

State Vs. Ajay Kumar Singh and ors.

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Court : Delhi

Decided On : Aug-22-1997

Reported in : 1998IAD(Delhi)639; 69(1997)DLT797

Judge : Arun Kumar and; N.G. Nandi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120A and 302; [Arms Act, 1959](#) - Sections 25

Appeal No. : Murder Reference No. 1 of 1996 and Criminal Appeal Nos. 102, 105, 107 and 108 of 1996

Appellant : State

Respondent : Ajay Kumar Singh and ors.

Advocate for Pet/Ap. : B.L. Kalra,; Rajesh Sachdeva,; R.K. Maheshwari,;

Judgement :

Arun Kumar, J.

(1) This murder reference and the connected appeals arise from the judgment dated 28th May, 1996 passed by a learned Addl. Sessions Judge, Delhi. In all five accused had been tried for offences under Sections 302/307/120B, IPC. Accused Ajay Kumar Singh was also charged for an offence under Sections 27/54 of the [Arms Act, 1959](#). Accused Rajender Kumar died during the course of the trial. All

the remaining four accused were convicted and sentenced to life imprisonment and fines and in default of payment of fine further imprisonment etc. Accused Ajay Kumar Singh was also awarded death sentence under Section 302, Indian Penal Code . for committing the murder of Mukesh Kumar. For the offences under Sections 120B and 307/34, Indian Penal Code . he was awarded sentences for life imprisonment besides fines. He was also awarded the sentence of imprisonment for seven years and fine for conviction under the Arms Act. Accused Sudhir Jain was sentenced to imprisonment for life under Section 120B, Indian Penal Code besides fine. Accused Narinder and Mahinder were convicted under Sections 302/34, Indian Penal Code etc. and were awarded life imprisonment besides fines.

(2) Murder Reference No. 1/96 is the reference made to this Court by the learned Addl. Sessions Judge under Section 366, Cr.P.C. for confirmation of the death sentence awarded to accused Ajay Kumar Singh. Ajay Kumar Singh has also appealed against the judgment of the learned Addl. Sessions Judge and his appeal is Cri. A.105/96. The other three appeals, i.e., Cri. A.102/96, 107/96 and 108/96 are the appeals filed by accused Sudhir Kumar Jain, Mahinder Kumar and Narinder Kumar respectively against the said judgment of the learned Addl. Sessions Judge.

(3) The entire case revolves around an incident which took place on 6th October, 1982 at 7.45 p.m. inside the Palika Bazar - an underground air-conditioned market located at Connaught Place, New Delhi. The complainant party consists of three brothers, namely, Ashok Kumar, Naval Kumar and Mukesh Kumar. In the incident Mukesh died as a result of two bullet injuries received by him. Ashok also received two bullet injuries. He was lucky to have survived. Two shots were allegedly fired at the third brother also but he escaped them. Besides the bullet injuries the two surviving brothers also received some other injuries. Ajay Kumar Singh who had allegedly fired the shots was apprehended Along with a revolver in his hand while ^ he was fleeing from the scene of crime. He was arrested then and there and the) revolver was seized from him. The other accused succeeded in their escape from the scene of occurrence. However, they were arrested later. Si Gurdeep Singh accompanied by Naval had gone in search of the other accused who had fled from the scene of occurrence. They went to their residence at Joshi Road where they

were not found. Accused Narinder and Mahinder were arrested on 8th October, 1982 while accused Rajender was arrested on 12th October, 1982. Sudhir Jain was arrested on 19th December, 1982.

(4) Initially the investigation was carried out by Si Gurdeep Singh, PW-35. However, the complainant party was not satisfied in the manner in which the investigation was being conducted and they approached the Commissioner of Police on 8th October, 1982 and also filed an application before him in this connection which is Ex. PW-I/P. On 9th October, 1982 as per orders of Commissioner of Police the investigation of the case was transferred to the Crime Branch. Inspector Kulpal Rai Mehta took over the investigation on 9th October, 1982.

(5) Naval Kumar, PW-I, one of the brothers belonging to the complainant party made a statement before the 10, Si Gurdeep Singh, which formed the basis of the FIR. The statement was recorded soon after the incident by the Investigating Officer. The incident took place at about 7.45 p.m. The endorsement of the Investigating Officer ' while despatching the statement from the place of occurrence to the police station for registering the RLR. shows that it was dispatched at 9.05 p.m. Thus the statement was recorded within an hour of the incident. The statement of Naval Kumar Ex. PW- I/A gives a vivid description of how the incident occurred. It runs as follows :

'I reside at the above noted address and run a jewellery shop under the name & style of 'Gem Palace' at No. 33, Palika Bazar, Connaught Place Along with my two brothers namely Mukesh Kumar @ Pappu aged 22 years, Ashok Kumar aged 28 years and father Shri Gobind Ram. Opposite my shop, is shop No. 4 under the name & style of 'Gem Treasures' at Palika Bazar, Connaught Place. One of its partners is Sudhir. He also runs a jewellery shop like us. Sudhir is friend of all the three brothers namely Rajan, Narinder and Mahinder of Shop No. 9, Palika Bazar, Connaught Place. Narinder who usually sits at shop No. 4 of Sudhir, uses to try to take the customers visiting our shop, to shop No. 4. I and my brothers have admonished him a number of times but he did not desist himself from the said act. They were having grudge on account of business. Today at about 7.45 p.m., I and

my two brothers were present at our shop. I was inside the shop whereas my brothers : Mukesh and Ashok were standing outside the shop. In the meantime, Rajan, Narinder, Mahinder and their friend Ajay Singh @ Aji who resides in Gali Peepal Mahadev, Hauz Qazi, Delhi and usually visits them in order to supply jewellery (came there). Rajan was holding a leather belt whereas Narinder and Mahinder were armed with batten and Ajay was empty handed. The aforesaid persons, just after reaching there, started giving beatings to both my brothers Ashok and Mukesh with battens and leather belt, saying that we the three brothers have no power to stop them from taking away customers and further threatened that they would finish we the three brothers. Actual words being 'TUM Teeno Bhaion Mein Kya Taqat Haijo Hamain Grahak Lejane Se Rokte HO. Aaj Tumhara Teeno Ka Niptara Kar DANGE'. I also came out of the shop and a scuffling and quarrel started. Narinder and Mohinder exhorted Ajay @ Aji to shoot and finish all the three that day itself. So that the daily quarrel may come to an end. Rajan also instigated Aji and said that why he was delaying; shot at once. Thereupon Ajay took out a revolver from the dub of his pants and fired a number of shots consecutively one after the other at me and my brothers. As a result whereof, my brothers Ashok Kumar and Mukesh Kumar sustained injuries. As and when Ajay Singh tried to flee away, I followed him and overpowered Ajay Singh Along with revolver near Air-conditioning Plant. He, in order to free himself, bit with his teeth on the dorsum of my left hand. I also bit him on the back portion of his arm and tightened my grip. Meanwhile, you reached there with the accompanying police persons from front side and overpowered Ajay. You snatched the revolver from his right hand. Rajan, Narinder and Mohinder fled away from the spot. Rajan, Narinder and Mohinder and Ajay with common intention have made attempt to murder us by way of firing shots. Ashok and Mukesh, my injured brothers were taken to the Hospital by my father who had happened to reach the spot in the car. The aforesaid entire incident has been witnessed by Shri Mohinder Singh, s/o Arjan Singh, r/o Vikas Studio, National Highway, Shakarpur, Delhi and Rakesh Kapoor, s/o Jagdish Kapoor of shop No. M-13, Palika Bazar, New Delhi whose names and addresses have now been learnt. Legal action may be taken in the said regard. I have heard the statement and the same is correct.'

(6) On the basis of the said statement an Fir was registered at Police Station, Connaught Place, New Delhi being Fir No. 918/82 at 9.15 p.m. on 6th October, 1982. Si Gurdeep Singh who had recorded the statement of Naval Kumar on the basis whereof the Fir was recorded, happened to be present in the Palika Bazar in connection with some other inquiry. On hearing the sound of gun shots and noticing the resultant commotion, he Along with his accompanying police officers rushed towards the place from where the sound of gun shots had been heard. When he reached near the air-conditioning plant he saw the complainant Naval Kumar having caught hold of accused Ajay Kumar Singh. Ajay was having a revolver in his right hand. Si Gurdeep Singh snatched the revolver from Ajay's right hand. Ajay was handed over to the other police officers accompanying Si Gurdeep Singh. Investigations followed.

(7) As per the prosecution case in the presence of independent eye witnesses Mahinder Singh PW-2 and Rakesh Kapoor PW-5 and complainant Naval Kumar PW-I, Si Gurdeep Singh effected certain recoveries, prepared the memos which were got signed from these witnesses. He opened the revolver which had been snatched from the hand of accused Ajay and found six empty cartridges in it. A sketch of the revolver was prepared. The revolver is Ex. P-II. Six empty cartridges are Ex. PW-12/1 to 6. The cartridges were allowed to remain inside the chambers. Its recovery memo is Ex. PW-I/C. A rough site plan prepared by the 10 is Ex. PW-13/B. The scene of occurrence was photographed. Blood samples were lifted from outside shop No. 2, shop Nos. 3 and 4 and shops No. 161 and 162 and were taken possession of as per respective recovery memos. Blood was also lifted from the trail of blood leading to shops 161 and 162 and kept in a sealed phial. From near the pillar of shop No. 34, a bullet was recovered and kept in a sealed cover. The left shoe of Mukesh was found outside shops No. 3 and 4 which was taken into possession vide Ex. PW-I/F. The shoe is Ex. P-2/1. The right shoe of Mukesh was found near the water tank in the vicinity of shop No. 161 and the same is Ex. P-2/2. Its recovery memo is Ex. PW-I/J. A broken piece of danda was recovered from the stairs near shop No. 9 and was taken possession of vide a recovery memo. Personal search of accused Ajay was conducted and a recovery memo was prepared. Clothes of Ajay were found blood stained. His T-shirt Ex. P-4, Banyan Ex. P-3 and Pant Ex. P-5 were taken into possession vide Ex. PW-I/M. On

his return from the hospital the blood stained T-shirt of Naval (Ex. P-6) was taken into possession vide Ex. PW-I/N.

(8) Si Mahinder Ram PW-19 who had accompanied Mukesh and Ashok to the hospital was handed over the clothes of Mukesh and Ashok duly sealed. He took the same into possession vide memos Ex. PW-IO/A and IO/B. Clothes of Ashok consisted of a shirt Ex. P-16, a Banyan Ex. P-19. The Pant of Ashok was handed over to the I.O. on 11th October, 1982 and the same is Ex. P-17, his underwear is Ex. P- 18. They were taken into possession. S.I. Gurdeep Singh prepared an inquest report about the death of Mukesh Kumar. The same is Ex. PW-13/D-1. The statement of Naval recorded in this connection is Ex. PW-1/4. Two bullets recovered from the body of Mukesh by Dr. L.T. Ramani who performed the post mortem were handed over to the police in a sealed packet. The post mortem report is Ex. PW-13/A. Dr. L.T. Ramani also handed over sample blood of Mukesh to the police officer.

(9) The two brothers who had been injured in the incident were taken to the Willingdon Hospital by their father Govind Ram PW-21 in his car. Si Mahinder Ram, PW-19 accompanied them in the car. The MLCs of the injured were prepared at the hospital. The Mlc of Mukesh is Ex. PW-6/C/Ex. Public Witness 13/D-12. It shows the time of arrival at the hospital as 8.15 p.m. Further it shows that the patient was brought by the father. It is recorded in the Mlc that he is alleged to have sustained injury by gun shot. He was conscious at the time of arrival. The Mlc was prepared by Dr.Vivek Misra. The patient was declared unfit for giving statement at 8.40 p.m. on 6th October, 1982. It is also noted on the Mlc that the T-shirt and the Banyan of the patient were sealed and handed over to the police. As per the Mlc Mukesh had a punctured wound in epigastrium near midline of about 1 cm diameter. Mukesh died soon after. His post mortem was conducted on 7th October, 1982 at 2.30 p.m. by Dr. L.T. Ramani. As per the post mortem report he died at 8.45 p.m. on 6th October 1982.

(10) The Mlc of Ashok Kumar is Ex. PW-6/A/ Ex. PW-20-A/Ex. PW-20-B. His arrival at the hospital is also shown as 8.15 p.m., brought by his father. He was also alleged to have sustained injury by gun shot. He was conscious at the time of

arrival in the hospital. He was declared unfit to give a statement at 8.40 p.m. Dr.Vivek Misra had prepared the MLC. As per evidence on record statement of Ashok was recorded in the hospital at 7.00 a.m. next morning, i.e., the morning of 7th October, 1982. Ashok was saved by the timely efforts of the doctors. He was discharged from the hospital after about ten days.

(11) After completing the investigations at the spot. Naval was taken to the police station by the 10 at about 11.30 p.m. on 6th October, 1982. He was sent for medical examination at the police hospital where Dr. J.K. Handa PW-29 examined him at about 12.00 mid night. In the morning Si Gurdeep Singh informed Naval Kumar that Dr. Handa had noted three injuries on his person. However, according to Naval he had more than three injuries so he requested for another medical examination which was conducted in the police hospital on 10th October, 1982. As per this examination seven injuries were reported on Naval. There is some controversy about the injuries suffered by Naval to which we shall advert later. The controversy arises because as per the defense version Naval was not present at the scene of crime at the relevant time.

(12) While on the MLCs we may note that accused Ajay was also got medically examined on 7th October, 1982 at 10.00 a.m. The following injuries were recorded:

1. Bruise on the face on the right side one and half inch below the right eye. Size 2' x 1' incised reddish blue in colour. Surface was abraded. 2. A bruise on the forehead just above the right eyebrow. ' x ' in size. 3. Lacerated wound on the left border of the tongue in the middle X in size. 4. Abrasion on the left hand back side below the thumb. 1' x ' in size. 5. Teeth bite on the back of left arm. 9' above the elbow joint. Skin deep, one and half inch in diameter. Circular in shape. 6. Teeth bite on the back below the left scapula - skin deep one and half inch in diameter. Circular in shape. Further it is noted that the patient complained of bleeding per nose, no visible injury.

IT was opined - injury Nos. 1,2,3 & 4- simple, caused by blunt object. Injury Nos. 5 and 6 - simple, caused by teeth bite. The Mlc is Ex. Public Witness 17/A. Dr. R.P. Arya had prepared this MLC. He appeared as PW-17.

(13) The prosecution examined several witnesses to prove its case. Since the number of witnesses is large, it will be appropriate to categorise the material witnesses and thereafter consider their evidence.

(1) Complainants/injured witnesses - PW-1 Naval and PW-3 Ashok both brothers of deceased Mukesh. (2) Independent eye witnesses - PW-2 Mahinder Singh and PW-5 Rakesh Kapoor. (3) Supporting witnesses - PW-4 Mukesh Sud about the evidence prior to the main incident. PW-21 Gobind Ram father of the complainants and the deceased who performed some role after the incident. Both these witnesses are not eye witnesses of the main incident. (4) Medical evidence - Regarding Mukesh and Ashok-PW-7 - Dr. S.D. Gupta/PW-20 - Dr. J.P. Gupta/PW-8 - Dr. Jayanti Chatterjee/PW-6 - Ram Niwas, Clerk/PW-13 - Dr. L.T. Ramani. Regarding Naval - PW-29 - Dr. J.K. Handa/PW-17 - Dr. R.P. Arya Regarding Ajay - PW-17 - Dr. R.P. Arya (5) Expert evidence - PW-18 - B.Moitra (6) Police witnesses - PW-35 Si Gurdeep Singh is the 1.O. PW-36 Inspector Kulpal Rai Mehta, second 1.O. PW-19 Si Mahender Ram. PW-24 Constable Mehtab Singh.

(14) PW-1 Naval Kumar is the main prosecution witness in this case. He is one of the three brothers who were allegedly involved in the incident. He is the maker of the FIR. His statement is of great significance. He is intimately connected with all the important events of the case. According to him shop No. 33 in Palika Bazar stood allotted in the name of his father Gobind Ram. His elder brother Ashok Kumar (Public Witness - 3) was a partner in the shop. Mukesh is their third brother. According to him he and Mukesh were helping their elder brother Ashok in his business at shop No. 33, Palika Bazar. The shop was in existence since 1968 in the name and style of 'Gem Palace'. They were running the business of precious stones and semi-precious stones and jewellery in the said shop. His father Gobind Ram also had a shop at Panchkuin Road, New Delhi which was being looked after by the father himself. Opposite shop No. 33 is shop No. 4. In shop No. 4 accused Sudhir was doing similar business as that of the complainants in partnership with one Manmohan under the name of 'Gem Treasure'. The business of Sudhir was the same as that of the complainant party. Sudhir had started that business about one and half years to two years prior to the date of incident. Before starting the business at shop No. 4 Sudhir was having a Counter

at shop No. 9, Palika 'Bazar, where accused Rajinder, Narinder and Mahinder were doing business. These three accused were real brothers. Their business was that of art printing. Naval stated that he knew accused Ajay Kumar Singh prior to the date of the incident. Accused Ajay Kumar Singh used to come to accused Sudhir when the latter was having a counter at shop No. 9. Ajay also used to come to Sudhir at shop No. 4. He went on to say that he had seen several times Ajay and Sudhir taking liquor together at shop No. 9 as well as at shop No. 4. According to Naval, Narinder generally used to sit at shop No. 4 run by accused Sudhir. Narinder used to take away the customers coming to the shop of complainant party to the shop of Sudhir. Naval stated that he had asked Narinder not to entice away customers from his shop but Narinder did not bother. According to Naval, Narinder did not pay any heed to what Naval had asked him and rather adopted a confrontationist attitude. With this background Naval refers to the incident of 1st October, 1982 which is the starting point of the events leading to the ultimate incident of shooting and death on 6th October 1982. 'On 1st October, 1982 at about 7.00 p.m. I was at my shop No. 33. At that time one customer was coming to my shop and that customer was taken away by accused Narinder Kumar to the shop of accused Sudhir Kumar. When I tried to advise Narinder not to do so he started quarrelling. At this time one Mukesh Sood who has his shop at M-12, Palika Bazar also came there and he and other 2-3 persons intervened. I did not go to police station. Accused Narinder Kumar moved an application against me in the police station. When I went to my house, I told regarding this incident to my father who advised me not to involve in any dispute.'

(15) Narinder Kumar complained about this incident to the police on 1st October, 1982 vide Ex. PW-9/A. This complaint was made at 9.00 p.m. As per the complaint Narinder was beaten by Naval etc. in the presence of his wife and children. He further complained that such type of incidents had taken place many a times between Naval's party on the one hand and Narinder's party on the other. This complaint appears to have been marked to Si Mahender Ram, PW-19. Naval went on to state that Si Mahender Ram had visited him at about 1.00 or 1.30 p.m. on 3rd October, 1982 at their Panchkuin Road shop in connection with the inquiry, 3rd October, 1982 was a Sunday and, therefore, Palika Bazar was closed. The following portion of Naval's statement has a significant bearing on the entire case

and, therefore, deserves to be reproduced as it is :

'ON6.10.82 I was sitting at my shop No. 33, Palika Bazar and then one Constable from P.S. Connaught Place had come who had told me that Sho Sahib was calling me. I went to Police Station, Connaught Place Along with my father Shri Govind Ram and reached there at about 3 - 4 p.m. When we reached there, we found that accused Sudhir Kumar, Rajinder, Narinder and Mohinder were already there. In the police station, Sho Sahib enquired from me regarding the complaint dated 1.10.82JofNarinder Kumar. At that time, accused Rajinder Kumar, Narinder Kumar and Mahinder Kumar became aggressive (Garma Karne Lage). S.H.O. Sahib told that in case the parties would be fighting, he would arrest both the parties. After this all the three brothers became peaceful 'Thande Ho Gaye'. They agreed for compromise. But they insisted that in the compromise, Ashok Kumar be also included. Sho Sahib tried to call Ashok Kumar by telephone but he was not available. Sho Sahib directed both the parties to come next morning at 9 a.m. He also directed me to bring Ashok Kumar. Before my coming out from the police station building, Sudhir Kumar, Narinder Kumar, Mahinder Kumar and Rajinder Kumar came out. When I was passing by them Along with my father, we heard accused Sudhir Kumar Jain and accused Narinder Kumar saying, 'In Police-Walo Ne Kuch Nahin Kama. Ab hame Khud He Nibatna Parega.' On hearing this, I and my father went back to see S.H.O. but before we reached to his room, he left in a jeep to some place. We came back to our shop at Palika Bazar. After staying for about 30 minutes at Palika Bazar shop, my father Govind Ram went to Panchkuin Road shop. On 6.10.82 at about 6.15 p.m., when I was at my shop No. 33, Palika Bazar, I saw accused all the five accused present in the Court standing outside the shop No. 4 and they were talking. During those days, the closing time of the shops at Palika Bazar was 7.30 p.m. Sudhir Kumar Jain accused closed his shop on that day at about 6.45 p.m. and went away. Sudhir Kumar Jain accused had scooter as a means of transport and perhaps he has also a car. When the five accused persons were talking outside the shop of Sudhir Kumar Jain, I had not paid much attention because Sho Sahib had called us on 7.10.82 at 9 a.m. At that time, my other two brothers Ashok Kumar and Mukesh were also present on our shop. On 6.10.82 at about 7.45 p.m., I was inside my shop and my brothers Ashok Kumar and Mukesh were standing in front of the gate of my shop. I was counting and

collecting cash of my shop and the jewellery of my shop and hence my two brothers were standing there. I saw accused Narinder and Mahinder armed with dandas. Accused Rajinder was armed with a belt. Accused Ajay Kumar was empty handed. These four accused persons came from the side of shop No. 9. Just after their arrival at our shop, I heard accused Narinder, Rajinder and Mahinder saying, 'Tumhare Thino Bhaiyon Ki Kya Takat Hai Ki Hamen Grahak Le Jane Se Rokte Ho. Aaj Hum Teeno Bhaiyon Ka Nibhara Kar Hi Denge.' Accused Narinder and Mahinder with dandas, accused Rajinder with belt and accused Ajay Kumar by fist and kicks, started beating my brothers Ashok Kumar and Mukesh. I also came out side the shop and they also attacked me. We were empty-handed. We could not do anything. These four accused continued beating us. I and my brothers received injuries. Accused Narinder and Mahinder exhorted Ajay Kumar by saying that, 'Aaj Goli Chala Kar In Teeno Bhaiyon Ko Khatam Kar Do Taki, Roj Roj Ka Jhagra Aaj He Khatam Ho Jai'.

Q. Whether these words were said by them jointly or simultaneously or one after the other Ans. First of all it was said by accused Narinder and simultaneously, it was said by accused Mahinder. After that, accused Rajinder said, 'Jaldi Goli Chala. Der Kyon Karta Hai.'

(16) After that, accused Ajay Kumar took out a revolver from the dub of his Pants and fired shots one after the other several times on me and my brothers. He fired 6 shots and emptied his revolver. My brother Mukesh received two bullet injuries - one on the stomach and the other on thigh. My brother Ashok received one bullet injury on his chest and another bullet injury on his finger. Two shots were fired at me but I escaped and one shot hit pillar of shop No. 34. On receiving bullet injuries, my brothers Mukesh and Ashok Kumar were injured. All the four accused persons, who were present there started running. In the beginning all the four had run together towards shop No. 9 and later on from the central hall, accused Ajay Kumar Singh ran towards Janpath Gate and the remaining three accused ran towards Regal Gate. I chased them. Afterwards, I came to know that my two brothers who were injured, had also followed me, for chasing. I apprehended accused Ajay Kumar Singh near the air-conditioning plant. Shops No. 161 and 162 were near the place where accused Ajay Kumar Singh was apprehended. I caught

hold Ajay Kumar Singh from behind. At that time, accused Ajay Kumar Singh was having revolver in his hand. When I had caught hold accused Ajay Kumar Singh, he had bitten my left hand to get himself released. I strengthened my hold and I had also bitten Ajay Kumar Singh on his back. When I and Ajay Kumar Singh were grappling, I fell him down and at that time, S.I. Gurdip Singh Along with his staff reached there. S.I. Gurdip Singh snatched the revolver from the hand of accused Ajay Kumar Singh. He entrusted accused Ajay Kumar Singh to the constables who were with him. Rakesh Kapoor and Mahinder Singh had also come there. Rakesh Kapoor had his shop at Palika Bazar.

(17) Before chasing Ajay Kumar Singh, I tried to help my brother Mukesh who had received the bullet injuries and at that time, his blood also came on my clothes. When I was coming back towards my shop, I was informed by Rakesh Kapoor and Mahinder Singh that my father had taken my brothers Ashok Kumar and Mukesh to hospital. After apprehending Ajay Kumar Singh near Air Conditioning Plant, he was brought under police custody, at the spot. On the spot, A.C.P., Sho, and other senior officers had come there. The name of A.C.P. was Shri Ascharaj Lal Chadha. A.C.P. S. Narinder Singh had; also come on the spot at that time. A.C.P. Sardar Narinder Singh had a talk with A.C.P. Ascharaj Lal Chadha. I had narrated the incident and all the facts in presence of the police officers. (Objected to by Mr. P.P. Grover, Adv.)

(18) A.C.P. Ascharaj Lal Chadha told me, 'Jo Ab Vakya Huwa Hai, Usi Ke Bare Me Batao. Baki Ki investigation S.H.O. Sahab Khud Kar Rahe Hain'. (Objected to by Mr. P.P.Grover, Adv.). After that, I gave my statement to Gurdip Singh S.I. regarding the incident of that very moment and that statement was recorded by S.I. Gurdip Singh.'

(19) After the above statement. Naval went on to refer to whatever Si Gurdeep Singh had done during the course of investigation. The items recovered during investigation were shown in the Court to Naval for purposes of identification and he correctly identified the same. He also gave detailed description of how he Along with his father and uncle met the Commissioner of Police and complained about the unsatisfactory and biased manner in which the investigation was conducted in

the case. They moved an application before the Commissioner. On their said application the investigation was transferred to the Crime Branch and was conducted by Inspector Kulpal Rai Mehta. Inspector Mehta took over the investigation of the case in the afternoon on 9th October, 1982 and started recording statements of witnesses afresh on 10th October, 1982. Naval was subjected to a very lengthy cross-examination conducted by four Counsel appearing for different accused persons. The cross-examination could not shake Naval nor any significant contradiction could be extracted. Naval firmly stood his ground so firm as the main events and incident of the case is concerned. Attempt was made to discredit him by showing his involvement in petty cases. The main attempt on the part of defense was to establish that Naval was not present at the time of the incident. This attempt started with the suggestion that Naval in fact worked at the Panchkuin Road shop belonging to his father and not at the Palika Bazar shop. This is belied by the suggestions made to Naval in his cross-examination as well as by Narender's own document, i.e., Ex. PW-9/A, his complaint to the police. Naval was injured in the incident and this fact would establish the presence of Naval on the scene of occurrence. To dislodge this the defense disputed the fact that Naval received injuries. An alternate theory was also advanced that injuries on Naval could be self-inflicted. Naval's injuries are established by his medicals at the police hospital. Naval was holding on to accused Ajay when the police arrived. Thereafter Naval was all Along with the police. It would have been impossible to self-inflict the injuries.

(20) Naval reiterated in his cross-examination that 10-12 times Narinder had taken away his customers to the shop of Sudhir. About the main incident he repeated that when the fight started Mukesh fell down and Ashok covered him by lying over him. Rajinder by belt, Narinder and Mahinder by dandas and Ajay by kicks and fists were assaulting them. Naval had also joined in the scuffle which was going on. The whole incident took about 4-5 minutes. Firing started within a minute or so. According to Naval after the firing there was no beating by dandas or belts or fists or kicks. All the three brothers belonging to the complainant party were empty handed. They did not inflict any injury on the accused persons.

(21) In order to establish a contradiction, the defense Counsel confronted him with his first statement recorded by Si Gurdeep Singh which is Ex. PW-I /A. When appearing as a witness Si Gurdeep Singh admitted having not mentioned the prior incident in the previous statement. From this the defense tried to show that the witness was making improvements in his statement in Court. This was explained by the witness by saying that in view of instructions of Acp Chadha, Si Gurdeep Singh was not recording any event prior to the main incident.

(22) He was cross-examined on the point that in his first statement to the 10, i.e., Ex. PW-I /A he had not given the exact number of shots allegedly fired by Ajay. His answer was that at that time he did not know how many bullets had hit Mukesh and how many had hit Ashok and where. These facts came to his knowledge later on in the night. He denied the suggestion that he did not have blood stains on his clothes. His T-shirt had been taken possession of. In cross-examination also he described how his father had removed his brothers Mukesh and Ashok to the hospital. He stated that he saw his father removing his brothers Ashok and Mukesh to the hospital when he returned after handing over Ajay to the police officers. He described the presence of PW-2 and PW-5 at the time of the incident. He also reiterated that firing started after exhortations from accused Narinder, Mahinder and Rajinder. According to him Ajay fired all the six bullets from one place but during the firing of the bullets he moved one or two paces forward or backwards.

(23) In cross-examination by Counsel for Sudhir he repeated that he had told Si Gurdeep Singh about having seen all the five accused talking outside shop No. 34 on 6th October, 1982 at 6.15 p.m. He added that this fact was not recorded by the 10 because of the instructions of Acp Chadha. In response to a question from Counsel for Ajay he gave details of injuries suffered by him as a result of the incident. He stated that none of Ajay's wounds was bleeding. He, however, admitted that he had seen the blood stains on the clothes of Ajay. According to him the blood on the clothes of Ajay could be that of Mukesh, Ashok or of his own. According to him Mukesh fell) down first in front of shop No. 33 after receiving the gun shots. Then he again fell down near the water cooler, i.e., near shops 161 and 162 when he was giving a chase to the accused. About the presence of A.C.P.

Narender Singh and A.C.P. A, Chadha, he stated that they came to the spot within 10-15 minutes of Si Gurdeep Singh reaching the spot. He added that A.C.P. Chadha stayed at the spot for about one and half to two hours while Acp Narender Singh stayed there for about 30-45 minutes.

(24) The next injured eye witness is Ashok Kumar PW-3, one of the three brothers belonging to the complainant party. The presence of this witness at the scene of occurrence is beyond dispute because the witness received two bullet injuries in the incident. He was lucky to have survived inspite of the fact that one of the bullets had hit him on the chest on the left side about 3' above the nipple. Thus this is a very important witness for the purposes of this case. Ashok Kumar stated that he was doing jewellery business in shop No. 33, Palika Bazar. He was partner in the said business along with his father Govind Ram, PW-21. Mukesh and Naval were his real brothers and they used to sit along with him at the said shop. He clarified that Panchkuin Road shop was in the name of his father and his father Govind Ram mostly carried on his business there. Sometimes Naval used to go to help his father at that shop. Ashok stated that he knew all the five accused in this case. Sudhir Jain was earlier having a counter at shop No. 9 where Narinder, Mahinder and Rajinder used to carry on business of art printing. Later Sudhir Jain started his business at shop No. 4, Palika Bazar in the name of 'Gem Treasure' about one and half to two years prior to the date of incident. In shop No. 4 Sudhir was a partner along with one Manmohan and his real brother. Duli Chand was the allottee of shop No. 9 but he was not working there. Duli Chand had given that shop to accused Narender, Mahender and Rajender. According to Ashok when Sudhir Jain was working at shop No. 9 he had informed Ashok about accused Ajay that he used to study with Sudhir in Dav College, Srinivas Puri, Delhi and was supplying jewellery to Sudhir. He added that he had seen all the five accused taking liquor together at shop No. 4, Palika Bazar and shop No. 9, Palika Bazar prior to the date of incident.

(25) On how the trouble started between the two groups Ashok had this to say: 'When S.K. Jain had started business in shop No. 4, Palika Bazar, accused Narender Kumar generally used to come to that shop and he generally used to intercept customers coming to my shop and he used to take the customers to the

shop of S.K. Jain. He also sometimes used to take the customers when they used to come out of my shop No. 33 and he used to take those customers to the shop of S.K. Jain accused. I several times advised accused Narender Kumar not to do so but he did not desist. On this, we had several times verbal altercation with him'. Whatever happened at the police station on 6th October, 1982 at about 4.00 p.m. was not within the personal knowledge of this witness. Of course in his statement he mentioned about what had transpired at the police station but according to him his knowledge about this was derived from Naval and Gobind Ram.

(26) Ashok has given a clear and detailed account of events which took place on 6th October, 1982 from 6.15 p.m. onwards in the Palika Bazar near shop No. 33. He stated that at 6.15 p.m. on 6th October, 1982 he Along with Naval and Mukesh were present at shop No. 33. He had seen in front of shop No. 4 accused Narender, Mahender, Rajender, Sudhir Jain and Ajay. These five persons were talking to each other at that time. He says that in fact they were whispering. Ashok added that he had a doubt on this but he did not pay much attention because the Sho had called all of them in police station on 7th October, 1982.

(27) Ashok went on to say that the closing time at Palika Bazar during those days was 7.30 p.m. Sudhir Jain always used to close his shop at 7.30 p.m. However, on 6th October, 1982 Sudhir Jain closed his shop at 6.45 p.m. and had gone away. Thereafter accused Narender, Rajender, Mahender and Ajay went back to shop No. 9, Palika Bazar. At 7.45 p.m. this witness Ashok and his brother Mukesh were standing outside their shop No. 33 and Naval (Public Witness -I) was packing up and was counting the cash for closing the shop. Then he proceeded to give a detailed account of the main incident in the following words :

'AT that time accused Narinder Kumar armed with one danda, accused Mahinder Kumar armed with one danda and accused Rajinder Kumar, armed with one belt and Ajay Kumar Singh came to my shop where we were standing. On coming there, immediately Narinder Kumar, Mahinder Kumar and Rajinder Kumar said, 'Turn Teeno Bhaiyon Mein Kya Takat Hai Jo Hamen Grahak Le Jane Se Rokte Ho. Turn Teeno Ka Nibtara Aaj Kar Denge.'

AFTER this, Narinder Kumar and Mahinder Kumar, by dandas and Rajinder Kumar by belt and accused Ajay Kumar Singh by fists and kicks, started beating me and Mukesh Kumar. Seeing this 'Maar-Peet', Nawal Kumar came out of the shop. They also started beating to Nawal Kumar. There started grappling on the one side we three brothers and on the other side those four persons. During this, accused Narinder Kumar and Mahinder Kumar loudly said, 'Goli Chala Kar In Teeno Bhaiyon Ko Aaj Khatam Kar Do Roz Roz Ka Jhagra Hi Aaj Nibat Jaye.' Accused Rajinder Kumar also said to Ajay Kumar Singh accused, 'Jaldi Goli Chala, Der Kyon Kar Raha Hai.' On this, accused Ajay Kumar Singh who is present in the Court had taken out the revolver from his right dub of the Pant and fired successive shots at me and my brothers. One of the bullet fired by Ajay Kumar Singh, hit on my left chest near the nipple. One bullet of Ajay Kumar Singh hit me at my first finger which is near the

(28) The witness identified the revolver Ex. P-II as the one having been used by Ajay at the time of the incident. He also identified the piece of broken danda Ex. P-1 as having been used for beating them.

(29) The statement of this witness was recorded by Si Gurdeep Singh on 7th October, 1982 in the Willingdon Hospital in the morning at 7.00 a.m. About the statement recorded by Gurdeep Singh the witness stated that he was asked only two questions by the Sub-Inspector, namely, on what account there was enmity between the parties and details of the 'marpeet, firing and the incident. His further statement was recorded by Inspector Kulpal Rai Mehta, PW-36 on 11th October, 1982.

(30) On 11th October, 1982 he gave his Pant and underwear which were blood stained to Inspector Mehta. The revolver Ex. P-II which as per the prosecution story was snatched from the hands of Ajay was shown to the witness and he identified the same. He also identified the piece of broken danda. Ex. P-I which was used for beating the complainants.

(31) In cross-examination this witness stated that he was not unconscious when he reached the hospital. This is supported, by the Mlc of this witness where it was stated that he was conscious.

(32) Ashok admitted in cross-examination that the detailed facts given by him to Inspector Mehta and also in his examination-in-chief in Court were not stated before Si Gurdeep Singh in the first statement. He explained that this was because Si Gurdeep Singh had put only two questions referred to above and those were answered. He further admitted that prior to the incident there had been quarrels between the parties on several occasions. He was questioned about his having mentioned only four shots fired during the incident in his statement dated 7th October, 1982 (Ex. PW-3 / DA). His reply was that he had stated that bullets had been fired one after the other at all the three brothers. He was operated in the night between the 6th and 7th October, 1982 and the bullet which was lodged in his chest was taken out. According to him blood was oozing out from his both bullet injuries. The other injuries received by him were not bleeding. He stated that he chased the accused for about 90 to 100 steps after he had received the bullet injuries. He denied the suggestion that his injuries other than the bullet injuries were caused by running and falling. The information about apprehension of Ajay was received by this witness in the hospital. He stated that he could identify Mahender Singh PW-2 but at the time of the incident he did not remember his name. The name of PW-2 was disclosed to Ashok by his brother Naval. He identified both the other eye witnesses, i.e., PW-2 and PW-5 through their photographs. He described how and in what manner his father Gobind Ram had removed his brother Mukesh and him to his car for taking them to the hospital. Mahender and Rakesh Kapoor, PW-2 and PW-5 remained standing near the water cooler when these injured persons were removed to the car for being taken to the hospital. Mukesh was lifted by his father Gobind Ram and he had supported Mukesh by putting his hand below the back of Mukesh. Mukesh was bleeding profusely. This witness and Mukesh were on the back seat of the car. Mukesh was lying with his head in the lap of this witness Ashok. In an answer to the question as to whether he continued to wear blood stained pant and underwear till the time when he had handed over them to Inspector Mehta, his reply was that he had changed his clothes in the meanwhile but kept the blood stained Pant and underwear in the Almirah after wrapping them in the newspaper. However, at the time of recording of his statement by Si Gurdeep Singh on 7th October, 1982 he was wearing the same Pant and underwear. The Inspector had not asked him to

remove and hand over the same to the police at that time. Si Mahender Ram, PW-19 had accompanied them to the hospital in the car. He admitted that blood was oozing from his injuries as well as injuries of Mukesh while they were being taken to the car. The witness admitted that he had not told Si Gurdeep Singh in his statement dated 7th October, 1982 that the five accused were standing in front of shops No. 3 and 4 on 6th October, 1982 at 6.15 p.m. and whispering.

(33) The witness reiterated that Sudhir Jain used to close his shop at 7.30 p.m. but on the fateful day he closed his shop at 6.45 p.m. and after he had gone away. He also reiterated that Sudhir Jain had told him about doing business with Ajay who was studying with him in the Dav College, Delhi and that Ajay used to supply jewellery to him. He maintained his stand taken in the examination-in-chief about having seen all the five accused taking liquor together at shop No. 4 and earlier at shop No. 9, Palika Bazar prior to the date of incident. He also maintained his stand about the exhortation imputed to accused Rajender, Narender and Mahender during the course of the main incident. He did not remember whether the blood which was oozing out from his injuries and the injuries of Mukesh had fallen in the car in which they were going to the hospital. He stated that accused Ajay was a Judo champion. This was as per information given by accused Sudhir to this witness. He was asked as to why he did not raise any hue and cry at the time of the incident. He replied that there was no time to do this. Everything happened so fast. This witness along with his other two brothers resisted the attack mounted upon them by the four accused who had come to their shop on the fateful day. In the process 'Hathapai' had taken place and there was grappling. According to this witness grappling took place for about one and half to two minutes. He stated that the three brothers of the complainant party were without any arms while accused Narender and Mahender had a danda and accused Rajender had a belt in their hands. There were no injuries on the person of the accused persons. He could not say if Mukesh received any injuries by dandas or belt during the scuffle. He volunteered that Mukesh was lying on the ground and he lay upon him. therefore, this witness received the danda and belt blows. Regarding the stage from firing onwards this witness had to say this :

'WHEN Mukesh Kumar received the bullet injuries he was standing at a distance of about one or two feet from the place where he was earlier lying. He had received the bullet injuries at a distance of about 5 - 6 feet from the gate of Shop No. 33. Mukesh Kumar had fallen down at the place where he had received injuries by bullet when he was in standing position. When Mukesh Kumar had fallen down on the ground, Nawal Kumar had lifted him and made him stand. When Mukesh Kumar was made to stand, he remained in the standing position for about half a minute and then he followed the accused persons. When Mukesh Kumar was made to stand, after that accused persons started running from there. I cannot say if there was lot of blood at the places where Mukesh Kumar had fallen down or received injuries.'

'AFTER receiving the injuries, I had not fallen on the ground. Nawal Kumar had not given support to me anywhere. When I received bullet injuries, I was about 5-7 feet from the gate of Shop No. 33. Before the firing started, in addition to Rakesh Kapoor and Mahinder Singh, some other persons were also present at the spot but on starting of the firing, there was Bhagdar.' 34. The witness admitted that his father had got a license for a revolver and he owned a revolver. He denied the suggestion that Gobind Ram used to keep revolver with him whenever he went out of his house. The witness stated that whenever Gobind Ram went out of Delhi he used to take the revolver Along with him. He denied the suggestion that the complainant party was having a grudge against Ajay because Ajay used to supply jewellery to Sudhir. He also denied the suggestion that Naval PW-I generally used to sit at the Panchkuin Road shop. He denied the defense theory propounded on behalf of accused Ajay to the effect that the shots which resulted in death of Mukesh were fired by Govind Ram from his revolver. He also denied the allegation that immediately after the incident Gobind Ram the father of the complainants went away to conceal his own revolver and after having concealed the same reached the hospital direct.

(35) The witness maintained that he knew PW-5 Rakesh Kapoor from before the incident. He was cross- examined about his uncles, i.e., his father's brothers. He stated that his father had five brothers but he is not on visiting and speaking terms with three of them which included Jagdish Rai, the alleged allottee of shop No. M-

13, Palika Bazar where PW-5 Rakesh Kapoor was said to be working. The defense tried to suggest links of this witness with the police.

(36) The witness explained how one shoe of Mukesh, his deceased brother, was found near shops No. 3 and 4. At the time of the incident one shoe of Mukesh came out and had fallen on the ground in front of shop No. 33. However, when accused persons were running away that shoe of Mukesh got pushed due to a kick from one of the fleeing accused and that is how it went towards the common wall of shops No. 3 and 4. This shoe had come out from the foot of Mukesh during the scuffle.

(37) We have recounted the salient features of the evidence of these two most important witnesses of this case. These witnesses were subjected to lengthy cross-examination and, therefore, the aforesaid narration has been slightly long. Hereinafter we intend to briefly refer to the remaining important witnesses of this case.

(38) PW-2 Mahender Singh has been cited as an independent eye witness of the incident. He knew all the three brothers belonging to the complainant party and their father Gobind Ram. He also appeared to be knowing accused Narender, Mahender and Narinder and stated that they were real brothers and were doing business at shop No. 9 in Palika Bazar in October, 1982. He came to know accused Ajay after his apprehension on the date of the incident. He stated that he was present at Palika Bazar on 6th October, 1982 at 7.45 p.m. He was proceeding towards the main gate when he saw grappling going on between accused Rajender, Mahender, Narender and Ajay with Ashok, Naval and Mukesh in front of shop No. 33. He stated that he saw danda as in the hands of accused Narender and Mahender and belt in the hand of accused Rajender. According to this witness these three were beating Ashok and Mukesh and Naval with dandas and .belt. When this beating was going on Narender and Mahender accused gave an exhortation for killing all the three brothers by firing bullets so that the daily quarrels would be over. This was followed by exhortation by accused Rajender to fire quickly and not to delay. These exhortations were being given to Ajay and Ajay accordingly took out from the right dub of trousers a revolver and started firing

towards all the three brothers. Mukesh and Ashok were injured in the firing. After the firing all the accused had run away towards shop No. 9. Naval, Ashok and Mukesh chased them. Mukesh and Ashok chased up to the water cooler plant where Mukesh fell down. Ashok who was following Mukesh stopped to help Mukesh by supporting him to get him up. Ajay was apprehending near the air-conditioning plant, i.e., near shops No. 161 and 162 by Naval. There was grappling between Ajay and Naval. In this grappling Ajay had received injuries. When grappling was going on between them Si Gurdeep Singh and Si Mahender Ram and two constables reached there. Si Gurdeep Singh snatched the revolver from the right hand of accused Ajay. Govind Ram father old Ashok and Mukesh removed them to the hospital. Si Gurdeep Singh brought Ajay near and in front of shop No. 33. He opened the revolver in front of shop No. 33 and found that there were six empty cartridges in the revolver. Naval was also there. Si Gurdeep Singh recorded the statement of Naval Kumar in his own hand. After recording the statement of Naval Kumar Si Gurdeep Singh had prepared a sketch of that revolver. The witness identified his signatures and the signatures of witness Rakesh Kapoor on the sketch Ex. PW-I/B. Thereafter the revolver was put in a packet of cloth and was sealed with a seal of Gurdeep Singh. The seal after this was handed over to Naval. The six empty cartridges remained inside the revolver, put in the seal by Si Gurdeep Singh. A memo was prepared about taking the revolver into possession Ex. P-I /C. It is signed by the witness. The witness identified the revolver and the empty cartridges. He testified about the remaining police investigation conducted at the site because he was present throughout and signed various memos as a witness. He stated that the size of the danda carried by accused Mahinder and Narinder could be around two and half feet. He stated that he had seen the injuries on the person of Naval and Ajay. This witness has also identified the dead body of Mukesh. He stated that accused Mahinder and Narinder were arrested in his presence on 8th October, 1982. This witness was subjected to a lengthy crossexamination, The effort was to show that he had old links with the complainant party and, therefore, was trying to help them by becoming a witness in this case. He had tried to conceal his links with the complainants and had also tried to conceal his address etc. This witness was a student of the same school in which the complainants had also studied and,

therefore, the attempt was to show their past ties. Further the attempt of the learned Counsel appearing for the accused persons was to establish that this witness was not present at the time of the occurrence and had become a witness in this case only to help the complainant party with which he had an old association.

(39) Testimony of Rakesh Kapoor PW-5 is on similar lines. He was having a counter at shop No. M-13, Palika Bazar, New Delhi where he used to sell audio tapes. On 6th October, 1982 he closed his shop at about 7.45 p.m. He was coming down the stairs to the ground floor when he saw a quarrel was going on at shop No. 33, Palika Bazar. He stated that at that time Mahinder Singh PW-2 was also on the stairs. He knew the complainants as also accused Sudhir Jain, Rajinder, Narinder and Mahinder. He stated that Sudhir was working at shop No. 4 and Rajinder, Mahinder and Narinder were working at shop No. 9, Palika Bazar. He saw accused Ajay for the first time on 6th October, 1982 during the incident. About the incident he gave a similar version as the one given by PW-2 Mahinder Singh. In similar manner he stated about how the accused persons ran away and were given chase by the complainants. He stated about the grappling between Naval and Ajay at the time when Naval apprehended Ajay. Naval had caught hold of Ajay in his grip from the back side of Ajay. He assisted Ashok in lifting Mukesh for taking him to the car. Gobind Ram, father of Mukesh was also there. Gobind Ram took Ashok and Mukesh to the hospital. This witness remained in Palika Bazar. Rest of the things which took place after apprehension of the accused have been spoken about by this witness in the same manner as the other witnesses have done.

(40) This witness had tried to conceal his address on the ground that he was afraid of the accused persons. He denied the suggestion that he was related to the complainants. He said that he did not know if Jagdish Rai, the allottee of shop No. M-13 where he was working, was a real uncle of the complainants. The witness admitted that he was not given any receipt for the rent which he was paying to the allottee with respect to the shop where he was working. He added that nobody gives receipt in Palika Bazar. He said that he was paying Rs. 2,000.00 per month to Jagdish Rai, allottee of the shop. The rent was paid in cash. The statement of

this witness was recorded after the incident of 6th October, 1982 at about 11.30 p.m. by Si Gurdeep Singh. He denied the suggestion that his statement was recorded at the police station. The attempt to dislodge the witness in cross-examination about the main incident totally failed. The witness stuck to his guns. He reiterated whatever he stated in the examination-in-chief about the main incident. Rest of the attempt was to discredit the witness on account of concealment of his residential address. Secondly by establishing link of this witness with the complainants through the uncle of the complainants being allottee of shop No. M-13 where this witness was working. Thirdly the effort was to show improvements and contradictions in his statements recorded on the day of the incident by the police and what he stated in Court. The defense proved certain electricity bills relating to shop No. M-13 to show that the shop remained closed throughout the relevant period. This was intended to show that this witness was telling a lie when he stated that he was working at shop No. M-13. Non-consumption of electricity would indicate that the shop remained closed. The electricity bills purportedly showed that there was no consumption of electricity at the shop.

(41) The cross-examination of this witness showed that he knew about the various other shops in Palika Bazar which would in turn show that the witness was familiar with the surroundings. He stated about the injuries of Ajay. He added that none of the injuries of Ajay was bleeding. He correctly described each part of the body of Mukesh and Ashok where the bullet injuries were caused. He gave a precise description of how Mukesh had fallen on the ground after receiving bullet injury. His back side was touching the ground and the face was towards the sky. He described the trail of blood which was going from shop No. 33 up to the water cooler near shops No. 161 and 162. He denied the suggestion that he was an old friend of the complainant party and as such was an interested witness. He denied the suggestion that shop No. M-13 was closed since 1981 and he never worked there.

(42) PW-4 Mukesh Sood is a witness from the same market. He had been doing business in Palika Bazar since long. At the relevant time he was doing electronic business as well as running a Restaurant at shop No. M-13, Palika Bazar. He

stated that he knew all the five accused persons. In the year 1979 when accused Sudhir Jain was doing the business of jewellery on a counter at shop No. 9, for two months this witness worked as a salesman for Sudhir Jain at his said counter. At that time Rajinder, Narinder, Mahinder were also doing their business at shop No. 9. So at least since then this witness knew all these four persons. During that time this witness further came to know the fifth accused, i.e., Ajay who according to this witness used to visit at counter of shop No. 9 and he used to supply jewellery to Sudhir. This witness further stated that in 1982 Sudhir Jain was doing jewellery business at shop No. 4, Palika Bazar. He also stated that Sudhir Jain had informed him that accused Ajay was studying with Sudhir in the Dav College. Sudhir Jain and Ajay were friends. This witness had seen the altercation which took place between Naval and Narinder on 1st October, 1982 at about 7.00 p.m. in Palika Bazar. He stated that at that time he was going back to his house. The altercation was going on in front of shop No. 33. The witness and some other shopkeepers intervened and the altercation was brought to an end. The reason for the altercation was that accused Narinder had taken away a customer who was going to shop No. 33 to shop No. 4.

(43) The other important fact about which this witness testified is about having seen all the accused persons standing in front of shop No. 4 talking to each other on 6th October, 1982 at about 6.15 p.m. Shops No. 33 and 4 fall in the main gangway leading to the main gate of the Palika Bazar. He stated that when he was going to his house he saw the accused, i.e., Sudhir, Narinder, Ajay and Mahinder in front of shop No. 4 - the remaining name he could not recall. He could not hear anything as to what they were talking about. His statement was recorded by Inspector Mehta on 11th October, 1982. He stated that Inspector Mehta was making enquiries in the Palika Bazar and surveying the place of occurrence and in course of that he came to this witness and thereafter his statement was recorded by him. In cross-examination he admitted that he knew all the three brothers belonging to the complainant party since 1979. He reaffirmed that before 11th October, 1982 he had not talked to anybody about the incident of 1st October, 1982 and 6th October, 1982 referred to above. He clarified that Ashok, Naval or Gobind Ram had not approached him prior to 11th October, 1982 for purposes of giving statement regarding the incident dated

1st October, 1982. About the incident of 1st October, 1982 he stated that no 'Maar peet' (beating) had taken place in his presence.

(44) The witness testified to having lodged a report in Police Station Shakarpur under Section 506, Indian Penal Code on 23rd June, 1984 regarding the threats held out to him by accused Rajender. He admitted that he had been a witness in some cases relating to seizure of smuggled goods in the Palika Bazar since 1981. This shows that as per , the defense's own suggestion this witness had been working in Palika Bazar since long.

(45) While appearing in Court about the incident of 6th October, 1982, i.e., the witness seeing the accused persons standing in front of shop No. 4 it was stated by this witness that they were talking to each other and on seeing him they became silent. He was confronted with a statement to the police Ex. PW-4/DA where this part, i.e., 'they became silent' was not contained. An objection was raised by the learned Counsel appearing for the accused persons that this was an improvement by the witness. In view of this objection the learned Special Public Prosecutor conceded that this part of his statement, i.e., 'they became silent' may be ignored. The learned Counsel who cross-examined this witness on behalf of accused Rajender pointedly put to the witness that Rajender was not present in Palika Bazar on 6th October, 1982. The witness replied that this was not correct and that he had seen Rajender there. He denied the suggestions that he had not seen whatever he stated in relation to the incident of 6th October, 1982. Further about 6th October, 1982 he stated that when he was going to his house he had seen shops No. 39 and 33 open but he does not remember whether shop No. 4 was also open. About 1st October, 1982 he stated that besides accused Narinder he had seen one lady and one child standing near him in Palika Bazar. He could not say whether the lady and the child were the wife and son of accused Narinder. He denied the suggestion that he had seen accused Ajay on 6th October, 1982 for the first time. He reiterated that he had seen Ajay for the first time in August or September, 1979. He was confronted with his statement Ex. PW-4/DA where it was recorded that he had good relations with Naval, Ashok and Mukesh. He denied the suggestion that he had never worked at the counter of Sudhir Jain. From the above it will be seen that this witness is not an eye witness of the main

incident of 6th October, 1982. He is a witness of certain supporting facts pleaded by the prosecution.

(46) The next supporting witness is PW-21 Gobind Ram. He is the father of Ashok, Mukesh and Naval. This witness is also not an eye witness of the main incident involving the scuffle and the shooting. He came on the scene soon after the incident and his role as per his statement consists of removing his both injured sons to the hospital in his car. He stated that he was the owner of shop No. 33, Palika Bazar in which he and his son Ashok were partners. He stated that his son Naval and Mukesh used to help in the said business at Palika Bazar. The name of the shop was given as 'Gem Palace'. They dealt in precious and semi-precious stones. Shop No. 4 was opposite shop No. 33. Sudhir Jain and Manmohan Singh were working in shop No. 4. They had similar business as that of the complainants. Shop No. 9, Palika Bazar was of accused Narinder, Mahinder and Rajender. Earlier accused Sudhir Jain was also working at shop No. 9 on a counter. He stated that he knew accused much prior to 6th October, 1982 by face. He came to know his name only after the incident. Ajay used to supply precious and semi-precious stones etc. to Sudhir Jain. He had also seen Ajay drinking liquor in shop No. 4 and earlier in shop No. 9 along with other accused persons. He admitted that he had a shop at Panchkuin Road also which he himself looked after. As per practice he stated that he used to come to Palika Bazar in his car after closing his shop at Panchkuin Road to pick up his sons for going home in his car. He said that his son Ashok had informed him about the incident dated 1st October, 1982 involving accused Narinder. According to him Narinder used to remain sitting at shop No. 4 of Sudhir Jain. Whichever customer used to come to shop No. 33 was called from outside by Narinder and taken to shop No. 4. This was the root cause of the quarrels between the two groups. He had advised his sons not to quarrel on this issue. He had been informed by his son Naval on 3rd October, 1982 that police had come to the Panchkuin Road shop in connection with inquiry about the incident dated 1st October, 1982 which took place in the Palika Bazar.

(47) In connection with incident dated 1st October, 1982 this witness stated that he had gone along with his son Naval to the SHO, Police Station, Connaught Place

because he had been called there by the SHO. When he Along with son Naval reached there they found that accused Narinder, Mahinder and Rajender and Sudhir Jain were already sitting with the SHO. These four persons lost their temper. The Sho scolded them and said if they would lose temper he would arrest all of them. In view of this they calmed down and agreed for a compromise. The compromise could not be finalised because these persons insisted that Ashok should also be a party to the compromise and Ashok was not available. Sho called them Along with Ashok to the police station next morning at 9.00 a.m. When this witness Along with his son Naval reached near the gate of the police station, Narinder and Sudhir Jain were ahead of them. They were heard saying 'POLICE Ko Kuchh Nahin Karna, Hamne Khud Hi Inse Nib tana PADEGA'. On hearing this, this witness Along with his son Naval went back to the room of the Sho but the Sho had gone somewhere else in his jeep in die meanwhile. They returned to the Palika Bazar shop. Thereafter this witness left for his shop at Panchkuin Road.

(48) On 6th October, 1982 at 7.45 p.m., this witness came from Panchkuin Road to Palika Bazar as usual at about 7.45 p.m. to take his sons Along with him to their residence. When he reached Palika Bazar he found persons coming out running from inside the Palika Bazar. On inquiry he was told that firing had taken place inside. He immediately rushed inside the Palika Bazar where he came to know that hij sons had been shotat. He found Ashok and Mukesh in injured condition. He saw Mukesh lying in injured condition near the water cooler, Ashok was near him and was helping Mukesh to get up. Rakesh Kapoor (Public Witness -5) and one person having a ' beard were also there and afterwards he came to know that the other person with beard was Mahender Singh, PW-2. Rakesh Kapoor and Mahender Singh supported Mukesh to get up. This witness testified that he lifted Mukesh in his arms with the help of some oilier persons. He had taken Ashok and Mukesh to his car parked outside Palika Bazar. From there they were taken to the Willingdon Hospital. PW- 19 Si Mahender Ram had also gone in that car Along with them. Ashok on the way to the hospital informed this witness that the person who had fired gun shots had been arrested. Mukesh was wearing a wrist watch when he was put on the stretcher. That watch got untied and this witness removed the same and put it in the pocket of Mukesh's Pant. The witness also testified to the fact that he had met the Commissioner of Police on 8th October, 1982 for

transfer of the case. He had also moved an application for this purpose. His younger brother Charanjeet Lal had , accompanied him at that time. Charanjeet Lal had written the application Ex. PW- I/B and this witness Gobind Ram appended his signatures thereon. He admitted that he had given a statement to Si Gurdeep Singh on 7th October, 1982 which was . Ex. 21/DA. His detailed statement was recorded by Inspector Mehta subsequently.

(49) In cross-examination this witness admitted that Si Mahender Ram who had accompanied him to the hospital had told him on the way that the accused had been arrested Along with the revolver. He also reiterated that he had taken Mukesh from the place from where he had fallen to the car in his arms while Ashok had gone on his feet with support of this witness's shoulder. Once they reached the hospital, the injured persons were removed from the car by the staff of the hospital .Head mitted that his shirt and Pant got blood stained with the blood of Mukesh. He stayed in the hospital till 4.00/5.00 a.m. and then went to his house. He had not given his blood stained clothes to the police. He changed his clothes a this residence. His Explanationn for not giving his blood stained clothes to the police was that the police never asked for the same. His first statement was recorded by the police on 7th October, 1982 at about 9.00/10.00 a.m. in the Mortuary. At that time he was not wearing the blood stained clothes because he had changed his clothes in the meanwhile when he had gone to his residence. An attempt was made to show the proximity of the complainant party to the police by suggesting to this witness that he knew Acp Tek Chand Chopra of the Crime Branch. The witness denied having known the said person. He also denied the suggestion that Acp Chopra had helped in getting the investigation of the case transferred to the Crime Branch. On the contrary this witness alleged collusion between accused persons and the local police of Police Station Connaught Place, New Delhi.

(50) The witness admitted that he had a licensed Webley Scotrevolver of .32 bore since 1974. He denied the suggestion that he used to carry the revolver with him whenever moving around Delhi city. He volunteered that he used to keep the revolver at his residence under lock and whenever he went outside Delhi he used to carry the revolver with him. He denied the suggestion that Naval Kumar used to

sit at tile Panchkuin Road shop. He also denied the suggestion that Naval was not present at Palika Bazar at the time of the incident. The learned Counsel who cross examined this witness on behalf of accused Ajay had put the case setup by accused Ajay to this witness, particularly the fact that this witness had fired twice at Ajay from his revolver and the shots had instead hit Mukesh. He also denied that immediately after shooting he had run away from the spot in order to conceal his revolver. His grievance against the local police was spelled out from his following statement:

'IN my statement which I had given before Si Gurdeep Singh I had given the name of Sudhir Kumar Jain, and whatever I have stated in my examination- in-chief regarding Sudhir Kumar Jain I had told the same to him (volunteered) the name of Sudhir Kumar Jain and whatever I had stated about Sudhir Kumar Jain was not recorded by the Si Gurdeep Singh. Whatever was written in my statement by Si Gurdeep Singh was not read over to me'.

This witness admitted that he had been asking Si Gurdeep Singh to arrest Sudhir Kumar Jain in this case. Till 8th October, 1982 neither Sudhir Jain nor Narinder, Mahinder and Rajinder had been arrested. This was also the grievance of the complainant party which led them to approach the Commissioner of Police for transfer of the investigation of the case from local police to the Crime Branch.

Medical Evidence

(51) PW-29, Dr. J.K. Handa was the Medical Officer in the police hospital (in 6th October, 1982. He examined Naval, PW-I who had been referred to the police hospital by Si Gurdeep Singh regarding the injuries suffered by him. Si Gurdeep Singh had sent an application Ex. PW-I /R in which he had noted the injuries suffered by Naval. The report of Dr. Handa regarding the injuries of Naval is Ex. Public Witness I/S. Dr. Handa found the following injuries on the person of Naval :

1.Contusion on the left chest back of the size of 2' x ' .

2.Abrasion on left arm, posterior side, on the lower 1 /3 area of the size 1x1/10'.

3. Contusion on the left hand dorsum of the size ' x l /3', which was alleged to be due to teeth bite.

On 12th November, 1982 at about 10.00 a.m. Dr. Handa had again examined Naval. Medical opinion about injuries No. 1 and 2 was that they were simple in nature having been caused by some blunt object. Regarding injury No. 3 Dr. Handa had sought dental surgeon's report. Ex. PW-29/A is the report of Dr. Handa after the second medical examination. In cross-examination the doctor opined that injury No. 1 mentioned in his report could be caused by any danda or hard substance. He was shown the piece of danda Ex. P-I and he said that the said injury could be possible through Ex. P-I. About injury No. 2 he said that it could be possible from the buckle of the belt Ex. P-14. Injury No. 3 was possible from teeth bite. Dr. Handa was questioned as to whether he had noticed any other injury on the person of Naval on 12th November, 1982. He replied that he had seen only those three injuries which were mentioned in Ex. PW-29/A. He added that he had not paid any attention to any other injury. He also stated that nobody complained to him that lie had not shown all the injuries on Naval in his report. About the injury No. 2 he stated the same could be caused by a danda blow depending upon the force used. He could not deny the suggestion that injuries No. 1 and 2 could be caused by fall on a hard and rough substance.

(52) PW-17 is Dr. R.P. Arya who was then working as Medical Officer in the Police Hospital, Delhi. He had occasion to examine accused Ajay as well as Naval, PW-I. He examined Ajay on the morning of 7th October, 1982 at about 10.00 a.m. and had prepared a medical report which is Ex. PW-17/A. The report is in the hand of Dr. Arya. Dr. Arya noted the following injuries on the person of Ajay :

'1. Bruise on the face on the right side. 1 ' ' below the right eye. Size 2' x 1'. Reddish blue in colour. Surface was abraded. 2. Abrasion on the forehead just about the right eyebrow .''' x '' in size. 3. Lacerated wound on the left border of the tongue in the middle .' x ' in size. 4. Abrasion on the left hand, vex side below the thumb 1' x '' in size. 5. Teeth bite on the back of left arm. 9' above the elbow joint. Skin deep. 1''' in diameter. Circular in shape. 6. Teeth bite on the back below the left scapula skin deep 1 '4' in diameter circular in shape. Patient complained of

bleeding per nose but no injury on the nose was visible.'

Injuries 1,2,3 and 4 were simple in nature caused by blunt object while injuries 5 and 6 were simple in nature caused by teeth bite. The doctor opined that injuries 1 to 4 could have been caused during scuffle by fist blows. Injury No. 5 could have been caused by the tongue coming between the teeth.

(53) It will be recalled that in view of his complaints and dissatisfaction about his medical examination by Dr. Handa, Naval had been sent for medical examination again on 10th October, 1982. A second medical examination was conducted by one Dr. G. Sudershan who had by the stage of recording of evidence left the hospital and his whereabouts were not known. The Mlc Ex. PW-17/B was proved by Dr. Arya who said that he was familiar with the handwriting of Dr. Sudershan the then Medical Officer, Police Hospital, Delhi as he had worked with Dr. Arya. He also identified the signatures of Dr. Sudershan.

(54) This brings us to the doctors in the Rml Hospital (previously known as the Willingdon Hospital) who had attended on Ashok and Mukesh, the two unfortunate victims of the crime in this case. First is Dr. J.P. Gupta PW-20. He stated that on 6th October, 1982 he was working as Sr. Medical Officer in the R.M.L. Hospital under professor Dr. S.D. Gupta (Public Witness -7). Ashok, son of Gobind Ram was brought to the hospital by his father at 8.15 p.m. with the alleged history of having sustained injury by gun shot. He was conscious at that time. His pupils were reacting to light and were normal. Pulse was 150 per minute. Respiration was 20 per minute. Blood pressure was not recordable. He had the following injuries :

1. Bruise on the right arm.
2. A long bruise extending from back to the arm right side,
3. Punctured wound on the chest on the left side about 3' above the nipple and about ' cm in diameter. There was surgical emphysema.
4. There was punctured wound on the index finger of the left hand.

5. Swelling over proximal phalanx index finger.

6. Swelling over the nose bridge. Dr. Gupta stated that these findings were recorded by the Casualty Medical Officer Dr. Vivek Misra on that day. However, Dr. Gupta had also observed the injuries. On the same day Dr. Gupta had opined at 8.40 p.m. that the patient was unfit to give statement. This endorsement was made on the Mlc Ex. PW-6/A under signatures of Dr. Gupta. Next day at 7.00 a.m. Dr. Gupta had declared Ashok fit for statement. In response to a question Dr. Gupta stated that there was surgical emphysema on the left side with bleeding from the entry wound. This entry wound was .5 cm in diameter with blackening and tattooing of the surrounding skin. About left index finger of Ashok, the doctor opined that there was a fracture and X-ray of chest as well as left hand was advised - This doctor stated that he was present during the operation performed at 11.30 p.m. on 6th October, 1982 on Ashok. The operation was performed by Dr. S.D. Gupta (Public Witness -7) who was the senior surgeon on duty on that date. Dr. J.P. Gupta had assisted the senior surgeon in performing the operation on Ashok. For operation the steps taken as stated by Dr. Gupta were : 'AN incision about one and half inch long was made over the inter-coastal space. The incision was deepened up to the inter-coastal muscles. A bullet was felt in the inter-coastal muscles and was removed. The wound was stitched in layers. The bullet coincided with the bullet seen in the X-ray. The repeat X-ray was advised by the doctor performing the operation'. The operation notes by Dr. S.D. Gupta in her own handwriting are Ex. P-7/A. So far as the index finger of Ashok is concerned, the Orthopedic surgeon was advised to immobilise the same. There was no exit wound on the bullet injury received by Ashok.

(55) About Mukesh Dr. J.P. Gupta stated that he was brought to the hospital at 8.15 p.m. with gun shot injuries. The Mlc of Mukesh is Ex. PW-6/C. Mukesh was declared unfit for statement and as per endorsement made on the Mlc itself under signatures of Dr. Gupta the general condition of Mukesh was stated to be very poor. He was disoriented pulse and blood pressure was not recordable. There was an entry wound in the epigastria near the mid line on right side about ' cm in diameter with surrounding skin charred and tattooing. The patient could not be X-rayed because he was in a state of severe shock. The doctor tried to resuscitate

the patient by transfusing I.V. fluids, by making cut down on both lower and upper limbs. Blood samples were taken for grouping and matching. Blood was also arranged from the hospital blood bank. The patient was given medicines also. However, Mukesh expired due to cardiac arrest at 8.45 p.m. He prepared the death certificate of Mukesh in his own handwriting and signed the same. The certificate is Ex. PW-20/J. The death summary of Mukesh is also in the handwriting of this doctor and is signed by him. The same is Ex. PW-20/K.

(56) The following question was put to the doctor and his reply to same has some relevance in connection with the arguments raised by the defense Counsel and, therefore, needs to be reproduced :

'QUES: You had seen tattooing, blackening and charring. Tell the distance from which this injury had been caused with a pistol or a revolver, on both the patients (Mukesh and Ashok)? Ans: Keeping in view the nature of injuries, I am of the view that these injuries must have been caused to them with a pistol or a revolver from a short distance which may be within one foot.'

(57) PW-7DR. Saraswati Devi Gupta (Dr. S.D. Gupta) was working as Professor of Surgery in the R.M.L. Hospital, New Delhi at the relevant time. She stated that before Mukesh could be operated upon he had already died. However, she had performed the operation on Ashok the same night and she proved her report as Ex. PW-7/A. She stated that Dr. J.P. Gupta PW-20 was working under her in the same hospital. About the chest injury of Ashok she described that there was opening which is called the entry wound. There was tattooing mark surrounding the opening. There was surgical emphysema and some swelling. She detailed the various steps taken in the course of operation performed on Ashok. The operation started at 11.30 p.m. on 6th October, 1982. Ashok was discharged from the hospital around 16th October. The discharge slip is Ex. PW-7/C and is in the hand of Dr. Pathania who was a Postgraduate student working under Dr. S.D. Gupta. The bullet recovered from the body of Ashok was put in a sealed cover, It was handed over to the police vide memo Ex. PW-7/E. The memo was signed by Dr. S.D. Gupta at point 'O'. Dr. Gupta opined that the injury on the chest of Ashok was dangerous in nature and could have been fatal if not operated upon. It could be

fatal for the following reasons :

(A) There was surgical emphysema.

(B) There was haziness of the -lung field shown in the X-ray meaning thereby that there was some lung injury. In response to a question she admitted that she had not specifically mentioned about the lung injury in the admission or discharge record of Ashok. However, she added that the chest injury and the surgical emphysema have been mentioned which included the lung injury. She also stated that all injuries connected with lungs lead to surgical emphysema. Dr. Gupta stated that when she saw Mukesh he was already dead. The opinion of the doctor was sought in cross-examination as to whether bruises could be caused on human body by friction or by rubbing against a hard object. She replied that one cannot get bruises by rubbing against a hard object but she admitted that bruises could be caused if a person who is running falls.

(58) PW-8 Dr. Jayanti Chatterjee was the Radiologist in the Rml Hospital at the relevant time and she had done the X-ray on Ashok. There is nothing in her statement which could be of any consequence for the purposes of the present case. therefore, no further reference to her statement is required.

(59) PW-13 is Dr. L.T. Ramani, who performed the post-mortem examination on the body of Mukesh. The body was sent to Dr. Ramani by Si Gurdeep Singh through the police constables of Police Station, Connaught Place, New Delhi. The dead body was identified by Govind Ram, father of the deceased. The deceased was wearing an underwear and Pants. Both of them were blood stained. There was a tear near the left side of the Pants' pocket corresponding to the injury on the left thigh. There were surgical presence over epigastric region and on both ankles. The following injuries were found on the body of the deceased :

1. Rounded punctured wound of 0.5 cm. diameter in epigastric region 8 cm. above the umbilicus. There was a collar of abrasion 2 mm wide all around the wound. There was no evidence of tattooing or burning , effect around the wound. Margins of the wound were inverted. ,

2. Rounded punctured wound on the upper part of left thigh lateral aspect, 15 cm below the anterior superior iliac spine. Size of the injury ' was 0.5 cm in diameter, there was collar of abrasion all around the ' wound more on the lower medial aspect. No burning or tattooing effect ' was present around the wound. There was no other external mark of i injury on the body. The internal examination of the deceased revealed that abdominal cavity was full of fluid and clotted blood. Injury on the , abdomen communicated with abdominal cavity where it had perforated to transverse colon omentum pancreas and descending aorta. A , bullet was found lodged in the muscles of the abdomen posterior wall. On dissecting the muscles of the left thigh, a bullet was found lodged in the muscles of the buttock where it had got embedded after being deflected from is cheat tuberosity. Both the bullets were 5.3 cm long and have 5 mm diameter base. The bullet recovered from the abdomen had slightly deformed base. Both the bullets were sealed and clothes and sample of blood were also sealed and handed over to the police. Both the injuries were ante-mortem and caused by fire arm. Injury No. 1 was sufficient to cause death in ordinary course of nature. Death was due to haemorrhage shock. Time since death was about 18.00 hrs. The doctor proved his post mortem report as Ex. PW-13/A. The application for conducting the post mortem (Ex. PW-13/B) alongwith 14 other papers was received in the Mortuary on 12.10 p.m. on 7th October, 1982 regarding which an endorsement was made on the application itself. This doctor was asked to give opinion as to whether after receiving the bullet injuries as mentioned in the post mortem report and the Mlc of Mukesh and Ashok could they run as suggested by the prosecution? The opinion of the doctor in this connection is Ex. Public Witness -13/F. The doctor opined : 'AFTER going through the Mlc and reports regarding injured Ashok Kumar and post mortem report of Mukesh (deceased) I am of the view that the deceased and injured Ashok Kumar could follow (move) the accused persons a distance of about 60 - 70 yards'.

(60) This brings us to the statement of PW-18, Shri B. Moitra, Sr. Scientific Officer (Gr.I) Central Forensic Science Laboratory, New Delhi. B. Moitra is the Ballistic Expert who appeared as a witness in this case. He stated that on 16th October, 1982, 18 sealed parcels were received from Acp, Crime Branch, Delhi. They were received in the office of the Cfsl, R.K. Puram, New Delhi. The sealed parcels were bearing Nos. 1 to 12, 12-A, 13 to 16 and 16-A. The seals of the parcels were intact

and tallied with the specimen seals of the parcels.

(61) The witness stated that he had opened parcel Sr. No. 1 and found one .32 bore Webley Scot revolver. The revolver was marked W-I by the witness. A sealed parcel containing a revolver was opened in Court and shown to the witness. After seeing the same the witness stated that Ex. P-II was the revolver which was in sealed parcel No. 1 referred to by him. He had noted the number of the revolver in his report and the same tallied with the number on the revolver Ex. P-II. In packet No. I, six .32 fired/empty cartridges were also found which were numbered by the witness for purposes of his examination as C-I to C-6. The cartridges were also placed before the witness which otherwise bore the following exhibit numbers - Exs. P-12/1 to 6. In the parcel bearing Sr.No. 2 one lead bullet of .32 bore was found. The same was marked as BC-I. This parcel was also opened in Court and the bullet Ex. P-13 was identified by the witness. The other sealed parcels contained the clothes recovered by the police and which had been sent for examination to the CFSL. In sealed parcel No. 8 two .32 bore fired bullets were found. These bullets had been given numbers BC/2 and BC/3 by the witness for the purposes of his own examination. These are Ex. P-19/1&2. These bullets were also identified by the witness in Court.

(62) From sealed parcel No. 16, one .32 bore fired bullet was taken out and it was marked by this witness as BC-4 for his own purpose. This bullet was taken out from the sealed packet in the Court for purposes of identification and the witness identified the same. The bullet otherwise bore the mark Ex. P-20. The other sealed parcels were sent to the Biology division by this witness.

(63) The witness stated that he carried out the laboratory tests including test Firing and the microscopic examination of these articles and had come to the Following conclusions:

(1)that .32 revolver marked W-I of parcel No. 1 is in working order and had been fired through.

(2)six .32 bore (empty cartridges) marked as C-I to C-6 also of parcel No. I had been fired through revolver marked W-I.

(3).32 bore bullet marked BC-4 of parcel No. 16 had been fired from the .32 bore revolver marked W-I of parcel No. 1. The .32 bullet BC-I of parcel No. 2 and two .32 lead bullets BC-2 and BC-3 of parcel No. 8 could also have been fired from .32 revolver W-I. But a definite opinion could not be given for want of sufficient data on these bullets Bc 1, 2 and BC-3.

(4)the hole encircled by him on the shirt of parcel No. 5, the holes encircled by him on the T-shirt and Banyan of parcel No. 6 and on parcel No. 9 could have been caused by the passage of .32 bullet of the type BC-I to BC-4 of parcel Nos. 2,8 and 16. The report of this witness is Public Witness 18/A.

'HE following excerpts from the testimony of this witness need to be reproduced or purposes of subsequently dealing with the arguments advanced by the learned counsel appearing for the appellants : 'Q: In the injury statement of Ashok Kumar and that of Mukesh, there is mention that there was blackening and tattooing around the wound of entrance of Ashok and Mukesh. What must have been the distance of the fire arm of calibre of .32 bore from the seat of the injury to produce such symptoms at the injury Ans: Generally blackening occurs with the fire arms pistols and revolvers when such fire arm is fired from a distance of about 6 inches from the target. As regards tattooing is concerned, it is caused when fire arms like pistol and revolver are fired at a distance of about 18 inches maximum, meaning thereby that in no case the distance of the target will be more than 24 inches if the tattooing is there around the entry wound when a revolver of .32 bore had been used. If on the entry wound, there is blackening/charring and also tattooing, in such circumstances, if a .32 bore revolver has been used, then maximum distance of the fire arm used will be 6 inches from the entry of the wound .But it is certain that if the firearm revolver of .32 bore has been used, if that has been used beyond six inches from the target, there can never be blackening/charring at the entry place of the wound (target).

Q:I show to you the case history of Mukesh deceased in which there is a mention that there was charring and tattooing at the wound of entry in the epigastrium near the midline on the right side. But the doctor who performed the post mortem, copy of which was also sent to you, had written that there was no evidence of tattooing

or charring effect around the wound. Would you kindly opine as an expert in which circumstances and conditions the effect of charring or tattooing may not be visible to the doctor conducting the post mortem examination? Ans; It is better that the doctor conducting the post mortem should be consulted on this point. But I am of the opinion that if the deceased was wearing clothes, then the blackening/charring and tattooing may not be visible at the time of post mortem examination. , TOCOURT: If the injured was having clothes at the place where the bullet had hit, blackening/charring and tattooing will not come on the body because in such circumstance, it will come on the cloth it self where the bullet had touched first. If at the time of receiving the bullet injury, blackening/charring and tattooing had come in the skin at entry point, and in that case, if the wound has been treated, then the blackening will disappear but in such circumstances, charring and tattooing will not disappear and that should be visible at the time of post mortem.'

(64) In this connection it is interesting to note that the witness stated that his opinion in this case was not taken regarding blackening, charring and tattooing of the injuries of Mukesh and Ashok. Whatever he was deposing about these aspects was as per the question put to him in cross-examination. Further the witness stated:

'REGARDING the three fired bullets which I had marked BC/2 and BC/3 in my office, could have been fired by a Webley Scot revolver of .32 bore other than the revolver Ex. P-I, marked by me as W-I - Volunteered, regarding these fired bullets BC/1 to BC/3, I could not ascertain if they were fired from the revolver Ex. P-I 1. Hence they could have been fired by this revolver or by some other revolver. Further volunteered, regarding these fired bullets BC/1 to BC/3, sufficient data were not available and hence, I could not give my opinion. Ques. If two persons are grappling and one of them is having a revolver and the other is trying to snatch that revolver, and if in such circumstances there will be firing from that revolver, and if that will hit one of these persons, who were grappling or the other person who was having the revolver, the bullet will hit the person with close range and that bullet injury will produce blackening and charring mark?

Ans. The blackening and charring will depend upon the distance between the muzzle end of the revolver and the target. If during that grappling when the firing is from the revolver, the end of the muzzle is up to six inches from the target, there will be blackening at the entry wound and if the end of a muzzle of the revolver is more than six inches, from the target, there will be no blackening. As regards charring is concerned, that can only be caused if end of the muzzle of the revolver is up to two inch only from the target. In case the muzzle end of the revolver is more than 2 inches from the target, there will not be any charring at the entry wound.'

(65) Eighteen parcels had been dispatched in sealed condition to the Central Forensic Science Laboratory, R.K.Puram, New Delhi through S.I. Om Parkash PW-20 on 16th October, 1982. The witness stated that all the parcels had their sea Is intact. This fact is also borne out from the Cfsl report Ex. Public Witness 18/A which notes that the seals on the parcels were intact and tallied with the specimen seals. The parcel pertaining to arms and ammunition were examined by Mr. B. Moitra, PW-I 8 and we have already referred to his evidence. These articles were :

'(I)Revolver Ex. Pi 1 and 6 empties Ex. P-12/1-6 taken from the hand of Ajay Kumar. (ii) Lead bullet Ex. P-13 recovered from near the pillar of shop No. 34 adjoining shop No. 33, belonging to the complainant party. (iii) Shirt Ex. Pis and Banian Ex. P-16 of Ashok Kumar. (iv) T-shirt Ex. P10 and Banian Ex. P9 of Mukesh deceased. (v) Pant Ex. Ps and underwear Ex. P7 of Mukesh. (vi) Two bullets, .32 bore taken out from the body of Mukesh, Ex. P19/1- (vii) One bullet, .32 bore taken from the body of Ashok Ex. P20. Shri B. Moitra examined these arms and ammunition as well as clothes mentioned above and gave his report Ex. PW18/A. His opinion was as follows : (i) Revolver was in working order and had been fired through. (ii) 6 empties had been fired from revolver Ex. Pi 1. (iii) Bullet Ex. P20 (BC-4) which had been extricated from the chest of Ashok Kumar during operation had been fired through revolver Ex. P11. (iv) two bullets recovered from the body of Mukesh, i.e. Ex. P19/1-2 could have been fired through revolver Ex. PH. (v) one bullet Ex. P13(BC-1) recovered from a place near pillar of shop No. 34, could have been fired through revolver Ex. Pi 1. (vi) holes in the shirt of Ashok, holes in the shirt and Banian of Mukesh and hole in the pant of Mukesh could have

been caused by this type of bullet, i.e. bullet of .32 calibre.'

'THE blood groups of blood on clothes of different persons mentioned above : (i) Bush-shirt Ex. P15 and Banian Ex. P16 of Ashok Kumar were found stained with 'AB group blood' which is of Ashok Kumar himself). (ii) Ex. P17 and underwear Ex. P18 belonging to Ashok Kumar were besmeared with 'AB group blood' (which is of Ashok Kumar). (iii) T-shirt Ex. P10 belonging to Mukesh was stained with 'AB group blood' (which is of Ashok Kumar). Banian Ex. P7 belonging to Mukesh was without a result of blood, because blood was 'interfered'; (iv) Pant Ex. P8 and underwear Ex. P9 belonging to Mukesh was found to be stained within 'A group blood' (which is of Mukesh himself) (v) T-shirt Ex. P16 of Naval was found to be stained within 'AB group' (blood of Ashok). (vi) T-shirt Ex. P4 of Ajay Kumar was stained with 'AB group blood' (that of Ashok Kumar) Ajay Kumar claims that it is his own blood. Banian Ex. P3 belonging to Ajay did not give any result of blood, being 'interfered' Pant Ex. P5 belonging to Ajay Kumar was found to be stained with 'A group blood' (that of Mukesh). (vii) Post-mortem sample blood on Mukesh was found 'putrefied' and no opinion could be given about it.'

The sample of blood taken from the trail of blood from shop Nos. 33 and 161 was found to be of blood group 'AB' which was the blood group of Ashok. It is in evidence that Ashok had chased accused Ajay up to shop No. 161 and, therefore, the blood being found of 'AB' group stands explained. The blood sample taken from outside shop Nos. 3 and 4 gave inconclusive result. Blood of Mukesh as well as Ashok which had fallen at that spot lifted in one phial and must have got mixed up as a result of which the results could not be obtained.

(66) PW-6, Ram Niwas, was a Clerk working in the Dr. R.M.L. Hospital, New Delhi. He appeared as a witness to prove the MLCs of Ashok and Mukesh. These MLCs were prepared by Dr. Vivek Misra who had by then left the hospital and his whereabouts were not known. The witness stated that he was familiar with the hand-writing and signatures of Dr. Vivek Misra as well as Dr. J.P. Gupta of Rml Hospital, both of whom had left the service in the hospital. The medical report of Ashok was identified by the witness and was proved as Ex. PW-6/A. A portion of this MLC encircled and marked 'A' was proved by the witness as in the handwriting

of Dr. J.P. Gupta.

(67) The Mlc of Mukesh was also proved by this witness as Ex. PW-6/C. The witness identified the handwriting and signatures of Dr. Vivek Misra on the MLC. This Mlc also at point 'A' was identified as having been written by Dr. j.P. Gupta, Police Witnesses.

1.PW-35, Si Gurdeep Singh 2. PW-36, Inspector Kulpal Rai Mehta 3. PW-19, Mahender Ram 4. PW-24, Constable Mehtab Singh

(68) PW-35, Si Gurdeep Singh was the first I.O. of this case and he was the first to reach the spot after the incident Along with his team of police officers. He was already in the Palika Bazar in connection with some other inquiry and, therefore, as soon as he heard the sound of gun shots he rushed towards from where the sound of fire shots was heard. This was at about 7.45 p.m. on 6th October, 1982. when the police party reached near the air-conditioning plant Si Gurdeep Singh saw the complainant Naval Kumar having caught hold of accused Ajay Kumar Singh from behind in a bent position. Accused Ajay was having a revolver in his right hand. This witness snatched the said revolver from the hand of accused Ajay. The remaining police personnel over powered the said accused. The witness further stated that he opened the revolver smelled it and found therein six empty cartridges. Naval told the police officer that Ajay had come after injuring his brothers. Si Gurdip Singh stated that public witnesses S/Shri Mahinder Singh and Rakesh Kapoor came over there and told him that the father of the injured persons was taking them to the hospital. It is further stated by the witness that he detailed Si Mahender Ram (Public Witness - 19) to go to the hospital Along with the injured persons. Naval Kumar took him to the spot where the incident had taken place. He found people in front of shop No., 33 and shops No. 3 and 4 which are opposite shop No. 33. He also noticed people near shops No. 161 and 162 and trail of blood near the passage from shop No. 161 to shop No. 33, Palika Bazar. He saw one shoe lying at the spot and another shoe of the same j type in front of shops No. 161/162. He also found the lid piece of bullet near shop ; No. 34 towards the stairs near the entry gate. A piece of danda lying close to shop No. 9 in Palika Bazar, It was a freshly broken danda. Si Gurdeep Singh further stated

that ; he started noting the statement of Naval. Acp Chadha and Acp Narinder Singh reached there. They started making inquiries from Naval and directed Si Gurdeep Singh to record the statement of Naval only about what had happened just then. Accordingly the witness recorded the statement of Naval with regard to the main incident only. The statement was read over to Naval who signed the same in taken of correctness thereof. The statement is Ex. Public Witness I /A. He made an endorsement and sent the Rukka (statement of Naval) for registration of an Fir through constable Mehtab Singh. The witness prepared a sketch of the revolver which was marked as Ex. PW-1 /B. The revolver was taken into possession vide recovery memo Ex. Pw I /C. He prepared a rough site plan with marginal notes and the same is Ex. Public Witness 35/ B. Photographer was called to photograph the scene of occurrence. He took blood sample into possession from shop No. 33 vide recovery memo Ex. I/D as also from opposite shops No. 3 & 4 as Ex. 1/E. These were put in sealed parcels. Blood was also picked up from shop Nos. 161 and 162 and put under seal. About this recovery the memo is Ex. PW 1 /K. Blood was also taken from the trail leading from shop No. 33 to shop No. 161,162 vide memo Ex. Public Witness 2/A. The lead piece of fired bullet was also taken into possession from the pillar in front of shop No. 34 vide memo No. Ex. Public Witness I /G. One shoe which was lying in front of shops No. 3 and 4 was taken possession vide Ex. Public Witness I /F. The other shoe was taken possession of from near the water tank near shops No. 161 /162. The piece of broken danda was also taken into possession and converted into a sealed parcel. The witness was shown all these articles in Court and he identified the same. The revolver is Ex. P-I I while the lead bullet is Ex. P-13. The empty cartridges are Ex. P-12/1 to 6. The pair of shoes is Ex. R-2/1 and 2. The piece of wooden danda is Ex. P-I. The witness testified about preparing the injury statement of Naval (Ex. Public Witness I/R) and the injury statement of Ajay (Ex. Public Witness 35/C). Naval was sent for medical examination. On his return after medical examination the T-shirt of Naval (Ex. P-6) was taken into possession vide Ex. Public Witness I /N. Supplementary statements of Naval, eye witnesses Mahender Singh, Rakesh Kapoor and constable Mehtab Singh, Si Mahender Ram were also recorded. He took personal search of accused Ajay and recovered Rs. 1,905.00 in cash and some visiting cards which were taken into possession vide

recovery memo No. P-I/L. Clothes of Ajay were taken into possession as Ex. Public Witness I/M, his Banyan P-3, T-shirt P-4 and Pant P- 5. After getting the news of death of Mukesh at about 10.30 p.m. on 6th October, 1982 he added Section 302,1 .P.C. in the FIR. He conducted the inquest proceedings which are Ex. PW-13/D-1. The application for post mortem of Mukesh is Ex. 13/B prepared by this witness. Before conducting the inquest proceedings the witness stated that he had recorded the statement of Ashok after obtaining doctor's opinion 'fit for statement'. Clothes of Mukesh were received by him from the Mortuary through constable Ram Singh and the recovery memo is Ex. Public Witness 25/A. The wrist watch of Mukesh was taken into possession vide recovery memo Ex. Public Witness 25/B. Accused Ajay was interrogated on 7th October. 1982 by this witness. Accused Mahinder was arrested on 8th October 1982 and was subjected to interrogation on 9th October, 1982 by the S.H.O. of Police Station Connaught Place, New Delhi in presence of this witness. Accused Narinder was also arrested on 8th October, 1982 and was interrogated on 9th October, 1982. On 9th October the investigation was handed over by him to the S.H.O. of the police station and it was taken over by Inspector Kulpal Rai Mehta of the Crime Branch. It is significant to note that this witness stated that a about 8.00 p.m. while he was making inquiries from Naval before registration of F.I.R., ACP Ascharaj Lal Chadha and Narinder Singh came over there. This means that the two ACPs reached the place of occurrence within 15 minutes of the occurrence because the occurrence is stated to have taken place at 7.45 p.m. The S.H.O. of Police Station, Connaught Place in fact came 15 minutes after the Acp shad already arrived. The witness stated that while Naval Kumar was narrating the incident of 1st October, 1982 he was told by the Acp to be brief and be confined to the incident in question. He admitted that initially Naval was telling the incident of 1st October, 1982 but then he omitted the same. He stated that the injury statement of Naval was prepared by him at night and it was done in a hurry. However, according to him it was prepared after physical verification of the person concerned. He stated that the seizure memo regarding the shirt of Naval was prepared at police station at about 2.00 a.m. when Naval had returned to the police station after his medical examination. Mahinder Singh (Public Witness -2) had accompanied this witness from the spot to the police station and had witnessed the said recovery memo. He admitted that he

did not mention the name or position of the accused persons other than Ajay in the site plan. According to him he omitted to do so, then said 'had forgotten to do so'. In reply to a question regarding shop No. M-I 3 where witness Rakesh Kapoor (Public Witness -5) was said to be working, remaining closed, the witness stated that he had seen Rakesh Kapoor working in shop No. M-13 during those days. He denied the allegations that he was interested in the complainant party at the time when he was investigating the case. He stated that he went in search of the co-accused taking accused Ajay and complainant Naval along besides some other persons. He had left the police station for the search of the other accused at 2.00 a.m. He returned to the police station at about 7.00 a.m. He was questioned about not having lifted the finger prints from the revolver allegedly snatched by him from the hand of accused Ajay. His Explanationn was that he did not think it necessary at all to lift the finger prints from the revolver because the accused Ajay had been arrested Along with the revolver in question. He had smelt the barrel of the revolver and found that it had been recently fired. He further added that four fired bullets had been recovered till the time the investigation remained with him. According to the witness Naval, PW-I met him for the first time at 7.45 p.m. on 6th October, 1982 and he remained with him till his statement was completed at about 9.05 p.m. Prior to that the S.H.O. and ACPs came to the spot who made the preliminary inquiry and there was disturbance all around. Before starting writing down the statement of Naval verbal inquiries were made by the witnesses from Naval in which Naval had stated how he sustained the injuries. Naval had requested for being medically examined. There was no bleeding injury on the person of Naval. He admitted that in the Fir this fact had not been mentioned that Naval had sustained injuries except there is mention of tooth bite on Naval's left hand given by accused Ajay. Naval was sent for medical examination at about 12.00 in the night to the Police Hospital and he returned at about 2.35 same night after medical examination. The witness stated that there is a distance of about 20 feet between shop No. 33 and shops 3 and 4 situated opposite each other. He admitted that he had not shown the position of Naval in the site plan.

(69) In the cross-examination on behalf of accused Ajay this witness stated that he had taken the revolver from accused Ajay and thereafter had put it in a piece of cloth and sealed it at the spot. The piece of cloth was available in the investigation

bag with the witness. He denied the suggestion that finger prints were not lifted from the revolver because it did not contain any finger prints of Ajay. The crime team had not examined the revolver because it had been put in a sealed cover before its arrival. The witness denied any suggestion regarding delay in recording the FIR. The witness re-iterated that he had completely recorded the Rukka at 9.05 p.m. and that he came to know about the death of Mukesh at about 10.30 p.m. According to this witness accused Ajay did not have any bleeding injury. There were blood stains on the clothes of Ajay which includes his Banyan, T-shirt and trousers. His Banyan and T-shirt were little torn. The buttons of T-shirt were also torn. When Ajay was sent for medical he was not wearing the blood stained clothes. Naval was sent for medical in his blood stained clothes. He admitted that he had not considered it necessary to record the presence of all the police officers who had arrived at the place of occurrence which included ACPs Narinder Singh and A.L.Chadha.

(70) PW-36, Inspector Kulpal Rai Mehta took over investigation of the case on 9th October, 1982. By that time he noted that Sudhir Jain had not even been interrogated by the local police. He also found that accused Sudhir was still absconding. He summoned all the concerned persons to join the investigation and the investigation by him was in full swing from 10th October, 1982. He recorded supplementary statement of the witnesses under Section 161, Cr.P.C. On 11th October, 1982 he had visited the spot and made spot inquiries from the neighbouring shop keepers. There he met Mukesh Sood, PW-4 and recorded his statement. He arrested accused Rajinder on 12th October, 1982 at 6.00 p.m. on information that he was present near the Golcha Cinema. Rajinder was interrogated by him. According to this witness accused Rajinder made a disclosure statement which is Ex. PW-36/ D and got a belt recovered. The witness continued to give details in the manner in which he conducted further investigation. Naval was got medically examined afresh by Inspector Mehta. The injury statement prepared by him before sending Naval for fresh medical examination is Ex. Public Witness 36/A.

(71) The witness further stated that he recorded the statement of Naval for the first time on 10th October, 1982 at about 6.00 or 6.30 p.m. He admitted that he did not

record the statement of Acp Narindner Singh and Acp A.L.Chadha under Section 161, Cr.P.C.

(72) PW-19, Mahender Ram was posted at Police Station, Connaught Place at the relevant time. The application of accused Narinder dated 1st October, 1982, (Ex. PW-9/A) was made over to him on 2nd October, 1982 for purposes of inquiry, 2nd October, 1982 was a holiday on account of Gandhi Jayanti. On 3rd October, 1982 which was a Sunday when Palika Bazar remains closed he had gone to Naval at Panchkuin Road shop in connection with inquiry and had recorded the statement of Naval. On 4th October, 1982 he had gone to shops No. 4 and 9, Palika Bazar in connection with said inquiry. At shop No. 4 accused Sudhir and his partner Manmohan had met this witness while at shop No. 9 accused Narinder, Mahinder and one Duli Chand had met the witness. He made inquiries from all these persons but none of them gave statements in pursuance of request. He submitted his report on this application on 5th October, 1982. The report is Ex. PW-19/B. On the report there is an endorsement of the S.H.O. of the police station, namely, Kanchi Singh. The same is Ex. Public Witness 19/C. This endorsement was made on 6th October, 1982 in presence of this witness by the S.H.O. The S.H.O. had directed this witness to produce the parties on 7th October, 1982. He had instructed two constables to ensure that both the parties were present before the S.H.O. as per the directions of the S.H.O. He admitted that he was present in the Palika Bazar in connection with some other matter. At about 7.45 p.m. when he was near shop No. 144, Palika Bazar, he heard the sound of firing which was followed by stampede. On this, he along with Si Gurdeep Singh rushed to the Central Hall. Thereafter he recounted the events in the same manner as Si Gurdeep Singh had done which has already been mentioned hereinbefore.

(73) He admitted that on direction of Si Gurdeep Singh, he went along with the injured persons to the hospital. He wanted to record their statements but the injured persons were not fit for statement. He also admitted having signed some of the recovery memos prepared by Si Gurdeep Singh. He stated that he had stayed at the place where accused Ajay had been apprehended and where some other public witnesses were there for 2/3 minutes where after he had left in order to accompany the injured persons to the hospital. He also described how the injured

were taken to the hospital in the car. Mukesh was lying on the back seat of the car where injured Ashok was sitting. Govind Ram was also on the back seat. The witness did not have any talk in the car. He received the MI Cs of both the injured persons. He left the hospital at about 9.45 p.m. and reached Palika Bazar at 10.20 p.m. Personal search of accused Ajay was conducted in his presence after he had returned from the hospital to the spot. He denied the suggestion that Govind Ram had not accompanied the injured persons to the hospital. He denied the suggestion that Govind Ram had run away from the spot. He also denied the suggestion that Govind Ram reached the hospital when witnesses were being admitted. A significant fact mentioned by this witness in his cross-examination is that when he went to Palika Bazar in connection with inquiry on 4th October, 1982 and when he was at shop No. 9, accused Sudhir Jain came there from shop No. 4. He further stated that on 5th October, 1982 he sent messages to both the parties to appear before the S.H.O. and not him. These messages were sent through the constables orally. Statement of PW-24, constable Mehtab Singh is relevant only for a limited purpose because he was present Along with Si Gurdeep Singh in the Palika Bazar immediately after the occurrence. He reiterated all that had been said in that connection by Si Gurdeep Singh as well as by Mahinder Ram, PW-19. This witness also stated about the arrival of Acp A.L. Chadha and Acp Narinder Singh at the Palika Bazar soon after the incident. According to the witness Acp Chadha had stated to Naval that 'Pichhle Halaat Chhoro, Haal Ke Likhao' (leave the incidents of past, talk about the present incident). This witness further stated that Acp Chadha had told Si Gurdeep Singh to note down the facts of the present incident and as per instructions Si Gurdeep Singh recorded the statement of Naval. This witness further stated that he used to be on duty generally in the Palika Bazar and, therefore, knew Govind Ram, father of Naval. He also knew Naval, Mukesh and Ashok prior to 6th October, 1982 because he had seen them sitting in the shop at Palika Bazar. He also knew accused Rajinder. At the time when Acp Chadha and Acp Narinder Singh arrived, the revolver was in the hands of Si Gurdeep Singh. By the time these ACPs arrived, Si Gurdeep Singh had not started recording the statement of Naval, only oral inquiries were going on. According to this witness he had not seen any injury on accused Ajay from which blood was oozing out.

(74) This is a brief resume of the statements made in Court by the important-prosecution witnesses in this case. From this evidence the following facts emerge: Sudhir, Narinder, Mahinder and Rajinder on the one hand and Naval, Ashok and Mukesh belonging to die complainant party on the other hand were carrying on their independent businesses at the Palika Bazar, New Delhi since much prior to the main incident and were well known to each other. Earlier Sudhir was having a counter from which he conducted his business at shop No. 9 Palika Bazar where also the other accused Narinder, Mahinder and Rajinder used to do their business. Though accused Narinder etc. have denied working at shop No. 9, there is ample evidence on record which establishes that this denial on the part of accused Narinder etc. is wrong and the fact is that Narinder, Mahinder and Rajinder were working at shop No. 9, Palika Bazar. PW-3 Ashok Kumar has testified about this fact. PW-I Naval Kumar has also said so. PW-29 Gobind Ram, father of the complainants has supported this fact. PW-5 Rakesh Kapoor who is also a shopkeeper in the Palika Bazar area has said so. PW-4 Mukesh Sood, another local shopkeeper also testified to the same effect and went on to say that since 1979 he had seen these three brothers at shop No. 9. Same is the version of PW-2 Mahinder Singh on this aspect. PW-19 Si Mahinder Ram who had been in routine performing his duty at Palika Bazar also testified about this fact. PW-19 is an independent police witness and had no reason to lie or take sides. This leaves no manner of doubt that Narinder, Mahinder and Rajinder were working at shop No. 9, Palika Bazar. So far as the fact that the three brothers belonging to the complainant party were working at shop No. 33, there is ample evidence on record to support it. Besides Naval and Ashok who have said so, the other independent witnesses, namely, PW-2 Mahinder Singh, PW-5 Rakesh Kapoor had deposed to this effect. Si Gurdeep Singh who is an independent police witness stated that he had seen Naval working on shop No. 33 in Palika Bazar. To the same effect is the statement of another Police Officer PW-24 Mehtab Singh and PW- 19 Si Mahinder Ram who has said so in his enquiry report Ex. PW-19/B. The police complaint of Narinder regarding the incident dated 1st October, 1982 which is Ex. PW-9/A puts this matter totally beyond controversy in view of Narinder's own admission in the said complaint that Naval was one out of the three owners of shop No. 33. About Sudhir Jain having his jewellery business at shop No. 4, Palika Bazar there is no

controversy because the learned Counsel appearing for the appellants in these various appeals did not dispute it. Since about one and half to two years prior to the date of the incident Sudhir started doing business at shop No. 4 Palika Bazar in partnership with one Manmohan. Shop No. 4 is opposite to shop No. 33 in Palika Bazar. In shop No. 33 the complainants had been doing their business in precious, semi-precious stones and jewellery since long under the name and style of 'Gem Palace'. Sudhir was also doing similar business in his shop No. 4 under the name and style of 'Gem Treasures'. Thus Sudhir and the complainants were business rivals. This is also established from the evidence on record that all the accused knew each other very well since much prior to the incident and were quite thick with each other. PW-I Naval, PW-3 Ashok and PW-21 Gobind Ram have testified about this fact. PW- 4 Mukesh Sood, an independent witness belonging to the business community at Palika Bazar has also deposed about this fact. These witnesses have stated that Ajay used to come to shop No. 9, Palika Bazar and all the accused used to take liquor together at shop No. 9 and also at shop No. 4. Ajay and Sudhir were in the same college, i.e., Dav College simultaneously at least for three years. PW-12 Mohan Lal was the Principal of Dav College who deposed that Ajay and Sudhir were students of that college during the particular period. Ajay was a judo and wrestling champion of the college and was well known. Even the accused Ajay and Sudhir admitted that they were in the Dav College during the same period. This was for about three years. Ajay has further admitted in his statement under Section 313, Cr.P.C. in reply to question No. 13 that he had come to supply jewellery to Sudhir on the fateful day which shows that the two had business dealings with each other. This admission on the part of accused Ajay supports the statements of Naval and Ashok etc. about their being business dealings between accused Ajay and Sudhir. This business rivalry had taken an ugly shape inasmuch as it was the grievance of the complainant party that Narinder, one of the accused used to practically sit at shop No. 4 of Sudhir and entice away the customers coming to the shop of the complainant party to the shop of accused Sudhir. PW-I Naval testified about this. Naval further testified that in the past quarrels had taken place between the two parties 10-12 times on the issue of Narinder enticing away the customers coming to Naval's shop No. 33. PW-3 Ashok has supported Naval on this point. Further in this connection the

statement of Naval recorded by Si Mahinder Ram on 3rd October, 1982 in pursuance of the enquiry entrusted to him on the complaint of Narinder is significant. The said statement is Ex. PW-I /DD in which Naval has made a grievance of this fact, i.e., Narinder taking away his customers to the shop of Sudhir. The statement Ex. PW-I /DD was made three days prior to the main incident and, therefore, has lot of force. It can be safely concluded on the basis of all this evidence that the root cause of the entire dispute was the business rivalry between the two groups and accused Narinder enticing away the customers coming to the shop of the complainants. About this fact again there is lot of evidence on record. Besides the complainants, PW-I Naval and PW-3 Ashok having testified about this, PW-4 Mukesh Sood mentioned this fact. This fact again is noted in the enquiry report of PW-19 Si Mahinder Ram. The report is Ex. PW-19/B. The complainant party had warned Narinder regarding this but that had no effect. On 1st October, 1982 at about 7.00 p.m. an unfortunate incident had taken place involving the two sieves about which Narinder had made a complaint to the police vide Ex. PW-9/A. According to this complaint. Narinder was beaten by Naval in the presence of his wife and children. In this very complaint Narinder himself stated that such incidents had taken place many a times between Naval and his brothers on the one hand and Narinder and other co-accused on the other hand. This written complaint by Narinder to the police is a document beyond any dispute and shows the acrimony prevailing between the parties on account of business rivalry. In connection with this written complaint a police enquiry was held by Si Mahinder Ram PW-19 and a statement of Naval was recorded on 3rd October, 1982 which is Ex. PW-I/DD. Besides the proceedings in pursuance of the said enquiry and the enquiry report, there is independent evidence on record about the incident of 1st October, 1982 in the shape of statement of Naval PW-I as to what had happened on that day. PW-4 Mukesh Sood has also testified about the incident of 1st October, 1982 because he was an eye witness of the same. In pursuance of the said enquiry both the parties visited the police station on 6th October, 1982 at about 4.00 p.m. where the SHO tried to work out a compromise between both the groups. This is also recorded at the end of the document containing the enquiry report under the signatures of the SHO and has been marked as Ex. PW-19/C. The parties were directed to appear on 7th October,

1982 for finalising the compromise. On behalf of the complainant party Naval and his father Gobind Ram had gone to the police station while from the side of the accused Narinder, Mahinder and Sudhir were present before the SHO. The presence of these persons is recorded by the Sho in his noting Ex. PW-19/C on the enquiry report. The accused persons during trial denied having visited the police station on 6th October, 1982. But according to Naval and Gobind Ram they were very much in the police station. Various suggestions put to the prosecution witnesses in their cross-examination by the Counsel appearing for the accused persons suggest the presence of these accused in the police station on that date. Particularly it was put to PW-I Naval that Narinder etc. had not agreed for any compromise or that they had not insisted of the presence of Ashok Kumar. These suggestions show the presence of accused persons at the police station. Another question was put to Naval in cross-examination that 'Rajinder accused was not present before the SHO'. Of course Naval denied the same but from this question it can be inferred that at least presence of the 'other accused was not disputed'. The accused were dissatisfied with whatever had happened at the police station and Naval and Gobind Ram stated that they heard accused Sudhir and Narinder saying outside the police station 'IN Police Walon Ne Kuch Nahin KARNA. Ab Hamen Khud Hi Nibhana PAREGA.' (The police will not do anything. We will have ourselves to sort out things now). About this incident outside the police station PW-1 was cross examined but was not confronted with his statement Ex. PW-1/DA dated 10th October, 1982. Same is the position about PW-21 who was not confronted with his statement Ex. PW-1 /DB dated 11 the October, 1982. Of course in the statement dated 6th October, 1982 these aspects were not there which was so because as per the case of the complainants the investigation on 6th October, 1982 was not going on right lines and was proceeding as per the instructions of the two ACPs who were present at the spot. In a situation where the initial investigation did not proceed on right lines the subsequent statements assume importance and cannot be ignored. *Ganeshlal v. State of Maharashtra*, 1992 Cr.L.J. 1545 and *Radhey Shyam v. Kunj Behari*, 1990 Cr.L.J. 668. The evidence further shows that at 6.15 p.m. all the accused including accused Ajay were seen together outside shop No. 4, i.e., the shop of accused Sudhir, PW- 1 Naval has deposed about this fact as having witnessed it with his own eyes. He

was questioned in cross-examination as to why he did not mention this fact in the Rukka, i.e., his initial statement to the police and his reply was that Si Gurdeep Singh who had taken down that statement did not want to make a note of any fact other than the main incident of shooting. PW-3 Ashok has also testified about having seen all the accused together outside shop No. 4 at 6.15 p.m. on 6th October, 1982, To the same effect is the deposition of PW-4 Mukesh Sood on this point. It is further established from evidence that on 6th October, 1982 accused Sudhir closed his shop early, i.e., by about 6.45 p.m. though the usual closing time in Palika Bazar was 7.30 p. m. those days. PW-1 Naval has said so. PW-3 Ashok has corroborated the statements of Naval in this behalf. About the closing time of the shops in Palika Bazar, even PW-2 Mahinder Singh and PW-5 Rakesh Kapoor had stated that it was 7.30 p.m. those days. This is followed by the main incident of scuffle between the rival parties leading to firing followed by the escape attempt on the part of the accused who were involved in the main incident and apprehension and arrest of accused Ajay, A detailed account of this is contained in the statement of Naval which we have already reproduced. It is unnecessary to repeat the same. Mukesh and Ashok who had received gun shot injuries in the incident were immediately removed to the Rml Hospital. Naval was sent for medical examination after recording of his statement and also after completion of certain formalities in relation to the investigation of the case at the spot. Accused Ajay was also sent for medical examination and the details in this behalf have already appeared in the resume of the medical evidence given hereinbefore. On the basis of the evidence on record the Trial Court found accused Sudhir Jain guilty of the charge of conspiracy and convicted him under Section 120B, IPC. Accused Ajay Kumar Singh was found guilty of all the charges leveled against him and was convicted under Sections 302/307 and 120B, IPC. Accused Narinder and Mahinder were convicted under Sections 302/34, IPC. Their presence at the scene of occurrence along with accused Ajay Kumar Singh was found established and they were held to have exhorted accused Ajay to fire the shots one of which proved to be fatal qua Mukesh. They were also held to have given danda and belt blows to Naval and Ashok, two brothers of the complainant party who received injuries in the incident but survived. All the four eye witnesses are consistent in saying that Narinder, Mahinder, Rajinder and Ajay came together from the side of

shop No. 9, Palika Bazar. Narinder and Mahinder had danda in their hands while Rajinder had a belt in his hand. Accused Ajay appeared to be empty-handed. Mukesh and Ashok were standing outside shop No. 33. First the accused persons started beating Ashok and Mukesh with fists and kicks and dandas and belt. There was grappling between the two sides for about a minute and half or so. This was followed by exhortation to Ajay by Narinder and Mahinder followed with exhortation by Rajinder to shoot. All the four eye witnesses of the main incident have deposed about the exhortation given by Narinder and Mahinder and thereafter by Rajinder to Ajay to fire. The version of the incident given in the Fir corroborates these statements regarding exhortation made by the four eye witnesses in Court. It is note-worthy that the exhortation imputed to the three accused is not said to be in a chorus by any of the witnesses. All the eye witnesses have stated that the exhortation was in a sequence, i.e., first by Narinder and Mahinder followed by Rajinder. Immediately thereafter Ajay took out a revolver from the dub of his pant pocket and started firing. The shots were fired one after the other successively. Two shots were fired at Mukesh; two were fired at Ashok and two were fired at Naval. The shots fired at Mukesh and Ashok had hit both of them while Naval escaped both the shots fired at him. The exhortation given by Narinder, Mahinder and Rajinder shows that all of them knew that Ajay was carrying a revolver with him. This also explains why Narinder, Mahinder and Rajinder did not carry with them any lethal weapons and were satisfied with carrying dandas and belt. It is nobody's case that the complainant party had any weapons nor any such suggestion was put to the prosecution witness. Of course we may note here that on behalf of accused Ajay a defense was set up that Mukesh had a revolver with him. Besides this defense it is nobody's case that the three brothers of the complainant party were carrying any weapon. After the firing all the accused ran together-towards shop No. 9. From there they parted course. Accused Ajay went towards the Air-Conditioning Plant, i.e., towards shops No. 161-162 while the other three accused ran towards the other side. Ajay was chased by all the three brothers of the injured party. The two brothers who received gun shot injuries could not run as fast as their third brother Naval. Naval succeeded in catching hold of accused Ajay. There also some scuffle took place between the two but Naval maintained his grip over Ajay from back side of Ajay,

inspire of both of diem having given teeth bites to each other. Soon Si Gurdeep Singh reached there Along with his other policemen and Ajay was handed over to the police. The revolver was taken from his right hand by Si Gurdeep Singh. The investigation and seizure of certain articles. The shoes worn by Mukesh were also recovered - one shoe was found from in front of shops No. 3 and 4. Ashok has explained that this shoe got removed from the foot of Mukesh during the course of scuffle outside shop No. 33. This shoe received a push from one of the fleeing accused and that is why it was found near shops No. 3 and 4. The other shoe of Mukesh was found near shops No. 161, 162 where Mukesh had finally fallen down. Freshly broken piece of danda was also recovered near shop No. 9. Blood was found near shops No. 3 and 4, shop No. 33 and shops No. 161, 162. There was also a trail of blood from the place where the incident took place leading to shops No. 161,162. The blood stained clothes of Ajay were taken into possession at 10.45 p.m. These were his T-shirt Ex. P-5, pant Ex. P- 4 and Baniyan Ex. P-3. Ajay's baniyan and T-shirt were in a torn condition which must be the result of scuffles in which he was involved. It is in evidence that Ajay did not have any bleeding injury. This has been deposed to by many witnesses including Si Gurdeep Singh who was the initial Investigating Officer and who had first opportunity to see Ajay accused because he had arrested him at the spot. thereforee, the blood on Ajay's clothes had to be that of others. The first shot fired at Mukesh was during the course of scuffle between Mukesh and Ajay which means that the shot must have been fired from a very close range. The injury was bleeding and the blood on the pant of Ajay must be from that injury of Mukesh. The blood group of Mukesh was 'A' and as per the CfsI report the blood found on Ajay's pant belonged to group 'A'. Ashok had received the gun shot on hischest. That in jury was bleeding and the blood on Ajay's T-shirt must be that of Ashok. As per the CfsI report the blood group of blood found on Ajay's T-shirt was 'AB' which was the blood group of Ashok. Ajay was medically examined at 10.00 a.m. on the next day and none of the injury suggests that it was bleeding injury. No question was put to the doctor whether any injury of Ajay was bleeding. This fact coupled with the evidence of prosecution witnesses particularly that of Si Gurdeep Singh leaves no doubt about the fact that Ajay did not have any bleeding injury. From this it hollows that Ajay could not have his own blood on any of his clothes. It is to

be noted that there is no evidence on record to establish the blood group of accused Ajay. The clothes of Mukesh were handed over to the police after his post mortem. Similarly clothes of Ashok were also taken into possession. A question was raised that PW-21 Gobind Ram who removed his two sons to the hospital must have received blood on his clothes and why his clothes were not taken into possession by the police? On this Gobind Ram had deposed that he had received blood on his clothes while he was in the process of removing his sons Ashok and Mukesh to the hospital. He also stated that he stayed in the hospital that night up to about 4.00 or 5.00 a.m. wearing those very blood stained clothes. When he went home after 5.00 a.m. in the morning he changed his clothes. While he was in the hospital nobody asked him to hand over his blood stained clothes and, therefore, his blood stained clothes never came in possession of the police. Non-recovery of blood stained clothes of Gobind Ram is not material in the facts of the case since Gobind Ram never took part in the incident. He came on the scene after the incident was over. His evidence is corroborative of the facts after the arrival of the police on the scene. On various important aspects of the case the eye witness account gets support from the suggestions made to the witnesses in their respective cross-examinations. To illustrate-lot of controversy was raised regarding PW-5 Rakesh Kapoor doing business at shop No. M-13, Palika Bazar. However, a suggestion came in crossexamination of PW-I from the defense side about Rakesh Kapoor in the shape of a question:-'He was running electronic shop.' This shows that what was questioned was whether Rakesh Kapoor was running an electronic shop or was selling cassettes from his shop. The fact that he was doing business there was thus not disputed. Again it was suggested to Naval by Counsel appearing for accused Rajinder that Rajinder had been falsely implicated because he was known to accused Sudhir. This shows an admission that accused Rajinder and accused Sudhir were known to each other. In the context of denial of any business dealings between accused Ajay and accused Sudhir, a suggestion put by the learned Counsel appearing for accused Ajay to PVV-I Naval to the effect that Ajay had gone to supply jewellery in a thaila on 6th October, 1982 is significant. On some of the important aspects even the statements of the accused persons under Section 313, Cr.P.C. corroborate the prosecution version. All the four eye witnesses of the main incident, i.e., PW-I

Naval, PW-3 Ashok, PW-2 Mahinder Singh and Pw-5 Rakesh Kapoor have given the account of the main incident in similar terms without there being any material contradiction which makes their evidence trustworthy and beyond any manner of doubt. Besides the evidence of these main eye witnesses of the incident, there is supporting evidence of PW-35 Si Gurdeep Singh, PW-19 Si Mahinder Ram and PW-24 Constable Mehtab Singh. Learned Counsel appearing for the appellants in these appeals raised various points to challenge the findings of the Trial Court. The main arguments were

1. PW-I Naval, PW-2 Mahinder Singh and PW-5 Rakesh Kapoor were not at all present at the time of the incident and were, therefore, not eye witnesses of the incident. They are planted witnesses and their evidence ought to be discarded. 2. PW-I Naval and PW-3 Ashok are interested witnesses and their evidence ought to be considered keeping this fact in mind. 3. PW-4 Mukesh Sood is a planted witness and his evidence should be discarded. 4. Omissions, improvements and contradictions in the evidence of main prosecution witnesses. 5. Narinder, Mahinder and Rajinder were not present at the time of the incident and were falsely implicated. 6. Finger prints were not lifted from the revolver which was allegedly seized from the hands of Ajay at the time of his apprehension and arrest. 7. Expert evidence (Medical as well as Ballistic Experts) does not support the prosecution case. 8. Conspiracy is not established and ingredients of Section 120B Indian Penal Code are not satisfied. 9. No case for conviction under Section 34 Indian Penal Code is made out as common intention is not established. 10. Absence of motive. 11. Miscellaneous Points. 12. The investigation was unfair which resulted in miscarriage of justice. 13. There is no evidence of promptly delivering the special report to the Area Magistrate as required under Section 157 Cr.P.C- 14. Sentence. Point I:

(75) PW-I Naval, PW-2 Mahinder Singh and PW-5 Rakesh Kapoor were not present at the scene of crime. PW-3 Ashok, PW-2 Mahinder Singh and PW-5 Rakesh Kapoor have all deposed about the fact that Naval was present during the incident at the scene of crime. The three police officers, i.e., PW-35 Si Gurdeep Singh, PW-19 Si Mahinder Ram and PW-24 Constable Mehtab Singh have testified about the presence of Naval when they came on the scene at the time of

apprehension of Ajay and subsequent events which followed. These police officers have no reason to tell lies. Besides the oral testimony of all these witnesses there is other ample evidence on record to establish Naval's presence at the scene of crime. This is :

(A)Naval had apprehended Ajay when he was trying to escape from the scene of crime. He was holding Ajay in his grip when police officers arrived and took Ajay in custody.

(B)Ajay's list of injuries shows teeth bites on his back. These teeth bites establish the credibility of prosecution story of Naval holding Ajay in his grip from behind.While doing so Naval must have given teeth bites on the back of Ajay in response to the teeth bite given on the dorsum of the left hand of Naval by Ajay. Teeth bites on the back of Ajay is a very important piece of evidence establishing presence of Naval. None else could have given these teeth bites on the back of Ajay.

(C)Naval had received injuries on his person, most of which are contusions. Such injuries could not have been self-inflicted. Moreover, in the facts of the case Naval could not have any opportunity to self-inflict any injury because right from the time of apprehension of Ajay Naval was with several police officers all along till his medical examination was conducted at the police hospital that very night at about 11.30 p.m. or 12.00. In the medical examination the injuries on his person were duly netted. Moreover, the doctors who deposed about Naval's injuries were not cross-examined as to whether, the injuries on Naval could be self- inflicted.

(D)The T-shirt of Naval which was taken into possession by the police on that very night was found to be blood stained.

(E)Naval made the first statement to the police which formed the basis of the Fir and this statement was recorded shortly after the incident because the time of its dispatch for purposes of recording of Fir is shown to be 9.05 p.m. PW-5 stated that Si Gurdeep Singh started recording Naval's statement at 8.15 p.m. The time of the incident is 7.45 p.m. The statement contains such details about the incident which could not have been given except by a person who was personally involved in it:

(F) Naval had participated in the investigation on the spot and signed several recovery memos. The recovered articles were deposited in the Malkhana Along with recovery memos that very night. This obviates any argument about the recovery memos being prepared subsequently.

(G) The statement of Si Gurdeep Singh as PW-35 shows that before proceeding to record his statement he had made certain enquiries from Naval on the spot. Si Gurdeep Singh had also prepared the injury statement of Naval.

(H) Some of the injuries on Naval can only be explained to danda blows which he would have received during the main incident. (1) Naval was subsequently also medically examined because he had made a grievance that the earlier medical examination did not record all his injuries. In the first medical examination only three injuries were shown while in the medical examination conducted on 10th October, 1982 seven injuries were shown. Without entering into the controversy about the number of injuries what is important is that Naval had received injuries in the course of incident. His blood stained T-shirt was taken into possession that very night when he was returning from the hospital at 1.00 a.m.

The most important fact to be noted is that if Naval was not on the scene, who was responsible for Ajay's apprehension and arrest? The entire incident was over within minutes and accused persons immediately after the firing fled from the scene of crime. Unless Naval was already present on the scene of crime he could not have chased and apprehended and got arrested Ajay. No police officer or any other witness has said that he had chased Ajay and apprehended him when he was running away from the scene of crime. Thus there could be no doubt about the presence of Naval at the scene of crime. The defense started laying foundation for the plea that Naval was not present at the scene of crime by saying that Naval used to work at Panchkuin Road shop of Gobind Ram and did not work at the Palika Bazar shop of the complainant party. This foundation is knocked off by their own written document, i.e.. Ex. PW-9 /A- a complaint to the police by Narinder in which he refers to Naval as one of the owners of shop No. 33 with whom he alleged that he had quarrels several times. This document besides other evidence on record establishes that Naval very much used to work at shop No. 33 and,

therefore, in normal course of events he should have been present at the time of incident specially when it was the closing time of the shop. PW-2 Mahinder Singh and PW-5 Rakesh Kapoor while discussing about the presence of Naval we have noted that Naval's first statement, i.e., the Rukka was recorded soon after the incident. PW-2 Mahinder Singh and PW-5 Rakesh Kapoor are named in the said statement of Naval. Naval states in the said statement that these two persons were present at the time of the incident. In view of the proximity between the incident and this statement of Naval any possibility of Naval having consulted these witnesses before naming them in the Rukka is totally ruled out. The statements of these witnesses were recorded by the police the same evening. The version of the incident and the main events given by these witnesses is fully consistent with the version of other eye witnesses. therefore, it is impossible to say that these witnesses are planted witnesses or that they were not present at the scene of crime or that they did not witness the events with their own eyes. Further these two witnesses participated in the police investigations which followed the incident. They are signatories to various seizure memos. This shows their involvement right from the initial stage. This rules out any possibility of them being planted as witnesses in the case. The memos to which these witnesses are signatories get sanctified from the fact that articles seized by virtue of the memos were deposited in Malkhana that very night. It is not possible to say that the memos could be prepared subsequently. The allegation of the complainant party is that in the initial investigation the police was being unfair to the complainants. In the face of such an allegation it would be difficult to say that the police would become party to falsehood by allowing PW-2 and PW-5 to be planted. The fact that these witnesses participated in the investigation right from the beginning leaves no manner of doubt about their presence at the scene of crime. Further the way these witnesses have given the eye witness account of the main incident and the events which followed leaves no manner of doubt about their presence and credibility. In the lengthy cross-examination to which these witnesses were subjected they could not be dislodged. An attempt was made to discredit PW-2 Mahinder Singh by saying that he tried to conceal the fact that he was an old friend of the complainant party and was a class-mate of one of the brothers of the complainant party. Evidence was brought to establish this fact. It is true that from

the evidence that has been brought on record it appears that Mahinder Singh tried to conceal these facts and projected himself as if he was a totally unknown person, the question which arises for consideration is whether on account of this the witness should be totally discredited and his evidence be thrown over-board? When we are satisfied about the presence of this witness at the scene of crime, we do not consider it justifiable that his entire evidence should be rejected. His evidence has great corroborative force. Similarly attempt was made to discredit PW-5 Rakesh Kapoor by showing that he never worked at shop No. M-13, Palika Bazar. Electricity bills were brought on record to show that there was no electricity consumption in shop No. M-13, that there was no proof of payment of rent of the shop by the witness. Be that as it may, as already held Rakesh Kapoor's presence at the scene of crime cannot be doubted. Assuming that the witness was not working at shop No. M-13 yet his evidence shows his total familiarity with Palika Bazar and some of its shop keepers. He may not be a wholly reliable witness. But his deposition about the incident has great corroborative value specially when it is established that he was present at the scene of crime. To sum up, the names of these two witnesses are given in the Rukka as well in the FIR. Their names and positions are shown in the site plan proved on record. Their statements were recorded that very evening and subsequent statements were also recorded by Inspector Kulpal Rai Mehta. up to 11.00 p.m. as many as 14 memos had been prepared during the course of investigations and these persons had witnessed the same. The recovered properties were deposited in the Malkhana on the basis of such memos that very night between 11.00 to 12.00p.m. The extract from the Malkhana register is Ex. PW-16/A. In the three categories of witnesses propounded by the Supreme Court in *Vadivelu Thevar v. State of Madras*, : 1957 CriLJ1000 i.e., a wholly reliable witness, a wholly false witness and a witness who may be partly true and partly false, these witnesses fall in the third category. The evidence of such witnesses to that extent it is considered reliable and corroborative can be taken into consideration. thereforee, we need not totally discard the evidence of PW-2 Mahinder Singh and PW-5 Rakesh Kapoor. Their evidence has corroborative value. The evidence of Mahinder Singh was also attacked on the ground that as per the site plan he was at least at a distance of 55 feet from the place of occurrence and, thereforee, he could not have properly

witnessed the incident. This argument is totally misconceived. Firstly in a well-lighted place like the Palika Bazar it is not difficult to see events from a distance of 55 feet. PW-11 had deposed about the fact that the place was fully lighted. Secondly the distance of 55 feet was sought to be worked out on the basis of the site plan prepared by the draftsman. The-distances:- shown in the site plan were not put to the draftsman when he appeared in the witness box. These distances shown on the site plan could not be taken as gospel truth. It was also argued that PW-5 Rakesh Kapoor was not prepared to disclose his residential address. For this the witness had a justifiable Explanationn i.e. fear from the accused persons and, thereforee, this ground is not sufficient to discard his testimony. In order to show that he was not working at shop No. M-13 he was cross examined about payment of rent of the shop. The witness stated that he was paying rent in cash and he went on to explain that because the subletting was unauthorised rents were paid in cash only. We would like to note and emphasise at this stage that actually there are four eye witnesses of the incident. This includes these two witnesses, i.e., PW-2 and PW- 5 about whom the defense has sought to cast doubts. As a matter of law conviction can be based on the sole testimony of an eyewitness. In the present case the evidence of two eye witnesses, i.e., Naval and Ashok, about whose presence there is no manner of doubt whatsoever, is sufficient to uphold the prosecution case even if for the sake of argument the evidence of these two witnesses, i.e., PW-2 and PW-5 is to be rejected. About the presence of Ashok PW-3 nobody has raised any doubts. That is so because Ashok had received gun shot injuries, one of which was on a vital part of his body, i.e., chest and it was a miracle that he survived. It follows from the above discussion that the argument raised on behalf of the appellants that witnesses Naval, Mahinder Singh and Rakesh Kapoor were not at all present at the time of the incident is wholly untenable and misconceived - We are satisfied from the evidence on record that these witnesses were present at the scene of crime and are, thereforee, eye witnesses of the occurrence. It is wrong to say that they are planted witnesses. Point No. 2

(76) PW-1 Naval and PW-3 Ashok being the brothers of deceased Mukesh and themselves being the complainants are interested witnesses. No doubt PW-1 Naval and PW-3 Ashok are the complainants in this case and are also real

brothers of deceased Mukesh. They were jointly doing the jewellery business in shop No. 33, Palika Bazar. But these facts do not mean that their evidence ought to be discredited or should not be given the weight it deserves. We have already discussed the evidence of Naval and Ashok. We have also accepted the prosecution version that Naval was present at the scene of crime. Both these brothers are injured witnesses. So far as Ashok is concerned, his presence at the scene of crime has not even been challenged by anyone. He received two gun shots - one on his chest and the other on his finger. The Ballistic Expert PW-18, B.Moitra gave a definite opinion that the bullet recovered from the body of Ashok was fired through the revolver Ex. P-11, the one snatched from the hand of Ajay at the time of his apprehension and arrest. Ashok received several injuries out of which two were by bullets and the rest by danda and belt blows. His medical record shows that he was declared unfit for statement soon after his admission in the hospital on 6th October, 1982. He was operated upon that very night and a bullet was extracted from his chest. His statement was recorded by the police for the first time on 7th October, 1982 at about 7.00 a.m. A detailed statement of Ashok was recorded on 11th October, 1982. The appellants tried to attack the antecedents of Ashok and Naval in order to show that they were not credible witnesses. Law is that bad antecedents alone do not make a witness unreliable: Dalbir Singh v. State of Punjab, 1987SCC(Cri) 519. Rup Singh v. State of Punjab, 1991 Scc (Cri) 548. As a matter of fact we do not find any such antecedents of Ashok and Naval as may render their testimony even slightly doubtful. The Supreme Court held in Appabhai v. State of Gujarat. 1988 Scc (Cri.) 559, Brijpal Singh v. State of U.P.. 1994 Cr.L.J. 2082 and Ramaswami v. State of T.N., : 1976 CriLJ1563 that a witness injured in the incident is the best eye witness. Ashok and Naval both the brothers were injured in the incident and they are the best eye witnesses. Both gave a similar version of the entire incident though they hardly had any occasion to exchange notes. This we say in order to rule out an argument that the brothers had consulted each other before making statements to the police after the incident. Naval's first statement was recorded almost immediately after the incident whereas Ashok's first statement was recorded by the police at 7.00 a.m. i.e., the morning of 7th October, 1982. By the time Naval made his statement it cannot be said that had occasion to talk to Ashok before hand. So far as Ashok

is concerned, though it is in evidence of Ashok that Naval met him for the first time early morning on 7th October, 1982, yet it cannot be said that Ashok after undergoing such a serious operation a few hours before this meeting, would be in a position to talk at length about the incident with Naval and exchange notes. Both the brothers are natural witnesses of the incident. Their presence at the spot is natural because they were doing business at shop No. 33 and the incident took place at about the closing time of the shop when normally all the three brothers would be present at the shop. Naval was inside the shop counting cash to wind up the day's business while the other two brothers, i.e., Ashok and Mukesh were standing outside the shop when the whole thing started. Naturally all the three brothers were involved in the incident. The attack was directed at all of them and they being real brothers were trying to defend each other against the attack. Thus the participation of Ashok and Naval in the incident is also natural. Further it is to be noted that the eye witnesses account of the incident given by these two brothers is not only similar and consistent with the version given by both of them, their version is corroborated by the version of the incident given by PW-2 Mahinder Singh and PW-5 Rakesh Kapoor. Apart from this the version of the incident given by all these four witnesses is corroborated by the police witnesses from the stage of arrival of police onwards. We find that Naval and Ashok are wholly reliable witnesses and their evidence is wholly trustworthy and free from any doubts. About the argument that these two are interested witnesses, we must note that it is quite often that witnesses to a crime are interested witnesses being relations of the parties. Relations are interested in seeing that the real culprits are brought to book. therefore, being an interested witness is not so important. What is of utmost importance is as to whether a witness is a natural witness or appears to be a planted witness. In the present case the witnesses are not only real brothers of the deceased they are themselves victims of the crime. They are natural witnesses and their evidence deserves due weightage. It is settled law that the testimony of a witness need not be rejected merely on the ground that the witness is an interested witness. The concept of interested witness came up for consideration in *State of Rajasthan v. Kaiki*, : 1981 CriLJ1012 where it was held that A witness may be called 'interested' only when he or she derives some benefit from the result (if a litigation; in the decree in a civil suit, or in seeing an accused person punished. A

witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'.' Similar view has been propounded in Mohinder Singh v .State, 1992 Scc (Cri) 52 and Ram Avtar Rai v. State of U.P. 1985 Scc (Cri) 156. A charge has been leveled against Naval and Ashok that they tried to make improvements in the testimony while appearing as witnesses in Court. Regarding Naval this charge was sought to be made good by alleging that the statement imputed to Narinder and Sudhir about 'police will not do any thing and they will have to sort out the matter themselves' was never mentioned by Naval earlier to the police. Secondly the fact about all the accused seen talking outside the shop of Sudhir at 6.15 p.m. on 6th October, 1982 was allegedly not stated to the police by Naval earlier. Thirdly, same thing is alleged about Naval's statement that Sudhir closed his shop early on the fateful day. These things were put to Naval in crossexamination and he has explained that the police officer who recorded his first statement was not prepared to record anything except the main incident of 6th October, 1982 because of instructions in this behalf of the two ACPs present at the spot. The police was insisting that he should confine only to what had happened in the main incident The learned special Public Prosecutor pointed out that an Fir is not an Encyclopedia and it need not contain everything which is part of the prosecution case. To us both these Explanationns appear to be reasonable and, thereforee, we are unable to sustain the argument that Naval has tried to improve his statements. Also an argument was raised qua these witnesses that there were material discrepancies in their evidence. We find no substance in this argument. Firstly one ha s to see what are material discrepancies. It is not every type of discrepancy which may discredit the witness.The concept of material discrepancies has been explained by the Supreme Court in 1981 Cr.L.J. 1012. We do not find any material discrepancies in the evidence of these eye witnesses and, thereforee, we find no merit or substance in this argument. While holding this we would only like to note that small discrepancies or even some slight improvements cannot be said to be sufficient to totally discard the testimony of a witness. In the present case Naval and Ashok as already observed by us, are not ordinary witnesses. They are witnesses injured in the main incident and, thereforee, their testimony stands at a much higher footing and such arguments cannot create any dents. We are of the view that the

evidence of PW-1 Naval and PW-3 Ashok in the present case is totally reliable and trustworthy. It stands fully corroborated by the evidence of other witnesses including police witnesses and other facts on record. Point No. 3

(77) PW-4 Mukesh Sood is a planted witness. PW-4 Mukesh Sood was a shopkeeper in Palika Bazar during the relevant period. His evidence shows that he was fully familiar with topography of the Palika Bazar. His statement was recorded for the first time on 11th October, 1982 by Inspector Mehta PW-36. The first allegation against him by the appellants is about delay in recording his statement by the police. We find no merit in this allegation because as per facts on record Mukesh Sood is not a witness of the main incident. He could not be involved in the statements recorded by the police immediately after the incident of 6th October, 1982. Inspector Kulpal Rai Mehta took over the investigations in the case on 9th October, 1982. 10th October, 1982 was a Sunday and the Palika Bazar was closed. On 11th October, 1982 he visited Palika Bazar for the first time and in the course of spot enquiries he came across this witness and recorded his statement. His nonavailability or not coming forth to depose can also be explained to the fact that on 6th October, 1982 he rushed to his house on getting the news of serious sickness of his father and while going to his house he had seen the five accused outside the shop of accused Sudhir Jain talking to each other. On account of his father's sickness, may be he was busy and did not come forth to depose about facts relating to this case on 6th or 7th October, 1982. On 8th October, 1982 the investigation of the case stood transferred to the Crime Branch. Moreover, as stated by Naval the Inspector conducted the investigations on 6th and 7th, October and was not interested in noting any statement about anything other than the events pertaining to the main incident. Mukesh Sood as already stated was not a witness of the main incident and, therefore, in any event for Si Gurdeep Singh who was the initial investigator this witness was wholly irrelevant. Further the credibility of Mukesh Sood was sought to be challenged on account of some alleged bad antecedents or on account of his having joined the custom authorities as witness in some cases pertaining to Palika Bazar. We have already observed that bad antecedents do not make a witness wholly unreliable. The cases in which he was ought to be involved were all custom cases pertaining to Palika Bazar. Rather this shows that this witness was very much connected with the Palika

Bazar since long and knew a lot a booth' said Bazar and the shopkeepers working there. Mukesh Sood has only deposed about two things. One - the incident of 1st October, 1982 involving accused Narinder and PW-I Naval about which Narinder made a complaint to police. Mukesh Sood had witnessed this incident. This incident is not in dispute and, therefore, the testimony of this witness satisfies the test of credibility. The only other point about which this witness deposed is about having seen all the accused talking in front of shop No. 4 of Sudhir Jain on 6th October, 1982. Mukesh Sood was confronted with his statement recorded earlier by the police on this aspect when he appeared as PW-4. The only difference was that previously he did not say that 'On seeing him the five accused stopped talking or became silent'. The learned Counsel for the prosecution conceded that the part that 'five accused stopped talking or became silent' may be ignored. We have seen that Mukesh Sood talked only about two facts pertaining to this case out of which one at least is not in dispute. It follows that witness cannot be said to be a planted witness. We find no merit in this ground. The evidence of Mukesh Sood on both the points deposed by him appears to be reliable and trustworthy. Point No .4

(78) Omissions, improvements and contradictions In their effort to dislodge the eye witnesses the learned Counsel for the appellants tried to highlight certain omissions, improvements and contradictions in their statements. We have carefully considered the various alleged (emissions, improvements and contradictions and we do not find that there is any thing to reject the testimony of any of the witnesses. While considering this aspect it has to be borne in mind that even a most truthful witness may commit some discrepancy or minor contradictions in his own statement recorded over a period of time. In the present case the recording of the prosecution evidence started about two years after the incident and continued for years. The prosecution witnesses were subjected to lengthy cross-examinations by different Counsel appearing for different accused persons. The record shows that recording of statement of PW-I Naval started on 4th December, 1984 and the statement was concluded on 17th May, 1985, running into about 150 pages. This witness was examined on various dates. The predicament is that if witnesses give exactly similar account of the incident they are accused of being tutored. If they speak naturally and give eye witness account in their own words, there are bound to be slight variations. One cannot lose sight

of normal human behaviour. Each individual has his own perception of an event and likes to describe it in his or her own way. Coupled with this, the lapse of time between the incident and the stage for appearing as a witness in Court also accounts for some minor variations and discrepancies. Thus discrepancies are bound to be there in statements of even most honest and truthful witnesses. State of Rajasthan v. Kaiki, 1981 Cri. L.j. 1012, State of U.P. v. Ballabh Das, : 1985 CriLJ2009 . What is important in this connection is to find out if there are any material discrepancies. If the discrepancies go to the root of the matter they will have some bearing on the prosecution case. Otherwise if they do not go to the root of the matter and if they are not on material aspects of the prosecution case, then the case is not effected. The learned Counsel appearing for all the appellants have failed to point out any material discrepancy in the statement of eye witnesses or any such discrepancy which may go to the root of the matter. Only two important improvements in the statement of the eye witnesses were pointed out, i.e., the statement about the accused being seen in a black Ambassador car outside the Connaught Place Police Station after the main incident on 6th October, 1982 and the statement that when all the accused were seen outside shop No. 4 at 6.15 p.m. they were talking together and on seeing Mukesh Sood they stopped talking. Both these points were conceded by the learned Special Public Prosecutor and, therefore, we have not taken into consideration either of these two aspects and have proceeded as if they do not form part of the record. A question may arise that can for this reason the entire statement of the witness be discarded? We are of the view that entire evidence of the witness concerned is not liable to be thrown over-board for this reason. The offensive part can be ignored. Some improvements were shown regarding the events prior to the main incident of 6th October, 1982. The background events were contained in the statements of witnesses recorded on 6th or 7th October, 1982 by Si Gurdeep Singh. This has been answered by the witnesses by stating that in view of the instructions of Acp A.L.Chadha and Acp Narinder Singh who were present on the spot after the incident on 6th October, 1982, the I.O. was not prepared to record anything other than the facts about the main incident. For the background facts, the I.O. kept on saying that an enquiry was already being held regarding the same and, therefore, he was not concerned about those facts. On this ground the I.O. refused to record

any facts other than the main incident. There is sufficient evidence on record in this behalf and even S.I.Gurdeep Singh who was recording the statement has admitted that he had been instructed by the said ACPs to confine to the main incident of 6th October, 1982 while recording the statements. In such a situation, the subsequent statements where these facts are mentioned can be taken into consideration and the argument that there are improvements cannot hold good. In this context it was also argued that Naval did not state in his statement Ex. PW-1/A dated 6th October, 1982 about exact number of bullets allegedly fired by Ajay. True that Naval did not give exact number of bullets but it is recorded in his statement under Section 161, Cr.P.C. that 'one after the other continuously bullets were fired on me and my brothers'.

ANOTHER instance given was that the witnesses had not stated in their statements under section 161, Cr.P.C. as to in which direction the accused had fled after the incident. The direction may not be there but it is very much contained in the statement that all the accused ran away together after the firing. We feel that running away together is more important than the direction in which they ran away. Thus we are unable to persuade ourselves to hold that the testimony of the eye witnesses is liable to be rejected on the ground of omissions, improvements and contradictions.

(79) Presence of Narinder, Mahinder and Rajinder and their involvement in the incident. Narinder, Mahinder and Rajinder have denied their presence during the incident from which it would follow that they were not involved in the incident at all. We have to examine the credibility of this version of these three accused. For this purpose it will be appropriate to note in the first instance that the involvement of Narinder with Sudhir Jain permeates the whole affair. It starts with Sudhir Jain running his own counter at shop No. 9, Palika Bazar where Narinder, Mahinder and Rajinder were doing their business of art printing. The record shows that friendship between Sudhir and Narinder etc. started from at least then onwards. The evidence of this friendship is available not only from the statements of witnesses about all the accused being seen taking liquor together on various occasions but also from the fact that Narinder had to go to attend the birthday party of a child of Sudhir on 1st October, 1982 and for that purpose he had called

his wife and child to his shop so that they could accompany him to the place where Sudhir's party was to be held. The incident of 1st October, 1982 between Narinder and Naval is an admitted fact in view of Narinder's own complaint to the police Ex. PW-9/A. From this it also becomes clear that there used to be frequent quarrels between Narinder and Naval etc. and the cause of these quarrels was Narinder enticing away customers coming to the shop of Naval to the shop of Sudhir. This shows the closeness between Sudhir and Narinder. On 1st October, 1982 Narinder was beaten by Naval in the presence of his wife and child which left stronger bitterness in Narinder against Naval and party. The evidence on record has further established as accepted by us that all accused were seen outside the shop of Sudhir at 6.15 p.m. on 6th October, 1982. In pursuance of the complaint of Narinder dated 1st October, 1982 Narinder and his brothers Along with Sudhir had visited the police station on 6th October, 1982 at about 4.00 p.m. While coming out of the police station, Narinder and Sudhir were heard saying, 'IN Police Walon Ne Kuchh Nahin KARNA. Ab Hamen Khud Hi NIBTANAPAREGA'. This shows that Narinder, Mahinder and Rajinder were fully involved with Sudhir in his cause, i.e., his business rivalry with the complainant party, i.e.. Naval etc. Narinder and his brothers were fighting the battle of Sudhir with Sudhir in the background. This is an important fact to be noted that events from 1st October, 1982 onwards show that Sudhir always tried to remain in the background while Narinder etc. remained in the fore-front. The direct evidence of presence of Narinder, Mahinder and Rajinder at the scene of crime and their involvement in the incident is available from the injuries on the person of Ashok and Naval. Many injuries on these two brothers are relatable to danda and belt blows. This is nobody's case that Ajay had any other weapon in his hands. Rather Ajay appeared to be empty handed when he arrived at the scene of crime. therefore, the danda and belt injuries on the two victims clearly suggest presence of other attackers who had such weapons in their hands and these persons could be Narinder, Mahinder and Rajinder only and none else. Besides the evidence of injuries on Ashok and Naval which proved the presence of other persons in the attack apart from Ajay, there is clear, cogent and reliable evidence of the four eye witnesses which has already been referred to above about the presence of Narinder, Mahinder and Rajinder at the scene of crime and the role they played in the incident. We have no doubt about the presence of these

three persons at the time of the incident and the role played by them in the incident as deposed by the eye witnesses. An argument was raised that if they were present at the scene of crime and played a role in the incident, why they were not noticed by the police witnesses because none of the police witnesses spoke about their presence. The answer to this argument is that they had succeeded in their escape before the police arrived. It is only because of their successful escape that this argument is being raised. On successful escape the Supreme Court observed in *Kartarey v. State of U.P.*, : 1976 CriLJ13 :

'NOR could the circumstances of these appellants' successful escape be a ground to disbelieve the eye-witnesses and to doubt the appellants' participation in the commission of the crime.'

Further fact to be observed in this connection is the conduct of these three accused soon after the incident. None of them was available at their residence that night or on the next day. Narinder and Mahinder were arrested on 8th October, 1982 while Rajinder was arrested on 12th October, 1982. This conduct may not by itself be of a grave consequence, yet it is relevant and need not be ignored. *Kartarey v. State of U.P.*, 1976 Cri. L.J. 13 *Gurnek Singli v. State of Punjab*, : AIR 1988 SC2249 and *Kundula Bala Subrahmanyam v. State of A.P.*, 1993 Scc (Cri.) 655 Mr. B.R. Handa, learned Counsel appearing for accused Narinder and Mahinder also argued that the theory of presence of Narinder and Mahinder at the scene of occurrence and their involvement in the crime is rendered wholly unacceptable by the fact that these persons are alleged to have carried small dandas in their hands as weapons. He argued that a danda is hardly a weapon to be carried on such a serious mission. The answer to this argument is that they knew that their companion accused Ajay was carrying a fully loaded revolver with him. This was their confidence and, therefore, even if they do not carry a danda, that would not matter. Actually their weapon was Ajay. This finds support from the fact that the initial scuffle or beating with danda etc. went on hardly for about one and half minute or so. This means that just after starting the fight accused Narinder etc. gave exhortation to Ajay to fire. The initial fighting or the use of danda was thus just a starter. The real thing came out within one and half minutes or so. In view of these facts we have no doubt about the presence of Narinder,

Mahinder and Rajinder at the scene of occurrence and about the role played by them in the main incident. The argument raised by the learned Counsel appearing for the appellants to the contrary is thus rejected. Point No. 6.

(80) Not lifting of finger prints from the revolver seized from Ajay. The revolver was seized from the right hand of Ajay when Ajay was apprehended. This was done by Si Gurdeep Singh. Thus the police officer who seized the revolver believed that he had caught the accused red-handed with the revolver. He, therefore, did not consider it necessary to lift finger prints from the revolver. The revolver was handled first by Si Gurdeep Singh and thereafter by the senior police officers also as shown by the evidence on record. This would also render lifting of finger prints from the revolver futile. Si Gurdeep Singh has deposed that after seizing the revolver from the hand of accused Ajay, he opened it and smelt it. 11 smelt as having been freshly fired. The apprehension of accused Ajay and seizing of revolver took place in open and in the presence of public witnesses as well as several police officers. Planting of any oilier revolver on Ajay in such circumstances would be out of question. Public witnesses PW-2 Mahinder Singh and PW-5 Rakesh Kapoor had observed that senior police officers had examined the revolver. In a situation where the weapon is handled by so many persons the need for lifting finger prints is rendered futile. *Shamim Rahmani v. State of U.P.* : AIR 1975 SC1883 . The present is a case of the weapon being handled by so many others. Si Gurdeep Singh denied the suggestion that he did not lift finger prints from the revolver because it did not contain accused Ajay's finger prints. He explained that he did not feel it necessary to lift finger prints from the revolver in view of the fact that the revolver was seized from accused Ajay at the time of his arrest and also for the reason that he found the revolver having been recently fired from. Si Gurdeep Singh had actually sealed the revolver before the arrival of the crime team at the spot. In view of the peculiar facts of the case we do not attach much importance to non-lifting of finger prints from the revolver. We have believed the eye witness account of the incident according to which Ajay had fired six shots from his revolver, i.e., he emptied his fully loaded revolver. We have also believed the fact that when Ajay was arrested, he was holding the revolver in his right hand. The argument thus has no merit and is rejected. Point No. 7.

(81) Expert evidence does not support the prosecution case. Under this head is included medical evidence as well as the evidence of the Ballistic Expert. As per the evidence of Shri B. Moitra PW-18, the Ballistic Expert, the revolver Ex. PW-11 was found in working order and had been fired through. It will be recalled that PW-35 Si Gurdeep Singh stated that immediately after seizing the revolver from the accused he had opened it and same it. The revolver smelt as .laving been freshly fired through. Further, six empty cartridges were noticed inside the revolver. As per the oral evidence already referred to, in all six shots were fired in the incident. In all four bullets had been recovered - two from the body of deceased Mukesh, one was extracted from the chest region of Ashok while the fourth was found near the pillar near shop No. 34. As per the opinion of the Ballistic Expert the bullet recovered from die body of Ashok Ex. P-20 (BC-4) was definitely fired through the revolver Ex. P-I I. Regarding the other three bullets he opined that the same could have been fired from the same revolver but he was not in a position to give a definite opinion torn wan', of sufficient data. The clothes worn by Ashok and Mukesh were also sent to the Ballistic Expert for opinion regarding the holes in the clothes corresponding to the areas of the bodies where the gun shots had hit. The expert opined that the holes could have been caused by the passage of .32 bullets. The medical evidence shows that PW-7 Dr. S.D. Gupta and PW-20 Dr. J.P. Gupta had found some blackening and tattooing on the surrounding skin near the entry wound of Ashok. Dr. J.P. Gupta also said the same about the entry points of gun shot injuries received by Ashok. Opinion of Dr. J.P. Gupta was also sought about the distance from which a shot should be fired in order to leave charring/ blackening and tattooing marks at the entry point of the wound. His opinion was that the firing has to be from a short distance which may be within one feet. Similarly FW-18 Mr. B. Moitra, the Ballistic Expert opined that the blackening and charring depends upon the distance between the muzzle end of the revolver and the target. If during grappling when the firing is from the revolver, the end of muzzle is up to six inches from the target there will be blackening at the entry wound and if the end of the muzzle of the revolver is more than six inches from the target, there will be no blackening. For charring effect he opined that the end of the muzzle of the revolver should be only two inches from the target. For tattooing marks as per expert opinion the distance between muzzle end of the revolver and

the target can be up to one and half feet to two feet. In the background of this evidence the learned Counsel appearing for the appellants argued that as per the site plan Ex. PW-15/ A the distances between place of firing and the target are over ten feet which is much beyond the limits given by the Ballistic Expert. Shots fired from such distances could not leave behind charring/blackening and tattooing marks. It was sought to be made out that there was a clear conflict between the expert opinion and the evidence on record and the benefit of this should go to the accused persons. Reference in this connection was also made to statement of PW-5 Rakesh Kapoor where he stated that firing took place from a distance of about five and half to six feet. In this very connection the learned Counsel for the appellants also relied upon the evidence of PW-13 Dr. L.T. Ramani who had conducted the post mortem on the body of Mukesh. Dr. Ramani stated that there was no evidence of tattooing or burning effect around the wounds of Mukesh. According to expert opinion if the wound is treated the tattooing mark could disappear. Dr. L.T. Ramani stated that wound of Mukesh had not been treated. However, Dr. Ramani mentioned presence of surgical dressings around the wounds of Mukesh. In fact the doctor who attended to Mukesh when he was admitted to the hospital had also stated that they tried to stop the bleeding from his wounds. From this at least one thing becomes clear that the attempt by the doctors to stop bleeding from the wounds of Mukesh by applying surgical dressings etc. must have resulted in such marks to disappear from around his wounds. It is also admitted by expert opinion that these marks can disappear for such reasons. In this context we may also note that Dr. Misra who had prepared the MLCs of Mukesh and Ashok did not mention about any charring, blackening or tattooing around the wounds of these two injured persons. This can be explained by the fact that Dr. Misra might not have so closely scrutinised the wounds of the injured persons specially when the cases were being referred to experts for further management. Dr. J.P. Gupta who later took up these cases had noted such marks around wounds of both the brothers. Now remains the main aspect of this argument, i.e., the distances from which the shots were fired. The oral evidence about the main incident has already been noticed at length. In view of that evidence which we have already found to be credible and trustworthy we are unable to place much reliance on the site plan Ex. PW-15/A, so far as the distance

indicated in it are concerned. These distances are being counted on the basis of positions of different persons shown on the site plan. These positions are based on estimations. They can never be precise. Moreover the draftsman was not cross-examined with reference to the position of various persons shown on the site plan and the distances which can be worked out from the same are used for preparing the site plan. The thrust of the argument on behalf of accused persons is that the shots were fired from distances much longer than required for purposes of leaving behind such blackening, charring and tattooing marks. The prosecution case is that the shots were fired from a very close range and, therefore, such marks were found on the victims' wounds. It will be recalled that when the scuffle started there was grappling between persons involved. Within one and half to two minutes the firing started. The shots were fired successively one after the other. All the eye witnesses have stated that accused Ajay fired all the six bullets from one place but while firing the bullets, he moved one or two paces forward or backward. No question was put in cross-examination to PW-1 and PW-3, i.e., Naval and Ashok who are the injured witnesses about the distance from which the shots were fired. Only PW-5 Rakesh Kapoor was cross-examined about the distance and he replied that it could be five or six feet. This we feel is purely based on estimation and Rakesh Kapoor is not correct while mentioning the distance as 5/6 feet. The firing took place when grappling was still going on. therefore, Mukesh got both the shots from a very close range which could be even two inches and that is why he had charring and tattooing around his wounds as mentioned by Dr. S.D. Gupta and Dr. J.P. Gupta. So far as Ashok is concerned, there was tattooing, which could be from up to a distance of two feet between the end of the muzzle and the target. The first bullet which Mukesh received could be from a distance of even two inches between the end of the muzzle and the revolver and the injury. This fact is corroborated by another fact that blood of group 'A' was found on the trousers of Ajay. The blood group of Mukesh is 'A' and Ajay did not have any bleeding injury, therefore. Ajay's legs must be in contact with Mukesh. This establishes the closeness between the two during the firing. The signs of charring on the wounds of Mukesh could have disappeared during the course of efforts to stop bleeding as already observed. This is in substance the argument regarding alleged conflict between the expert evidence and the prosecution case. In order to

satisfy ourselves we have discussed this aspect above and we find that the learned Counsel for the appellants have failed to make out a case of conflict between the expert evidence and the prosecution case in this behalf. We would like to note here that it is settled law that if the eye witness account of an incident is found to be satisfactory, trustworthy, reliable and natural, the expert medical opinion or the opinion of the Ballistic Expert cannot override such evidence of eye witnesses. In Air 1993 Sc 1233, it was also observed that the expert evidence is most of the time based on hypothetical facts. The experts give their opinion on the basis of hypotheses. Such hypothetical opinion cannot override direct evidence which the Court finds reliable and unimpeachable. Darshan Singh v. State of Haryana, : 1996 CriLJ4438 . In State of U.P. v. Sughar Singh, : 1978 CriLJ141 , it was a case of death by gun shot injuries. Direct evidence of eye witnesses was available. Inconsistency relating to distance from which shots were fired as per the medical expert and the eye witness account was found to be of no consequence. In State of U.P. v. Knshnagopal, : 1989 CriLJ288 , it was observed: 'It is trite that where the eye witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses are the eyes and ears of justice'. from the above referred decisions of the Supreme Court the law on this aspect appears to be well settled. The expert opinion cannot override direct evidence of eye witnesses which the Court otherwise finds to be trustworthy and reliable. The learned Counsel for the appellants relied upon Ramnarain v. State of Punjab, : 1975 CriLJ1500 in this connection. In our view this judgment is clearly distinguishable. In this case the eye witness account was not found to be consistent and reliable which is not so in the present case. Keeping all these facts in view we find no merit in the argument raised on behalf of the appellants that there is conflict between the expert evidence and the prosecution case. We do not find any material conflict. We are also of the view that even if there was some conflict, the oral evidence in this case having been found to be reliable and trustworthy, the expert evidence would have to give way. Some controversy was also raised regarding the size of bullets as compared to the revolver Ex. P-I 1. This controversy has mainly arisen because Dr. L.T.Ramani who conducted the post mortem on the dead body of Mukesh gave the size of the bullets extracted by him from the dead body as 5 mm.

According to the Ballistic Expert the size had to be .32 inch. We feel that this has arisen because of mistake on the part of Dr. L.T. Ramani in noting the size of the bullet. We have no doubt that the bullets were of the size of .32 bore Webley Scot revolver, i.e. the revolver used in this case. In fact three bullets were recovered from the two injured persons, while the fourth bullet was recovered from the spot. All the bullets had been duly put in sealed covers. Seals were found intact at all relevant stages. Seals were also compared. This rules out any possibility of tampering with the bullets. We are of the view that this argument regarding size of the bullets is totally misconceived and has been raised in order to confuse the issue and nothing else. Point No. 8

(82) Conspiracy Sections 120A and 120-B, Indian Penal Code contain the provisions regarding the offence of criminal conspiracy. For ready reference, they are reproduced below:

'120A. Definition of criminal conspiracy.-When two or more persons agree to do, or cause to be done, - (1) An illegal act, or (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanationn.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. 120B. Punishment of criminal conspiracy. (1) Whoever is a party to a criminal conspiracy to commit an (offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]'

Section 120A defines criminal conspiracy while Section 120B provides fertile punishment for the offence of criminal conspiracy. Criminal conspiracy often attracts Section 10 of the Indian Evidence Act because direct evidence of

conspiracy is rarely available. A conspiracy is always hatched in secrecy. The offence has to be proved on the basis of inferences drawn from facts. Section 10 of the Indian Evidence Act also bears reproduction:-(Section 10 of the Indian Evidence Act) In *Kehar Singh v. State*, : 1989 CriLJ1 , the Supreme Court had occasion to deal with the law on conspiracy at length. The judgment contains a detailed discussion on all the relevant aspects of law of conspiracy and we do not consider it necessary to discuss the law all over again. For applying Section 10, a prima facie case of conspiracy has to be established because the section starts with the words 'Where there is a reasonable ground to believe that two or more persons have conspired together to commit an offence ' After a prima facie case or a reasonable ground to believe is found, the second part of the Section comes into play. According to which anything said, done or written by anyone of such persons in reference to the common intention after the time when such intention was first entertained by anyone of them. Relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It will be noticed that this latter part of Section 10 permits use of evidence. which otherwise could not be used against the accused person because the principle of criminal law is that act or action of one of the accused cannot be used as evidence against the other. Thus Section 10 creates an exception. Further it was observed in *Kehar Singh's* case (*supra*) that the very agreement to commit an illegal act is an offence under Section 120A and is punishable under Section 120B, IPC. The illegal act may or may not be done in pursuance of the agreement, the ingredient of the offence of conspiracy being the agreement between two or more persons to do or cause to be done an illegal act. It will also be noticed in the said judgment that 'Generally a conspiracy is hatched in secrecy and it will be difficult to adduce direct evidence of the same. The prosecution will often rely on facts of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon the circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators but the latter does. It is, however,

essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The expressed agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words or intention. The evidence as to transmission of thoughts of those sharing the unlawful design may be sufficient.' In *Yash Pal Mital v. State of Punjab*. 1978 Cri. LJ 189, it was held that 'it was not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of conspiracy. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one and other amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant fact is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or the two conspirators without the knowledge of the others, it will not effect the culpability of those others when they are associated with the object of conspiracy'. Reliance was also placed on *Major or Barsay's case* : 1961 CriLJ828 .In this case,the Supreme Court observed:

'It is not an ingredient of an offence under Section 120A that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevance in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts, though for individual offence all of them may not be liable.'

It needs no reiteration that direct evidence of conspiracy is almost impossible to get. therefore, conspiracy has to be inferred from the various circumstances available in a given case. The cumulative effect of all the circumstances have to be seen as a whole as observed by the Supreme Court in *Ram Avtar v .State*. 1985 Scc (Cri) 415. The basic facts in the present case are :

(A) Business rivalry is at the root of the entire incident. The rival businesses are owned by accused Sudhir along with his partner on the one hand (run at shop No. 4, Palika Bazar). On the other hand the rival business was owned by Naval, Ashok and Mukesh in shop No. 33, Palika Bazar, New Delhi. Shops No. 4 and 33 are located opposite each other. (B) Accused Narinder etc. were directly involved in the incident. Somebody was needed to organise the matters from behind the curtain. Sudhir was to perform this role. (C) There is sufficient oral evidence which is also corroborated by witnesses inter se to the effect that Sudhir, Narinder and Mahinder were good friends since long and were seen drinking together along with Ajay at shop No. 9 as well as at shop No. 4, Palika Bazar. This shows the closeness between all the accused. (D) There is also sufficient cogent and reliable evidence to show that accused Ajay used to supply jewellery to Sudhir at his counter at shop No. 9 and thereafter at shop No. 4, Palika Bazar. In fact in his statement under Section 313, Cr.P.C. accused Ajay stated that on the fateful day he had gone to supply jewellery to Sudhir in a thaila (bag). All the eye witnesses of the incident have referred to the close association between all the accused persons and their being seen drinking liquor together. We may note here that Narinder and Mahinder tried to disassociate themselves from shop No. 9 by showing that they had no connection with the same. However, this stand is totally belied by the oral evidence of the eye witnesses referred to above. There is also clinching evidence in the shape of the enquiry report of S.I. Mahinder Ram (Public Witness -19). The report is Ex. PW-19/B which shows that these accused worked at shop No. 9. In fact the complaint of accused Narinder to the police dated 1st October, 1982 (Ex. PW-9/A) which is much prior to the incident contains admission on the part of Narinder of being owner of shop No. 9 Along with Mahinder etc. Another proof of association between accused Ajay and accused Sudhir has emerged from the evidence on record showing that both were students of the same college, i.e., Dav College, Srinivaspuri, New Delhi during the same period. In fact in their statements under Section 313 Cr.P.C. both accused admitted being students of the Dav College during same period. (E) Next important point is accused Narinder used to sit at shop No. 4 of Sudhir and used to entice away customers from the shop of Naval to the shop of Sudhir. PW-I, Pw-3, PW-21 have particularly mentioned about this fact in their depositions. This fact also finds

support from the statement of Naval recorded much prior to the main shooting incident of the case, i.e., on 3rd October, 1982. The same is Ex. PW-I /DD. in this Naval has stated about this fact. The act of Narinder in enticing away customers from the shop of complainant party to the shop of Sudhir was the root cause for the conflict between the two sides and this conflict had been going on since long. The best proof for the fact that the conflict had been going on since long is the complaint of Narinder himself to the police which is Ex. PW-9/A. On 1st October, 1982 there was a fight on this very account between Narinder and Naval etc. and Narinder made a written complaint to the police. He was allegedly beaten by Naval in the presence of his wife and children. In this complaint, Narinder had alleged that such facts had taken place many a times before and police had not been doing anything in the matter. The enquiry in connection with this complaint was entrusted to PW-19 S.I. Mahinder Ram who went to the Palika Bazar on 4th October, 1982 for making on the spot enquiries. When Si Mahinder Ram was at shop No. 9 making enquiries from Narinder etc., Sudhir reached there on his own. About this S.I. Mahinder Ram deposed in his statement as PW- 19. This shows the personal interest of Sudhir in the whole affair. (F) When the rival parties were called at the police station on 6th October, 1982 in the afternoon, Along with Narinder and Mahinder, Sudhir was also present before the SHO. His presence is recorded in the note of the Sho contained in the enquiry report of S.I. Mahinder Ram. The enquiry report is Ex. PW-19/B while the SHO's note is Ex. PW-19/C. The Sho in his own hand has noted the presence of the three accused, i.e., Sudhir, Narinder and Mahinder. It is interesting to note that these accused denied the fact that they had gone to the police station on 6th October, 1982 in the afternoon and appeared before the SHO. In fact before the Sho also, Sudhir was not called and he had gone on his own. The presence of Sudhir before die Sho, has been categorically mentioned by PW-I and PW-21 in their statements in Court.

These facts lead to following inferences :

(1) It was only Sudhir who was to gain from customers being enticed away to his shop from the shop of the complainant party by accused Narinder. (2) At least on 4th October, 1982 and 6th October, 1982, Sudhir's presence in connection with enquiry about Narinder's complaint dated 1st October, 1982 is established. It is

significant to note that Sudhir was present on both the occasions without being specifically called or summoned by the police. Sudhir's personal interest in the on going conflict between Narinder and Naval is established. (a) Proceedings before the Sho in which there is evidence that Narinder etc. had got enraged and they calmed down only when the Sho threatened to arrest all of them. (b) When the parties came out of the police station, Sudhir and Narinder were heard saying 'IN Police Walon Ne Kuchh Nahin Karna, Ab Hamen Khud Hi Nibtana PAREGA' (These police people will not do anything. We will have to sort out this thing ourselves). The learned Counsel appearing for the accused persons argued that the proceedings before the Sho show that the matter was being compromised, which means they were satisfied. thereforee why should the accused make such a statement imputed to them by PW-I and PW-21 A simple answer to this is that they were not satisfied with the compromise. Before the Sho also they were enraged and they calmed down only when they were threatened with arrest. They got the proceedings before the Sho adjourned on the pretext of absence of Ashok on that date before the SHO. (e) On the day of the occurrence all the five accused persons were seen outside Sudhir's shop No. 4 at 6.15 p.m. (d) Sudhir closed his shop early on that day at about 6.45 p.m. (e) The arrival of two ACPs at the spot within fifteen minutes of the incident and their role in guiding the investigation in particular direction shows that somebody was working behind the scene. He was Sudhir.

We have already held that these facts stand established. All these facts dearly bring out the involvement of accused Sudhi r in the en tire incident. From the evidence on record Sudhir emerges as the kingpin in this case. He is the mastermind behind all that happened. All the accused conspired and joined hands for purposes of the commission of the offence in this case. The agreement to commit an offence can clearly be deduced from the fact that the accused persons came out of the police station totally dissatisfied, disgruntled, dejected and frustrated on 6th October, 1982 and accused Sudhir and Narinder were heard saying 'IN Police Walon Ne Kuchh Nahin Karna, Ab Hamen Khud Hi Nibtana PAREGA.' (The police will not do anything. We will have to sort out the matter ourselves). This is the decision of both the accused to take law in their own hands and settle scores with the opposite party on their own. The agreement to commit

an offence can clearly be inferred from the statement. This is followed by all the accused being seen together outside shop No. 4, Palika Bazar of accused Sudhir at 6.15 p.m. This again is a clear manifestation of the agreement between all the accused persons to commit offence. What started with the utterance outside the police station got a concrete shape with other accused joining hands. As per the law even a tacit understanding between the conspirators as to what is to be done is sufficient to constitute criminal conspiracy. In the present case the evidence noticed by us shows more than a tacit understanding between the accused persons to commit offence. The subsequent facts are the steps in furtherance of the agreement. Mr. D.C.Mathur, the learned senior Counsel appearing for the accused Sudhir Jain argued that closing the shop early on 6th October, 1982 by Sudhir Jain could mean his dissociation from the conspiracy. This conduct on the part of accused Sudhir could be taken as his disagreement with the other accused persons in commission of the crime. We are unable to agree with this submission. It appears that accused Sudhir closed his shop early firstly in a bid to make out a case that he was not involved at all. Secondly, the presence of the two senior police officers, i.e., Acp A.L. Chadha and Acp Narinder Singh on the spot within 10-15 minutes of the occurrence shows that there was somebody who was trying to organise the matter after the crime for the accused persons. These ACPs as per the evidence of the other police officers were interfering in the proceedings in the investigation of the case. They tried to manipulate the statements in a manner so as to leave scope for accused Sudhir to remain clean. They insisted that statements of witnesses should be recorded only to the extent that they were referring to the main incident of that night. They did not allow the statements regarding background facts to come on record. Only such facts would have shown involvement of Sudhir. Another thing which shows that the initial investigating officers were trying to protect accused Sudhir is that in spite of Sudhir's name figuring in the Fir at various places, he was not even interrogated. An inference can be drawn from these facts that Sudhir closed his shop early and left the Palika Bazar in order to organise things from outside. If all of them had got involved in the incident, there would be nobody left to organise the matter from behind the curtain. In view of the above facts, we are in agreement with the finding of the trial Court that criminal conspiracy between all the accused persons to kill Naval, Ashok and

Mukesh stands established in this case and conviction of all the accused under Sections 120A and 120B, Indian Penal Code has, therefore, to be upheld. Point No. 9

(83) Section 34, Indian Penal Code This point has been particularly pressed by Shri B. R. Handa, Senior Counsel appearing for accused Narinder and Mahinder. We have already noticed that it was argued on behalf of accused Narinder and Mahinder that they were not at all present during the main incident of scuffle and shooting on 6th October, 1982. We have rejected this contention and have agreed with the finding of the Trial Court that accused Narinder and Mahinder were very much present at the time of the main occurrence and they participated in the same. Regarding absence of common intention it was argued that if Narinder and Mahinder had any intention to kill Naval, Ashok and Mukesh, they would not have carried just small dandas in their hands. They would have been properly armed. In this context it was further argued that none of the injuries found on the person of the victims was serious enough to manifest any intention on the part of the accused persons to kill their victims. Thirdly, these accused deny the exhortation imputed to them. Fourthly, it was urged that assuming that Narinder and Mahinder gave exhortation in to Ajay to fire, yet the actual firing as per the prosecution case took place after the exhortation given by accused Rajinder (since deceased). As per the prosecution case, first the exhortation was given by accused Narinder and Mahinder which was followed by exhortation by accused Rajinder. From this it was urged that the exhortation of accused Narinder and Mahinder obviously did not work and that is why accused Rajinder had to follow it up. From this the learned Counsel drew an inference that exhortation of Narinder and Mahinder failed and, therefore, they cannot be held liable vicariously for the acts of Ajay. Fifthly, it was argued that exhortation has been held to be a weak piece of evidence and, therefore, cannot be the basis of conviction. About these points, we would like to say that the real weapon of offence which accompanied Narinder and Mahinder to the place of occurrence was in the shape of accused Ajay. They were very well aware that Ajay was carrying a fully loaded revolver with him. That is why at the first opportunity, they gave exhortation to Ajay to fire. The fact that Ajay was with them with a revolver gave them the confidence for not carrying any powerful weapon with them. The danda blows given by these accused to the victims do not

mean much so far as this aspect is concerned. The main blows were the gun shot injuries. The fact that one of the accused carried a fully loaded revolver clearly shows an intention to finish off the victims. When such is the intention there was absolutely no need for any preliminaries through any other weapon. The preliminaries were just an excuse to start off. As per the evidence on record the gun shots were fired within one and half minutes to two minutes from the start of the quarrel between the parties. Thus the weapons carried by accused Narinder and Mahinder had really no meaning. There is no merit in the argument that there was no intention to kill on the part of the accused Narinder and Mahinder because they carried merely dandas (sticks) in their hands. Coming to the exhortation part, first we would like to note that we have accepted the evidence of the eye witnesses about exhortation being given by accused Narinder and Mahinder to accused Ajay to fire. The exhortation by accused Rajinder (since deceased) was given in succession as it immediately followed the one given by accused Narinder and Mahinder. Things happened so fast that it is not possible to bifurcate the exhortation by accused Narinder and Mahinder on the one hand and by accused Rajinder on the other hand in order to say that when the first exhortation did not work, the second had to be given. The exhortations were given instantaneously one after the other. The argument by the learned Counsel for the- accused Narinder and Mahinder that since their exhortation did not lead to firing they cannot be blamed is not tenable and has to be rejected. About the exhortation being a weak piece of evidence, it has to be noted that the present case is not a case of mere exhortation in order to invoke Section 34, IPC. There are several other factors which taken together clearly make out a case under Section 34, IPC. These factors are : accused Narinder and Mahinder were real brothers. Ajay was their old friend and all of them used to be together and take liquor together. Narinder etc. had developed a long standing enmity with the complainant party. Narinder was particularly hurt on account of the incident dated 1st October, 1982 in which he had been beaten by Naval in the presence of his wife and child in a public place, i.e., the Palika Bazar market. All the accused came together from one direction at 7.45 p.m. to the shop of the complainant party and started the quarrel. All the accused launched the attack together and started beating die three brothers belonging to the complainant party. When the scuffle (Maarpeet) was

going on, the exhortation was given to Ajay to fire by accused Narinder and Mahinder followed by accused Rajinder. The exhortation shows that the other accused knew in advance that Ajay was carrying a fully loaded fire arm with him. Ajay fired six shots from his revolver following the exhortation. All the accused ran away from the place of occurrence together. After covering some distance they escaped. These factors clearly make out a case for invocation of Section 34 Indian Penal Code and we are of the view that the Trial Court rightly convicted accused Narinder and Mahinder invoking Section 34, Indian Penal Code for offences of murder of Mukesh and attempt to murder Ashok and Naval. Point No. 10

(84) MOTIVE. In the present case it is not difficult to find the motive for the crime. Motive is the previous enmity between the two groups. The root cause of the enmity was the business rivalry between Sudhir and Naval, It was for this reason that Narinder had been quarrelling with Naval etc. since long. The best evidence for previous enmity is available from an admitted document which is Narinder's own complaint to police Ex. PW-9/A. In this complaint Narinder has made a grievance about many previous instances of conflict between Narinder and party and between Naval's party. The statement of Naval (Ex. Public Witness I /DD) recorded on 3rd October, 1982 in pursuance of an enquiry pursuant to the complaint gives a clear picture of the previous enmity between two sides. Further the accused brought on record their own telegrams sent to the Dcp, Connaught Place, New Delhi and the Sho, Police Station, Connaught Place after the incident in which they stated that due to enmity with the complainant party they had been falsely implicated in the case and they wanted to surrender to the police. Copies of the telegrams are exhibits PW-35/DY and PW-35/DY-I. Thus previous enmity between the two groups is admitted by the accused themselves. The Counsel appearing for the accused persons also raised the point that the previous enmity between the parties had come to an end in view of the compromise brought about by the Sho, Police Station, Connaught Place. According to the learned Counsel the compromise left no scope for carrying on the enmity any further. The parties had amicably settled all their disputes. This argument has no factual basis. The evidence rather shows that Narinder etc. were quite enraged in the Police Station when the Sho was handling the case. They calmed down only when the Sho threatened to arrest all of them. Thus it was an uneasy calm. Narinder and party

were not at all happy with what the police was trying to do. Absence of Ashok provided them an excuse to get the matter adjourned to another date. The next elate was fixed on the next day itself. Thus the accused party got a short adjournment and were left with only the evening of 6th October, 1982 to do whatever they wanted to do on their own and that is why they got together soon after coming out of the police station; planned their next move anil executed the same that very evening. The Sho had asked all the parties to come again on the morning of 7th October, 1 W2. This explains why the plan/the conspiracy hatched by the accused persons was executed on the evening of 6th October, 1982 itself. From this discussion it follows that the matter did not stand settled between the rival groups with the intervention of the Sho, Police Station, Connaught Place. The extent of dissatisfaction about the meeting with the Sho at the police station on 6th October, 1982 at about 4.00 p.m. is further evidenced by the fact that accused Narinder, Mahinder as well as Sudhir even denied having visited the police station on that day and that hour. When these accused deny even having visited the police station, where is the question of any amicable settlement arrived at between the parties at the police station? This much is on motive. Point No. n

(85) Miscellaneous points raised on behalf of the Appellants.

(I) Non-production of the daily diary. The argument is that neither the daily diary of the Police Control Room (RCR) was produced to prove the relevant entry therein nor the daily diary entry regarding recording of substance of the Fir was produced from Police Station, Connaught Place. Regarding the Rcr daily diary, the learned Counsel for the State explained that the Rcr records are destroyed within two years as per rules. He referred to Ex.PW-38/1 to show the order regarding destruction of records and Ex. PW-38/2 the certificate regarding destruction of records of RCR. He further pointed out that the relevant entry had been proved as Ex. RW-13/D-7. This entry notes receipt of information through Rcr at 8.05 p.m. The telephonic message received from the Rcr at Police Station, Connaught Place gives information regarding the shooting having taken place in Palika Bazar. Regarding the Dd entry for purposes of recording substance of the Fir, PW-22 Mehak Singh stated that the concerned daily diary had been destroyed. Of course this could be said to be a lapse on the part of the prosecution but this type of a

lapse cannot be allowed to prejudice the prosecution case on merits. Further it is to be noted that the daily diaries are not case properties. Case properties are the articles subject matter of the case like the weapon of offence, clothes of the victims of the crime or the accused etc. etc. These are generally articles used in connection with the crime. The daily diaries maintained by the police are not, therefore, case properties as such.

(II) Clothes of Gobind

(III) If Naval had blood on his T-shirt why did he not mention it in his statement under Section 161, Cr.P.C. or in the FIR.

Naval's T-shirt was taken into possession same night after his return from the police station where he had gone for his medical examination. He returned from the police station around 12.30 or 1.00 a.m. on the night between 6th and 7th October, 1982 and immediately his T-shirt was taken into possession by the police. The blood on Naval's T-shirt was found to be of group AB. This blood could be that (if his brother Ashok because Naval had helped Ashok during the main incident and Ashok's blood could have come on Naval's T-shirt, Ashok being a very tall person. Mukesh's blood was of group A. This was ascertained from the blood found on Mukesh's underwear. Mukesh's post mortem was conducted on the 7th October in the afternoon while Naval's T-shirt had been taken into possession on the night between 6th and 7th October. Thus Mukesh's blood could not come on Naval's T-shirt nor it could be planted thereon. The blood of Mukesh which was handed over to the police after the post mortem could not be examined because it had got putrefied by then. (iv) No injury found on Mukesh which could be imputed to danda blow. The answer to this is that as per the evidence on record Mukesh was covered by Ashok for purposes of protection and, therefore, he did not receive any danda blows. (v) Delay in sending articles to the CFSL. The articles were sent to the CFSL on 16th October, 1982. All the articles were properly sealed and the seals were found to be intact. Two bullets extracted from the body of Mukesh by Dr. Ramani who conducted the post mortem were duly sealed and handed over to constable Ram Singh who in turn handed over the same to Si Gurdeep Singh vide seizures memo Ex. PW-25/A. Both the bullets in sealed cover

were deposited in sealed cover in the Malkhana. The bullet recovered from the body of Ashok was sealed with the seal of Chief Medical Officer (CMO) and was handed over to Inspector Kulpal Rai Mehta who deposited the same in the Malkhana that very night. The fourth bullet from near the pillar from shop No. 34 was sealed with the seal of S.I. Gurdeep Singh and deposited in the Malkhana that very night. The revolver taken into possession by S.I. Gurdeep Singh was sealed then and there and duly deposited in the Malkhana. The same is the position about various blood stained clothes recovered by the police. All the recovered articles which were deposited in the Malkhana remained in the Malkhana as per the deposition of PW- 16Raj Pal, Moharar, Malkhana. This witness stated that all the goods remained intact and untempered till they were in the Malkhana. These articles in sealed condition were sent to the CfsI on 16th October, 1982 through PW-28 S.I. Om Parkash. The seals were checked in the CfsI and were found intact as per the CfsI report Ex. PW- 18/A. The seals also tallied with the specimen seals. In the face of this evidence, the argument suggesting tempering with the seized articles has no merit nor can we subscribe to the argument that there was unreasonable delay in sending the articles to CFSI. Point No. 12

(86) Unfair Investigation. Both the parties have made allegations regarding unfair investigations. The complainant party, i.e., Naval etc. alleged that the initial investigation started by S.I. Gurdeep Singh was tempered and controlled by the ACPs, i.e., ACP A.L. Chadha and ACP Narinder Singh who had arrived at the spot within 10-15 minutes of the occurrence and who were directing the investigation in a particular manner. To substantiate this allegation, it was alleged that as per the direction of the ACPs, the I.O. was not prepared to record any background incident or fact and insisted on noting only the facts about the main incident which occurred that night. Further it was alleged that he was right from the beginning shielding accused Sudhir Jain and that is why inspired by several things mentioned against him in the FIR he had not been interrogated by the police. Thirdly, the delay in arrests of the accused persons is urged as a ground by Naval etc. to show unfair investigation. The evidence on record including that of the police officers on the spot on the night of the incident clearly establishes the arrival of the two ACPs within 10-15 minutes of the incident on the spot. This was not without any meaning or purpose. The two ACPs interfered in the investigation and it was for this reason

that on an application of the complainant party, the investigation was transferred from the hands of the local police to the Crime Branch and was taken over by Inspector Kulpal Rai Mehta, PW-36 from 9th October, 1982. In fact it is shown that Acp Narinder Singh who also arrived at the spot on that day was posted as Acp in the Delhi Armed Police. He had no reason to be present on die spot. All the same he was present and the two ACPs remained on the spot for sufficiently long time. On the contrary the accused party alleged unfair investigation by staling that the investigation was being guided by a senior and well-known Counsel who also took upon to be the Special Public Prosecutor in this case at a token fee. The accused party also tried to show that some senior police officer in the Crime Branch tried to help the complainant party in the matter of investigation but these were mere suggestions put in the cross-examination of a couple of a prosecution witnesses which the witnesses denied. There is nothing beyond this on this aspect. So far as the investigation being guided by a senior Counsel is concerned, the conduct of the senior Counsel in accepting to appear in this case a s a Special Public Prosecutor after having been engaged by the complainant party may be questionable. But so far as the investigation of the case is concerned, the same cannot be said to be unfair for that reason alone. We have noted the allegations and counter allegations about the investigation but: we would like to leave them alone here. We would prefer to confine to the material on record rather than get bogged down in such allegations. We do not feel that ultimately there is any miscarriage of justice in this case on this account. The evidence on record has been found to be very clear, cogent, reliable, trustworthy and convincing and we feel it safe to rely on the same for purposes of arriving at our conclusions. Point No. 13

(87) Delay in recording the F.I.R. and in sending the special report to the area Magistrate. So far as the allegation of delay in recording the Fir is concerned, we find no merit in the same. The same is factually also not tenable. As already observed the incident is of about 7.45 p.m. on 6th October, 1982. The Dd entry Ex. PW-13/D-7 shows that at 8.05 p. m.,PCR message was received in the Police Station, Connaught Place about this incident in Palika Bazar and police party was dispatched to the place of occurrence. In fact S. 1. Gurdeep Singh along with other police officers were already present in connection with some other enquiry' and as

soon as he heard the sound of gun shots, he rushed towards the place from where the sound had come and found Naval standing at the back of accused Ajay and holding onto him by putting his arms around him tightly. Ajay was apprehended then and there and a revolver was seized from him. Thereafter Naval was first interrogated and the recording of his statement started at 8.15 p.m. The statement (Rukka) was dispatched by S.I. Gurdeep Singh to the police station at 9.05 p.m. for registration of the FIR. At 9.15 p.m. the Fir was registered at the Police Station, Connaught Place. In these facts the argument about delay in registering Fir is not at all tenable. S.I. Gurdeep Singh has stated as PW-35 'I also continued making verbal enquiries from Naval Kishore till the start of his statement at about 8.15 p.m.' Further he has stated that the statement was completed at 9.05 p.m. and endorsement on the Rukka show', that it was dispatched at 9.05 p.m. for registration of the FIR. Naval was sent for medical examination at 11.30 p.m. that very night. Till that time the I.O. was effecting various recoveries and preparing recovery memos. The recovery memos are signed by Naval. There are at least 14 recovery memos. All these must have taken time. About the dispatch of the Fir to the Area Magistrate the following facts are to be noted: PW-26 Kartar Singh stated that the Fir was registered at 9.15 p.m. He prepared three copies for delivery to three persons. Two copies were delivered that very night. The third copy could not be delivered that night because the house of the Area Magistrate could not be located by the delivery constable. He returned at 3.15 a.m. PW-23 Constable Risal Singh stated that on 7th October, 1982 he was posted as a constable in Police Station, Connaught Place. Shri Jaswant Singh was the Ilaqua Magistrate. Risal Singh was the Niab Court of Shri Jaswant Singh. He further stated that on 7th October, 1982 he had gone to the Police Station, Connaught Place at about 8.00 a.m. The Duty Officer had given him at that time a copy of the Fir No. 918/ 82 (FIR in this case) after taking the same from Constable Kartar Singh. He further stated that the same could not be delivered to the Ilaqua Magistrate because Constable Kartar Singh could not locate his house that night. A copy of the Fir was thus entrusted to Risal Singh, Niab Court of the Magistrate for delivery to the Magistrate. Constable Risal Singh further stated that he first took that report to the house of Shri Jaswant Singh, Magistrate in Greater Kailash but he had left his house by that time. He brought the copy of the Fir to Patiala House Courts and

presented the same to Shri Jaswant Singh, the Ilaqua Magistrate. This witness was not cross examined by Counsel for accused Sudhir Jain on this point. He stated in crossexamination on behalf of another accused that Kartar Singh was present in the police station when the special report was given by the Duty Officer to him for delivery to the Ilaqua Magistrate. He further stated in cross-examination that the Fir was inside an envelop which had been handed over to him by the Duty Officer and he handed over the envelop to Shri Jaswant Singh, the Magistrate, in Court and in his presence the Magistrate opened the envelop and made an endorsement on the FIR. He also stated that the envelop was handed over by him to the Magistrate at about 9.30 or 9.45 A.M He denied the suggestion that he was giving false evidence. Thus through cross-examination all the relevant facts have been brought (in record. The learned Counsel appearing for the appellants argued that the copy of the Fir meant for the Magistrate should have remained in his Court if what Constable Risal Singh had said but as a matter of fact it was not found in the Court. From this it was suggested that Constable Risal Singh should not be believed. A suggestion was put in cross-examination of Risal Singh that the envelop which was handed over to him by the Duty Officer for delivery to the Magistrate was empty. To say the least, this was a preposterous suggestion. It was also argued that the log book of the motor cyclist who had first gone to deliver the special report to the Ilaqua Magistrate and had failed to locate his house, was not produced. We are not impressed by such hyper-technic arguments. 'Die appellants are raising these arguments because the copy of the Fir summoned from the Magistrate's Court could not come. Evidence on record shows that there had been various transfers of the presiding officers and Ahimads of the Court and for some reason the copy of the special report was not forthcoming. Be that as it may.weare firstly satisfied a bout the delivery of the special report as suggested by the prosecution. There was no reason that the police officers should try to withhold the special report. Strangely die learned Counsel for the appellants did not advance any argument that the special report purportedly was not sent to the Ilaqua Magistrate nor the usual argument was raised that in order to make improvements or embellishments the copy of the Fir was withheld. The argument was mainly about non-compliance of Section 157, Criminal Procedure Code. The purpose and object of promptly despatching the special report to the Ilaqua

Magistrate is to obviate any chance of padding or improvements in the evidence at the hands of the police. In the present case the entire prosecution case stood unfolded in the statement of Naval. The prosecution stood by that statement and there is no question of any padding or improvements etc. therefore, there can be no reason to withhold the special report or from the Ilacqua Magistrate or delay it. In any case there is evidence on record of promptly sending the special report to the Ilacqua Magistrate. Secondly, we do not find any prejudice having been caused by not sending the same promptly. Thirdly, the law is settled that the prosecution case cannot be thrown over-board merely on account of a lapse on the part of the prosecution in sending the special report promptly to the Ilacqua Magistrate or on account of its failure to prove this fact at the time of trial of the case. For all these reasons the argument regarding not sending the special report to the Ilacqua Magistrate promptly does not impress us in this case and the same is rejected.

(88) Before concluding we would like to mention the false defense set up by accused Ajay and several untenable denials on the part of the oilier accused. Ajay set up a defense that Naval etc. wanted that he should supply jewellery to them also and because of his refusal to do so they were inimical towards him. This of course was emphatically denied by Naval etc. About the main incident of 6th October, 1982 Ajay set up the following case :

(1) On 6th October, 1982 at about 7.30 p.m. Ajay had gone to supply jewellery to Sudhir. He carried the jewellery with him in a thaila (bag).

(2) Ajay found the shop of Sudhir closed. He inquired from Ashok about this. On this Ashok gave the reply in an abusive manner. Ajay warned Ashok to speak properly. Still Ashok further abused him. Ajay started moving towards shops No. 3 and

4. Mukesh who was inside his shop No. 33, shouted to Ashok to catch hold of Ajay who was a well wisher of Sudhir. Ashok chased Ajay and assaulted him. Mukesh in the meanwhile came out of his shop Along with a revolver.

(3) Ashok caught hold of hand of Mukesh in which he was having a revolver and started twisting and bending the same in order to ensure that the revolver is

released but could not succeed. During this scuffle Mukesh gave a teeth bite on the body of Ajay.

(4) While this struggle was going on Govind Ram, father of Mukesh and Ashok came towards shop No.

33. Ashok rushed towards Govind Ram govind Ram had a Webley Scot revolver with him and on asking of Ashok, Govind Ram took out his revolver. Ashok told Govind Ram that Ajay would snatch the revolver from Mukesh and would kill him, thereforee, Govind Ram should fire quickly (Hurry up). Covind Ram took out his revolver and fired twice. The shots hit Mukesh. Covind Ram was about to fire the third bullet when Ashok pushed him saying 'Babuji what arc you doing. The bullet had hit Mukesh'. Ashok pushed the hand of Covind Ram and that is why the third shot of Govind Ram hit the pillar of shop No.

34.

(5) During the struggle between Ajay and Mukesh two shots from Mukesh's revolver went off and hit Ashok who was standing near shop No. 33 at that time.

(6) On receiving the bullet injuries Mukesh fell down near the common wall of shops No. 3 and

4. Ashok fell down in front of shop No.

33.

(7) Govind Ram ran away from the spot Along with his revolver in order to conceal the same somewhere.

(8) Police removed the injured Ashok and Mukesh to the hospital. Govind Ram after hiding his revolver reached the hospital at the time when Ashok and Mukesh were being admitted to the hospital.

This defense of Ajay is patently false. Before adjusting the same as false we may note that earlier when this case on behalf of Ajay was put across by way of crossexamination by prosecution witnesses it was the stand on behalf of Ajay that

two shots went off from the revolver of Mukesh. In his statement under Section 313, Cr.P.C. Ajay changed his stand from 'two shots' to 'some more shots'. This change in the stand became necessary in view of the opinion of Ballistic Expert that in the revolver Ex. P-I I (which according to Ajay was the revolver of Mukesh) six empty cartridges were found in its chamber and all had been fired through. The above defense of Ajay is completely knocked off in view of the following facts: In the MLC of Mukesh and Ashok the time of arrival of patients is shown as 8.15 p.m. Both Ashok and Mukesh were shown to have been brought by their father, i.e. Govind Ram. If Govind Ram had run away from the spot to conceal his revolver and he had not removed Ashok and Mukesh to Hospital, how could he reach the hospital just at the appropriate time when Ashok and Mukesh were being admitted. Govind Ram would not even blow the name of the hospital to which his two sons were taken, there being several hospitals in Delhi. He could not guess to which hospital he should go. From this it follows that Govind Ram must have taken his two sons to the hospital. Apart from the evidence of the eye witnesses the evidence of police officers also is to the effect that Govind Ram had taken his two sons to the hospital. He never went away alone anywhere much less to conceal his revolver. Govind Ram is alleged to have fired two shots in the first instance and both hit Mukesh. If his first shot had hit Mukesh, i.e. his own son, he would not have ventured to fire another shot in the same direction in order to avoid the risk of hitting Mukesh again. Two shots which allegedly went off from the revolver of Mukesh could not have hit Ashok. In the course of scuffle and grappling which was going on between Ajay and Mukesh there was no possibility of a perfect aim towards Ashok. Govind Ram stated that he had got blood on his clothes and this must have come when he helped his two sons to take them to the hospital. Assuming that Govind Ram had fired shots which hit Mukesh, Govind Ram would not first think of concealing his revolver. He would first try to assist Mukesh and rush him to the hospital to save his life. Mere refusal to supply jewellery would be no reason for Ashok and Mukesh to kill Ajay. As per defense of Ajay, Govind Ram was standing near shop No. 33 whereas the scuffle between Mukesh and Ajay was going on near shops No. 3 and 4. Distance between shops No. 3 and 4 and shop No. 33 which are opposite each other is at least 20 feet. As per the Ballistic Expert and the medical opinion, a shot fired from a distance of

about 15 to 20 feet could not leave charring and tattooing marks around the injuries of Mukesh or Ashok. As per medical evidence these marks were present on Mukesh and Ashok. Revolver Ex. P-11 could not be that of Mukesh. It had six empty cartridges and had been freshly fired through. As per the case of Ajay only two shots had gone off from the said revolver. It was later on when Realizing this difficulty in his case Ajay added that some more shots were fired from that revolver. If more bullets were fired from this revolver, at least some of them would have been found from the spot. As per evidence, none was found. Planting of Mukesh's revolver in the hands of Ajay would even otherwise be not possible in the presence of so many policemen and the two ACPs. Ajay had been apprehended at a distance from the place of occurrence. Police found Naval holding Ajay in his arms in a tight grip. It is nobody's case that police had first gone where the incident had taken place or where Mukesh fell. How could the police carry Mukesh's revolver with them and plant it on Ajay at the time of his apprehension and arrest? Was the police interested party? Was there pre-planning involving the police? Rather it is in evidence that after the arrest of Ajay, Naval had taken S.I. Gurdeep Singh and party to the spot where the incident had taken place therefore, the question of Mukesh's revolver coming into the handset' the police or Naval for being planted on Ajay could not arise. Thus Ajay's defense is demonstrated to be palpably false. Then there are certain wholly untenable denials on the part of other accused. Accused Sudhir denied having known Ajay earlier and also stated that he had no business dealings with Ajay. Both of these have been found to be totally false. Accused Sudhir also denied having any friendly relation with Narinder, Mahinder and Rajinder. This also has already been demonstrated to be false. Narinder denied having any friendly relations with Sudhir. Apart from other facts, it is Narinder's own complaint to the police. Ex. PW-9/A in which he stated that he was going to attend birthday party hosted by Sudhir Along with his wife and child on the date of the incident subject matter of the said complaint. Sudhir also denied having accompanied Narinder to the police station on 6th October, 1982 at 4.00 p.m. The record of the proceedings by the Sho on the date shows vide Ex. PW-19/C that Sudhir was present in the police station. Besides these facts there is so much evidence on record to show that accused were on friendly terms with each other and used to take liquor with each other in

shops No. 4 as well as No. 9, Palika Bazar. Evidence shows that both accused Ajay and Sudhir were students of Dav College during the same period. PW-12 Mohan Lal, Principal, Dav College has proved that both Ajay and Sudhir were the students of the college. Sudhir was one year senior to Ajay. Similarly business dealings between Sudhir and Ajay are established from Ajay's own reply in his statement under Section 313, Cr.P.C. which has been referred to by us earlier. Accused Sudhir earlier used to work at the counter of shop No. 9 where Narinder, Mahinder etc. were working, a fact also found by us to be established on record. Denial of their involvement in the main incident of 6th October, 1982 by accused Narinder, Mahinder has also found to be totally false by us. Accused Narinder etc. had showed ignorance about Sudhir running his business at shop No. 4 and dealing in precious stones and jewellery. This ignorance is completely falsified by the evidence on record. Narinder and Mahinder denied that Sudhir was earlier running a counter at shop No. 9. This fact even Sudhir has accepted in his statement under Section 313, Cr.P.C. Narinder and Mahinder even denied running business of art printing at shop No. 9, Palika Bazar. The reply by way of denial under Section 313, Cr.P.C. is vague. In the reply they added that Duli Chand ran this shop. It is to be seen that Duli Chand was an allottee of that shop while evidence has shown that business was run by these persons in that shop. These are some of the examples of the false stand taken up by the accused persons on various aspects. We believe that the eye witness account of the main incident. Before reaching the conclusion we have satisfied ourselves by cross checking the version of the incident as given by each eye witness. The cross check coupled with the corroborative evidence of the police witnesses and the expert evidence leaves no manner of doubt in our mind that the prosecution case stands proved beyond any doubt and there is no hypothesis suggesting innocence of any of the accused. The result of the above discussion is that we find no merit in any of the arguments raised on behalf of the appellants in these appeals. We are unable to find any thing against the findings of the Trial Court contained in the impugned judgment dated 28th May, 1996 convicting all the accused persons. All the appeals are dismissed subject to what remains to be said about the sentences awarded by the Trial Court to the appellants. Point No. 14

(89) Sentence The Trial Court awarded death sentence to accused Ajay and has made a reference to this Court for its confirmation under Section 366, Cr.P.C. We have upheld the conviction recorded by the Trial Court qua accused Ajay regarding the various offences committed by him. However, so far as the death sentence awarded to accused Ajay under Section 302, Indian Penal Code is concerned, we are of the considered view that no doubt accused Ajay appears to be a hired assassin and he had tried to finish all the three brothers belonging to the opposite party, yet the inordinate delay in the trial of this case persuades us at this stage not to maintain the death sentence as awarded by the Trial Court to accused Ajay. The Supreme Court in *State of Gujarat v. Anirudh singh & Another*, : 1997 CriLJ3397 held that since more than nine years had elapsed from the date of commission of the crime it was not appropriate to impose the capital sentence of hanging even though it was a case of a very heinous and gruesome murder of a Member of the Legislative Assembly who was attending the flag hoisting ceremony on the Independence Day. The incident is of 6th October, 1982 and the judgment of the Trial Court which signifies the culmination of the trial is dated 28th May, 1996. This shows that the trial lasted about fourteen years. Accused Ajay has remained in custody almost throughout, which means that he has already undergone incarceration for about fifteen years. Without going into the question as to who was responsible for the delay in trial, the fact remains that the accused remained in custody for such a long period. For this reason the death sentence awarded to accused Ajay is converted into the sentence for life imprisonment. Confirmation of death sentence under Murder Reference I of 1996 is declined and the reference is answered accordingly. The other sentences awarded to accused Ajay and the other accused as per the Trial Court judgment are maintained except that in case of accused Ajay the seven years sentence awarded to him for the conviction under the Arms Act is reduced to three years but this sentence will run after the completion of the term of life sentence awarded for the convictions under Section 302, IPC.