF Camp there were a lot many people present there who were not known to him. He had stated that he had reached the camp at 8:30 AM alongwith the ATS team. However, he had not got reported the time when he had left the place of incident. Also he had stated that before he had reached the CRPF Camp, he had never informed the CRPF officials. He had also stated that the fingerprint expert had come and had taken the fingerprints to the laboratory. However, no copies of the fingerprints were given to the PW-37. At the time of the taking of the fingerprints, the CRPF officials were present. He had stated that it was wrong to say that he had done all the investigation while sitting in the office.

64. PW-38 was one Constable Jitendra Singh of Thana Bhagatpur, District – Moradabad. He had stated that on 31.12.2007/1.1.2008 he was posted at the Thana - Civil Line, District - Rampur and that he, on the date of incident, alongwith Sub-Inspector Om Prakash Sharma, Constable Indrapal, Home Guard Aftab Khan on a government jeep with the driver Constable Jaswant Singh were keeping a vigil at 12:30 in the night. He did not remember the G.D. number. He had stated that he and

Constable Indrapal were having rifles and they also had 30 bullets with them. Sub-Inspector Om Prakash had a revolver and Home Guard Aftab had a rifle. While they were keeping a vigil they had reached the Kosi Bridge and when they had got the information of a dead-body then they started towards the Shahbad Gate and thereafter had reached the Kosi Bridge again. Over there at around 2:25 AM when they were returning from the Kosi Bridge and had almost reached the toll gate of the CRPF, they heard the sounds of firing at the toll gate of the CRPF. There was a police picket present which comprised Sub-Inspector Bihari Lal, Constable Vijendra Rana, Constable Nasir and two home guards, one of them was Narpat and the firing was coming from the gate no. 1. The Sub-Inspector Om Prakash talked to the Sub-Inspector Bihari Lal and they started towards the CRPF Gate No. 1. In the jeep there were five people already present. Constable Virendra Rana had gone alongwith PW-38 while others had gone into the jeep and were coming from behind. At around 2:30 AM, they had reached the CRPF Gate where there was sufficient electric light and there they saw around 4-5 persons firing towards the CRPF Gate. They were firing at the jawans of the CRPF. They were having AK-47. They were also aiming at the jawans and were throwing hand grenades. At that point of time, PW-38 states that he saw two CRPF's jawans laden with blood and they had died. One rikshaw puller had also received bullets and was lying there at the gate. Out of the 4-5 assailants, one who was in the rare of the team was named Jang Bahadur. He was asking his friends that they may throw hand grenades towards the CRPF jawans. He was also asking one Mohd.

Farooq to fire. He was asking his companions to fire at the kafir CRPF jawans. He had stated that the person nearest to the CRPF Gate was Imran behind him was Farooq and behind Farooq was Sabauddin and one who was last in the team was Sharif. They were all being guided by Jang Bahadur who was exhorting them to fire. PW-38 had stated that Imran and Farooq were Pakistanis. Jang Bahadur was from Moradabad. Sharif was from Rampur. Sabauddin was from Bihar. He had stated that from the manner in which the firing was being done and the hand grenades were being thrown, it was evident that they were all terrorists. Thereafter he had stated that they had spread out and had started firing and when they had fired enough towards the CRPF Camp the terrorists turned back to fire upon the police party with their AK-47. The rifle of Indrapal was damaged because of a bullet which came from the side of the terrorists. Similarly, the rifle of Aftab Khan got jammed. Again towards the police party, the terrorists were throwing hand grenades wherein Indrapal Singh and Home Guard Aftab Khan were injured and thereafter the terrorists while fleeing kept on firing at the police party. They went through the Kosi Bridge. The police party chased them but they ran away in the dark of the night. The Sub-Inspector Om Prakash Sharma gave the news of the firing from the wireless of the jeep. He had stated that in the entire event, eight persons had died. Of the eight persons, two had died outside the gate, they were police personnel and one rikshaw puller and inside the gate, four CRPF jawans had died. Also near the Gate No. 1, three CRPF jawans had got injured. One Havaldar Afzal Khan had died while being taken to the hospital. Thus in the event,

seven jawans and one rikshaw puller had died. He had stated that he was not injured. He had stated that he had recognised all the terrorists in the light of the electricity bulb. He had stated that he could recognise them even now. While looking at the accused persons present in the court, he had stated that the person in the white *kurta* who was having a beard and was wearing spectacles was Jang Bahadur. Person in the *kurta paijama* who was standing in the left side was Imran. Person in green T-shirt was Sabauddin and the person in black T-shirt was Farooq. He had stated that he did not remember the face of Sharif as eight years had passed.

65. In the cross-examination, which took place on the same day, he had stated that the accused were wearing the same clothes, they were wearing on the date when he had got the statement-in-chief recorded. However, he had stated that the accused Imran was in green T-shirt with white lines. The accused Farooq was in gray colour *salwar kameez*. A question was asked that in the examination-in-chief he had stated that the person wearing green T-shirt was Sabauddin whereas in fact the person in green T-shirt was Kausar. He had answered to this question that the person at that particular point of time was wearing a green T-shirt and he according to the PW-38 was Sabauddin. He had stated that at that point of time there was scarcity of light and that he was also having a spectacle with the wrong number and that eight years had gone by and therefore his memory had also started fading. A question was put that in the examination-in-chief the person in *kurta paijama* was Imran whereas Imran was wearing a pant shirt. To this he had answered, he had stated that the person who was wearing *pathani kurta paijama* was in fact

Imran. Again a question was put that the person who was wearing a *slaty coloured salwar suit* was Farooq. Then to that the PW-38 had answered that he was Imran. A question was again put that in his examination-in-chief had stated that the accused who was wearing black T-shirt was Farooq whereas the person in the court wearing black T-shirt was actually Sabauddin. To this he had answered that at that point of time the electricity light was not available and therefore he could not recognise the accused properly. He had thereafter stated that his eyes had become weak and that he was wearing a new spectacle.

66. He had thereafter stated that when he alongwith police team had left for the place of incident then they had filled up the G.D. showing that they had left the police station. He had stated that when the team had left for the place of incident, it had got information that there was a dead-body lying at the Kosi Bridge. From the thana the Kosi Bridge was 3-4 km. He states that he did not remember whether the dead-body on the left side of the bridge or on the right side of the bridge. However it was found at the very beginning of the bridge. However, upon various questions being put, he got slightly confused and stated that he did not remember exactly where the dead-body was.

67. The cross-examination of PW-38 commenced again on the 20.7.2016. He had stated that his statement was got recorded by the Investigating Officer for the first time on 20.1.2008. He had stated that it was correct to say that he had not got any description of the accused persons when he had got his statement recorded. He had stated that he had not told the Investigating Officer in his statement which he had got

recorded that the assailants had entered the camp. He had stated that he did not know where they had gone thereafter. He had stated that it was wrong to say that there was no help given by the CRPF officials to the police and it was also wrong to say that the CRPF personnel had lifted the magazine etc. from the place of incident. When this PW-38 was confronted by statement under Section 161 of Cr.P.C. that the CRPF jawans had not cooperated with the police and that on the date of incident the magazine etc. which was lying on the spot were taken away by them was correct, he states that even the fingerprints on the magazine could not be taken because they were taken away. The police was definitely not allowed inside the campus. He had stated that he himself was around 30-35 steps away from the assailants and he had taken position from behind the railway quarters. In the police team, he had stated that Constable Indrapal was ahead of him. He had also stated that after he had taken the position behind railway quarter he was not aware as to what duration the firing continued. He had stated that on the date of incident when he had proceeded towards the Kosi Bridge he was supplied with 30 rounds of bullets. The 7 rounds which he had fired was done intermittently. He did not remember whether the magazine from the CRPF personnel had been taken away from within the camp or had come from outside. He had stated that the place, from where he was taking position and was firing, was very dark. He had stated that the Investigating Officer had never called him for assisting in the investigation and creating the portrait of the accused persons.

68. Thereafter the statement of the accused persons were got recorded under Section 313 of Cr.P.C.

69. In his statement under Section 313 of Cr.P.C., Mohd. Sharif had specifically given an answer to the question no. 129 that the fingerprints were obtained from them after they were arrested for the purposes of creating evidence.

70. Upon completion of the trial the Additional Sessions Judge, Court No. 3, Rampur had passed the judgement on 2.11.2019 whereby the accused persons were given the following punishments.

(i) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh were convicted under Section 302 read with section 149 of I.P.C. for death sentence and a fine of Rs. 50,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for three months.

(ii) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh were convicted under Section 27(3) of Arms Act for death sentence.

(iii) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh were to be hung till death.

(iv) The accused person namely Jang Bahadur Khan was convicted under Section 302 read with section 149 of I.P.C. for life imprisonment and a fine of Rs. 50,000/- was imposed. In the event of default, he was to undergo an additional imprisonment for three months.

(v) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 148 of I.P.C. for imprisonment of three years.

(vi) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba

were convicted under Section 307 read with section 149 of I.P.C. for imprisonment of 10 years and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for three months.

(vii) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 333 read with section 149 of I.P.C. for imprisonment of 7 years and a fine of Rs. 20,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(viii) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 4 of PDPP Act for imprisonment of 5 years and a fine of Rs. 20,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(ix) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 121 read with section 149 of I.P.C. for life imprisonment and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(x) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 16 of Unlawful Activities (Prevention) Act, 1967 for life imprisonment and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(xi) The accused persons namely (1) Mohd. Sharif @ Suhail @ Sajid @ Anwar @ Ali, (2) Sabauddin @ Sahabuddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar, (3) Imran Shahjad @ Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and (4) Mohd. Farooq @ Abu Zulkar

Nain @ Abujar @ Amar Singh (5) Jang Bahadur Khan @ Baba were convicted under Section 20 of Unlawful Activities (Prevention) Act, 1967 for life imprisonment and a fine of Rs. 25,000/- (each of the accused). In the event of default, they were to undergo an additional imprisonment for two months.

(xii) Mohd. Kausar and Gulab Khan were not found guilty of the charges under sections 302/120B, 307/120B, 121 and 121A of IPC and sections 18 and 20 of Unlawful Activities (Prevention) Act, 1967 and, therefore, they were acquitted.

71. Since, in Session Trial No.208 of 2008 (State vs. Mohd. Sharif @ Suhail and Ors.); in S.T. No.338 of 2009 (State vs. Mohd. Sharif and Ors.); in S.T. No.664 of 2009 (State vs. Imran Shahjad and Ors.); in S.T. No.09 of 2010 (State vs. Imran Shahjad and Ors.) and in S.T. No.179 of 2011 (State vs. Sabauddin) the appellants Mohd. Sharif, Imran Shahjad, Mohd. Farooq and Sabauddin were given death sentence under Section 302 read with section 149 of I.P.C. along with section 273 of Explosive Substances Act, 1908, the matter was referred to the High Court under Section 366(1) of Cr.P.C. and a request was also sent to the Deputy Registrar, Criminal Appeal Section of the Allahabad High Court for the filing of Capital Appeal. The following Capital Appeals were filed:

i. Capital Case No. 7 of 2019 (Mohd. Sharif @ Suhail @ Sazid @ Anwar @ Ali vs. State of U.P.)

ii. Capital Case No. 3 of 2020 (Mohd. Sharif @ Suhail @ Sazid @ Anwar @ Ali and 3 Ors. vs. State of U.P.)

iii. Criminal Appeal No. 31 of 2020 (Jang Bahadur Khan vs. State of U.P.)

72. Also, since in Session Trial No. 208 of 2008 (State vs. Mohd. Sharif @ Suhail and Ors.), in Session Trial No. 338 of 2009 (State vs. Mohd. Sharif and Ors.), in Session Trial No. 664 of 2009 (State vs. Imran Shahjad and Ors.), in Session Trial No. 09 of 2010 (State vs. Imran Shahjad and Ors.) and in Session Trial No. 179 of 2011 (State vs. Sabauddin) under Sections 148, 302/149, 333/149, 307/149, 121/149 of I.P.C., Section 4 of PDPP Act, Section 16 and 20 of Unlawful Activities (Prevention) Act, 1967, Section 27(3) of the Arms Act, death sentence was awarded a Reference numbered as Reference No. 6 of 2019 was sent to the High Court for confirmation. The Reference was also heard.

73. Sri Imran Ullah, learned counsel for the appellants/convicted persons assisted by Sri Faiz Ahmad, Sri Raj Raghuvanshi and Sri Vinit Vikram Singh, learned counsel was representing accused-appellants in Capital Case No. 7 of 2019 Capital Case No. 3 of 2020 in Criminal Appeal No. 31 of 2020 and in the Capital Reference No. 6 of 2019. Sri M.S. Khan appeared for the appellants through Video Conferencing. They have essentially made the following submissions while assailing the judgement of conviction :

(I) <u>Identification</u>

The identification of the appellants was not established beyond reasonable doubt. He has submitted that in order to prove the presence of the accused and the incident of attack by the

appellants, the prosecution had produced and examined the following eye witnesses :-

Police Officials:

(1) PW-1 Sub-Inspector Om Prakash (Complainant)

(2) PW-6 Constable Indrapal Singh

(3) PW-38 Constable Jitendra Singh

CRPF Personnels:

(4) PW-8 Constable Pradeep Kumar *(posted at the Naka outside the Gate No. 1CRPF Camp alongwith Head Constable Afzal Ahmad and Constable Devendra Kumar)*

(5) PW-15 Rajjan Lal *(posted at the Naka outside the Gate No. 1CRPF Camp alongwith Head Constable Afzal Ahmad and Constable Devendra Kumar)*

(6) PW-9 Constable Kendra Singh *(Posted at Naka near DIG Control Room inside the camp alongwith Constable Laxman Singh Dasila and Constable Santosh Kuthari)*

(7) PW-12 Santosh Kuthari *(Posted at Naka near DIG Control Room inside the camp alongwith Constable Laxman Singh Dasila and Constable Santosh Kuthari)*

(8) Devendra Kumar *(posted at the Naka outside the Gate No. 1CRPF Camp alongwith Head Constable Afzal Ahmad and Constable Devendra Kumar)*

At the relevant point of time when the incident had occurred the CRPF Guards were inside the guard room with Constable Ram Taras Mishra and Constable Laxman Singh Dasila. Constable Laxman Singh Dasila was not examined by the prosecution even

though his statement was recorded by the Investigating Officer PW-24 Inspector Satya Prakash Sharma.

A Railway employee PW-32 Chhote Lal who was on patrolling duty on the railway track passing in front of the Gate No. 1 CRPF Camp was also an eye-witness.

While making their submission, learned counsel for the appellants submitted as to why the identification of the appellants in the dock for the first time as assailants was untrustworthy, unreliable and did not inspire confidence. The following arguments were advanced :

> It was the admitted case of the prosecution that the appellants-assailants were not known to the eye-witnesses. Before the witnesses came to the court the identity of the accused was never revealed by the witnesses, either in the F.I.R. or in the statement recorded under Section 161 of Cr.P.C. None of the appellants were arrested on the information furnished by these eye-witnesses. As a matter of fact on 10.2.2008, the appellants namely Jang Bahadur and Mohd. Sharif were arrested on the basis of some secret information by a team of Special Task Force, Lucknow which was led by PW-17 Ashok Kumar Raghav and PW-19 Ram Badan Singh. What is more the appellant Jang Bahadur was arrested from Village Milak and Mohd. Sharif was arrested from the bus stand at Rampur and not from any place which was ever revealed by any of the eye-witnesses

or the police which was investigating. It has been submitted by the learned counsel for the appellants that Sabauddin, Imran Shahjad and Mohd. Farooq were apprehended from Charbagh Railway Station, Lucknow. Again, not by the police which was present at Rampur on the date of incident but by a team of Special Task Force led by one PW-14 Inspector Navendu Kumar. Learned counsel for the appellants has submitted that Gulab Khan and Mohd. Kausar were also arrested but regarding them not much was argued as they were subsequently acquitted after the sessions trial. After the arrests had taken place, investigation was taken over by PW-25 Sri O.P. Tripathi on 17.2.2008 and on the basis of the statements of the eye-witnesses a charge-sheet (Ka-93) was filed on 8.5.2008 by PW-25 against seven accused persons under Sections 147, 148, 149, 302, 307, 332, 120-B of I.P.C. read with section 3/4 of Prevention of Damage to Public Property Act, 1984, Section 7/27 of Arms Act and Section 3/4/5 of the Explosive Substances Act, 1908, in the Court of Chief Judicial Magistrate and on coming to the Court of Sessions, the same was registered as Session Trial No. 208/2008 *(main leading case)*. What the witnesses mentioned with regard to the number of accused and their descriptions, in the F.I.R. and the statements recorded under Section 161 of Cr.P.C. has been vividly

provided by the learned counsel for the appellants and the same is being reproduced here as under :

"Police Witnesses Version

FIR EX.KA-3 Page 1	*i. Complainant with staff was on a patrolling duty.* *ii. At 2.30 am he heard firing sound when he was at picket near the CRPF Camp.* *iii. He alongwith staff reached near the CRPF camp.* ***iv. He saw 4-5 persons firing at CRPF personnels with sophisticated weapons.*** *V. While firing those persons entered the camp and continuously fired and lobbed hand grenades and caused injuries to the CRPF personnels.* *vi. He flashed the message through wireless.* *vii. The attackers were chased by the police but without any success.* *vii. He fired two rounds from his revolver.* *viii.* ***No description of assailants mentioned.***
Statement of ***PW1*** *SI Om Prakash U/s. 161 Cr.P.C. recorded on* ***01.01.2008*** *by PW-24*	*(page 101) Additionally he mentioned that the assailants were of young age, having medium built and medium height and did not see any special sign*

Insp. Satya Prakash Sharma ***[Page 97-102]***	*and two of them were wearing military jackets.*
Statement of ***PW6*** *Constable Inder Pal U/s. 161 Cr.P.C. recorded on* ***03.01.2008*** *by PW-24 Insp. Satya Prakash Sharma* ***[Page 120-123]***	*i. He was on patrolling duty with PW-1 and others* *ii. Heard the sound of firing and reached near the CRPF camp* *iii.* ***He saw 4-5 persons firing at CRPF personnel with sophisticated weapons.*** *iv.* ***No description of assailants mentioned.*** *v.* ***Fired 8 rounds.***
Statement of ***PW 38*** *CP Jitender Kumar Singh U/s. 161 Cr.P.C. recorded on* ***02.01.2008*** *by PW-24 Insp. Satya Prakash Sharma* ***[Page 188-190]***	*i. He was on patrolling duty with PW-1 and others* *ii. Heard the sound of firing and reached near the CRPF camp* *iii.* ***He saw 4-5 persons firing at CRPF personnels with sophisticated weapons.*** *iv.* ***No description of assailants mentioned.*** *v.* ***After the incident CRPF personnel did not cooperate with the police and lifted the magazines etc. from the spot which might have had finger prints of the assailants.*** *v.* ***Fired 7 rounds***

CRPF Witnesses Version:

*Statement of **PW-8** CP Pradeep Kumar Gurjar recorded on **03.01.2008** by PW-24 Insp. Satya Prakash Sharma **[Page 124-126]***	*i. Posted at Naka at Gate No. 1 CRPF Camp alongwith CP Rajjan Lal, Devender Kumar and Afzal Ahmed.* *ii. Afzal Ahmed lit the bonfire and they were warming their hands and CP Vikas Kumar also joined them.* *iii. When they were near the Fire, all of a sudden indiscriminate firing came towards them, they also fired in retaliation and due this sudden firing **"sudh nahin rahi"**. (They were not conscious as to what all had happened)* *iv. [Page 126] **He could not see the face of any of the assailants; perhaps they were 2-3.***
*Statement of **PW-15** CP Rajjan Lal U/s. 161 Cr.P.C. recorded on **03.01.2008** by PW-24 Insp. Satya Prakash Sharma.*	***Not in the paper book,** however, he stated that "मैंने उन आतंकवादियों की सूरत नहीं देखी अंदाजा बता रहा हूं कि कम से कम दो तीन आतंकवादी तो इस घटना में जरूर थे"*
*Statement of **PW-9** CP Kendra Singh U/s. 161 Cr.P.C. recorded on **03.01.2008** by PW-24 Insp. Satya Prakash Sharma **[Page 127-129]***	*i. Posted at the Morcha near DIG Control Room alongwith Constables Ramji Saran Mishra, Laxman Singh Dasila, Santosh Kothari.* *ii. The duty shift was of 2 hours for each.* *iii. Laxman Dasila was on Morhca Duty while the remaining were sleeping in the Guard room on their*

	cots. *iv. Ramji Saran woke them up and informed about firing at the Gate.* *v. Fire burst came from eastern side window and thereafter one hand grenade was lobbed and* ***he lost consciousness.*** *vi.* ***He could not see anything as his back was towards the window.*** *vii. He heard that Santosh Kothari had seen the assailant who was wearing a jacket.*
Statement of ***PW-12*** *Const. Santosh Kothari U/s. 161 Cr.P.C. recorded on* ***01.01.2008*** *by PW-24 Insp. Satya Prakash Sharma [Page 135-136]*	***Turned hostile during examination.*** *i. Stated on the same lines as PW-9 and additionally stated that he saw one wearing thick Khaki Jacket and peaked cap.* *ii.* ***Except above No description of the assailant.***

Railway Official Version:

Statement of ***PW-32*** *Chhotey Lal U/s. 161 Cr.P.C. recorded on* ***04.01.2008*** *by PW-24 Insp. Satya Prakash Sharma.* ***[Page 187]***	*His detailed statement was not recorded rather it is recorded that he supports the version of his co-worker Jagannath whose statement has been recorded by the IO, however, no statement of Jagannath is on record.*

The most glaring thing which emerges from the reading of the F.I.R. and the versions of the eye-witnesses as contained in their statements recorded under Section 161

Cr.P.C. is that not only was the description of the assailants missing, even the exact number of the assailants were not known to them. The deposition of PW-24 Inspector Satya Prakash Sharma the Investigating Officer from 1.1.2008 to 14.2.2008 revealed that none of the witnesses had informed the police during the initial investigation with regard to the recognition of their faces and with regard to the fact as to whether the assailants were dark or fair. No special sign of recognition was revealed by any of the witnesses to the investigating officer. In fact, the Inspector Satya Prakash Sharma had stated in his examination-in-chief that Laxman Singh Dasila a CRPF Jawan who was on duty in the control room had stated that he had never seen anybody going inside the camp. He had categorically stated that for the identification of the accused he had never moved any application in the court. He had also stated that in the case diary he had never mentioned his intention to keep the accused persons unidentified (बापर्दा). He had also stated that in the police custody also there was no application for keeping the accused unidentified (बापर्दा). Also the Investigating Officer from 17.2.2008, Sri O.P. Tripathi had stated that before the incident the injured and the eye-witnesses never knew about the accused persons and they did not recognise them. He had stated that for the purposes of identification, no application for identification parade

was moved by him before the court. The relevant portions of the deposition of PW-24 and PW-25 are being reproduced here as under :

> ***PW-24 Insp. Satya Prakash Sharma*** ***(Investigating Officer 01.01.2008 to 14.02.2008):-***
>
> *Page 417 dated: 13.04.15: उक्त आवास के दौरान मेरे द्वारा लिये गये १६१ सी आर पी सी के ब्यानों में हमलावरों की कद काठी के व कपड़ो के बारे में बताया गया लेकिन* ***चेहरे कि बनावट व रंग आदि विशेष चिन्ह के बारे में नहीं बताया था।***
>
> *Page 417 dated 13.04.15: लक्ष्मण डसीला सीआरपीएफ जवान की ड्यूटी डीआईजी कंट्रोल रूम वाले मोर्चा जो पॉइंट डी है ने अपने बयान में बताया था कि* ***उस तरफ उसने किसी को आते नहीं देखा था*** *यह कहना सही है कि डीआईजी कंट्रोल रूम व गार्ड रूम घटनास्थल से काफी नजदीक हैं और वह स्थान मोर्चे से साफ चमकते हैं।*
>
> *Page 420 dated 27.04.15: ११.०२.०८ से १४.०२.०८ के बीच मैंने* ***अभियुक्तों की शिनाख्त के लिए मैंने कोई प्रार्थना पत्र अदालत में नहीं दिया था*** *। ११.०२.०८ से १४.०२.०८ के बीच अभियुक्त गण को* ***बापर्दा*** *होने का कोई तस्करा सीडी में दर्ज नहीं है।*
>
> *Page 420 dated 27.04.15 Police custody की अर्जी में* ***बापर्दा*** *होने का उल्लेख नहीं है।*
>
> ***PW-25 O.P. Tripathi*** *(Investigating officer from 17.02.2008 and Assistant Investigating officer):*

*Page 450 dated 26.0.15: घटना से पहले मजरुब एवं गवाह मुलज़िमान को **न जानते थे न पहचानते थे न उनके नाम मालुम थे।***

*मेरे द्वारा विवेचना के दौरान मुल्जिमान की शनाख्त परेड कराने हेतु न्यायलय में कोई अर्जी दाखिल **नहीं** की गयी थी।*

To further bring home the point that the eye-witnesses themselves were not speaking the truth, learned counsel for the appellants had compared their statements made in the examination-in-chief with the statements made in the cross-examination. The discrepancy in the deposition definitely came to the fore. To point out the discrepancy in the deposition learned counsel for the appellants produced a definite table which is being reproduced here as under :

DISCREPANCY IN DEPOSITION – RELEVANT PORTIONS OF THE DEPOSITION OF THE EYE WITNESSES

EXAMINATION IN CHIEF	*CROSS EXAMINATION*
PW-1 SI OM PRAKASH *Page 212 ...फायरिंग करने से हम कर्मचारी को महसूस हुआ जरूर यह आतंकी हमला है आतंकियों में से एक अभियुक्त जंग बहादुर गेट नंबर 1 सीआरपीएफ के पास खड़ा था इसी से थोड़ा आगे सीआरपीएफ कैंप की तरफ इरफान शहजाद व मोहम्मद फारूक एके-47 राइफल लिए हुए सीआरपीएफ जवानों की तरफ ताबड़तोड़ फायरिंग कर रहे हैं और निशाना बनाकर ग्रेनेड भी फेंक*	*Page 225 dated 05.11.11- **मैंने अपनी तहरीर में मुलज़िमों का कोइ हुलिया दर्ज नहीं किया था** केवल कहा मैं हुलिये के बारे में पहले विवेचक को बयान दे चुका हूं। मैंने कोई **विशेष पहचान किसी मुलजिम** की नहीं बताई थी। केवल **जवान उम्र** के बताए थे। व जो कि मैंने **चार या पांच मुलजिम** लिखाए थे.*

रहे थे. *Page 213* जंग बहादुर इन दोनों आतंकियों को ललकारते हुए हौसला बढ़ा रहा था. उसी के थोड़ा सा पास में सीआरपीएफ कैंप की तरफ सबा उद्दीन उर्फ सबा एके-47 लिए हुए सीआरपी के जवानों की तरफ निशाना बनाकर फायरिंग कर रहा था व निशाना बनाकर ग्रेनेड फेंक रहा था. सबा उद्दीन के पास ही मोहम्मद शरीफ था यह भी ग्रेनेड निशाना सीआरपीएफ के जवानों को बना कर फेंक रहा था. जंग बहादुर इमरान शहजाद से कह रहा था कि अपने स्थान से दाएं बाएं चलो तथा बर्स्ट फायर मारो तथा ग्रेनेड फेको. मोहम्मद फारुख से वह कह रहा था कि काफिरों को मार गिराओ. इस तरह जंग बहादुर पीछे खड़े मोहम्मद शरीफ से कह रहा था कि ग्रेनेड पीछे से फेंको. मुलजिम जंग बहादुर अपने सभी साथियों का विभिन्न नामों को लेकर उत्साह बढ़ा रहा था तथा सीआरपीएफ के अंदर व बाहर की जानकारी अन्य को दे रहा था. *Page 214* आतंकी इमरान शहजाद व मोहम्मद फारुख एके-47 से फायर करते हुए सीआरपीएफ कैंप की तरफ प्रवेश कर गए सबसे पहले सीआरपीएफ कैंप में इमरान शहजाद वह बाद में घुसे. यह दोनों अंदर फायरिंग करते रहे वह ग्रेनेड	*Page 234 dated 09.01.12* - ***<u>यह सही है कि मैं मुलजिम को पहले से नहीं जानता था ।</u>*** *Page 227 dated 09.01.12- यह कहना सही है कि दिनांक 01. 01. 08 के बयान में मैंने अभियुक्त की पोजीशन के बारे में कुछ नहीं बताया था कि मैंने अपनी तहरीर व अपने बयान जो ०१.०१.०८ को दर्ज हुए थे उसमें यही कहा था कि कोई अभियुक्त ललकारते हुए सह अभियुक्तों का हौसला बढ़ा रहा था वो कौन सा अभियुक्त था किस कार्रवाई में संलिप्त था।* *दिनांक १०.०२.०८ को मेरा विवेचक ने कोई बयान दर्ज नहीं किया जो अभियुक्तों की पहचान के बारे में हो । २२.०२.०८ को मेरा विवेचक ने कोई बयान नहीं लिया था। मैंने मुलज़िमो की पहचान की बाबत कोई दस्तावेज तैयार नहीं की थी लेकिन इस बाबतआई.ओ. को बयान दिया था। मेरी जानकारी में नहीं है कि दिनांक १०.०२.०८ व २२.०२.०८ को मुलजिम की पहचान की बाबत कोई दस्तावेज तैयार किया गया हो।* *सबा उद्दीन का फोटो 22-2-08 से पहले सुबह फाइल में फोटो*

फेंकते रहे . सीआरपीएफ व आतंकियों के फायर दोनों की फायरिंग आवाजें आती रही. Page 217 जंग बहादुर व मोहम्मद शरीफ क्रमश मुरादाबाद व रामपुर के निवासी है. दिनांक 10 2 2008 को थाना सिविल लाइन में दाखिल करते समय मैंने इन्हें देखकर पहचाना था. यह दोनों मुलजिम वही है जो सीआरपीएफ गेट 1 पर थे. मोहम्मद शरीफ वहां ग्रेनेड फेंक रहे थे वाह जंग बहादुर सबा आतंकियों को दिशा निर्देश दे रहे थे. दोनों अभियुक्त जंग बहादुर वाह मोहम्मद शरीफ आज अदालत में उपस्थित हैं जिन्हें मैं अच्छी तरह से पहचानता हूं. दिनांक 22 2 2008 को आतंकी इमरान शहजाद व मोहम्मद फारुख एटीएस टीम लखनऊ द्वारा रिमांड पर लखनऊ से पुलिस लाइंस रामपुर लाए गए थे जिनको बरामदगी के लिए पुलिस लाइन से कोसी पुल ले जाते समय पुलिस लाइन में मैंने पहचाना था जो सीआरपीएफ हमले के समय यह दोनों भी इस समय हाजिर अदालत मौजूद है. Page 218 .... सबाउद्दीन उर्फ सबा इसका फोटो मैं कोतवाली रामपुर में देखकर पहचाना था जो आज हाजिर अदालत है.	देखकर मैंने थाना सिविल लाइन में पहचाना था . उस समय सुबह 8:09 बजे का समय पढ़ा होगा. जब मैं थाने में मैं अपना रिकॉर्ड निकाल रहा था तभी वह फाइल मेरे सामने आई उसमें फोटो लगा था . यह मुझे नहीं पता कि यह फोटो थाने में किस प्रकार से आया. फोटो को मैंने अचानक पहचाना था <u>फोटो पर नाम लिखा था उससे मैंने पहचाना था .</u> आई ओने इस फोटो के संबंध में कोई पूछताछ नहीं की थी. इस संबंध में मेरा कोई बयान आई.ओ. द्वारा दर्ज नहीं किया था. Page 229 dated 09.01.12- <u>मेरी तहरीर में यह बात भी अंकित है कि उक्त बातें मुझे सीआरपीएफ के जवानों सुपरिंटेंडेंट द्वारा बताई गई है।</u> दिनांक 01.01.08 को मेरा वह बयान विवेचक द्वारा सुबह 8:30 बजे लिया गया था यह कहना भी सही है कि मेरा बयान धारा 161 सीआरपीसी में <u>यही दर्ज है कि उक्त घटना के बारे में सीआरपीएफ के जवानों ने बताया था।</u> Page 234 dated 09.01.12 - <u>**यह सही है कि मैं मुलजिम को पहले से नहीं जानता था ।**</u>

मोहम्मद शरीफ जनपद रामपुर के रहने वाले यह अपने साथी जंग बहादुर मुरादाबाद निवासी जो सीआरपीएफ कैंप अंदर / बाहर से रेकी करके आया था आतंकवादियों से सांठगांठ करके इसने यह घटना कार्य कराई है क्योंकि पूर्व समाचार पत्रों में प्रकाशित आतंकवादियों द्वारा सीआरपीएफ कैंप , आकाशवाणी, गवर्नमेंट प्रेस पर आतंकी हमले की सूचना को मद्दे नजर से उच्च अधिकारियों के निर्देश से ड्यूटी में सतर्कता करती जा रही थी. *Page 220... यह पांचो मुलजिमान आज भी न्यायालय में उपस्थित है*	
PW6 Constable INDER PAL *Page 255.... समय रात्रि 2:30 बजे होगा. तभी दरोगा जी ने सीआरपीएफ गेट से कुछ पहले रेलवे क्वार्टर की दीवार के पास गाड़ी रुकवाई, मैंने उतर कर देखा कि चार-पांच लोग सीआरपीएफ जवानों की तरफ फायर कर रहे हैं.* *Page 256... मैं बुरी तरह जख्मी हो गया मैं लुढ़कते हुए चाय के एक खोके मैं तखत के नीचे पहुंच गया था.....जब मैं तख्त के नीचे घायल अवस्था में था उसी समय दो चितकबरी मिलिट्री जैसी जैकेट पहने हुए उन्हें आतंकवादियों को नजदीक से देखा उसी समय एक*	*Page 260.... घटना के समय हाईवे पर चाय की दुकानें बंद थी. यह खोके बंद थे दरवाजे से बंद थे. जब मैं घायल होने के बाद जिस खोके के पास पहुंचा वह खोखा नेशनल हाईवे पर पश्चिम की तरफ बाई साइड पर था. खोखा गुमती से 10-12 कदम की दूरी पर था. खोखा बंद था..... जिन व्यक्तियों पर में निशाना लगा रहा था वह करीब 50 मीटर सीआरपीएफ गेट की तरफ थे. जिन लोगों पर मैं निशाना लगा रहा था उनमें से कुछ गेट के अंदर से कुछ गेट*

व्यक्ति जिसका नाम जंग बहादुर आतंकवादियों को नाम ले लेकर ललकार रहा था. इमरान फायर करो फारुख ग्रेनेड फेंको आदि.. *Page 257 इसके बाद जब यह आतंकवादी गिरफ्तार पुलिस लाइन में बरामदगी आदि के लिए लाए गए थे तब मैंने पुलिस लाइन जाकर देखा वह पहचाना. इनके नाम इमरान व फारुख थे उसी समय जंग बहादुर को भी गिरफ्तारी के बाद देखा वह पहचाना.* *जब मैं मेरठ मेडिकल कॉलेज में भर्ती था मेरे थाने के विवेचक इंस्पेक्टर श्री सत्य प्रकाश शर्मा गए थे वह घटना के बारे में पूछताछ की थी. उसके करीब छह-सात महीने बाद एटीएस इंस्पेक्टर साहब ने घटना के बारे में पुन्हा पूछताछ की थी. तभी मैंने उनको अभियुक्तों के बारे में पहचानने की बात बताई थी.* *गवाह ने हाजिर अदालत मुलजिमो को देख कर कहा फारूक जंग बहादुर हाजिर अदालत है.*	*के बाहर थे. जब पहली बार में घटनास्थल पर दरोगा जी के साथ पहुंचा तब हमलावर कुछ लोग सीआरपीएफ गेट के अंदर थे तथा कुछ लोग गेट के बाहर थे. जो लोग अंदर थे वह अंदर की तरफ फायर कर रहे थे जो बाहर थे वह बाहर की तरफ फायर कर रहे थे.* *Page 261 मैं यह नहीं बता सकता कि हमलावर के अंदर कितनी संख्या थी बाहर तीन की संख्या थी वह तीनों सड़क की तरफ फायर कर रहे थे हमारा मोर्चा लेने के बाद तीन व्यक्ति हमारे तरफ फायर करने लगे.. मेरे घटनास्थल से खोके पहुंचने तक सेकंडो में दो चितकबरी मिलिट्री जैसे जैकेट पहने हुए दो आतंकवादी आए और जो सेकंडो में ही चले गए.* *Page 261....dated 12.04.13 - मै पुलिस विभाग में 26 साल से तैनात हूं। पुलिसकर्मी होने के नाते मुझे यह बात मालूम है कि मुलजिम को पकड़ने के लिए हाल हुलिया काफी महत्वपूर्ण होता है। मैंने दरोगा जी को मुलजिमो का हुलिया बताया होगा उस समय मेरी हालत गंभीर थी. गवाह ने 161 सीआरपीसी का बयान पढ़कर बताया कि मुलजिमान का*

	हुलिया बताने वाली बात बयान में नहीं है..... मैंने जो न्यायालय में ब्यान २९.०१.१२ को दिया वह अपने से दिया उसमें जंग बहादुर अतंकवादियों का नाम लेकर ललकार रहा है "इमरान फायर करो, फारुख गर्नेड फेंका' ***<u>गवाह के बयान १६१ सी०आर० पी० सी० में उपरोक्त नहीं है.</u>***
<u>PW-38 C. JITENDER SINGH</u> *Page 507-508.हम करीब 2:30 सीआरपीएफ गेट नंबर 1 की तरह पहुंचे थे. सीआरपीएफ गेट के पास बिजली की रोशनी थी. वहां हमने देखा कि लगभग चार-पांच आदमी सीआरपीएफ गेट की तरह फायरिंग कर रहे थे वह जवानों पर फायरिंग कर रहे थे. वह एके-47 से फायरिंग कर रहे थे और हैंड ग्रेनेड जवानों को लक्ष्य कर फेंक रहे थे. चार पांच हमलावरों में जो सबसे पीछे था उसका नाम जंग बहादुर था. वह अपने साथियों से कह रहा था कि सीआरपीएफ जवानों की तरफ ग्रेनेट फेंको, फारूक इधर फायर करो. काफिर सीआरपीएफ जवानों को मार डालो. सबसे आगे सीआरपीएफ गेट के अंदर इमरान, उसके पीछे फारूक उसके पीछे सबा उद्दीन व चारों में सबसे पीछे शरीफ था. इन सबसे पीछे जंग बहादुर था जो उन्हें ललकार कर कह रहा था कि इन काफिरों को मारो. इमरान व फारुख पाकिस्तानी*	*Page 513: विवेचक द्वारा मेरा बयान 02.01.2008 को दर्ज किया गया था। । यह कहना सही है कि मेरे द्वारा दिए गए दिनांक 02.01.2008 के बयान में* ***<u>किसी भी अभियुक्त का कोई हाल हुलिया नहीं बताया था ।</u>*** *Page 510.... प्रश्नः आपने अपनी मुख्य परीक्षा में हरे रंग की शर्ट रहने वाले व्यक्ति का नाम सब उद्दीन बताया जबकि हरि शर्ट वाले ने अपना नाम कौसर बताया.* *उत्तरः श्रीमान जी मैंने उस समय जो मुलजिम काईया हरी टीशर्ट पहने हैं उसको सबआउद्दीन बताया था. उस समय थोड़ी लाइट चली गई थी. मेरे चश्मे का नंबर भी गिर गया है. मामले को 8 साल भी हो गए हैं. इसलिए याददाश्त थोड़ी धुंधली हो गई है.*

है. जंग बहादुर मुरादाबाद का है. शरीफ रामपुर का है सबउद्दीन बिहार का है Page 509 ... हाजिर अदालत मुलजिमान को देखकर गवाह ने कहा कि सफेद कुर्ते में दाढ़ी वाले व्यक्ति जिसने चश्मा लगा रखा है उसका नाम जंग बहादुर है. कुर्ते पजामे में बाई तरफ वाला व्यक्ति इमरान है. हरी टी-शर्ट वाले व्यक्ति का नाम सबउद्दीन है व ब्लैक टीशर्ट में फारूक है . शरीफ का चेहरा ध्यान नहीं है 8 साल हो गए हैं. और किसी को नहीं पहचान पा रहा हूं. उनके हुलिया बदल चुके हैं	Page 511... प्रश्नः आपने अपनी मुख्य परीक्षा में हाजिर अदालत मुलजिम को देखकर ब्लैक टीशर्ट पहने व्यक्ति को फारुख बताया जबकि हाजिर अदालत मुझे जो ब्लैक टी-शर्ट पहने हैं सब उद्दीन है. उत्तर : उस समय भी लाइट चली गई थी इसलिए सही से पहचान नहीं पाया था. दूर की नजर कमजोर है। चश्मा भी नया बना है. Page 514.. गवाह को 161 सीआरपीसी का बयान पर्चा नंबर दो दिनांक 2-1-08 पढ़कर सुनाया तो गवाह ने कहा कि मेरा निम्न बयान- "यह घटना के बाद सीआरपीएफ जवानों द्वारा हम पुलिस वालों को किसी तरह का कोई सहयोग नहीं दिया गया. और उनके द्वारा घटनास्थल पर मैगजीन आदि उठा ली गई. जिस पर अवश्य ही आतंकवादियों के निशान हो सकते थे . हम लोगों को सीआरपीएफ वालों ने कैंपस के अंदर नहीं जाने दिया गया" Page 515 …. जिस जगह से मैं गोली चला रहा था उस जगह अंधेरा था. जिस जगह पर मैं गोली चला रहा था वह कैंप में जाने का मुख्य रास्ता है . मुझे

	कभी भी विवेचना अधिकारी ने मुलजिमान का चित्र बनाने के लिए ना कभी बुलाया और ना कभी मदद ली.
PW-8 PRADEEP KUMAR GUJJAR *Page 266... एक आतंकी पीछे से जोर-जोर से चिल्ला रहा था और कह रहा था कि गोलियां चलाते रहो वह फारुख व इमरान का नाम बार-बार ले रहा था और हैंड ग्रेनेड फेंकने को कह रहा था* *Page 267... मैंने फायरिंग व गोले फेंकते हुए इमरान को देखा था तथा एक और था जिसका मैं नाम नहीं जानता . जिन लोगों ने घटनाकार इसकी उनको घटनास्थल पर व गिरफ्तारी के बाद कचहरी में देखा था और उन्हें पहचान लिया था.* *Page 268.... गवाह ने हाजिर अभियुक्त इमरान को अंगुली के इशारे से बताया कि यह अभियुक्त घटना में शामिल था गवाने और किसी अन्य अभियुक्त की शिनाख्त नहीं की.*	*XXXXX* *Page 271-272 ... हमारी ब्रीफिंग रेगुलर बेसिस पर होती रहती है घटना वाले दिन हम नाका ड्यूटी पर चार लोग तैनात थे नाके से मेरा मतलब कैंपस के मुख्य द्वार से है जो नेशनल हाईवे की तरफ खुलता है मुख्य दरवाजे पर लोहे का गेट 6 या साडे 6 फुट ऊंचा गेट था. गेट पिलर्स में फिट था . मुझे यह ध्यान नहीं कि सीआरपीएफ कैंपस का गेट अंदर की तरफ खुलता था या बाहर की तरफ खुलता था. सी / देवेंद्र कुमार की ड्यूटी गेट पर गन के साथ पोजीशन लेकर थी. नाका ड्यूटी का मकसद अनावश्यक व्यक्ति की आवाजाही रोकने के मकसद से लगाई जाती थी व चौकीदारी कर सके. नाका ड्यूटी पर हमारा कार्य था कि किसी भी व्यक्ति को भीतर आने की शिनाख्त कर सकें. कोई भी संदिग्ध व्यक्ति भीतर ना जा सके . मैं घटना वाले दिन बाहर तैनात था व गेट बंद था. सी / रंजन व सी/ देवेंद्र गेट के बाहर पोजीशन लेकर तैयार थे. सी/ देवेंद्र सेंड*

	बैग की आड़ में थे. गेट के बाद रेलवे लाइन है रेलवे लाइन के बाद रोड है यह नाका रेलवे ट्रैक व रोड के बीच में है.....मुझे याद नहीं है कि मैंने अपने बयान में जो सिविल लाइन थाने में पुलिस द्वारा लिया गया था मैं किसी भी हमलावर का नाम व शनाख्त हुलिया बयान दिया हो । मुझे यह याद नहीं कि मैंने अपने बयान में जो सिविल लाइन पुलिस को लिख गया था कि मैं किसी आतंकवादी की सूरत नहीं देख पाया। संभावित दो तीन आतंकवादी जरूर ही होंगे। ***यह कहना सही है कि मेरे बयान में उपरोक्त बात बताई होगी ।*** *मुझे ध्यान नहीं कि मैंने अपने बयान में " रात करीब 2:25 बजे जब हम लोग आपके पास थे की ताबड़तोड़ गोलियां.. सुध नहीं रही."*
PW-15 C. RAJJAN LAL: *Page 344 .... दिनांक 31-12-07 व 1-1-08 को रात्रि मेरी ड्यूटी रेलवे क्रॉसिंग व हाईवे के बीच में थी. सीआरपीएफ गेट नंबर 1 के पास थी. मैं नाका ड्यूटी पर था जो गेट के बाहर है... लगभग 2:30 बजे हाईवे की तरफ से ताबड़तोड़ गोलियां बरसाते हुए दो आतंकवादी कैंप की तरफ घुस गए और अन्य लोग हमारे ऊपर ग्रेनेड फेंकते रहे.*	*XXXXX* *Page 346... यह घटनाक्रम 1 मिनट के अंदर हो गया था.* *Page 348... मुझे पता था कि मुलजिम पकड़े गए हैं. मैंने दो एक बार अदालत आते हुए देखा है.* *Page 349... हाजिर अदालत मुलजिमान को कहीं नहीं दिखा*

Page 345-346.. दो लोग फायर करने वालों में जो अंदर की ओर गए थे उनको मैंने देखा हुआ पहचाना था. दो-तीन लोग और थे. जिनको मैं घायल की वजह से नहीं पहचान पाया ऊपर मरकरी लाइट जल रही थी और काफी रौशनी थी. कोई आदमी फारुख और इमरान कहकर चिल्ला रहा था की फायर करो और ग्रेनेड फेको इनमें से 2 लोगों को पहचानता हूं जो घटना में शामिल थे यह वही दो लोग हैं जो गेट जो गेट के अंदर घुसे थे. इमरान की सही पहचान साक्षी द्वारा की गई जबकि फारुख से जिस अभियुक्त को पहचाना है वह फारूक ना होकर इमरान है. मैं फारुख की गलत पहचान इस कारणवश से हो गई है क्योंकि इस घटना को काफी समय हो गया है और न्यायालय में उपस्थित फहीम की दाढ़ी बढ़ जाने के कारण सही पहचान नहीं हो पाई.	*गया*
PW-9 C. KENDRA SINGH *Page 274-275 …. रात्रि के 2:30 बजे सिपाही लक्ष्मण डसीला मोर्चे में ड्यूटी कर रहा था . रात्रि के करीब 2:30 बजे गेट नंबर 1 से फायरिंग की आवाज आई इस फायरिंग की आवाज के बाद हवलदार राम तरस मिश्रा लेकर तथा मुझे और सिपाही संतोष*	*XXXXX* *Page 277-278 … सीआरपीएफ अधिकारियों द्वारा आंतरिक तौर पर पूछताछ की गई थी मैंने नहीं बताया था सीआरपीएफ जांच में ना तो लिखित रूप से ना मौखिक रूप से कि इमरान शहजाद एके-47 से फायरिंग कर रहा था।*

कोठारी को बताया कि फायरिंग हो गई है. उसके बाद मैंने बुलेट प्रूफ जैकेट पहना जब मैंने जैकेट पहना तो संतोष कोठारी सामने वाली खिड़की के पास खड़ा था . उसके बाद मेरे पीछे वाली खिड़की से फायरिंग की आवाज आई. फिर रोशनीके उजाले में इमरान शहजाद फायरिंग करते हुए निकल रहा था..... उसके 10 कदम बाहर एक और आतंकवादी मोहम्मद फारुख ग्रेनेड फेंकते हुए आ रहा था. जो गार्ड रूम में मौजूद थे उसमें फेंक रहा था..... इन दोनों को मैंने बिजली की रोशनी में पहचाना था. गेट नंबर 1 के पास जो आतंकवादी खड़े थे वह आवाज देकर बोल रहे थे इमरान शहजाद फायरिंग करो मोहम्मद फारुख ग्रेनेड ग्रेनाइट फेंको ग्रेनेड फेंकते जाओ और फायरिंग करके मारते जाओ ..... दिनांक 22.2.2008 को आतंकवादियों को लेकर कोसी नदी के पास ले जा रहे थे . मेरे साथ और मैं वहां जिज्ञासा बस देखने गए तो मैंने दोनों आतंकवादियों गुलाम शहजाद व मोहम्मद फारुख को पहचाना *Page 276..... हाजिर अदालत अभियुक्त गण को इसलिए नहीं पहचान पा रहे हैं कि काफी समय हो गया और ज्यादातर ने अपने दाढ़ी बढ़ा ली है.*	*यह कहना सही है कि मैंने अपने बयान 161 सीआरपीसी जो पुलिस अधिकारियों द्वारा लिया गया था उ**<u>नको यह नहीं बताया था</u>** कि इमरान शहजाद फायरिंग करता हुआ निकल रहा था वह उसके व उसके पास एके-47 हथियार था वाह उसके 10 कदम बाद एक और आतंकी मोहम्मद फारुख ग्रेनड फेंखते हुए आ रहा था ।* *<u>मेरा कोई भी मुलजिम से **शिनाखत के संबंध में कोई बयान** लिखा गया और ना ही न्यायालय के सामने प्रस्तुत किया गया</u>* *यह कहना सही है कि मैंने अपने बयान 161 सीआरपीसी जो पुलिस अधिकारियों द्वारा लिया गया था उसमें यह नहीं बताया था कि गेट नंबर 1 के पास जो आतंकवादी खड़े। थे वह आवाज देकर कह रहे थे कि इमरान शहजाद वायरिंग करो और मोहम्मद फारुख फेंकते जाओ ।* ***<u>यह कहना सही है कि मैंने बयान में पुलिस अधिकारियों को यह कहा था कि किसी को भी नहीं देख पाया क्योंकि मेरी पीठ खिड़की की तरफ थी।</u>***
<u>PW-12 C. SANTOSH KOTHARI</u>	

Page 295-296…… 31-12-07 व 1-1-08 के मध्य रात्रि को ड्यूटी डीआईजी कार्यालय में थी. मोर्चे पर सिपाही लक्ष्मण सिंह था. जब घटना हुई तो रात्रि के 2:30 बजे थे. जब गोलियां चल रही थी रामजी शरण मिश्रा हल्ला करते हुए बाहर निकल गया हमसे कुछ नहीं कहा. यह फायरिंग की आवाज गेट नंबर 1 की ओर से आ रही थी. इतने में मैं व केंद्र से गिरी उठ गए और अपना अपना हथियार लिया तथा मैं गार्डन के दरवाजे से गेट नंबर 1 की ओर देखा..... इतने में ही गार्ड रूम की खिड़की से हम पर फायर हुआ मैं तुरंत नीचे झुका तथा खिड़की के किनारे जाने लगा... सिपाही केंद्र सिंह के चोट लगी वह घायल हो गया ..... उस समय किसी चीज का प्रकाश नहीं था.. गेट की लाइट नहीं जल रही थी. रेलवे फाटक की लाइट जल रही थी रेलवे फाटक के पास की लाइट जो चल रही थी उसकी रोशनी गेट नंबर 1 तक रहती है..... हमले के समय खिड़की से फायर होते वक्त जब मैं नीचे झुका उस वक्त में एक हल्की सी छाया देखी जिसे पहचान पाना मुश्किल है. हाजिर अदालत मुझे मान को देखकर कहा कि यही मुलजीमान हमलावर थे या नहीं. ***अभियोजन पक्ष गवाह को पक्ष***	

द्रोही घोषित किया गया . *जीरह अभियोजन पक्ष द्वारा :-* ***यह कहना गलत है कि घटनास्थल पर पर्याप्त रोशनी हो*** *और अभियुक्त गण को घटना कार्य करते हुए देखा हो.*	
PW-32 CHOTEY LAL *Page.....478-479… घटना वर्ष 2008 की बात है मैं रेलवे में गैंगमैन की नौकरी करता हूं उस दिन मैं व जगनंदन ड्यूटी पर थे हम लोग उस दिन रामपुर स्टेशन से कोसी पुल तक ड्यूटी पर थे जब हम लोग कोसी पुल की तरफ पेट्रोलिंग करते जा रहे थे तो सीआरपीएफ गेट पर रेलवे क्रॉसिंग पर कैलाश ड्यूटी पर था हम लोगों की मुलाकात कैलाश से हुई थी कैलाश वही गेट पर था हम लोग कोसी पुल की तरफ चले गए. हम लोग कोसी पुल से लौट रहे थे तो जब हम लोग सीआरपीएफ गेट से एक केएम दूर से तो हम लोगों को आवाज सुनाई दी हम लोग समझे कि पटाखों की आवाज है यह वादे सीआरपीएफ की गेट की ओर से आ रही थी हम लोग आवाजों व भगदड़ की वजह से सीआरपीएफ गेट के फाटक से 7 खंबा दूर रुक गए. प्रति खंबा 60 मीटर की दूरी पर होता है दिल्ली से रानीखेत जाने वाली एक्सप्रेस आई और सिग्नल पर रुक गई उसमें मैं व जगनंदन 4 गए आते समय कैलाश गेट मैन दिखाई नहीं दिया.*	*XXXXX* *Page 480* *वापसी में साथ में खंबे के पास करीब 10 मिनट रुके होंगे उस समय करीब पोने तीन बजे होंगे मैं घड़ी नहीं बांधी था ट्रेन करीब 3:00 बजे पहुंचती है.*

From the above reproduction of the depositions at the time of the examination-in-chief and the depositions which were made by the witnesses at the time of the cross-examination it definitely gets revealed that the witnesses had not known the appellants from before but they were subsequently named and also identified. Learned counsel for the appellants relied upon a judgment of Supreme Court in **Amrik Singh vs. State of Punjab** reported in **(2022) 9 SCC 402** and submitted that though an F.I.R. is not an encyclopedia of all the facts but when no test identification parade was conducted of unknown accused persons then the first version of the complainant reflected in the F.I.R. would play an important role. It was a question which is required to be considered in every case where the F.I.R. or the first version of the eye-witnesses do not disclose the identity of the accused. How on earth they could recognise the accused in the court room was something which was baffling. Test identification parade, was an urgent necessity in the course of trial when the eye-witness had at the time of cross-examination admitted that the accused were not known to the eye-witnesses earlier in point of time. He has submitted that it was a matter which had to be left to the wisdom of the court to consider as to what weight an evidence would have of an identification of an accused in the court for the

first time when identification in the court was not preceded by a test identification parade. He submitted therefore that the evidence of identification of an accused for the first time during trial was inherently an evidence of a very weak character. He submitted that the purpose of test identification parade was to test the strength and trustworthiness of a witness. Since, learned counsel for the appellants heavily relied upon paragraph 14, 18, 19 and 20 of the judgement reported in **(2022) 9 SCC 402**, they are being reproduced here as under :

> *"**Para 14-** It may be true that as per the settled position of law, the FIR cannot be Encyclopedia. However, at the same time when no TIP was conducted the first version of the complainant reflected in the FIR would play an important role. It is required to be considered whether in the FIR and/or in the first version the eyewitness, either disclosed the identity, and/or description of the accused on the basis of which he can recollect at the time of deposition and identity the accused for the first time in the courtroom.*
>
> ***Para 18 -** there are some contradictions in the first statement of the complainant recorded in the form of FIR and in the deposition before the court. In the deposition before the court he has tried to improve the case by deposing that he had seen the accused in the city on one or two occasions. The aforesaid was not disclosed in the FIR. Even in the cross examination, as PW-1, he did not disclose any description of the accused. At this stage, it is to be noted that PW-1 has specifically and categorically admitted in the cross-examination that it is incorrect that the accused were known to him earlier. He disclosed only the age of the accused. In view of the matter conducting of TIP was necessitated and, therefore in the facts and circumstances of the case, it is not safe to convict the*

accused solely on their identification by PW-1 for the first time in court.

Para 19- *What weight must be attached to the evidence of the identification in court, which is not preceded by a test identification parade, is matter for the courts of facts to examine.*

Para 20 - *The evidence of mere identification of the accused person at the trial, for the first time is from its very nature inherently of a weak character. The purpose of TIP is to test and strengthen the trustworthiness of that evidence. It is accordingly, considered a safe rule of prudent to generally look for the corroboration of the sworn testimony of the witnesses in court, as to identity of the accused who are strangers to them in the form of earlier identification proceedings. The said rule of prudence, however, is subject to exceptions when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such order or other corroboration."*

Learned counsel for the appellants relying upon a judgment reported in **(1991) 3 SCC 434 Bollacaram Pedda Narsi Reddi & Ors. vs. State of Andhra Pradesh,** submitted that when the appellants were such persons who had absolutely no acquaintance with the eye-witnesses from before and if the occurrence occurred in the dark of the night then identification of an accused person becomes all the more important. The necessity to have the suspects identified by the witnesses soon after their arrests is a very necessary fact of an investigation. Learned counsel for the appellants submitted that when the face of the accused

persons had already been shown before the test identification parade then that piece of evidence was not admissible. Learned counsel for the appellants submits that in the instant case after the arrests were made at Moradabad and at Lucknow, no effort was made to keep the appellants unidentified (बापर्दा) and also thereafter no effort was made to get a proper test identification parade conducted. In the instant case in fact supplementary statements of the witnesses were recorded even after the filing of the charge-sheet with respect to the identification of the accused wherein very surprisingly even names of the accused persons were known to the witnesses. Since learned counsel for the appellants relied upon paragraphs 8, 9 and 10 of the judgement reported in **(1991) 3 SCC 434** and the same are being reproduced here as under :

> *"**Para 8 & 9 -** The evidence given by the witnesses before the court is the substantive evidence. In a case where the witness is a stranger to the accused and he identifies the accused person before the court for the first time, the court will **not ordinarily accept** that identification as conclusive. It is to lend assurance to the testimony of the witnesses that evidence in the form of an earlier identification is tendered. If the accused persons are got identified by the witness soon after their arrest and such identification does not suffer from any infirmity that circumstance lends corroboration to the evidence given by the witness before the court. But in a case where the evidence before the court is itself shaky, the identification before the magistrate would be of no assistance to the prosecution. In the present case, the appellants are admittedly persons with whom the two witnesses had no previous acquaintance. The*

occurrence happened on a dark night. When the crime was committed during the hours of darkness and the assailants are utter strangers to the witnesses, the identification of the accused persons assumes great importance. The prevailing light is a matter of crucial significance. The necessity to have the suspects identified by the witnesses soonafter their arrest also arises.

Para 10 - *Therefore, in the absence of cogent evidence that PWs 1 and 2 by reason of the visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their mind to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the appellants are the real assailants. There is no whisper in Ex. P-1 that there was some source of light at the scene. The omission cannot be ignored as insignificant. When the Investigating Officer has visited the scene, he made reference to the street lights, petrol bunk light etc. Whether the street lights and the petrol bunk/ light had been burning at the time of the occurence and the spot where the incidence happened was so located as to receive the light emanating from these sources are required to be made out by the prosecution. When this significant fact is left out in the earliest record, the improvement in the course of the investigation and trial could be of no avail."*

Similarly, learned counsel for the appellants relying upon a judgement reported in **(2023) 1 SCC 180 Gireesan Nair and Ors vs. State of Kerala**, submitted that when witnesses have an ample opportunity to see the accused before a test identification parade is held then that may adversely affect the trial. It is the duty of the prosecution to establish before the court, right from the day of the arrest till

there is any possibility of the accused being seen even in police custody, to keep the accused unidentified (बापर्दा). If ever the witnesses have an opportunity to see the accused before the test identification parade either physically or through the photographs or through the media even the test identification parade becomes faulty and inadmissible in evidence. He submits that the test identification parade of an accused had to take place before the accused is seen or even identified in a court during the trial. Since the learned counsel for the appellants relied upon paragraphs 31 and 32 of the judgment reported in **(2023) 1 SCC 180,** the same are being reproduced here as under :

> *"**Para 31 & 32-** In cases where witnesses had ample opportunity to see the accused before the identification parade is held, may adversely affect the trial. It is duty of the prosecution to establish before the court the right from the day of the arrest, the accused was kept in 'beparda' to rule out the possibility of their face being seen in police custody. Further, if witnesses had the opportunity to see the accused before TIP, be it any form i.e. physically, through photographs or via media (newspaper, television etc), the evidence of the TIP is not admissible as a valid piece of evidence.*
>
> *If identification in the TIP has taken place after accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during the trial is meaningless."*

(II) The identification of the appellants for the first time in the court further becomes untrustworthy on account of the fact that there was absolutely no injury to the assailants (appellants) even after the firing of

98 rounds by the CRPF/Police. Learned counsel for the appellants referring to the statement of the PW-23 at page no. 394 of the paper book specifically states that during his cross-examination, the PW-23 had stated that CRPF had in its possession AK-47 rifles. The exact statement of the PW-23 at page no. 394 is being reproduced here as under:

> *"**(Page 394)** "सीआरपीएफ के पास एस० एल० आर० एवं एके-47 इत्यादि हथियार थे इसके अलावा अन्य इस्तेमाली हथियार भी थे एके -47 व एस० एल० आर० जो ड्यूटी पर होते हैं उन्हें ईशु की जाती है"."*

Learned counsel for the appellants therefore states that the bullets which were found on the place of incident would also have the bullets of AK-47 which were used by the CRPF personnel. Learned counsel for the appellants states that when as per the case of the prosecution the assailants were well inside the CRPF Camp, amidst the firing done by the jawans and also the police personnel then at least one of the five accused persons ought to have been hit by the bullets of the CRPF jawans and by the bullets of the police who were well trained in handling weapons. As per PW-1, 27 bullets were fired by the police, (Exhibit Ka-84 at page 6 of the paper book) and 68 bullets were fired from SLR and 3 rounds fired from AK-47, making the total tally of number of bullets fired was 98. Of these 98 bullets none of them hit the assailants.

(III) Learned counsel submitted that as per Exhibit Ka-84 at page no. 10 of the paper book, the CRPF Commandant PW-23 informed of only two incidents of throwing hand grenades. This fact was further corroborated by the seizure memo Exhibit Ka-67 at page no. 35 and Exhibit Ka-68 at page no. 37 whereby ashes from two craters were taken

into possession. However, it has been submitted by the learned counsel for the appellants that the witnesses had deposed that the four assailants out of the five were involved in continuously throwing hand grenades on being instigated by the fifth assailant and if even one grenade was thrown by each of the four assailants then at least four craters ought to have been found at the place of incident. Even if the earliest version of the F.I.R. and the statement recorded under Section 161 of Cr.P.C. were seen, then it becomes evident that 4-5 persons were initially seen firing inside and outside the CRPF Camp but during deposition by these witnesses the number of persons holding guns was reduced to two and thus at least three persons were required to be throwing hand grenades.

(IV) The prosecution also miserably failed to prove the case, where it was based on circumstantial evidence. Learned counsel for the appellants thereafter submitted that the fingerprints which were lifted and preserved during the investigation were not proved beyond reasonable doubt and the opinion of PW-33 Naval Kishor Srivastava was not at all reliable. Learned counsel for the appellants submitted that as per the case of the prosecution, chance fingerprints were lifted on 1.1.2008 by PW-24 from the scene of the crime i.e. from somewhere inside the camp, meaning thereby that the fingerprints were lifted from the inside of the CRPF Camp and those fingerprints were sent to the Forensic Science Laboratory (FSL) for comparison with the fingerprints only of three accused persons namely Sabauddin, Imran Shahjad and Mohd. Farooq and their fingerprints were taken on 12.3.2008 while they were in jail. The FSL Expert PW-33 had deposed about the similarity of

the fingerprints of Imran Shahjad and of Mohd. Farooq with the fingerprints lifted from the site in question. However, learned counsel for the appellants states that the said report cannot be relied upon as no evidence whatsoever was led by the prosecution to establish that where the said chance fingerprints were kept in between 1.1.2008 and 3.4.2008. Learned counsel for the appellants states that it could not be ruled out that there was tampering of the chance fingerprints and he further submits that this serious omission thus on the part of the prosecution was fatal as it led to only one conclusion and that was that the fingerprints had been created by the police. Where the chance fingerprints 34 ख/17 were kept also was a big mystery. The PW-37 had stated that the fingerprints were lifted from the crime scene vide paper 34 ख/17 which had the signatures of PW-24 (Satya Prakash Sharma) and of PW-5 (Sub Inspector Shawabul Hasan). However, Shawabul Hasan in his testimony had not stated even a single word about lifting any fingerprint on 1.1.2008. The statement of PW-21 Head Constable Mahesh Chandra was not recorded on 1.1.2008, but was recorded sometime in the month of April, 2008 and there is absolutely no evidence on record to state that the fingerprints so traced from the office of the CRPF Camp were kept anywhere in any safe custody whatsoever. The statement of PW-21 Mahesh Chandra which finds place at page 386 was read over by the learned counsel and therefore the same is being reproduced here as under:

*"**PW-21 H.C. Mahesh Chand:***

*Chief page 386 dated: 24.7.14: तथा उक्त सर्वमोहर हालत में कार्यालय में सुरक्षित **विवेचक के आदेश** अनुपालन में सुरक्षितरख लिए गए। (Note: No document has been produced or proved to show the Seal impressions as well as the safe custody)."*

Also the statement of PW-24 Satya Prakash Sharma which finds place at page 424 was read by the learned counsel and the same is being reproduced here as under :

"PW-24 Satya Prakash Sharma:

*Page 424 dated 27.04.15: **फिंगरप्रिंट किस दिन थाने में जमा किये गये इस का उल्लेख सी०डी० मे नहीं है। मालखाना रजिस्टर व जी०डी० मे होगा।***

(Note: No Malkhana Register and No GD entry has been produced by the prosecution to show deposit of chance finger print in safe custody in Malkhana or any other safe place).

Still further the statement of PW-25 O.P. Tripathi which finds place at page 448 also as per the learned counsel was important and therefore the same is being reproduced here as under :

*"**PW-25 O P Tripathi:***

Page 448 dated 26.06.15: यह कहना सही है कि मेरे द्वारा दर्ज बयान में कांस्टेबल महेशचंद फील्ड युनिट रामपुर नहीं बताया कि उसने कितने नमूने घटना स्थल से उठाए थे।

Page 449 dated 26.06.15: प्रश्न- मौके से उठाए गए फिंगरप्रिंट सी०पी० महेशचंद द्वारा कब दाखिल मालखाना किए गए थे ?

*उत्तर- **मुझे नहीं मालूम कि किस तारीख को यह फिंगरप्रिंट कोतवाली में जमा किए गए इस बाबत पूर्व विवेचक से मैंने कोई पूछताछ नहीं***

<u>की थी और नाही कोई जी०डी० एंट्री की कॉपी प्राप्त की और न केस डायरी में सलंग्न की।</u>

Page 449 dated 26.06.15: यह कहना सही है ***<u>कि मुझे यह नहीं मालूम की दिनांक ०१.०१.०८ को जो फिंगरप्रिंट सीआरपीएफ कैंप के लिए गए थे वह ०३.०४.०८ तक किस व्यक्ति या अधिकारी की कस्टडी व संरक्षण में सुरक्षित रखे गए थे।</u>***

यह कहना भी सही है की विवेचना के दौरान दिनांक ०१ .०१.०८ को उठाए गए फिंगरप्रिंट दिनांक ०३.०४.०८ को परीक्षण हेतु फिंगरप्रिंट ब्यूरो द्वारा सिविल लाइन में दाखिल किया गया तथा उस कार्यालय के आरसी सीपी महेशचंद के द्वारा दिनांक 04.04.08 को केस डायरी में अंकित किया गया।

At Page 450 - यह कहना सही है कि मेरे द्वारा विवेचना के दौरान छाप अंगुष्ट कार्यालय में दिनांक ०१.०१.०८ से दिनांक ०३.०४.०८ तक अंगुष्ट छाप जो सी आर पी एफ कैंप से उठाए गए थे ***उनको दाखिल करने हेतु एवं अभिरक्षा हेतु कोई दस्तावेज कब्जे में ना लिया हो।"***

The statement of PW-35 Rajesh Kumar Srivastava is also very revealing and was read out by the learned counsel also is being reproduced here as under :

*"****<u>PW-35 Rajesh Kumar Srivastava:</u>***

Page 498 dated 12.01.2016: ***<u>मुझे याद नहीं कि विवेचना के अंतर्गत घटना से उठाए गए फिंगरप्रिंट किस तिथि को दाखिल किए गए ।"</u>***

Similarly the statement of the PW-37 S.I. Hindvir Singh and the statement of the PW-5 Sawabul Hasan are being reproduced here as under :

> *"**PW-37 SI Hindvir Singh:-***
>
> *Page 505 - फिंगरप्रिंट एक्सपर्ट आए थे और वह फिंगरप्रिंट के साथ प्रयोगशाला ले गए थे. उन्होंने फिंगरप्रिंट की कोई नकल हमें नहीं दी थी."*
>
> ***"PW-5 Shahbul Hassan:***
> *This witness is silent about lifting of chance finger print on 01.01.2008."*

Learned counsel specifically mentioned about the statement of PW-5 as it was said earlier by PW-21 that document 34 ख/17 had the signatures of both PW-5 and PW-21.

(V) Further learned counsel for the appellants has submitted that there was no safe custody ensured of the hand grenades, AK-47 rifles and of the material including empty cartridges and therefore when the safe custody was not proved of the hand grenades, AK-47 rifles and the empty cartridges then it could not be said that the prosecution had proved its case beyond reasonable doubt.

With regard to safe custody of hand grenades, AK-47 rifles vide Exhibit Ka-66 at page no. 34 of the paper book, it was alleged by the prosecution that on 1.1.2008, 32 empty shells of AK-47 were recovered when they were picked up from the place of incident on 1.1.2008. On 2.1.2008 vide the Exhibit Ka-35, 11 empty shells of AK-47 were

recovered and seized. Further, the prosecution had come up with a case that on 10.2.2008 vide Exhibit Ka-64, 3 hand grenades were recovered from Mohd. Sharif *(learned counsel for the appellants stressed on the point that this was recovered in the absence of any public witness)*. Further it is the case of the prosecution that on 10.2.2008 recovery was made from Sabauddin as follows:

(i) AK-47 with magazine containing 9 bullets

(ii) 1 train ticket

(iii) 1 room key of Bangalore house

Recovery was made from Imran Shahjad as follows:

(i) AK-47 with magazine containing 9 bullets

(ii) Pakistan's passport

(iii) Railway ticket

Recovery was made from Mohd. Farooq as follows:

(i) 1 hand grenades from his hand and one from his pocket

(ii) 1 Pakistan's passport

(iii) 1 Railway ticket

(Learned counsel for the appellants stressed on the issue that there was no public witness)

Further it was alleged that on 14.2.2008 the accused Mohd. Sharif and Jang Bahadur got recovered a bag containing two AK-47 magazines. Still further on 17.3.2008 the hand grenades received from Mohd. Sharif were got defused by PW-26 Kuldeep Singh Rawat vide the report Ka-100 *(this report is not available in the paper book)*. Learned counsel for

the appellants submitted that when a particular case was dependent on circumstantial evidence, the chain of evidence should be so completed as to not leave any reasonable ground for the conclusion consistent with the innocence of the accused and that the circumstances must show that in all human probability the act must have been committed by the accused. In the instant case it has been submitted by the learned counsel for the appellants that there was a grave missing link which had not been provided by the prosecution with regard to the safe custody of the articles between the period of their alleged seizure and the handing over to the Forensic Science Laboratory (FSL). He submits that there was no malkhana entry or G.D. entry placed on record. No witness was examined who carried the various articles to the FSL and there was also no evidence with the effect as to when the articles were returned by the FSL and through whom. He submits that it was not clear as to through whom were the articles produced before the Court. PW-24 Sub Inspector Satya Prakash who is the seizing officer had not uttered a single word in his examination-in-chief about the deposit of the seized articles. The seizure memos mentioned about the following seizures given from serial no. 1 to 7.

> *"I. Samples picked on 01.01.2008 and reached FSL on 5.4.2008.*
> *II. Cartridges etc from spot seized on 01/02 January 2008 and reached FSL on -5.04.2008.*
> *III. Clothes of deceased and other items seized on 01.01.2008 and they reached FSL on 21.04.2008;*
> *IV. Finger print lifted on 01.01.2008 - Sample / Specimen of the arrested accused taken on 12.03.2008 and they reached FSL on 03.04.2008. [reference is there of only 1 GD entry no. 26 dated 03.04.2008 when the finger print were sent to FSL and this GD Entry also not produced/proved]*

V. Three Hand Grenades recovered on 10.02.2008 which were diffused on 17.03.2008 had reached FSL on 05.04.2008;
VI. 2 AK-47 with 18 bullets recovered on 10 February 2008 and reached FSL on 05.04.2008;
VII. Two AK-47 megazine seized on 14.02.20008 at the instance of Jang Bahadur and Mohd. Sharief reached FSL on 05.04.2008."

Learned counsel for the appellants relied upon the following judgments to emphasise that if keeping of the seized articles was not done then their FSL reports were useless.

"Judgement on the aspect of missing links:-

1. *Satender Singh and Ors vs. State of U.P. - MANU/UP/1245/2020-Para 11 and 13;*
2. *Sachidanand and Anr vs State of H.P. - MANU/HP/0472/2013 – Para 2-6;*
3. *State of Rajasthan vs Gurmail Singh – MANU/SC/0151/2005 – Para 3;*
4. *Nand Kishore vs State of Haryana – 1998 SCC (CRL) 568 – Para 3;*
5. *State of Rajasthan vs Daulat Ram – Crl Appeal No. 112 of 1974;"*

(VI) Still further learned counsel for the appellants states that when the alleged recovery from the accused were in no manner getting connected with the commission of crime then the accused were to be acquitted. Firstly, he submits that the recovery of the seized material was sent very belatedly to the FSL and secondly, after the seizure of the articles so seized on 1.1.2008 and 2.1.2008 there was no whisper throughout on record to show how they were kept in safe custody. PW-14 Navendu Kumar's testimony with regard to the Exhibit Ka-181 i.e. FSL report

gets falsified, when by the testimony of the PW-34 with regard the matching of the recovered cartridges from the spot an effort was made to match the recoveries of empty cartridges with the rifles recovered. Learned counsel for the appellants states that the statement of Navendu Kumar PW-14 did not match with the statement of PW-34 with regard to the matching of the empty cartridges recovered from the spot with the weapons i.e. the two AK-47 rifles which were recovered from the accused. PW-14 during the course of the examination-in-chief on 2.12.2014 at page no. 376 identified both rifles as ka-186 and ka-189. The 18 cartridges, 9 recovered from each accused were exhibited as ka-188 to Ka-196 and as Ka-200 to Ka-208. The same cartridges and weapons were examined by the PW-34 and as per his deposition as well as his report dated 16.5.2008, Ka-181 at page 78 there was a mention with regard to 6 cartridges which were tested and marked as TC-1 to TC-6 and on the basis of the examination of these test fired bullets, the PW-34 had opined the matching of the weapons with the commission of crime by the accused. However, very shockingly when out of the 18 bullets, only 6 matched, it could not be said that the empty cartridges matched the rifles. What is more, at no point of time the cartridges tested as TC-1 to TC-6 were ever produced for the Inspection of the court.

Learned counsel submitted that if a few of the empty cartridges matched the test bullets, then it could not be said that the rifles got automatically connected with the incident as there was no evidence of the fact as to where the empty cartridges were kept. No reliance, thus, could be placed on the test done by the FSL.

(VII) Learned counsel submitted that the connectivity of the accused with each other as well as any terror outfit was not proved. Learned counsel for the appellants has submitted that not only was there no evidence in the form of records/ emails/ social media/ letters etc. which were investigated into to prove the connectivity between the accused persons, the PW-27 to 31 in fact had turned hostile and this cast a great doubt as to whether the accused were connected to each other. Nowhere in the entire prosecution case is there any material to prove that there was a meeting of minds. He submits that in ***(1999) 5 SCC 253; State of Tamil Nadu through Superintendent of Police, CBI/SIT vs. Nalini & Ors.*** meeting of mind of two or more persons for doing any illegal act is a *sine qua non* for establishing a criminal conspiracy. There is absolutely no evidence to prove that there was any agreement between the five accused persons. As per ***(2005) 11 SCC 600; State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru,*** learned counsel for the appellants states that in the absence of any material to prove meeting of minds and agreement the accused deserved an acquittal. Since learned counsel relied heavily on para 89 and 90 of the judgment cited above they are being reproduced here as under:

> *"**89.** In the Statement of Objects and Reasons to the Amendment Bill, it was explicitly stated that the new provisions (120-A and 120-B) were "designed to assimilate the provisions of the Penal Code to those of the English Law…". Thus, Sections 120-A and 120-B made conspiracy a substantive offence and rendered the mere agreement to commit an offence punishable. Even if an overt act does not take place pursuant to the illegal agreement, the offence of conspiracy would still be attracted. The passages from*

Russell on Crimes, the House of Lords decision in Quinn v. Leathem [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] and the address of Willes, J. to the Jury in Mulcahy v. R. [(1868) 3 HL 306] are often quoted in the decisions of this Court. The passage in Russell on Crimes referred to by Jagannatha Shetty, J. in Kehar Singh case [(1988) 3 SCC 609 : 1988 SCC (Cri) 711] (SCC at p. 731, para 271) is quite apposite:

> *"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."*

This passage brings out the legal position succinctly.

90. *In Nalini case [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] S.S.M. Quadri, J., pointed out that the meeting of the minds of two or more persons for doing an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy. Judge Learned Hand, in Van Riper v. United States [13 F 2d 961 (2nd Cir, 1926)] said of conspiracy:*

> *"When men enter into an agreement for an unlawful end, they become ad hoc agents for one another and have made a partnership in crime."*

Learned counsel submitted that the testimony of PW-35 Rajesh Kumar Srivastava in this regard becomes important and the relevant portion of his testimony is being reproduced here as under :

"PW – 35 Rajesh Kumar Srivastava:

XXX page 497 : विवेचना के दौरान इस केस की जांच के लिए पाकिस्तान नहीं गया पाकिस्तान सरकार से सूचना विवेचना के दौरान प्राप्त करने के लिए ***लेटर रोगेटरी भेजने का प्रयास नहीं किया गया।***

प्रश्न- क्या आरोप पत्र में इस बात का विवरण है कि लश्कर -ए-तैयबा का उद्देश्य मूल रूप से दक्षिण एशिया में इस्लामिक राज्यकी स्थापना तथा भारतीय कश्मीर राज्य कोआजाद कराने का रहा है जैसा कि आपने अपनी मुख्य परीक्षा में कहां है?

उत्तर- नहीं।

Page 498 : ***यह कहना सत्य है*** *कि आरोप पत्र में इस बात का उल्लेख नहीं है कि लश्कर-ए-तैयबा द्वारा संगठन अहलेहदीस का परिणाम है किस संगठन को भारत समेत संयुक्त राज्य अमेरिका, यू०के० एवं ऑस्ट्रेलिया द्वारा प्रतिबंधित कर दिया गया है।* ***विवेचना के बाबत इस संबंध में कोई भी दस्तावेज सुपुर्दगी में नहीं लिया गया था।*** *जिसके अंतर्गत यह तथ्य प्रकाश में आया कि लश्कर-ए-तैयबा को संयुक्त राज्य अमेरिका, यू०के०, यूरोपीय संघ, रूस एवं ऑस्ट्रेलिया द्वारा प्रतिबंधित कर दिया गया।* ***विवेचना के दौरान ऐसा कोई भी लिखित साक्ष्य प्रकाश में नहीं आया।*** *जो यह बताएं कि जमात-उद-दावाव लश्कर-ए-तैयबा एक ही इकाई है।*

यह कहना सत्य है *की विवेचना के अंतर्गत ब्रिटिश गृहमंत्रालय के विधिक आदेश संख्या 1261 एवं ऑस्ट्रेलिया सिक्योरिटी लेजिस्लेटिव एमेण्डमेण्ट (आतंकवाद अधिनियम 2002 अथवा संयुक्त राज्य संघ सुरक्षा परिषद के प्रस्ताव संख्या 1267* ***को रिकॉर्ड में नहीं लिया गया विवेचना के अंतर्गत कोई भी प्रत्याशी एवं राष्ट्रीय दस्तावेज उपलब्ध नहीं थे। जिससे यह स्पष्ट हो कि लश्कर-ए-तैयबा आई०एस०आई० की इकाई है।***

यह कहना सही है कि विवेचना के दौरान मैंने यह जानने की कोशिश नहीं कि अभियुक्त इमरान शहज़ाद व फारुख ने ***कब भारत में प्रवेश किया और कहाँ कहाँ भारत में ठिकाना बनाकर रहे।***

मुझे याद नहीं है कि इमरान शहज़ाद, फारुख व सबाउददीन जो लखनऊ में गिरफ्तार किये गये थे ***किससे मिलने जा रहे थे तथा न ही इस बाबत मेरे द्वारा कोई विवेचना कि गयी।***

यह कहना सत्य है कि मेरे द्वारा कृत विवेचना में ***कोई ऐसा साक्षी मिला हो जिसने सभी अभियुक्तगणों को एक साथ देखा हो।***"

Similarly, the testimony of PW-14 Navendu Kumar becomes important and is being reproduced here as under:

"PW-14 Insp. Navender Kumar:

XXX page 339-340: मुझे इस बाबत सूचना नहीं मिली थी कि यह लोग कहां से आरहे हैं।.... ***मुल्जिमों का व्यक्तिगत होलिया एवं उनकी पोशाकों की कोई जानकारी नहीं थी।****... मुल्जिमान के पास से लखनऊ आने तक का कोई टिकट बरामद नहीं हुआ था। लखनऊ में मुल्जिमान को किससे मिलना था व कहाँ जाना था यह पुछताछ में मालुम नहीं चल पाया।*

पुलिस टीम के किसी भी सदस्य को ***मुल्जिमों के व्यक्तिगत होलियाव पोशाक उनकी जानकारी नहीं थी इसका जिक्र भी फर्द में भी नहीं है।*** *... यह कहना सही है कि फर्द में इस बात का जिक्र नहीं है कि मुलजिम ओं का लखनऊ आगमन की सूचना मुखबिर द्वारा मुझे प्राप्त हुई।*

XXX page 341: ***मुझे लखनऊ में मुल्जिमान को पकड़ने से पहले इस बात कि जानकारी नहीं थी कि दुसरी टीम द्वारा रामपुर में तीन व्यक्ति पकडं गये हैं."***

(VIII) Invalid sanctions

Learned counsel for the appellants further submitted that the for prosecution and trial for offences under Chapter VI of the IPC; under the Unlawful Activities (Prevention) Act; under the Explosive Substances Act and under the Arms Act, sanction had to be taken under the respective laws. When the sanction is to be granted, it had to be seen from the sanction order that all facts etc. were brought to the notice of the sanctioning authority and if and when, on the face of the sanction, from the evidence it is not clear as to what were the facts before the sanctioning authority, then it becomes incumbent upon the prosecution to prove by other evidence that the material facts constituting the offences were placed before the sanctioning authority. Learned counsel for the appellants states that the sanction under section 6 of the Explosive Substances Act was granted on 1.11.2008 by the then District Magistrate, Rampur on behalf of the Government of India in view of the notification dated 20.4.1977. Since, the notification relied upon becomes important, the relevant portion of the 'notification dated 20.4.1977 published in the Gazette of India on 14.5.1977' is being reproduced here as under :-

> *“MINISTRY OF HOME AFFAIRS New Delhi, the 20th April, 1977 S.O. 1359.-In exercise of the powers conferred by clause (1) of article 258 of the Constitution and in supersession of all previous notifications issued in this behalf, the President, with the consent of the Governments of the States of Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Manipur, Meghalaya, Orissa, Punjab, Rajasthan, Sikkim, Tripura and Uttar Pradesh, hereby entrusts to all District Magistrates in the said States, the functions of the Central Government under section 7 of the Explosive*

Substances Act, 1908 (6 of 1908). [No. 23/9/76-GPA.V] H. B. ROY, Under Secy."

The sanction so granted on behalf of the Central Government became a nullity as after the amendment of 2002 by the Parliament, the sanctioning authority became the District Magistrate himself and, therefore, in the instant case, when the sanction itself was not granted by the District Magistrate but was granted as an agent of the Government of India, then the sanction was a waste paper. What is more, even the non-examination of the District Magistrate, whose signatures were there on the sanctioning order, was fatal for the prosecution.

Similarly, there was absolutely no sanction for the offences under the UAPA and, therefore, the trial under the UAPA was vitiated. Also, there was no sanction granted under section 39 of the Arms Act which rendered the trial under the Arms Act nugatory.

So far as the sanction of the prosecution under Chapter VI of the IPC i.e. with regard to the prosecution under sections 121, 121-A and 122 IPC was concerned, the sanction under section 196 Cr.P.C. was required. Learned counsel for the appellants stated that in the face of the non-production of the original sanction during the cross-examination by the PW-36 i.e. Kamlesh Kumar shows that the sanction was made in the most mechanical manner without any application of mind.

IX. Learned counsel for the appellants further submitted that the assessment of evidence as was made by the Court below in regard to the following issue was also done erroneously and in the most slipshod manner :

(i) The accused were known by various other names i.e. Mohd. Sharif by Suhail @ Sazid @ Anwar @ Ali; Imran Shahjad by Abu Osama @ Ajay @ Asad @ Rameez Raja Owais and ; Mohd. Farooq by Abu Zulkar Nain @ Abujar @ Amar Singh and Sabauddin by Sabauddin @ Sabah @ Sanjeev @ Farhan @ Saba @ Abu-al-Kasim @ Babar @ Mubassir @ Samir @ Iftekhar.

Learned counsel for the appellants states that it is very normal for the accused who want to keep their identity hidden, to see to it that only nick names are called out during a particular illegal attack etc. but, learned counsel for the appellants states that all the names which were allegedly taken by the accused persons and which were taken in the hearing of the eye-witnesses were original names,

(ii) Learned counsel for the appellants states that when the finger prints were taken of the accused who were arrested at Lucknow i.e. Sabauddin, Imran Shahjad and Mohd. Farooq, then why the prosecution did not take the finger prints of the other accused persons namely Mohd. Fahim, Mohd. Sharif, Jang Bahadur Khan, Mohd. Kausar and Gulab Khan. Learned counsel for the appellants states that this goes to show that the investigating agencies in a hurry to get the fabricated finger prints matched with the three accused, who were lodged in the Lucknow jail, committed the mistake.

(iii) Learned counsel for the appellants submitted that throughout all the Special Task Force's jobs were being done on the direction of one Amitabh Yash but Amitabh Yash was never produced by the prosecution in the witness-box. This becomes all the more important because whenever the STF left for its job, it never entered its time of leaving the police station and the time for arrival in the police station in the Case Diary or General Diary. Here learned counsel for the appellants further submitted that Kallu Khan had taken the seized material from the police station

to the Malkhana but he was never brought in the witness box to explain as to from where he picked up the seized materials.

(iv) Learned counsel for the appellants further states that throughout the prosecution had forgotten about the telephone with a SIM card No.9927846448 which was seized from the place of incident and this telephone was never investigated into.

(v) Similarly, the person whom the three accused, who were arrested in Lucknow, had come to meet in Lucknow was never traced and he was never apprehended also.

(vi) Learned counsel for the appellants further states that from the possession of the accused persons, who were arrested on 9.2.2008 and 10.2.2008, railway tickets were found. They were not bought from Moradabad/Rampur/Lucknow but they were purchased from Ghaziabad/Nizamuddin. Learned counsel for the appellants states that the tickets must have been bought after filling up the reservation requisition forms and from those forms, to minimize the doubt with regard to the fact that those tickets were planted, the prosecution ought to have gone to the root of the matter and should have got the reservation requisition forms looked into to see as to in whose hand-writing the reservation forms were filled. Learned counsel for the appellants states that in the absence of this activity of the prosecution, a doubt was created as to whether the reservation tickets were purchased by the prosecution itself and were planted on the accused persons.

74. Learned counsel for the appellants, therefore, submitted that the accused persons were falsely implicated and convicted on the basis of wrong appreciation of evidence.

75. Learned Additional Advocate General Sri Prakash Chandra Srivastava in the first hearing and thereafter Sri J.K. Upadhyaya, learned AGA assisted by Sri Gaurav Pratap Singh made arguments on behalf of

the State and submitted that it mattered little when no Test Identification Parade was done, because in the statement-in-chief, the prosecution witnesses had definitely mentioned the names of the accused persons. Still further, the State argued that when the recovered cartridges etc. were matched with the rifles which were recovered on 10.2.2008 then there was no doubt left with regard to the fact that the rifles were used in the incident and the bullets had come out of those rifles only. Still further, the State had throughout submitted that it mattered little if the finger prints which were lifted from the CRPF camp were not kept in any safe custody. What had to be seen was whether the lifted finger prints matched with the finger prints of the accused persons. Learned counsel for the State further submitted that if the sanctions were not there then also it mattered little. With regard to the assessment of evidence, learned counsel for the State submitted that the assessment of evidence was such a thing which would vary from one person to another and no fault could be found with the assessment as was done by the Sessions Court.

76. Learned AGA further submitted that when the firearms and the grenades were recovered from the three accused persons namely Imran Shahjad, Farooq and Sabauddin and when on the pointing of Mohd. Sharif, firearms i.e. two magazines of AK-47 rifles, two empty cartridges and three hand grenades from Mohd. Sharif, were recovered then it could not be said that the accused Imran Shahjad, Mohd. Farooq, Sabauddin Mohd. Sharif were innocent persons.

77. Having heard Sri M.S. Khan who appeared through video-conferencing and Sri Imran Ullah assisted by Sri Raj Raghuvanshi and Faiz Ahmad for the appellants and Sri Prakash Chandra Srivastava, Additional Advocate General (in the first hearing) and Sri J.K.Upadhyay assisted by Sri Gaurav Pratap Singh for the State, we find that the incident took place on 1.1.2008 at 2.25 AM near the Gate of the CRPF Commandant Office, Rampur, Uttar Pradesh. The FIR being Exhibit-3 was lodged at around 5.50 AM at Civil Lines Police Station, Rampur under sections 147, 148, 149, 307, 332, 302 of Indian Penal Code; section 3/5 of Prevention of Damage to Public Property Act and section 3 of Explosive Substances Act. Om Prakash Sharma who happened to be the Sub-Inspector and who, as per the FIR was at the place of incident for the purposes of security and patrolling, was carrying a revolver and 12 cartridges. He was accompanied by Constables Indra Pal Singh and Jitendra Singh and a Home Guard Aftab Khan who was having a rifle no.2677 and 30 cartridges. They had gone to the place of incident in a Government Jeep No.UP 22 G 0019 with a driver Constable Jaswant Singh. They had noted in the Rawanagi Register that they had left the police station at around 12.55 AM. While they had reached the kosi river bridge and were proceeding towards the CRPF toll gate, they heard the sounds of firing and they also realized that the police personnel who were on picket duty comprising Sub-Inspector Bihari Lal, Constable Nasir, Constable Virendra Rana, Home Guard Ganpat, Home Guard Ram Gopal were also firing on the assailants. When the first informant along with his team reached the place of incident then at around 2.30

AM in the electricity light which was there, the first informant saw that 4-5 persons with modern automatic weapons were firing towards the jawans of the group centre. Upon reaching the place of incident, the first informant Om Prakash Sharma fired from his own gun twice. Constable Indra Pal Singh, Constable Jaswant Singh, Constable Jitendra Singh, Constable Virendra Rana and Home Guard Aftab Khan also fired 8, 7 and 5 rounds respectively from their rifles of 7.62 caliber. In the firing which was done by the assailants, Indra Pal Singh and Home Guard Aftab Khan were seriously injured. The rifle of Indra Pal Singh was damaged. The assailants while firing had also entered the CRPF Group Centre and they were also aiming at certain targets and throwing grenades. While all this was happening, the first informant from the wireless set of his jeep informed the police station and all other higher officials. During the incident, the CRPF jawans also fired towards the assailants (terrorists). Simultaneously, the police personnel also followed the terrorists unsuccessfully. When the firing stopped, the CRPF informed the police personnel that at the Gate two jawans namely Devendra and Vishwas Kumar (Vikas) along with one unknown person had died in the terrorist attack. The jawans Kendra Singh and Pradeep Kumar were injured and inside the campus the terrorists had killed hawaldar Rishikesh Rai, hawaldar Afzal Ahmad, hawaldar Ramjeet Saran Mishra (Ramjee Saran Mishra), sipahi Anand Kumar and Sipahi Manveer Singh. Constable Niranjan was grievously injured. It was also informed by the CRPF personnel that the injured were taken to the hospital in the CRPF campus. Further it was noted in the FIR that the

vehicle owners who were passing by via the nearby National Highway had left their vehicles on the highway and had run away. He had stated that he had seen the terrorists clearly in the electric light and if they came before him, he would recognize them. In the dark of the night, the empty cartridges as were fired by the police could not be recovered and as and when they would be recovered, they would be deposited at the relevant place.

78. Similarly, the CRPF had reported the matter to the In-charge at the Civil Lines Police Station, Rampur in which report it had been stated that on 1.1.2008 at around 2.25 AM, the terrorists had attacked the Group Centre Campus at Gate No.1 in which 7 CRPF personnel had died and three were injured and the names of the deceased were given as Sipahi Anand Kumar, Hawaldar Rishikesh Rai, Hawaldar Afzal Ahmad, Hawaldar Ramjee Saran Mishra, Sipahi Manveer Singh, Sipahi Devendra Kumar and Sipahi Vikas Kumar. The names of injured persons were reported as Sipahi Kendra Singh; Sipahi Pradeep Kumar and Sipahi Ranjan Lal. In the information sent by the CRPF itself it was stated that around 68 rounds of SLR and 3 rounds of AK47 were fired by CRPF jawans. It was stated that the exact information of the number of rounds would be made available later. In the information which was sent, it was stated that 4 CRPF personnel had died at the Main Gate/Guard Room; 2 personnel had died at the Group Centre Control Room and one person had died at the other control unit. In the information sent, it was stated that in all probability, the terrorists had thrown two grenades. Also, from the site, it was stated that of the terrorists one magazine of AK47; 29 live

cartridges; 7 empty cartridges and one lever of hand grenade were recovered. It was also stated that one SLR rifle having body No.16142833 of the CRPF was damaged. Also one magazine having 40 rounds of ammunition of CRPF was in the possession of the police. They had prayed that a First Information Report in that regard be lodged.

79. On 2.1.2008, the CRPF personnel again wrote that in continuation of the communication dated 1.1.2008, it was being informed that on 2.1.2008 further search was made in which one safety pin of a grenade was found; four empty cartridges of AK47 were found and 6 damaged/crushed cartridges were found. In addition, by this communication recovery of one magazine of AK47 with 29 rounds of live cartridges; 7 empty cartridges and a lever of hand grenade was shown and then recovered articles were handed over to the police.

80. Recovery memos were prepared by the police also. Exhibit-Ka-2 was prepared showing recovery of 2 empty cartridges of .38 bore from the place of firing. These firings were done by Sub-Inspector O.P. Sharma; 10 empty cartridges from the place of firing which was done by Jitendra Kumar and Virendra Rana were also found. One L shaped metal of a magazine was found by the Constable Jugal Kishore and Constable Nasir Ali. Two empty cartridges of .38 bore and 10 empty cartridges of 7.62 bore and one L shaped metal of magazine were wrapped in a piece of cloth and were sealed and kept in a safe place.

81. On 2.1.2008, in the presence of the witnesses Sub-Inspector Sri Shabahul Hasan and Sub-Inspector Sri K.P. Singh, the Deputy

Commandant of the Group Centre of CRPF Sri N.P. Singh had handed over :

1. one magazine of AK47 which had 29 rounds of live cartridges;

2. 7 empty cartridges of AK47; and

3. one lever of a hand grenade.

82. In this recovery memo, it has further been stated that upon investigation done by CRPF of the place of incident, one safety pin of hand grenade; 4 empty cartridges of AK47 and 6 used cartridges were found, (NOT MATCHED at FSL). All these articles were kept in another piece of cloth and were sealed. It has also been mentioned in the recovery memo that the CRPF had expressed their inability to inform as to where from these articles were found.

83. The entire recovered articles were sent by the CRPF by a communication No.I-Das-3/2008-Tha-2 and was dated 2.1.2008. This recovery memo of the articles was marked as Exhibit-Ka-35.

84. Similarly, other recovery memos were prepared on 1.1.2008. Exhibit-Ka-65 was the recovery memo with regard to the recovery of one damaged SLR Rifle No.16142833 along with magazine of 10 rounds. Also, the recovery was of 2 empty cartridges along with iron barrel of SLR No.47; one missed bullet of SLR and one mobile phone NOKIA having SIM No.9927846448 which were collected near the road of Railway gate near CRPF.

85. Of the same date i.e. of 1.1.2008, one more recovery memo being Exhibit-Ka-66 was prepared wherein it was mentioned that 32 empty cartridges of AK47 were recovered.

86. Of the same date i.e. of 1.1.2008, another recovery memo Exhibit K-67 was prepared in which ash in addition to plain soil along with a blanket which was blood soaked was shown to be recovered.

87. Various recovery memos were drawn of the articles recovered.

88. Exhibit Ka-64 was the recovery memo which was prepared by the Additional Superintendent of Police Sri Ashok Kumar Raghav on 10.2.2008. In this recovery memo, it has been stated that the STF had got information through various informers that prior to the date of incident, one Baba @ Jang Bahadur Khan resident of Milak Kamas along with a friend of his was seen roaming near CRPF camp. It has also been stated that efforts were being made by the STF, in the leadership of one Deputy S.P. Sri Jai Prakash Yadav and one another team leader Additional S.P. Sri Ashok Kumar Raghav, to apprehend Baba @ Jang Bahadur Khan and in this sequence of events, on 9.2.2008 at around 8.00 PM, informers had informed that Baba @ Jang Bahadur Khan had been sighted and that other terrorists were in contact with him and that they were to contact Baba @ Jang Bahadur Khan on 9.2.2008 again. Upon getting this information, the Additional S.P. informed the Inspector S.P. Sharma, Police Station Civil Lines, Rampur and after forming teams at the police station itself, they proceeded. The first team comprised Sri Ashok Kumar Raghav, Additional S.P., Sri S.P. Sharma, Inspector; Constable Dinesh Kumar; Head Constable Bhudev Tyagi; Constable Sarvesh Pal; Commando Rajesh Kumar, Constable Driver Gidev Mishra and they all went in a Tavera Car No.UP 32 BG 2016. The second team was constituted of Deputy S.P. Sri Ram Badan Singh; Commando Sheshnath;

Commando Gajanand and Constable Driver Rajaram. They were also in the government vehicle Tavera No.UP 32 BG 2060. The third team was constituted of Sub-Inspector B.M. Pal; Sub-Inspector Dharmendra Singh Yadav; Constable Bhanwar Singh; Head Constable Commando Hariom; Commando Shobh Nath Singh and Constable Driver Charan Singh and they all went in government vehicle being Bolaro No.UP 32 BG 0735. The fourth team was constituted of Deputy S.P. Sri Jai Prakash Yadav, Sub-Inspector Kuldeep Tiwari; Constable Chandra Prakash Mishra; Constable Rajesh Kumar; Commando Satya Prakash Singh; Commando Ramesh Kumar and Constable Driver Azaharuddin and they were traveling by government vehicle Tavera No.UP 32 BG 2057. The fifth team was constituted by Inspector Avinash Mishra; Constable Vakil Ahmad; Constable Gangaram Chahar; Commando Neeraj Kumar and Constable Driver Virendra Nath Tiwari and they went by government vehicle Tavera No.UP 32 BG 2063. They all started from the police station of Civil Lines, Rampur and the informer was guiding the teams. They reached the police station Munda Pandey where they met Station House Officer Raghuraj Singh, Constable Yogendra Singh and Constable Shalim Husain who joined Team No.2.

89. Along with all the teams, the Additional S.P. Sri Ashok Kumar Raghav reached the village of Baba @ Jang Bahadur Khan. While Team Nos.1 and 2 were near the house of Baba @ Jang Bahadur Khan, the third, fourth and fifth teams were keeping vigil in the village. While the Team Nos.1 and 2 were waiting near the house of Baba @ Jang Bahadur Khan, one person came out of the house and he was recognized by the

informer and at around 10.30 PM, Jang Bahadur Khan was apprehended. Upon enquiry, he told that his name was Jang Bahadur Khan @ Baba, son of Khan Bahadur, resident of Milak Kamas, Police Station Munda Pandey, District Moradabad. Upon further investigation, he told that Sharif @ Suhail was trained in Pakistan and was an active member of Lasher-e-Taiba and that he had committed the attack on CRPF Camp, Rampur. Thereafter, upon the occurrence of the incident at the CRPF Camp, the firearms used by Sharif were kept in his house i.e. the house of Jang Bahadur Khan and that Sharif had collected those firearms from the house of Jang Bahadur and he had gone with four of his friends to the Rampur Bus-stand and he was to go to Delhi from there and if the teams rushed to the bus-stand, they could apprehend him. Thereafter the Additional S.P. Ashok Kumar Raghav took all the teams to the Rampur bus-stand and hid themselves at various places. Jang Bahadur had accompanied the teams. While they were all hiding, Jang Bahadur informed them that from the main road which led to Bilaspur and which had on the left side a 'pan and chai' shop two persons were standing there and he stated that the person having a maroon bag was Sharif @ Suhail and the other one was his friend and thereafter the teams arrested Sharif @ Suhail and his friend in the mid-night of 9/10.2.2008 at 12.10 AM. Sharif, upon being interrogated gave out his name as Sharif @ Suhail @ Sazid @ Ali @ Anwar @ Sandeep Barnwal son of Ayub, resident of Badanpuri, P.S. Khajuriya, District Rampur. In the maroon bag, there was a green polythene which contained 3 hand grenades and from the right pocket of his pant, one railway ticket having PNR No.2508510262

Train No.2138 for travelling from Delhi to Mumbai on 12.2.2008 was found. The ticket was a wait listed one and the Waiting List was 1 and Rs.250 was also found from his pocket. The other person who was arrested revealed that his name was Fahim @ Arshad @ Hasan Hafad @ Saqib @ Abu Jarar @ Sahil Paskar @ Sameer Sheikh son of Mohd. Yusuf Ansari resident of Chawl No.303 Room No.2409 Moti Lal Nagar No.2, M.G. Road, Gore Gaon West, Mumbai. From his possession was found a Star Pistol of 30 bore on which TATARA ARMS FACTORY PESHAWAR CAL-30 MAUSER was mentioned and on the 'butt' was written 'No.651'. The pistol had a magazine which contained 6 live cartridges. From the pocket of his pant were found 15 live cartridges. From the left pocket of his pant was found a Pakistani passport on which was written BM 6809341 HASSAN HAMMAD ISLAMIC REPUBLIC OF PAKISTAN PASSPORT. On the passport was the photograph of Fahim. One ID card was also found which was in Urdu with a number 3740564919347 and was dated 03.05.1984. On it also was the photograph of Fahim. He was also having Rs.477 with him in cash. From his pocket also, a railway ticket for travelling to Mumbai from Delhi on 12.2.2008 with PNR No.2496234465 of Punjab Mail was found. One ticket of 10.1.2008 of Train No.9039 with PNR No.8507798959 for travelling from Bandra Terminus to Muzaffarpur Jn. by Awadh Express was also found. 9 maps drawn by hand with a pen were also found. 2 papers with regard to some computer was also found. Another paper with a map drawn by pencil was also found. Upon being questioned, Sharif @ Suhail told that he was working in Saudi Arabia.

Along with him was working one Kausar son of Badaruddin resident of Kunda, District Pratapgarh. There they had gone to offer prayers in a mosque and the Imam there used to tell the two of them about the concept of jehad and thereafter they had gone to Pakistan for training and from Pakistan via Kasmir they had come to India. While he had crossed the border, he was carrying with him one AK47 and the required cartridges. However, the AK47 and the cartridges were taken by Lashker-e-Taiba people and from Kasmir thereafter he had come to his home town. From Pakistan, one Yusuf used to send him the money. He had stated that he had been given the task of attacking Rampur CRPF Camp. The CRPF camp was seen and reconnaissance was done of that place by him along with Baba @ Jang Bahadur and after having prepared the map of CRPF Camp, he had informed Sabauddin who was living in Kathmandu and was planning from there. Sharif further informed that Sabauddin had sent him to one Atif @ Sadiq of Jammu Kashmir who had given him 2 AK47 rifles, six fully loaded magazines and 8 grenades which he had brought and given to his friend Kausar of Kunda Pratapgarh. One week before the incident at CRPF Camp, Sharif told that he had brought the arms from the house of Kausar at Pratrapgarh and had kept them in the house of Gulab, resident of Shahgarh, P.S. Baheri, district Bareilly. He had stated that on 29th December he had started from Gorakhpur to Bareilly and in the morning of 30th, he reached Bareilly. From Bareilly, he came to Moradabad and from Moradabad he came to the bridge near Kosi river near the Camp and there he had two other persons who had been sent by Sabauddin.

One was named Amar Singh @ Abuzad and the other was named Adil @ Asad and both were Pakistani fidayeen. After having left both the fidayeens with Jang Bahadur, he (Sharif) had stated that he had gone to Baheri. On 31st December at 9.00 PM, he had stated, that he reached the bridge near the CRPF Camp where the three of them were waiting. He had stated that he had given two of them AK47 rifles and three magazines each. He had also given them 4 grenades each and thereafter he had stated that he reached near Baba @ Jang Bahadur. He then had stated that it was understood that they had to fire on the CRPF Camp and kill as many jawans as possible. He stated that thereafter he had hidden himself at a little distance. Thereafter since the entire team had to commit another crime in Bombay, they were all carrying the firearms for committing the crime at Bombay. He had stated that he along with Fahim had to go to Bombay. Saba, Amar Singh @ Abuzad and Adil @ Asad were to go from Rampur by Nauchandi Express to Lucknow and they were carrying their firearms with themselves and from there they had to reach Bombay. Upon getting this information, the Additional S.P. had given the information to STF Headquarters about the arrival of Sabauddin and his two companions. The person who was arrested alongwith Sharif i.e. Fahim was also questioned and he also told the story something akin to the story told by Sharif. In addition to that he told that he had prepared the map of Mumbai where he had to commit the crime. He had stated that he made arrangements of all the persons for going to Mumbai itself. Thereafter the recovery memo was prepared of one 30 star pistol, live cartridges of 30 bore, 3 live hand grenades, 1

passport and hand drawn maps. The recovery memo also mentioned the arrest of three accused being Baba @ Jang Bahadur Khan, Sharif @ Suhail and Fahim. (In this recovery memo, there was also a mention of the co-accused Kausar and Gulab).

90. Exhibit Ka-83 was a recovery memo with regard to two AK47 rifles along with magazine, cartridges having 18 rounds, 2 hand grenades and showed the arrest of three accused being Sabauddin, Imran Shahjad and Mohd. Farooq. With regard to the incident at CRPF Camp, the STF had formed under the Senior Superintendent of Police Sri Amitabh Yash, a team comprising Deputy SP Sri Jay Prakash and Sri S. Anand; Sub-Inspector Sri Avinash Misrha and Sub-Inspector Sri Ashok Kumar Banerji. They had received information that on 9/10.2.2008, three dreaded terrorists who had connections with Lashker-e-Taiba and had committed the attack at CRPF Camp, Rampur were reaching Lucknow by Nauchandi Express at 5.00 AM and that at Lucknow they were to meet somebody and thereafter they had to proceed for Mumbai. This information was confirmed by the STF team at Rampur. The Rampur team had informed that three terrorists were carrying certain bags; one was carrying a blue and black bag; the other was carrying a black coloured airbag and the third was carrying a green bag and that in those bags there were extremely modern weapons and explosives. Believing on the information given by the Rampur team, on 10.2.2008 at around 3.30 AM for taking action, Inspector Navendu Kumar along with Sub-Inspector Jai Prakash Pandey; Sub-Inspector Sri Ajay Chaturvedi; Sub-Inspector Satendra Singh; Sub-Inspetor D.K. Shahi; Sub-Inspector Satya

Prakash; Sub-Inspector Sandeep Mishra; Head Constable Dhirendra Singh; Head Constable Pramod Kumar; Head Constable Gajendra Pal; Head Constable Rajkumar Singh; Head Constable Pankaj Dwivedi; Head Constable Himmat Singh; Constable Devendra Pal Singh, Constable Neeraj Kumar; Constable Amit Kumar; Constable Satya Prakash; Constable Usman; Constable Rajesh Mishra; Constable Virendra Pal Singh; Constable Commandos Mohd. Fahim; Vinod Yadav; Santosh Singh; Pramod Kumar Pandey; Bhupendra Singh; Sanjiv Kumar; Omvir; Karuna Shanker Tiwari in vehicles numbered as UP 32 BG 2017 with Driver Vijay Prakash; UP 34 G 0017 with driver Suresh and UP 32 BG 0734 with driver Shailendra started off for apprehending terrorists at the Charbagh Lucknow Railway Station where they reached at 4.00 AM. The police personnel had divided themselves into three teams. The informer was kept for the team which was led by Navendu Kumar and this team of Navendu Kumar was at Charbagh Reservation Counter. The second team was at the road in between Charbagh and Hussainganj and the third team was at Charbagh Hussainganj road leading to the Railway Stadium. Upon the information given by the informer when the three terrorists came out of the Railway Station, they were followed and when they suspected something foul, they started opening their bags and were in the process of taking out their firearms. Upon this, Navendu Kumar ordered the three of them to surrender. Instead of surrendering, they started taking position and the three were arrested near the Ravindralaya Gate at around 6.30 AM. The persons who were arrested were Shabauddin Ahmad @ Shaba @ Farhan @

Mohd. Bashir @ Sanjiv @ Barar @ Samir @ Iftikar @ Abu Al Kasim @ Ali son of Shabbir Ahmad, village & post Gandhwar via Pandaul, P.S. Sakari, District Madhuban, Bihar and from him was recovered one AK47 rifle with magazine having 9 live cartridges of 7.62 bore and the rifle was numbered as R-11245. From the bag were recovered clothes, a ticket for travelling on 11.2.2008 from Agra Cantt. to Mumbai and Rs.540/- (cash) was also recovered. A long key on which was written RECKSON was also recovered and Shabauddin told that it was with regard to the room at Bangalore. The other person, who was apprehended by the second team, had told his name as Abu Osama @ Ramiz @ Imran Shahjad @ Avaish @ Adil @ Ajay @ Ashad son of Mohd. Azam, resident of Shibhani, P.S. Chowki, District Mimbar, Pakistan Occupied Kashmir. From him also was recovered one AK47 with a magazine having 9 live cartridges of 7.62 bore. From him was also recovered a Pakistani Passport with the name of Shahjad Imran on it. It also had the photograph of the arrested person. From him also was recovered a Railway ticket for travelling from Agra Cantt to Mumbai by Punjab Mail on 11.2.2008 and Rs.520/- in cash was also recovered. The third team had arrested Mohd. Farooq @ Amar Singh @ Abu Zalf Karanyan @ Abuzar son of Mohd. Bootabatti, resident of Gujarwala Dahukel, PS Sadar, District Gujrawala, Pakistan (Punjab). From him a live hand grenade was recovered. From him also a Pakistani passport having his photograph and a railway ticket for travelling from Agra Cantt. to Mumbai by Punjab Mail on 11.2.2008 were recovered. Cash of

Rs.435/- was also recovered from him. The three terrorists gave information about themselves and that was noted in the recovery memo.

91. When Jang Bahadur Khan @ Baba and Sharif were arrested, on their pointing on 14.2.2008 in the presence of police personnel one empty magazine of AK-47 was also recovered from near the Kosi river bridge near Dilli hotel near CRPF Camp Rampur. The accused themselves had got the police vehicle stopped near the Dilli Hotel and they got out of the vehicle and from the side of the hotel there was a kaccha rasta which led to the kosi river bridge and from below the bridge, Sharif and Jang Bahadur @ Baba at around 6.15 had unearthed a black bag and from it were recovered two empty magazines of AK-47. These two magazines were sealed in a cloth and kept securely. This recovery memo was prepared on 14.2.2008.

92. From the arguments made by the learned counsel and from the perusal of the record, we find that to begin with the appellants' counsel had laid much stress on the fact that the eye-witnesses had definitely not identified the accused when the incident had occurred. In order to prove the presence of the accused persons at the place of incident i.e. at the CRPF Camp, we find that there were 9 eye-witnesses. Out of the 9 eye-witnesses, PW-1 O.P. Sharma; PW-2 Satish Sharma; PW-6 Indrapal Singh and PW-38 Jitendra Kumar Singh were the eye-witnesses of the police party, whereas the eye-witnesses of CRPF personnel were PW-8 Constable Pradeep Kumar **Goozar**; PW-9 Constable Kendra Singh; PW-12 Constable Satosh Kothari and PW-15 Rajjan Lal Paswan. They were posted at the Naka/Morcha near DIG Control Room inside the camp and

at the time of incident they were inside the Guard Room. Along with them were present the Constable Ramjee Saran Mishra and Constable Laxman Dasila. Constable Laxman Dasila was not examined by the prosecution though his statement was recorded by the Investigating Officer during investigation. In addition to the police personnel and CRPF personnel, there was one Railway employee namely Chote Lal who was examined as PW-32. He was on a patrolling duty on the railway track which was near the Gate No.1 of the CRPF camp. PW-22 Nand Kishore was the peanut seller. Admittedly, none of the accused persons were known to the witnesses. When the FIR was lodged by the complainant Om Prakash Sharma, the exact number of the accused was not given; their descriptions were absolutely vague. This was not only the case in the FIR but was also the case when the statements were recorded under section 161 Cr.P.C. The statements did not disclose the exact number of the assailants; the identity/description of the assailants was also missing. It may be noted that the incident had taken place on 1.1.2008 at around 2.25 AM but the accused were arrested on 10.2.2008. Jang Bahadur Khan and Mohd. Sharif were arrested on the basis of the some secret information by a team of the STF Lucknow. This team was led by Ashok Kumar Raghav (PW-17) and Ram Badan Singh (PW-19). They had arrested Jang Bahadur Khan from village Milak Kamas and Mohd. Sharif was arrested from the bus-stand at Rampur. Fahim, who was also arrested on the pointing of Jang Bahadur Khan from the vicinity of Rampur bus-stand was not tried along with the others and was tried separately. On 10.2.2008 Sabauddin was arrested with one AK47

rifle, 9 live cartridges; one train ticket; one room key of Bangalore house and some cash from Charbagh Railway Station at Lucknow. Similarly, Imran Shahjad was arrested with AK-47 rifle; 9 bullets; one Pakistani passport; one railway ticket and some cash from Charbagh railway station. Likewise, Mohd. Farooq was arrested from Charbagh railway station with one hand grenade in his hand and one hand grenade in his pocket. He was also found carrying a Pakistani passport, one railway ticket and cash. Mohd. Kausar and Gulam were implicated as accused on the statement of Mohd. Sharif and Jang Bahadur Khan.

93. Now, the question which arises in the case is as to how the eye-witnesses had recognized the accused persons. The PW-25 O.P. Tripathi who had taken over the investigation w.e.f. 17.2.2008 on the basis of the statement made by the eye-witnesses, mentioned above, under section 161 Cr.P.C. had submitted **his first charge sheet Ka-92** and this was filed on 2.8.2008 against 7 accused persons under sections 147, 148, 149, 302, 307, 332, 120-B of Indian Penal Code; section 3/4 of Prevention of Damage to Public Property Act; section 7/27 of the Arms Act and section 3/4/5 of Explosive Substances Act in the Court of Chief Judicial Magistrate, and thereafter the case was committed to the Court of learned Sessions Judge which was registered as Sessions Trial No.208 of 2008 (leading case).

94. Here we would like to deal the versions of the witnesses with regard to the number and description of the assailants. In the FIR it has been stated that the complainant was there at 2.30 AM on 1.1.2008. He had heard the firing sound near the CRPF Camp and thereafter had

reached there and had seen 4-5 persons firing at the CRPF Camp with sophisticated weapons and they had also entered the camp. He himself fired two rounds from his rifle. Definitely, there was no mention of any description of the assailants. He just mentioned that they were all of young ages and of medium built and height and two of them were wearing military jackets.

95. Similarly, PW-6 Constable Indra Pal in his statement under section 161 Cr.P.C. had stated that he was also on patrol duty along with PW-1, the complainant. He had also heard the sound of firing and he had seen 4 to 5 persons firing on the CRPF personnel. He had also fired 8 rounds. Thereafter, came the statement of PW-38 Jitendra Kumar Singh under section 161 Cr.P.C.. He also stated that he had heard the sound of firing; had reached at the place of firing and saw 4-5 persons firing at the CRPF personnel. No description of the assailants was given. He also fired 5-7 rounds.

96. Thereafter the four eye-witnesses of the CRPF had given their versions in the following manner :

i. PW-8 Constable Pradeep Kumar Goozar had stated that there was sudden firing and he had virtually lost control of the situation and he could not see the faces of the assailants. He had stated that they were 2-3 in number.

ii. PW-15 Rajjan Lal under section 161 Cr.P.C. had stated that he had not seen the faces of the assailants and had stated that at least 2-3 terrorists were definitely there. PW-9 Kendra Singh had

stated that he had also not seen anything as his back was towards the window and he had also lost his consciousness. PW-12 Constable Santosh Kothari in his statement under section 161 Cr.P.C. had stated that he saw one assailant wearing a thick khaki jacket and a peaked cap. However, he did not give any description of the assailants.

iii. PW-32 Chote Lal, who was the railway official, in his statement under section 161 Cr.P.C. had stated that he only dittoed the version of his companion Jagannath.

iv. PW-22 Nand Kishore, the peanut seller, in statement under section 161 Cr.P.C. had stated that he had heard the sound and then had gone towards the place where the rickshaw puller Kishan Lal was sleeping and he had found that he had actually been killed. He had also seen two persons wearing jackets.

97. Thus, from the version of the FIR and the statements under section 161 Cr.P.C. of the eye-witnesses, we find that the description of the eye-witnesses with regard to the accused persons was missing. The exact number of the assailants was also not known to the eye-witnesses. However, when the various eye-witnesses appeared in the witness-box, they were knowing the number of the assailants and also they knew their names.

98. Before we go to the deposition of the eye-witnesses, it would be relevant to look into the deposition of PW-23, Inspector Satya Prakash Sharma who was the Investigating Officer from 1.1.2008 to 14.2.2008.

At page 417 of the paper book, he had stated that when he had taken the statements under section 161 Cr.P.C., no-one had mentioned anything about the description of the assailants. At page 420 of the paper book, i.e. in the statement-in-chief, he had stated that he had not moved any application for the test identification of the accused persons in the Court. He had also not made any effort to keep the assailants unidentified by the method of keeping them in isolation.

99. Similarly, PW-25-O.P. Tripathi, who was the Investigating Officer from 17.2.2008, had stated that before the incident neither the injured nor the eye-witnesses knew the assailants' description or their names. He had also stated, at page 450 of the paper book i.e. in his statement-in-chief, that he had not given any application for the test identification parade of the accused persons.

100. PW-1 O.P. Sharma, PW-6 Indra Pal Singh, PW-8 Pradeep Kumar Goozar, PW-9 Kendra Singh, PW-12 Santosh Kothari, PW-15 Rajjan Lal Paswan and PW-32 Chottey Lal had in their examination in chief, which they had given in the Court had given out as to how many of the assailants were there. This, they had not done either in the FIR or in the statement under section 161 and when they were confronted with their own statements, during cross-examination, almost all of them had stated that they had not known anything about the assailants at the time of the incident.

101. Learned counsel for the appellants, the learned Amicus Curiae had pointed out from the examination-in-chief and the cross-examinations of

the abovementioned prosecution witnesses the discrepancies in their statements. The PW-1 the complainant Sub-Inspector Om Prakash Tripathi at page 212 had very categorically stated that Jang Bahadur Khan was stationed at Gate No.1 of the CRPF Camp and a little ahead of the gate were Imran Shahjad and Mohd. Farooq with their AK47 rifles and they were firing and at page no.225 of the paper book i.e. in the cross-examination, he had stated that in the FIR he had not disclosed any description of the assailants. He had only stated that they were young persons and that they were 4-5 in number. Then again at page 213, he had stated that Jang Bahadur Khan was exhorting the other accused persons and that Sabauddin with his AK47 was also firing at the CRPF camp and was also throwing hand grenades. He had stated that just beside Sabauddin, Mohd. Sharif was also standing and he was also throwing grenades. Jang Bahadur Khan was asking Imran Shahjad to throw grenades. Jang Bahadur Khan was also asking Mohd. Farooq that the Kafirs be killed. In this manner, he had stated in the statement-in-chief that Jang Bahadur Khan was through and through by taking names exhorting the other assailants. However, at page 234, he had categorically stated that he did not recognize any of the accused persons from before. At page 227 again in the cross-examination, he had stated that he had not taken any names in the statement under section 161 and he had only stated that someone was exhorting the others. He had also stated in the cross-examination that he had not got prepared any document/drawing by which he could say that he had actually seen the assailants and could recognize them. At pages 214, 217 and 218 of the

paper book again, PW-1 had through and through mentioned the names of various assailants and tried to show that he knew their names. However, in his cross-examination, his version changed. He had clearly stated that on 22.2.2008, he had seen the photograph of Sabauddin in the police station and had, therefore, recognized Sabauddin. He had stated that on 22.2.2008 at 8.09 hours, a file went past him while he was trying to search some record and then he saw the photograph of Sabauddin. He had stated that he did not have any idea as to how the photograph of Sabauddin reached the police station. He had stated that he had just by matter of chance looked at the photograph and underneath his name was written. In this regard, the Investigating Officer had not put any question. **At page 229 on 9.1.2012**, he had stated that apart from the fact that he had seen the whole incident himself, he had also been told about it by the Superintendent of the CRPF. At page 234 he made a statement which was dated 9.1.2012, in the cross-examination wherein he had categorically stated that *"यह सही है कि मैं मुल्ज़िम को पहले से नहीं जानता था।" (It is correct that I did not know the accused from before).*

102. Similarly, PW-6 Constable Indra Pal Singh stated somewhat the same thing which the PW-1 had stated. He had also mentioned that Jang Bahadur Khan was exhorting Imran to fire and Farooq to throw the grenades. In his examination in chief, he stated that he had seen the accused in jail and had tried to recognize them. He had stated that while he was injured and was being treated at Meerut Medical College, the Investigating Officer Satya Prakash Sharma and ATS Inspector both had

gone to him to ask about the incident. However, in the cross-examination, he had stated at page 260 that he had stated that while he was firing, all the assailants were at a 50 meters distance. He had further stated that he was not aware as to how many of them had entered the gate of CRPF. He was not aware as to whether he had told the Investigating Officer under section 161 Cr.P.C. about the description of the assailants. In fact when he was confronted with his statement under section 161 Cr.P.C., he had admitted that there was no description of the assailants given while he was getting his statement recorded under section 161 Cr.P.C. With regard to the names etc. which he had taken in the examination-in-chief, he had admitted that he had never mentioned the names in the statement recorded under section 161 Cr.P.C.

103. PW-38 Constable Jitendra Singh had in his statement-in-chief stated that he had reached the Gate No.1 of the CRPF at around 2.30 AM and there was electricity bulb which was giving out light and there he had seen around 4-5 persons. The one who was standing absolutely behind the assailants was named Jang Bahadur Khan and he was asking the other assailants to throw the grenades. He then asked Farooq to fire. He had very graphically described that inside the CRPF gate, at the forefront was standing Imran; behind him was Farooq who was followed by Sabauddin. Sharif was at the rear end and Jang Bahadur Khan was behind all of them and was exhorting them to fire and throw grenades. He went to the extent of saying that Imran and Farooq were from Pakistan; Jang Bahadur Khan was from Moradabad; Sharif was from Rampur and Sabauddin was from Bihar. At page 501 of the paper book

i.e. in his examination-in-chief, he had stated that the person in white kurta with beard and the one who was wearing spectacles was Jang Bahadur. The person on his left who was in Kurta Paijama was Imran. The person in green T-shirt was Sharif and the person in black T-shirt was Farooq. Sharif's face, he had stated, he did not remember. In the cross-examination, he had categorically stated that when his statement under section 161 was taken on 2.1.2008, he had not given the description of any of the accused persons. He was again confronted with the statement which he had made that the person in green T-shirt was Sabauddin when in fact he was Kausar then he had, to that question, replied that at that point of time, the light had gone out and that his eyes had also deteriorated because of which the power of his spectacles had changed. To another question, which was put to him that the person in black T-shirt he had recognized as Farooq was in fact Sabauddin, then he again had said that light had in fact gone and his eyes had become weak. He was also confronted with the statement under section 161 Cr.P.C. with regard to the fact that the firearms which were there in the CRPF had been taken away by the CRPF people then he had stated in the statement under section 161 that in fact the firearms had been taken away and there was no opportunity for the police to get the finger prints which might have been there on them. He then again had stated that the Investigating Officer had never taken his help to recreate the faces of the accused persons by the method of pencil drawing etc. Thus, in fact the dock identification was also inaccurate.

104. In the same manner, we find that PW-8 Pradeep Kumar Goozar who was the CRPF jawan had also stated on pages 266 and 267 of the paper book, that one terrorist was shouting from behind and exhorting Farooq and Imran to throw grenades and he had stated that he himself had seen Imran throwing grenades. He had stated that he had seen one more person but his name he did not remember. He had stated that these persons were seen by him in the Sessions Court and he had recognized them there. He pointed out his finger towards Imran and had stated that the particular accused was involved in the incident. In the cross-examination at page 271 and 272, he categorically stated that he was not knowing the names of the assailants at the time of recording of statements under section 161.

105. Constable Kendra Singh-PW-9 at page 274 and 275 had stated, again by taking the name of Mohd. Farooq that he was throwing grenades. He also took the name of Imran Shahjad. He had stated that on 22.2.2008 when the accused were being taken towards the river kosi then he had also reached there out of curiosity and he had seen Gulam, Shahjad and Mohd. Farooq there and he had recognized them. He had, however, stated that he had not recognized the accused persons in the Court as much time had elapsed. In the cross-examination, he had categorically stated that he had never stated earlier either in writing or orally that Imran Shahjad was firing by AK47. Again he admitted that in the statement under section 161 he had not told any name or description of the accused. He also stated that he had never got the opportunity to identify the accused before he had given his statement-in-chief. He had

also stated that it was correct to say that under section 161 Cr.P.C. he had categorically stated that his back was towards the gate and he had not seen anyone.

106. PW-12 Santosh Kothari in his examination-in-chief itself had stated that he had not seen any accused person and he was, therefore, declared hostile.

107. PW-15 Rajjan Lal in his examination-in-chief had stated that he had seen the accused persons and had heard someone calling by the name of Farooq and Imran and was exhorting them to throw grenades. The person who was recognized as Farooq by this PW-15 was in fact Imran and the reason that he gave for not recognizing Farooq was the passage of long time.

108. PW-32 Chotey Lal was a gangman at the railway crossing in the year 2008. He had not given anything much about the names etc.

109. Evidently, from the depositions which have been analysed above, the appellants were admittedly not known to the witnesses. However, very surprisingly in the examination-in-chief their names were uttered by them. If Jang Bahadur Khan, Fahim and Sharif were arrested from Moradabad and Rampur bus-stand and if Sabauddin, Imran Shahjad and Mohd. Farooq were arrested on 10.2.2008 from Charbagh Railway Station, Lucknow and if they were dreaded terrorists with various modern automatic weapons and live cartridges etc. then should the Court come to the conclusion that they were the ones who had committed the

crime at the Rampur CRPF Centre on 1.1.2008 is a question which has to be very minutely looked into by us.

110. The PW-1, PW-6, PW-8, PW-9, PW-12, PW-32 and PW-38 had been chosen as the eye-witnesses in the case. A few of them were also injured eye-witnesses. They had throughout in the FIR (lodged by PW-1) and in the statements which they had got recorded under section 161 Cr.P.C. never mentioned either the names of the appellants/accused persons or had given any description of theirs which could have matched with the accused persons. However, we do find that after the accused were brought to jail on 9.2.2008 and 10.2.2008, there was no effort made by the investigating agencies to keep them under cover. They were openly seen by everybody and in fact PW-1 has gone to the extent of saying that when he had gone to the police station, he had seen the photograph of Sabauddin and had also seen his name written under the photograph. Also, we find that none of the eye-witnesses had ever mentioned the name of any of the accused before they were arrested.

111. Definitely, a First Information Report is not an encyclopedia of all facts. However, at the same time when no Test Identification Parade was conducted, the first version of the complainant reflected in the FIR would play an important role. What we have to consider is as to whether when in the FIR or in the first version of the eye-witnesses, the identity and the names of the accused was not disclosed then could the accused be convicted without a Test Identification Parade. All the eye-witnesses have categorically stated that the accused were definitely not known to them from before. Therefore, the Court has no other option but to

conclude that either the eye-witnesses were tutored with regard to the description and the names of the accused persons or they themselves had visited the various jails to know the names. (they having not being kept under cover). Even in the Court Room, we find that not all the eye-witnesses had been able to recognize the accused persons with precision. **The evidence of mere identification of the accused persons at the trial for the first time is, from its very nature, inherently a weak piece of evidence**. The principle of Test Identification Parade is to test the strength and the trustworthiness of the evidence. TIP is a safe rule of prudence to look for the corroboration of the sworn testimony of the witness in the Court, specially when the accused are absolute strangers to them. No eye-witness has given any testimony which could be treated as a testimony which was trustworthy and could be relied upon and this is also the law which has been laid down by the Supreme Court in **Amrik Singh vs. State of Punjab : (2022) 9 SCC 402.**

112. Thus, the absence of TIP gains utmost importance in the case and when the eye-witnesses themselves did not know the accused from before and did not even mention their names in the FIR or in the statements under section 161 Cr.P.C. then a TIP was all the more important. In the absence of TIP, we have absolutely no link which would make us believe that the eye-witnesses actually recognized the accused. Simply, because the accused were dreaded criminals and had been apprehended by the police would not connect them to the incident which had occurred on 1.1.2008.

113. Also, it may be noted that when the crime was committed during the hours of darkness and the appellants were absolute strangers to the witnesses, the identification of the accused persons assumed great importance. In all cases where the witness had ample opportunity to have looked at the accused before the identification parade is held, it may adversely affect the trial. Thus, it was the duty of the prosecution to establish before the Court that right from the day of the arrest till the accused were brought in open, they were in absolute cover *(baparda)*.

114. In the instant case, we do find that the accused were not kept under cover *(baparda)* and anybody could have had a look at them especially when the PW-1, PW-6 and PW-38 were police personnel. In this regard, learned counsel for the appellants has relied heavily upon the decisions of the Supreme Court in **Amrik Singh vs. State of Punjab : (2022) 9 SCC 402; Bollacaram Pedda Narsi Reddy & Ors. vs. State of Andhra Pradesh : (1991) 3 SCC 434** and **Gireesan Nair & Ors. vs. State of Kerala : (2023) 1 SCC 180**.

115. In addition to the above, we find that the CRPF personnel definitely did not recognize the accused even in the Court and thus there was a defective dock identification as well. If the eye-witnesses confused one accused with the other then the Court gets a feeling that the tutoring was incomplete and not properly done and, therefore, the confusion had occurred.

116. What is more, the eye-witness accounts also become doubtful because if we see that at the time of arrest, the accused had given out

their names. Along with their names they had also given various other nick names by which they were known. Definitely when the planned attack at CRPF Camp was being done then no accused would call the other accused by the actual name and they would keep their identities safe and mention their names which were not their real ones. Still further, we find that from the side of the CRPF almost 98 rounds of firing had been done and from the side of the police also a fair amount of firing had been done but not one assailant was even injured, despite the fact that it was the case of the prosecution that they had entered inside the CRPF Camp to the extent that they had even left their finger prints on some glass panes.

117. In the circumstances, when the direct evidence of the eye-witnesses become weak, it becomes the sacred duty of the Court to look into the circumstances which prevailed and which could have led the Court to conclude that the assailants were in fact the arrested persons who had been arrested at Moradabad / Rampur / Lucknow on 9.2.2008 and 10.2.2008. For this purpose, the statements of various witnesses again become very important. The prosecution has come up with a case that certain chance finger prints were lifted on 1.1.2008 by PW-24 Inspector Satya Prakash Sharma from the crime scene i.e. from the office of the CRPF camp and the same was sent for comparison with the finger prints of only three accused persons namely Sabauddin, Imran Shahjad and Mohd. Farooq who were housed in the Lucknow jail. This was done on 3.4.2008. The Forensic Science Laboratory (FSL) expert PW-13-Naval Kishor Srivastava deposed about the similarity of the finger prints

of Imran Shahjad and Mohd. Farooq. However, after having gone through all the evidence on record and after having gone through the statements of the prosecution, we are of the view that the report of the FSL expert is not reliable. When the finger prints were lifted from the glass panes from the CRPF office on 1.1.2008 where exactly were they kept from 1.1.2008 to 3.4.2008 remained a mystery. The omission from the side of the prosecution to show that they were safely kept would be fatal to the prosecution case. When the safe keeping of the finger prints in between 1.1.2008 to 3.4.2008 was not proved by the prosecution then one cannot rule out the chance of tampering of the finger prints in between 1.1.2008 and 3.4.2008. PW-37 namely Hindveer Singh has stated that their finger prints were lifted from the crime scene vide **paper No.34Kha/17** and he has stated that the document by which the finger prints were lifted were bearing the signatures of PW24 and PW-5. However, PW-5 has not uttered a single word about the lifting of finger prints on 1.1.2008 in his testimony. Further the statement of PW-21 – Mahesh Chandra which was recorded in April, 2008 does not inspire confidence. His statement was recorded in April, 2008 under section 161 Cr.P.C. Only to give credence to the entire exercise of the comparison of finger prints this was done. He had stated that the finger prints were lifted on 1.1.2008 and were given to the Investigating Officer Sri Satya Prakash Sharma. Thereafter on 3.4.2008 at 8.35 hours, he (PW-21) had himself taken the envelop to the FSL. PW-21 in his examination-in-chief at page 386, however, had stated that initially the finger prints were lifted from the CRPF Camp under the orders of the Investigating Officer

and were kept under safe cover. However, in the entire testimony of PW-21, he did not show that any document had been produced or proved to show that any envelop in which the finger prints were kept was kept in safe custody. The statement of PW-24 Satya Prakash Sharma on 27.4.2015 at page 424 of the paper book, i.e. the cross-examination, evidently shows that he did not know as to when the finger prints were deposited for safe custody in the police station and he has also stated that the deposit of the envelop was not entered in any CD entry. He only suspected that its entry might be there in the Malkhana register or in the GD entry. However, neither any Malkhana register was produced nor any GD entry was produced by the prosecution to show that the deposit of the chance finger prints was there in safe custody.

118. When the second Investigating Officer O.P. Tripathi was put a question as to whether the Constable Mahesh Chandra – PW-21 had told him as to how many finger prints he had lifted from the spot, he had not answered that question. PW-25 O.P. Tripathi had stated, also upon a question being asked as to when Mahesh Chandra PW-21 had deposited the finger prints in the Malkhana, he had replied, "मुझे नहीं मालूम कि किस तारीख को यह फिंगरप्रिंट कोतवाली में जमा किए गए इस बाबत पूर्व विवेचक से मैंने कोई पूछताक्ष नहीं की थी और ना ही कोई जी0डी0 एंट्री की कॉपी प्राप्त की और न केस डायरी में सलंग्न की। Also at page 449, upon a question being asked as to whether he was aware as to where the finger prints lifted from the CRPF camp were kept, he had answered : "यह कहना सही है कि मुझे यह नहीं मालूम की दिनांक 01.01.2008 को जो फिंगरप्रिंट सीआरपीएफ कैंप में लिए गए थे वह 03.04.08 तक किस व्यक्ति या अधिकारी की कस्टडी व संरक्षण में सुरक्षित रखे गए थे।" He then states that

for the first time Mahesh Chandra had entered in the case diary about the fact that he had taken the finger prints to FSL. He, at page 450, again had stated that “it was correct to say that he had not taken any document in his possession which would show that the finger prints were kept in safe custody in between 1.1.2008 and 3.4.2008.

119. Similarly, PW-35 Rajesh Kumar Srivastava had stated that he did not remember as to where and when the finger prints lifted on 1.1.2008 were kept in safe custody. PW-5 Shahbul Hassan, who as per the other witnesses had put his signatures on the document 34-Kha/17, was silent with regard to the lifting of the finger prints and has not mentioned about the finger prints anywhere whatsoever.

120. The other aspects which had been dealt with by the prosecution to connect the incident with the accused persons were the hand grenades, AK47 rifles and other materials including the empty cartridges from the place of incident. The recoveries were as follows :

1. On 10.2.2008, from Sabauddin a 7.62 calibre rifle numbered as R-11248 with magazine having 9 live cartridges of 6.62 x 39 mm was recovered. Since, this recovery was made subsequently, this was given a separate case crime number which was registered as Case Crime No.48/08 under sections 121, 121A, 122 and 123 IPC and under section 3/7/25 of the Explosive Substances Act, 1984.

2. Similarly, from Imran Shahjad, one AK-47 rifle was recovered of 7.62 calibre and was numbered as 1516116. It had a magazine with 9 live bullets.

3. From Mohd. Farooq one hand grenade was recovered from his hand and one from his pocket.

4. Also, Mohd. Sharif and Jang Bahadur Khan, on 14.2.2008, had got recovered a bag containing 2 empty AK47 magazines from under the bridge at Rampur.

5. 32 empty cartridges of AK47 and 2 empty cartridges were recovered by the police from the place of incident and the CRPF on 1.1.2008 had recovered a magazine of AK47 having 29 live cartridges, 7 empty cartridges and a lever of the hand grenade. They had also sent a damaged SLR vide body no.16142833 and one magazine of 40 rounds.

6. On 2.1.2008 the CRPF personnel collected once again another safety pin of grenade, 4 empty cartridges of AK47 and 6 ‘D’ formed bullets.

121. All these articles were sent to the FSL on 5.4.2008. However, in between 1.1.2008 and 2.1.2008 till 5.4.2008, where exactly were these recovered firearms and cartridges etc. kept is a big mystery. No Malkhana register entry or GD entry was placed on record. No witness was examined who carried these exhibits to the FSL. To be precise, one Constable Kallu had carried the articles but he was never produced in the witness box for him to elaborate as to from where he had picked up the

articles. Not only that, the articles which were recovered were sent with substantial delay to the FSL. The PW-14 Navendu Kumar had in his examination-in-chief on 2.12.2014 at page 336 identified the rifles K-186 and K-189 and the 18 cartridges (9 from Sabauddin and 9 from Imran Shahjad) which were recovered. These were the bullets which were examined by the PW-34 and as per his deposition as well as, as per his report dated 16.5.2008 (Paper No.Ka-181 at page 78), it specifically mentioned that 6 cartridges out of 18 were test fired and on the test firing, the PW-34 Sanjay Khare opined that the bullets matched the weapons.

122. What is more, the bullets which were recovered from the CRPF camp by the CRPF personnel did not match the test bullets. They were numbered as EC26, EC29 to EC43 (did not match). Also ECs2, 7, 9, 11, 12, 13 and 19, which were the cartridges given by the police, did not match. The cartridges i.e. Ecs 5, 6, 18, 25, 27, 28 and 30 which matched with the rifle numbered as 1/2008 and ECs4, 8 and 16 which matched with rifle which was numbered as 2/2008 would not lead one to believe that the bullets were fired from those guns as for good three months there was no evidence where the empty cartridges were kept. Possibility of tampering could not be thus ruled out.

123. Learned counsel for the appellants has submitted that the empty cartridges which came from the side of the CRPF and were numbered as EC25, EC29 to EC43 probably were never opened and manipulated. However, the other empty cartridges which did match and were not kept under safe cover could always be concluded to have been tampered with.

Unless there was a definite safe keeping of the empty cartridges which were recovered during the incident, one could not say with any certainty that the cartridges which were actually found on the place of incident were tested by the PW-34 Sanjay Khare. Also, definitely when the Constable Kallu was never cross examined and produced before the Court, it would never come to light that how the empty cartridges, rifles etc. were kept in safe cover. We, therefore, do find substance in the submission made by learned counsel for the appellants that when the various recovered bullets, empty cartridges, rifles were not kept in safe cover and they were always open for tampering then any amount of test firing done at the FSL would not be of any use. In the instant case when the two circumstances namely the “finger print recognition” and the “matching of firearms” which could have been the circumstantial evidence to prove that in the incident, the accused were involved did not inspire confidence and when the circumstances could not be at all proved, then it can safely be said that also on the basis of circumstantial evidence, the appellants could not be held guilty. Thus, link evidence with regard to lifting of finger prints of the accused upto its production before the FSL is missing. Same is the position of the arms and ammunitions lifted from the place of occurrence.

124. As per the judgment of the Supreme Court in **Sharad Birdichand Sarda vs. State of Maharashtra** reported in **AIR 1984 SC 1622,** there are five salient points which are to be seen for the conviction of the accused on the basis of circumstantial evidence which are as follows :-

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;

2. The fact so established should be consistent only with the hypothesis of the guilt of the accused;

3. The circumstances should be of conclusive nature and tendency;

4. They should exclude every possible hypothesis except the one to be proved; and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

125. These ingredients have to be necessarily there for the Court to come to a conclusion that the accused were guilty.

126. Judgments cited by the learned counsel for bolstering the argument that conviction could not be done when there were missing links were as follows:

1. Satender Singh & Ors. vs. State of U.P. reported in 2020 SCC Online All. 821

2. Sachhida Nand & Ors. vs. State of Himachal Pradesh reported in MANU/HP/0472/2013

3. State of Rajasthan vs. Gurmail Singh reported in (2005) 3 SCC 59

4. Nand Kishore vs. State of Haryana reported in 1998 SCC (Crl) 568

5. State of Rajasthan vs. Daulat Ram reported in (1980) 3 SCC 303

127. Under such circumstances, the Court is of the view that definitely it could not be denied that the incident did take place. What the Court has to find out was as to whether the appellants who were the accused in the case had actually committed the offence. In the instant case on account of the fact that the prosecution witnesses had never known the accused-appellants from before and were never made to identify the appellants in a TIP, a doubt is raised as to whether the prosecution witnesses were ever aware that the accused-appellants had actually committed the offence. The Court from the entire reading of the records and after hearing the arguments of learned counsel for the appellants finds that the prosecution witnesses at the time of getting their statements recorded before the Investigating Officer under section 161 Cr.P.C. and at the time of lodging of the FIR, were not knowing the names of the accused persons. However, in the Court there were sufficient dock recognitions and in fact the prosecution witnesses i.e. eye-witnesses being PW1, PW-6, PW-8, PW-9, PW-12, PW-15, PW-22, PW-32 and PW-38 recognized in the Court the accused and in fact recognized them by their names as well. However, in the cross-examinations, they simply failed to inform the Court as to how and when they had got to know the names of the accused persons when at the time of the lodging of the FIR and at the time of the recording of the statements under section 161 Cr.P.C., they were not knowing their names at all.

128. Definitely, the evidence of finger prints also cannot be made the basis for conviction. There is a statement of PW-21 that the finger prints were lifted from the CRPF camp along with the PW-5-Shavabul Hasan on 1/2.1.2008 but PW-21 has not been able to tell as to whether the finger prints lifted were kept in safe custody. In fact, PW-5 in his entire testimony had not narrated any fact with regard to the lifting of the finger prints from the CRPF camp. In fact the Investigating Officer PW-24 and PW-35 have also not been able to tell in their testimonies as to where the finger prints which were lifted from the CRPF camp on 1/2.1.2008 were kept. There is a statement of PW-21 that the envelop in which the finger prints, which were lifted, were kept was numbered as 34-Kha/17. However, this envelop was never produced before the Court and there was no effort made to prove the finger prints. What is more, the circumstances under which the finger prints were compared were also making the story of lifting of finger prints from the CRPF camp doubtful. When there were 5 accused persons as per the prosecution who had attacked the CRPF camp then the finger prints could have been available of the 5 accused persons but the comparison which was done, was of only 3 accused persons namely Sabauddin, Imran Shahjad and Mohd. Farooq. When there is no evidence of properly keeping the finger prints lifted on 1/2.1.2008 then it can safely be concluded that the investigating agencies could have played foul. They could have taken the finger prints of the arrested individuals and could have stated that those finger prints were in the safe keeping of the police and had thereafter tried to get those finger prints compared with the finger prints of the 3

accused namely Sabauddin, Imran Shahjad and Mohd. Farooq and had sent the same for comparison.

129. Also, when the question came with regard to the safe keeping of the firearms; the empty cartridges and the grenades then also the Court finds that no safe keeping was done. In fact the person who had taken the firearms, bullets, empty cartridges and the grenades i.e. Constable Kallu was not even examined with regard to the fact as to where the firearms were kept, whether they were kept with any individual or in the Malkhana, nothing has been brought in the evidence.

130. Under section 43-E of UAPA, there is a presumption with regard to an offence under section 15 of the UAPA, if it is proved that the arms or explosives or any other substance specified in section 15 were recovered from the possession of the accused and if there was a reason to believe that such arms or explosive or other substance of a similar nature were used in the commission of such offence. However, in the instant case for the reasons give herein above when we have concluded that there was no connection of the accused persons with the incident then definitely the offence under the various provisions of UAPA could not be proved. Also, when it could not be proved that the accused persons had actually been there on the site then also no offence under sections 302 read with section 149 IPC could be made out. Also, for the reasons given in the submissions made by the counsel for the appellants, we are of the view that the offences under the IPC, UAPA; the Explosive Substances Act and the Arms Act were never proved.

131. So far as the sanction under Chapter VI of the IPC is concerned, we find that the sanctioning authority had not applied its mind while giving the sanction for the trial of offences under Chapter VI of the IPC.

132. So far as sanction under section 6 of the Explosive Substances Act is concerned, we find that it was granted on 1.11.2008 by the then District Magistrate, Rampur on behalf of the Government of India. However, it did not comply with the notification dated 20.4.1977 which was published in the Gazette of India on 14.5.1977 wherein the District Magistrate himself had to give the sanction and he had not to give the sanction on behalf of the Government of India. The District Magistrate as per the notification dated 20.4.1977 and as per the Explosive Substances Act after its amendment in 2002 himself had to give the sanction independently. He had not to give the sanction as an agent of the Government of India.

133. Thus, the appellants deserve acquittal under sections **148, 302/149, 333/149, 307/149, 121/149 of Indian Penal Code; sections 16 and 20 of Unlawful Activities (Prevention) Act; section 4 of Prevention of Damage to Public Property Act and section 27(3) of the Arms Act**.

134. Mohd. Sharif; Sabauddin; Imran Shahjad and Mohd. Farooq who were awarded capital punishment (i.e. the death sentence) and a fine of Rs. 50,000/- (each of the accused) under Section 302 read with section 149 of I.P.C. are acquitted of the charges levelled against them.

135. Mohd. Sharif; Sabauddin; Imran Shahjad and Mohd. Farooq who were awarded death sentence under Section 27(3) of Arms Act are also acquitted of the charges under the Arms Act.

136. Jang Bahadur Khan who was awarded life imprisonment with a fine of Rs. 50,000/- under Section 302 read with section 149 of I.P.C. is also acquitted.

137. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were awarded imprisonment of three years under Section 148 of I.P.C. are acquitted.

138. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were sentenced with the imprisonment of ten years and a fine of Rs. 25,000/- (each of the accused) under Section 307 read with section 149 of I.P.C. are acquitted of those charges.

139. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were awarded punishment of an imprisonment of 7 years and a fine of Rs. 20,000/- (each of the accused) under Section 333 read with section 149 of I.P.C. are acquitted.

140. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were sentenced for an imprisonment of 5 years and a fine of Rs. 20,000/- (each of the accused) under Section 4 of Prevention of Damage to Public Property Act, 1984 are acquitted.

141. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were awarded life imprisonment and a fine of Rs. 25,000/- (each of the accused) under Section 121 read with section 149 of I.P.C. are acquitted.

142. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were awarded life imprisonment and a fine of Rs. 25,000/- (each of the accused) under Section 16 of Unlawful Activities (Prevention) Act, 1967 are acquitted.

143. Mohd. Sharif; Sabauddin; Imran Shahjad Mohd. Farooq and Jang Bahadur Khan @ Baba who were awarded life imprisonment and a fine of Rs. 25,000/- (each of the accused) under Section 20 of Unlawful Activities (Prevention) Act, 1967 are acquitted.

144. However, upon the entire analysis of the evidence which had been brought on record, we find that prohibited firearms i.e. a 7.62 calibre rifle with magazine having 9 live cartridges of 6.62 x 39 mm. was recovered from Sabauddin; one AK-47 rifle of 7.62 calibre with a magazine having 9 live bullets was recovered from Imran Shahjad; one hand grenade in hand and one from the pocket of Mohd. Farooq was also recovered; 2 empty AK47 magazines from under the Kosi bridge on the pointing of Mohd. Sharif and Jang Bahadur Khan were recovered. On 10.02.2008 appellants namely Mohd. Sharif and Jang Bahadur Khan were apprehended on the basis of some secret information by a team of STF, Lucknow led by PW-17 Ashok Kumar Raghav who was accompanied by PW-19 Ram Badan Singh, from Village - Milak and Bus Stand Rampur, respectively. Whereas Sabauddin, Imran Shahjad and Mohd. Farooq were apprehended from Charbagh Railway Station, Lucknow by a team of STF Lucknow led by PW-14 Inspector Navendu Kumar (Two other persons namely Gulab Khan and Mohd. Kausar were also apprehended but they were acquitted). Three hand grenades were

recovered from possession of accused-appellant Mohd. Sharif and two empty magazines of one AK-47 were recovered on joint pointing out by accused-appellants namely Mohd. Sharif and Jang Bahadur Khan. The recovery memo of the three hand grenades from appellant Mohd. Sharif was proved as Ex.Ka-64. The hand grenades recovered from Mohd. Sharif @ Suhail were found in a maroon coloured bag held by said accused. These were wrapped in a green polythene kept inside the bag. He was arrested by police in the intervening night of 09/10.02.2008 along with one Faheem @ Arshad @ Hasan Ahmad.

145. The then District Magistrate Rampur granted sanction to prosecute Sharif @ Suhail @ Sajid for prosecution under Section 7 of the Explosive Substances Act on account of recovery of the three hand grenades from his possession without any legal authority for his prosecution under Sections 4/5 of Explosive Substances Act. In the report of FSL Agra, these grenades contained high explosive Lead Oxide and Trinitrotoluene (TNT). Section 2(b) of Arms Act, 1959 particularly defines "ammunition" which means ammunition for any firearm, and includes rockets, bombs, grenades, shells and other missiles as specific examples. This confirms that a “grenade” was to be treated as a form of ammunition under Arms Act, 1959. Section 2(1)(h) details a category of "prohibited ammunition" which includes items "containing or designed or adapted to contain any noxious liquid, gas or other such things", the same clause also specifically mentions rockets, bombs, grenades, shells, missiles, as example of prohibited ammunition. Because “hand grenade” is classified as ammunition and categorised specifically as prohibited

form of ammunition, its possession, acquisition, manufacture, sale or transfer are illegal without authorization from the Government. The Arms Act, 1959 aims the prevention of the use of dangerous weapons like grenades etc. so that law and order would be maintained.

146. Thus possession of hand grenade, which is an ammunition within Section 2(b) of Arms Act, is punishable under Section 7/25 of Arms Act. So far as recovery of empty magazine of AK47 high calibre assault rifle on pointing of accused-appellants namely Jang Bahadur Khan and Mohd. Sharif under Arms Act is concerned, we find that an empty magazine comes within purview of prohibited weapon and would be considered as a prohibited arm and its possession is thus unlawful. Law does not differentiate between an empty magazine and one which is full. The nature of weapon and its component is to be looked into. If a weapon is considered a component of a prohibited item and its unauthorized possession can lead to criminal charge under the Arms Act then the possession becomes punishable. In the present case, the empty magazines were recovered on the pointing out of appellants namely Jang Bahadur Khan and Mohd. Sharif on 14.02.2008, therefore, it is evident that the accused were conscious and aware of the possession of those items.

147. We are, therefore, of the view that since firearms; hand grenades; magazines and cartridges etc. were found from the accused persons and they were in possession of those prohibited articles without the fulfillment of the requirements of section 7 of the Arms Act, they are guilty of having committed offence under section 25(1-A) of the Arms

Act. The accused persons were in conscious possession of the lethal firearms and ammunition which were prohibited to be carried as per the mandate of section 7 of the Arms Act.

148. Thus, having found the appellants guilty of the offences committed under section 25 (1-A) of the Arms Act, the appellants are punished for 10 years of rigorous imprisonment. We intended to impose a heavier penalty but since the statute as was prevailing in the year 2008 i.e. the year of incident, the maximum punishment was 10 years, we are restraining ourselves from giving any graver punishment. We, however, further consider it appropriate to impose a fine of Rs.1 lac on each one of the appellants namely Mohd. Sharif, Sabauddin, Imran Shahjad, Mohd. Farooq and Jang Bahadur for the offence committed by them under the Arms Act. The period of imprisonment undergone by the appellants will be adjusted towards above sentence awarded to the appellants. The offence under section 25 (1-A) of the Arms Act is a minor offence in comparison to offense under section 27(3) of the Arms Act which is not found to be proved in the present appeal and they are acquitted charge of Section 27(3) Arms Act. In case of default of deposit of the fine of Rs.1 lac imposed on each of the appellants for charge under section 25 (1-A) of the Arms Act, the appellants will have to undergo further two years simple imprisonment.

149. If the appellants have already undergone the punishment of rigorous imprisonment of ten years then it shall be deemed that their punishment is complete. However, if they have not undergone the

punishment of 10 years rigorous imprisonment then they shall complete the punishment of all 10 years rigorous imprisonment.

150. As and when the appellants are released, the provisions of section 437A Cr.P.C. shall be adhered to by them and they will immediately appear before the trial Court and file requisite personal bonds and sureties to the satisfaction of the trial Court.

151. Before parting with the case, we would definitely like to mention that this case would have met a different result had the investigation and the prosecution been conducted by a more trained police. When the eye-witnesses were not knowing the accused persons from before and when the incident had occurred in the darkness of the night then it was imperative for the investigating agencies to have kept the arrested persons *in cognito (BAPARDA)*. Also, the prosecution should have, in the circumstances narrated above, prayed for Test Identification Parade. When the FIR and the statements under section 161 Cr.P.C. were silent with regard to the recognition of the appellants by facial expression or by name then it was imperative that the accused ought to have been kept BAPARDA and they should have been made to get recognized by the method of Test Identification Parade alone.

152. Also, we are of the view that when the case had to be solved by applying the principles of circumstantial evidence then also, the finger prints which were allegedly lifted from the glass-panes of the CRPF Camp on 1.1.2008, ought to have been kept in extreme safe custody. Also, the empty cartridges, firearms etc. which were recovered from the place of incident, ought to have been kept in the Malkhana of the police.

From time to time, the State Government and the Central Government have been coming up with various rules and notifications as to how a Malkhana ought to be operated but in the instant case, we find that nowhere had those directions/directives been followed by the police and the investigating agencies.

153. The defect in investigation went to the root of the case and ultimately culminated in the acquittal of the accused persons. We are deeply concerned with the magnitude and enormity of the offence and at the same time we are constrained to observe that the prosecution miserably failed to prove the case against the accused for the principal offence beyond reasonable doubt which is a golden rule that runs through the web of criminal jurisprudence. The State would be at liberty to deal with appropriately the lapses in investigation and proceed against the guilty police officers under law.

154. Thus, for the reasons stated above, the instant Capital Cases being Capital Case No.7 of 2019 and Capital Case No.3 of 2020 and the Criminal Appeal No.31 of 2020 are allowed, subject to the conviction under section 25(1-A) of the Arms Act for all the reasons recorded in this judgment.

155. The Reference is also, accordingly, answered.

156. A copy of judgment along with Lower Court Record be immediately sent to Court concerned for necessary compliance.

157. For the hard work which has been put in by the learned Amicus Curiae, we quantify his fee as Rs.25,000/- which shall be payable to him

by the Legal Services Authority forthwith. The payment be got done under the supervision of the Registrar General of this Court.

(Ram Manohar Narayan Mishra, J.) (Siddhartha Varma, J.)

October 29, 2025
GS/M.S. Ansari

Digitally signed by :-
GAUTAM SONI
High Court of Judicature at Allahabad