

SC No. 80/1/14

FIR No. 110/87 & 141/87
P.S Link Road Ghaziabad & Murad Nagar

IN THE COURT OF SH. SANJAY JINDAL, ADDL. SESSIONS
JUDGE WEST – 04, TIS HAZARI COURTS, DELHI

Unique Case ID No. : 02401R0116312002

SC NO. 80/1/14 (Old No. 44/2/07)

FIR NO. 110/87

P.S. : Link Road Ghaziabad.

FIR NO. 141/87

PS Murad Nagar

U/S : 147/148/149/364/307/302/201/120B IPC

IN THE MATTER OF

State of Uttar Pradesh

Through Special Public Prosecutor

Versus

1 Surender Pal Singh

S/o Incha Singh

R/o Village Kunda, P.S Flawda,

District Meerut, U.P.

Posted as S.I. AP Police Line,

Aligarh, U.P.

(Since expired).

2 Suresh Chand Sharma

S/o Hoti Lal

R/o Village Khem Pur, P.S Chandas,

District Aligarh, U.P

Posted at 41st Bn. PAC, Ghaziabad, U.P.

3 Niranjan Lal

S/o Sh. Devi Ram

R/o Village Himmat Pur, P.S Nidholi Kalan,

District Eta, U.P.

Posted at 24th Bn. P.A.C, Muradabad.

4 Kamal Singh

S/o Sh. Sohan Singh

R/o Village Saronadhan,

P.S Sikandrabad, District Bulandsher, U.P.

Posted at 44th Bn. P.A.C Meerut.

5 Kush Kumar

S/o Sh. Jumman Singh

R/o Village Samas Pur Nasiv, P.S Nagina Dehat,

District Bijnor, U.P,

Posted at 41st Bn. P.A.C Ghaziabad.

(Since expired).

6 Rambir Singh

S/o Sh. Sunder Singh

R/o Village Debai, P.S Debai

District Bulendsher, U.P

Posted at 41st Bn. P.A.C Ghaziabad.

7 Sami Ullah

S/o Ali Hussain

R/o Village Bharthapatti,

P.S Rampur Karkhana,

District Deoria, U.P.

Posted at 10th Bn. PACJhangirbad, Barabaki, U.P

8 Mahesh Prasad

S/o Sh. Kawleshwar Singh

Village Bharoli, P.S Barhalganj,

District Gorakhpur, U.P.

Posted as 34th Bn. P.A. C. Bhullanpur, Banaras, U.P.

9 Jaipal Singh

S/o Sh. Dilawar Singh

R/o Village Bhansi P.S Khatoli,

District Mujaffar Nagar , U.P

Posted at Police Line Ghaziabad.

10 Ram Dhyam

S/o Sh. Swami Nath

R/o Village Ganawali P.S Maiei

District Deoria, U.P

Posted at 20th Bn. PAC Azamgarh, U.P.

11 Sarwan Kumar

S/o Sh. Ram Surat Yadav

R/o Village Mahdaeyia P.S Sehjanwa,
District Gorakhpur, U.P
Posted at 41st Bn. PAC, Ghaziabad.

12 Leela Dhar

S/o Lt. Sh. Siromoni Lohini
R/o Village Bhanar P.S Someswar,
District Almora, Uttrakhand.
Posted at Police Line Ghaziabad.

13 Hambir Singh

S/o Sh. Pancham Singh
R/o Village Nagla Batul P.S Pali Mukimpur,
District Aligarh, U.P
Posted at Police Line Muradabad.

14 Kunwar Pal Singh

S/o Sh. Feru Singh
R/o Village Kharodi P.S Shamli
District Shamli, U.P

Posted at Police Line Almora.

15 Budha Singh

S/o Sh. Lekh Raj

R/o Village Rajakpur P.S Naugawa Sehdar,

District Amroha , U.P.

Posted at 41st Bn. PAC, Ghaziabad.

16 Budhi Singh

S/o Lt. Sh. Ramji Lal

R/o Village Harchna P.S Gulawathi,

District Bulandshahar, U.P

Posted at 41st Bn. PAC Ghaziabad.

17 Mohkam Singh

S/o. Sh. Genda Lal Yaday,

R/o Village Jawaharpur P.S Civil Line,

District Etawa, U.P

Posted at Driver Police Line Aligarh.

18 Om Parkash Sharma

S/o Sh. Bharam Dutt
R/o Village Jiwana, P.S Ramala,
District Meerut, U.P.
(Since expired).

19 Basant Vallabh

S/o Sh. Vishnu Dutt
R/o Village Pant Kwairali P.S Bageshwar,
District Bageshwar, Uttrakhand.

..... Accused Persons

Date when committed to the : **30.10.2002**
court of Sessions (Delhi)
Date of conclusion of : **21.02.2015**
final arguments
Date of final Judgment. : **21.03.2015**

J U D G M E N T

1 The present case relates to a horrific incident of targeted

abduction and killing of around 42 persons by the officers of Provincial Armed Constabulary (in short PAC), a reserved police force of State of Uttar Pradesh, on the night of 22.05.1987. The case of prosecution as unfolds from the charge-sheet is that on 21.05.1987 there was a deadly assault on Provincial Armed Constabulary in Meerut,U.P and two rifles of PAC personnels were looted by certain anti social elements. On the same date, one Sh. Prabhat Kumar Kaushik was murdered in Mohalla Suraj Kund adjacent to Mohalla Hashim Pura in Meerut. Upon this a meeting of District Administration Officers including police officers took place. Consequent upon that on 22.05.1987 a search for illegal arms in Mohalla Hashim Pura, Meerut was launched. Curfew was already clamped in the city Meerut. Mission of arrest and search was carried out by the District police, PAC and the Army. 644 persons from Mohalla Hashim Pura were arrested u/s 107/151/116 Cr.P.C. Arrangements were made to send the arrested persons to police station Civil Lines and Police Lines Meerut with the help of trucks of police, PAC and military. 42 persons arrested from Mohalla Hashim Pura were put in truck no. URU-1493 belonging to 41st battalion PAC. Instead of taking these persons to police station Civil

Lines, Meerut, they were taken to Upper Ganga Canal, Murad Nagar. Truck in question had come from Chowki Pilokhadi and PAC jawans were being led by Platoon Commander Surender Pal Singh of C company of 41st Btn. PAC Jawans (all accused in the present case). After taking the said 42 persons from Mohalla Hashim Pura to Upper Ganga Canal, Murad Nagar, the PAC Jawans started firing at them. Some were fired at after making them get down the truck while other were fired at in the truck itself. These Jawans after shooting the persons one by one kept on throwing them in Upper Ganga Canal with the impression that they were all dead. In the meantime, they noticed a truck whose lights fell on them while they were killing and throwing these persons. Apprehending exposure of the crime, they diverted their truck to Hindon river and completed the process of killing and throwing, in Hindon waters, the remaining persons rounded up from Mohalla Hashim Pura. PAC truck and Jawans left the place with the impression that all persons thrown by them in the waters were dead. From the persons thrown in Hindon River, one Babuddin S/o Shalil (PW-11) survived on whose information FIR No. (Crime No. 110/87) was registered at 12.20 on the night intervening

22/23.05.1987 at police station Link district Ghaziabad. From the persons thrown in Upper Ganga Canal, Murad Nagar, persons named Mujibur Rehman (PW-4), Mohd. Usman(PW-3), Zulfiqar (PW-1), Naeem (PW-2), Arif and Qamaruddin survived. On the basis of statement made by Mujibur Rehman, FIR (Crime No. 141/87) was registered on 23.05.1987 in police station Murad Nagar, District Ghaziabad. Injured Qamaruddin died on way from police station Murad Nagar to hospital in Mohan Nagar. One dead body was recovered from Chhaprola Minor, Upper Ganga Canal in the jurisdiction of police station Dadri, District Ghaziabad on 26.05.1987. Twelve bodies were recovered from the waters in the jurisdiction of police station Link Road. One dead body was recovered from the waters in the jurisdiction of Police Station Kalyan Puri, Delhi.

2 It is matter of record that in the present matter, two separate FIRs were registered i.e FIR No. 110/87 PS Link Road Ghaziabad, U.P and FIR No. 141/87 PS Murad Nagar, U.P. Vide order dt. 24.05.1987 of the Government of U.P, both the above mentioned matters were assigned to CBCID and joint investigation was carried out. After completion of

investigation, charge-sheet/supplementary charge-sheet were filed before the court of Sessions at Ghaziabad and two separate criminal cases vide ST 1362/2000 (in respect of accused persons other than Basant Ballabh) and ST 1850/2000 (qua accused Basant Ballabh) both titled as State of Uttar Pradesh vs. Surender Pal Singh were registered. Subsequently, vide order dt. 27.09.2002 in transfer petition (Criminal No. 321/2002) the criminal case no. ST 1362/2000 State of U.P vs. Surender Pal Singh pending in the court of Addl. District Judge-IV Ghaziabad, U.P was transferred to the District & Session Judge, Delhi by Hon'ble Supreme Court and the same was received by the Sessions Judge Delhi on 30.10.2002 and was assigned to the Ld. Predecessor as Sessions case No. 44/02. Thereafter, vide order dt. 11.07.2007 of Hon'ble Supreme Court in transfer petition criminal no. 285/2006, the criminal case vide ST 1850/2000 was also transferred to the District & Session Judge Delhi from the court of Additional District & Sessions Judge-IV, Ghaziabad, U.P, the same was received at Delhi and assigned to Ld. Predecessor on 14.11.2007 and was registered as Sessions case No.90/07. Since, charges were already framed against all the accused persons including accused

Basant Vallabh on 24.05.2006 i.e prior to receiving of the case vide ST No. 1850/2000 on transfer, one order was passed by Ld. Predecessor on 08.01.2008 clarifying the effect of late committal of the supplementary challan/case against accused Basant Vallabh. It was observed that effect of receipt of supplementary challan was inconsequential as accused Basant Vallabh had already joined the proceedings of the sessions case no. 44/02 received by the Session Judge Delhi on 30.10.2002 in terms of order dt. 27.09.2002 and the Sessions case no. 90/07 against accused Basant Vallabh was ordered to be tagged with sessions case no. 44/02/07.

3 The charge-sheet was filed against 19 accused persons out of which one namely Om Parkash had already expired and proceedings against him were already abated prior to receiving of the case in Delhi on 30.10.2002. Subsequently accused Kushak Kumar expired and proceedings against him were abated vide order dt. 11.02.2005. Thereafter accused Surender Pal Singh expired on 13.12.2005 and proceedings against him were abated vide order dt. 18.03.2006.

4 After consideration, on 18.05.2006, an order for framing of charges u/s 147/148/149/201/364/302/307/120B IPC was passed and formal charges were framed on 24.05.2006 to which the accused persons pleaded not guilty and claimed trial.

5 At the time of trial, prosecution has examined following witnesses;-

PW-1	Zulfiqar Nasir	PW-2	Mohd. Naeem
PW-3	Mohd. Usman	PW-4	Muzib-ur-Rehman
PW-5	Dr. S.N. Aggarwal	PW-6	Sh. Sukhbir Singh
PW-7	Sh. Rattan Singh	PW-8	Ct. Ratan lal
PW-9	HC Mangey Ram	PW-10	HC Suranjan Singh
PW-11	Sh. Babuddin	PW-12	Sh. Digambar Tyagi
PW-13	Inspr. Virender Singh Yadav	PW-14	SI Ram Lakhani
PW-15	Inspr. Anil Kumar	PW-16	Dr. Jai Prakash
PW-17	Dr. S.C. Mishra	PW-18	ACP Daya Nand
PW-19	Sh. Hafizuddin	PW-20	Mohd. Saleem
PW-21	Ms. Zebunnisa	PW-22	Mr. Abdul Hamid
PW-23	Mr. Shakeel Ahmad	PW-24	SI Birbal Singh
PW-25	Mohd. Akhlaq	PW-26	Sh. S.D. Mishra
PW-27	SI Sripal Singh Nagar	PW-28	Dr. A.K. Sharma

PW-29	Dr. J. Prasad	PW-30	Mr. Shakeel Ahmed
PW-31	Mr. Gaffar	PW-32	Dr. A. K. Ratti
PW-33	Inspr. Rajinder Singh Bhagor	PW-34	Mr. Ishwar Singh
PW-35	Ct. Rameshwar	PW-36	SI V.B. Singh
PW-37	Dr. S.K. Lehari	PW-38	Sh. Om Prakash Mani Tripathi
PW-39	Sh. Roop Singh	PW-40	Sh. Rangnath Shukla
PW-41	Sh. Udaivir Singh	PW-42	Sh. Badan Singh Yadav
PW-43	Dr. Subodh Tyagi	PW-44	Dr. S.C. Dwivedi
PW-45	Ct. Ajay Pal Singh	PW-46	Sh. Gajender Singh
PW-47	Ct. Driver Padam Singh	PW-48	Sh. Jamil Ahmed
PW-49	Mst. Mehmuddin	PW-50	Mr. Laik Ahmed
PW-51	Mst. Mehrunissa	PW-52	Mr. Rahis Ahmed
PW-53	Sh. Jamalluddin	PW-54	Mr. Parvez Ahmed
PW-55	Dr. Zahiruddin Ansari	PW-56	Sh. N.U. Ansari
PW-57	Sh. Sakhawat Ali	PW-58	Sh. Abdul Alim
PW-59	Dr. Naseem Zaidi	PW-60	Sh. Tanvir
PW-61	Md. Jaafar	PW-62	Mr. Sher Ali
PW-63	Mr. Fariduddin	PW-64	Mr. Anwar Ahmed
PW-65	Sh. G.L. Sharma	PW-66	Mr. Sirajuddin
PW-67	Mr. Abdul Gaffar	PW-68	Sh. Abdul Hamid
PW-69	Sh. Mam Chand	PW-70	SI Ram Chand Giri
PW-71	Dr. M.K. Singhai	PW-72	Inspr. Ranbir Singh Bishnoi

PW-73	Sh. V.K. B Nair	PW-74	Sh. V.N. Rai
PW-75	Sh. Kamendra Prasad	PW-76	Sh. Yashpal Talwar
PW-77	Mst. Hazara	PW-78	Mst. Zarina
PW-79	Sh. Vijay Pal Singh	PW-80	Ms. Snehlata Aggarwal
PW-81	SI Bhojraj	PW-82	Sh. Mahesh Narain Tiwari
PW-83	Mohd. Hanif	PW-84	Sh. Hari Shankar Sharma
PW-85	Sh. Chander Kant Tyagi	PW-86	Mr. Parveen Jain
PW-87	Sh. Mohd. Isa	PW-88	Sh. C.P. Yadav
PW-89	Sh. Sube Singh	PW-90	HC Niranjan Lal Gautam
PW-91	Ct. Maya Prakash		

6 After completion of prosecution evidence, the statements of accused persons were recorded u/s 313 Cr.P.C on 23.05.2014 and additional statements were recorded on 18.10.2014/28.10.2014. All incriminating material was put to them and they denied the case of prosecution in general and four accused persons namely Niranjan Lal, Samiullah, Jaipal and Mahesh Prasad opted to lead defense evidence and they examined Ct. Gulesh Ali, DW-1 in their defense.

7 I have heard Ld. Spl. PP for the State, Ld. Counsel for the

victims and Id. Defense counsels for the accused persons and carefully perused the record in light of submissions made before me.

8 Before proceeding further, it will not be out of place to have a reference to the statements of the witnesses examined by prosecution and documentary evidence brought on record.

8.1 SURVIVORS/INJURED/EYE-WITNESSES.

PW-1 Zulfiqar Nasir deposed that on 22.05.1987, it was Zumma (Friday) and he was reciting Namaz in the evening at about 06.00 PM on the roof of his house when a few military persons came to his house. Further that said military persons took himself, his father, his two uncles and his grandfather outside their house in the street on the road and the said military persons made them sit on the said road where already 400-500 persons were sitting. Further that persons of their Mohalla thus collected were sitting on the both side of the road and he was sitting in front of a Peepal tree and he saw a big force of military and PAC deployed

there , 7 or 8 trucks belonging to military and PAC were also parked there. Further that PAC persons divided the Mohalla people into two groups , one group comprised of the elderly people and the children whereas the second group was of the young persons, they then ordered the group of young persons to sit in their trucks. Further that PAC as well as the Army people both took away the trucks after loading young persons from the spot and that both his Chachas and father were in the group of young persons who were taken away by PAC and military. He further deposed that he did not know as to where they were taken away. Further that, to the group of elderly people and the children left at the spot, PAC officials gave directions to maintain peace and go to their respective houses but before they could leave for their houses, PAC officials took out of them the able guarded elderly persons and the boys of his age and in this way about 40-45 people were scrutinized and made to sit in the only truck left at the spot on which 'PAC' was written and he was in the said group of 40-45 people in the said truck and it was about 08.00 PM. Further he clarified that the colour of said truck was yellow and it bore the writing in white paint 'PAC'. Further that PAC officials after making us sit in the

truck gave them directions to keep their heads downwards and not to raise them and that there were 18-20 officials of PAC within the truck at that time. Further that PAC officials had surrounded them in the truck in a manner so that they were not visible to any outsider and that all PAC officials were carrying riffles with 'Sangeen' at their tops. Further that the said PAC officials were wearing 'Khaki' uniforms. He again said, it was a 'Khaki pili' type uniforms. Further that they were strictly instructed not to raise their heads. He further deposed that in case any body raised his head, he used to be rebuked and given a blow with the help of riffle butt. Further that after traveling some distance, the truck stopped. Further that he did not know as to which place it was. Further that he could sense that few more PAC officials boarded the said truck at that time and that the truck again started and came to Delhi road, that after peeping a little bit and identifying the building and other structures around, he could guess that it was Delhi Road. Further that after a total journey of 1- 1 ½ hour, they reached a Patri of Murad Nagar, Gang Nehar and the said truck then came to a halt. The lights of the truck were then switched off, that the time might have been between 09.00 PM and 10.00 PM, that they then started

bringing down the persons in the truck one by one. Further he deposed that the first person to come down the truck thus was one Mr. Yasin of their mohalla and PAC officials then fired bullet shots on said Mr. Yasin and then threw him in the said canal. Further that they then got down another boy whose name was Ashraf and happened to be his neighbourer and he was also shot with bullets and then thrown in the said canal. Further that he(PW-1) was the third person to be brought down the truck, that in the process of himself being dragged down, he fell on the ground and he was also shot while he was lying on the ground. Further that the bullet hit him in his armpit and came out from the side of the back of his chest, that after receiving the said bullet injury, he deliberately stopped breathing, feigning death, that he was also thrown in the said canal. Further that he could catch a few bushes around and after getting support from the bushes, he traveled a little distance inside the water and concealed himself in the bushes there, that while he was sitting in a concealed condition in the bushes, he met a boy named Arif belonging to his Mohalla who had jumped in the waters from the said truck before being shot by the PAC officials. Further that PAC officials were present

with the truck when he met Arif in the bushes. Further that he could hear the cries of the people 'BACHAO BACHAO' and the sounds of firing. Further that he could hear the thud 15-16 times that arose after the persons were being thrown in the water. Further that he could thereafter see the headlights of vehicles throwing lights in that area. Further that PAC officials then boarded their truck and left the place in direction from which they had come. Further that he and Arif kept on concealing themselves in the buses even 1 ½ hour thereafter and then he and Arif ventured to come to the Patri though in a fearful condition and found three persons lying on the said Patri in injured conditions. Further he deposed that one of them was his neighbour namely Qamruddin but he could not identify the remaining two. He and Arif then lifted Qamruddin and started moving towards the Pul of Murad Nagar. Further that Qamruddin was writhing in pain and after reaching the pul of Murad Nagar, Arif left the place in fear. Further that Qamruddin advised him to run away from the place telling him that he had no hope of his survival. Further that he reached Murad Nagar and entered the house of a Muslim Bhai who gave him cloths to wear. Further that he did not know as to where he kept the

cloths he had taken off. Further that he(the person who provided him shelter) then brought a 'Hakeem' who gave him first aid and dressed his wounds and also gave him 'Desi Dawai'. Further that the next day, he went to his Phupha namely Mehrazuddin in Ghaziabad. He further deposed that he had narrated the aforesaid incident to the said Muslim Bhai referred by him above and thereafter to his Phupha Mehrazuddin. He further deposed that his Phupha then consulted an Advocate namely Nawabuddin Ansari who was known to Syed Shahabuddin, a Member of Parliament at that time. Further that he was thus taken to Syed Shahabuddin by 2/3 people and he narrated the whole incident to him who consoled him and told him to disclose the incident to Press so as to find the whereabouts of his 'Walid' and 'Chachas'. Further that Syed Shahabuddin then took him to the house of one Sh. Chander Shekhar, a politician, perhaps belonging to Bhartiya Janta Party. Further that he stayed at the house of Syed Shahabuddin for 8-10 days and his daughter who was a medical student kept on treating him during that period. He further deposed that he gave statement Ex.PW-1/A to the Judge Saheb in Circuit House, Meerut. He also identified one person namely Mehboob

Ali in the photograph Mark A, lying in judicial file. He also identified another person namely Yasin in photograph Mark 1 and deposed that Yasin was the person who was shot first by PAC. He further identified persons namely Sarfraz, Mehboob Ali and Qamroodin in photographs. He further deposed that he cannot identify the accused persons present in the court for the reason that it was dark at the time of incident. He was duly cross-examined on behalf of accused persons.

PW-2 Mohd. Naeem is also one of the survivors and he deposed that on 22.05.87, while he was sitting at his house with Naeem S/o Abdul Qadeer and Shahanshah S/o Abdul Haq, PAC and military people reached at their place and arrested all the three of them and brought them to the road in Mohalla Hashimpura. Further that they were made to sit under a 'peepal' tree and 500 or 600 people were already sitting there on the directions of PAC and military. That PAC and military people thereafter started scrutiny of the persons sitting there and this way, some of the persons scrutinized from the said crowd were made to sit in the trucks which were being taken to unknown destination. Further he deposed that at about 08.00 PM, he saw that only one truck of PAC with

yellow colour was left there and about 50 persons left at the spot after 08.00 pm were made to sit in the yellow PAC truck. Further that said PAC officials were carrying official rifles with them and they were also wearing black iron helmets on their heads, some of the rifles were carrying 'sangeens' at their tops. Further that the truck was then taken to a petrol pump near Mawana bus stand via Nanak Chand College and 5 or 6 PAC Jawans then boarded the truck at that point and they took their seats in the cabin of the truck, they all were in 'Peeli' uniform and that the truck reached Delhi road via P.L. Sharma road. Further he deposed that the whole city of Meerut was under curfew at that time, that all of them were asked not to raise their hands while sitting in the truck and in case, anybody tried to raise his head, he was hit. Further that the truck then reached Murad Nagar, Gang Nehar and came to a halt at a place which was about 2 KM away from Delhi road and the lights of the truck were switched off and it might have been 09.30 or 09.45 PM at that time. The PAC jawans sitting in the cabin of the trucks came down and surrounded the back of the truck in the form of a circle. It is further deposed that they(PAC Officials) brought down first of all Mr. Yasin and shot three

bullets in his body, he(PW-2) heard the sound of said three bullet shots and after catching hold of his legs and arms, Mr. Yasin was thrown in the 'Nehar'. Further that they then brought down another boy from the truck who was also thrown in the Nehar after being shot but he did not know his name. Further that all of them sitting in the truck then stood up and shouted 'BACHAO BACHAO' and upon this, the PAC jawans started firing inside the truck itself and PAC Jawans standing outside the truck started giving butt blows to the persons inside the truck. Further it is deposed by PW-2 that he was hit with the butt of a rifle on his stomach and due to that he fell on the floor of the truck, that one of the said boys was Qamruddin who had received a bullet injury but he was alive at that time, the bullet injury of Qamruddin was bleeding and as a result, he was drenched with blood. Further that to save himself, he moved a little bit towards and beneath the seat of the truck and stopped his breath. The PAC Jawans standing outside the truck then opened the 'dalla' of the truck and they dragged him outside the truck. Further that the hands of PAC jawans dragging him were also stained with blood that was sticking to his body and was oozed from the body of Qamaruddin. Further that he continued

stopping his breath and he was thrown out of the truck, two PAC Jawans caught hold of his hands and two other caught hold of his legs and threw him in the water with the impression that he was dead. Further that he then took control of himself in the water and after swimming a little bit caught hold of the bushes. Further that PAC jawans continued throwing the persons from the truck in the water and he had been hearing the sound of such shots in a fearful condition. After some time the sound of bullet shots stopped and PAC jawans ran away from the spot with their truck. Further that he tried to come out of the water but immediately he saw one truck and he remained in water, the said truck perhaps was carrying milk as he could see milk cans hanging outside. Further he deposed that five minutes thereafter, PAC truck came to the spot after taking a U turn and proceeded to Delhi Road and he then came out of water and found Yasin saying 'BACHAO BACHAO' as he was catching hold of weeds in the water. Further that he told his name to him and on this Yasin extended his hands towards him and he tried to pull half of his person out of water and he(Yasin) breathed his last when he could pull half of his person out of water. Further that he then made his body lie down in the bushes and at

that time, he saw two more dead bodies lying there and after feeling their pulses etc, he found that they too were dead. After leaving all the aforesaid three dead bodies, he ran towards the fields in a fearful condition and reached at Delhi Road where he found a Dhaba where he found that 2-3 truck driver were taking their meals on a 'Charpai', he then divulged the whole incident to them who advised him not to further divulge it to anybody and they asked him to sit on the 'Charpai' and made him wash his face and hands and offered him food which he denied thankfully but he took the tea offered by them. Further that they then took him to the Chowkidar of a nearby factory and asked the said Chowkidar to give him shelter for the night, Chowkidar was a Muslim with whom he stayed till dawn. Further that said Chowkidar then made him sit in a vehicle and gave a 10 rupee note to the driver of the said vehicle and then he reached the house of his Chacha in Ghaziabad and after staying 2-3 hours in the house of his Chacha at Ghaziabad, he proceeded to Nainital. Further that IO of the case thereafter sought his assistance in the preparation of the site plan of the spot where they were detained by PAC jawans under a 'Peepal' tree. He further deposed that his statement Ex.PW-2/A was also recorded

by a Magistrate. He further deposed that he cannot identify the assailants for the reasons that the light of the PAC truck had been switched off; it was night time and he was in the fear of death at that time. He further deposed that the rifles shown to him today in court might have been the same used in the incident but some of them were having 'Sangeens' at their tops. He was duly cross-examined on behalf of accused persons.

PW-3 Mohd. Usman is another survivor and he deposed that on 22.05.87 at about 05.15 PM when he was in his house alongwith his brother Hanif, Mohd. Farookh, Md. Irshad, Shahabuddin and his father Bashir Ahmed, military persons came to his house and said that they wanted to search them and took them outside in the lane on the back side where about 50 persons had already been detained by the PAC whose Jawans were seen there. Further that they asked them to raise their hands upwards and move straight and they were made to reach a Peepal Tree at Hapur Road where 400-500 persons were already sitting. Further that in front of that spot, there was a shop of Dr. Jagdish Chauhan where elderly men and children were sitting and being supplied water to drink, he saw

yellow coloured trucks of PAC which were standing in an open condition, he heard some of the PAC people saying them “Take them to the police station”. Further that he gave the keys of his house to his father and kept on sitting over there, the detained people were being sent in the trucks and that PAC people were segregating the elderly people and the young men. Further that he was dragged into the group of young men whereas his father was pushed into the group of elderly people and children who lateron were allowed to leave for their houses, the elderly people and the children were let off whereas young men who were about 50 in number were made to sit on one side. Further that he was in the group of the said 50 young men and PAC jawans gave a command to the people who were collected there saying “SARAI WAALE KHADE HO JAO AUR CHALE JAAO” and then they said “ JAMMANPURA AUR HASHIMPURA WALLE KHADE HO JAAO”. Further that from the persons of Hashimpura and Jammanpura, they started segregating young and the old after touching their biceps and they asked them to sit in a yellow coloured truck of PAC. Further that all his four brothers were put in the truck which left the place, he was taken out of the group of old and children after

finding that he was a young man and was asked to stand aside, there were thus about 50 young men who were made to stand on one side and the said 50 young men were made to sit in a yellow coloured PAC truck. Further that they were made to sit on the floor of the truck where 15-16 PAC Jawans with helmets on their head and rifles asked them not to raise their heads, the PAC Jawans counted the number of persons sitting on the floor of the truck and one of them counted them as 39 and the other one counted them as 42 but in his opinion they were about 50 in number. Further that it was 08.15 PM when the truck started from there and after traveling 1 or 2 KM, the truck came to a halt where a few PAC Jawans were standing on the road and the PAC Jawans were made to sit in the drivers cabin of the truck, by raising his head, he found that the truck had reached Delhi Road. Further he deposed that on the right side of Murad Nagar, Gang Nehar, there was a Kachha road and the truck followed that Kachha road upto 2 KM, the lights of the truck were switched off and the PAC jawans came down the cabin of the truck and surrounded it from the back side. Further that one of them sitting in the truck was brought down the truck and a bullet was fired at him and he was then thrown into water, likewise

another man sitting in the truck with them was brought down and fired at and then thrown into water and this thing was repeated and then thinking themselves very near to death, he stood up and invoked the powers of Allah. He further deposed that they shouted “Bachao Bachao”, upon this the PAC Jawans standing outside the truck and inside the truck started firing at all of them, they then started throwing the dead persons in the water and also fired again if anyone found alive. Further that after thus killing about fifteen persons, came his turn, he tried to run away but two PAC jawans caught hold of him by his arms, he begged for mercy saying that his children shall be rendered orphans but they did not take pity on him, in the meantime, a PAC Jawan intervened and said “kill him right now”, he upon this attempted to snatch the rifle after freeing his arm from the hands of the PAC Jawan. Further that immediately a bullet was fired into his belly and the bullet came out of his body from his back, the PAC jawans then fired another shot which struck at his right leg and the bullet made its exit from the back side of his right thigh, then he was thrown into water when he was writhing in pain. Further that he was bounced by the water, he could not swim as he had received bullet shots and he thereafter

caught hold of the grass and other weeds in the water, he kept on witnessing that the PAC jawans were firing at the persons they had brought in the truck and then throwing them into water. He had seen about 20-25 person being killed and thrown into water. Further that after some time, he did not hear the sound of firing and he then heard the sound of the engine of PAC truck in a starting condition. Further that after that he perceived that the said truck of PAC had left the place, that with the help of two arms and one leg, he crawled and came out of the water and reached the bank of the canal. Further that he then heard the voice of two persons amongst them asking for water to drink but there was none to provide them the same. Further that he then heard the voice of the call given to the Muslim people for 'Sehri' as these were the days of Ramzan and he then guessed that it might be 02.30 am, he then saw light coming from a vehicle approaching him and he then found that a motorcycle came to a halt when he had given a signal to the same, two policemen were born on the said motorcycle, they asked him as to what had happened to him and he narrated them that the PAC jawans had fired at him and thrown him into water. Further that one of the two policemen kept on standing

there while the other one left the spot on the motorcycle and came back with a police jeep. Further that both the policemen told him not to name PAC and promised to provide him medical aid by taking him to a hospital, they threatened him of being killed in case he named PAC, he and his two companions were put into the said police jeep and taken to Mohan Nagar hospital and on the advice of doctors, the said policemen admitted him to All India Institute of Medical Sciences. Further that he was given medical aid by the doctor and doctors asked him as to what had happened and as he was threatened of being killed, he gave a false statement to the doctors. He further deposed that before taking him to the hospital, the police persons who took him in the jeep first went to PS Murad Nagar. Further that in the police jeep besides him, Muzib-ur-Rehman and one more injured were there. Further that at the police station he and Muzib-ur-Rehman were brought down the said jeep and after examining his injuries, police people put him again in the vehicle. Further that after 15-20 minutes, Muzib-ur-Rehman too was put in the vehicle and driver of the vehicle was directed to take them to the hospital. Further that he and Muzib-ur-Rehman were taken inside the Mohan Nagar

hospital and the third injured having been found dead was left in the vehicle itself. Further that doctor after examination referred him to a big hospital and accordingly he was admitted to AIIMS. He further deposed that he made a false statement to the doctor relating to the cause of injury fearing his death at the hands of the accused or the police. Further that he was treated at AIIMS. He further proved his MLC relating to his admission in hospital as Ex.PW-3/P1 and slip pertaining to blood bank as Ex.PW-3/P2. Further that he was X-rayed and then sent to operation theater and he was operated. Further he deposed that his statement was also recorded by the Magistrate and the same is Ex.PW-3/A. He further deposed that the rifles produced in the court are similar to the ones used in the commission of offence but the rifles used in the incident were having sangeens at the top. He further deposed that he cannot identify the accused persons present in the court for the reason that it was dark when the incident took place.

PW-4 Muzib-ur Rehman is also an eye-witness/survivor and he deposed that he is permanent resident of Distict Darbhanga, Bihar

and he started working on the power-loom of Abdul Mazid Incholia Wale in Mohala Hashimpura four years prior to the year 1987. He further deposed that on 22.05.1987, it was a day of 'Alvida' in the month of Ramzan and the time was about 2 or 3 PM, Mohalla Hashimpura in Meerut was being searched by the police. Further that searching officials belongs to PAC UP police, Mahila Police and military. He was present in the house alongwith his three Chachas namely Mohd. Sadiq, Mohd. Zameel and Mohd. Azeem. The aforesaid police officials brought them out of the house and made them stand in the gali. They then started searching their house and commanded them to go to Hapur Road near the Peepal tree. On reaching there, he saw that 400-500 people had already been detained there near the Peepal tree. Out of the said crowd of 400-500, about 150 persons belong to Mohalla Hashimpura and the remaining persons belonged to the neighbouring mohallas. Some persons out of the aforesaid 400-500 persons were arrested and sent to jail. His two chachas namely Mohd. Sadiq and Mohd. Zameel were in the group of people who were sent to Jail in trucks and out of the persons left at the place near People tree, PAC segregated young and strong persons who were about 50

in number. Further that very young and old people were allowed to leave for their homes. One truck of yellow colour and belonging to PAC was standing there. The PAC persons commanded them to sit in the said PAC yellow truck. Out of the said 50 people who were made to sit in the said truck, he could identify his Chacha Mohd. Azeem and others namely Kausar, Mohd. Babuden, Mohd. Usman. He himself was also made to sit in the said yellow colour truck of PAC. About 14-15 Jawans of PAC also boarded the said truck at that time. The PAC jawans were wearing yellow coloured uniform and were carrying rifles with sangeens at their tops and were wearing helmets. Further that the time was about 07.30-07.45 PM and the truck started and after traveling for about 10 minutes the truck came to a halt. He could see 5 or 6 more PAC jawans entering the cabin of the truck but they did not utter any word there. After traveling for another about two hours, the truck reached at Murad Nagar, Gang Nehar. The truck then moved on the left hand side on a Kacchi road and after going 1 ½ – 2 kms on the kacchi road, the truck then stopped near the Nehar and the lights of the truck were then switched off. The PAC jawans who were sitting in the cabin of the truck came down and surrounded the truck from

its back. PAC Jawans then brought down the truck one person sitting amongst them and fired at him and he was then thrown into the Nehar water. Likewise another person was brought down, shot at and then thrown into water. The third person from amongst them also met the same fate. The people sitting in the truck became panicked and started shouting “Bachao-Bachao” and at that time PAC Jawans who were standing inside the truck and also those standing outside the truck started firing on the persons inside the truck and he received a bullet shot on the thigh of his right leg and his Chacha Mohd. Azeem received bullet shot in his chest and died then and there in the truck. Further it is deposed by PW-4 that PAC jawans started throwing into waters the persons who were found dead after having been shot at. The persons who were found surviving were again shot at and then thrown into water. He was then brought down from the truck and was shot at his chest. Further that after receiving the said bullet shot, he fell down and the PAC jawans thought that he was dead and threw him into water. He knew how to swim and he then concealed himself in the bushes in the water and at the bank of the canal, he could hear the sound of gun shots and the thuds taking place due to the

persons being thrown into water after being shot at. Further that he heard about 25 such sounds. Further that he could then hear the sound of the truck having started for leaving the place. After perceiving total silence for sometime, he came out of the bushes of the canal and reached the bank of the canal. He then found three persons lying wounded nearby and out of three person one was in a critical condition, the second person was badly wounded whereas the third one was in a position to move. The third person took up the person who was in a badly wounded condition and started moving and they then reached the bridge. Further that he also started moving towards the said bridge. After reaching the bridge, he found that the person who was badly wounded was left thereby the person who had brought him there. Further that he found a water tap there from which he drank water and in the meantime, a shopkeeper from a nearby shop came to see them all and after having a look at all of them he also left the place. Further that after sometime, a police jeep reached there and put him, the badly wounded person lying there and the person in a critical condition at the canal in the said jeep. The said jeep then reached at PS Murad Nagar and the persons in the said police jeep threatened him saying

that he would be killed in case he complained anything against PAC Jawans. He further deposed that at that time two more persons were with him, one was Mohd. Usman and he did not know the name of the other person. Further that they were threatened by those police officials that in case they made complaint to any person, they would be killed. They were forced to sit in the jeep and were taken to Murad Nagar Police Station. Further that the body of Mohd. Usman was seen by them i.e the police officials who were in the police station and after seeing the injuries on the person of Mohd. Usman, those police officials had brought him out of the police station. Further that he was also inspected by the police officials to find out that where he sustained injuries. His name and address was inquired and he disclosed his name and address to them. Further that since he had sustained two bullet injuries, therefore, he was frightened. Further that since his uncle had been killed in front of him, he was also injured and frightened, therefore at that time, he had not disclosed the name and address and had obtained his thumb impression on the papers. Further that something had however been written by those police officials on those papers on which his thumb impression had been obtained by them. He

further deposed that he is illiterate. After seeing FIR Ex.PW-4/A, he deposed that it seems that paper was like Ex.PW-4/A on which his thumb impression had been obtained. Further that after obtaining his thumb impression, the police officials had made him to sit in the jeep and he was taken to Mohan Nagar Hospital. Further that besides him there were two more injured in that jeep. He further deposed that he was threatened by the police officials that in case he disclosed to the doctor that he had been injured by the police officials, he will be got killed. Further that before they could reach to the hospital, one of the injured, who was in a serious condition has succumbed to his injuries, who was other than Mohd. Usman. Further that those police officials who had taken him and the other injured to the hospital had a talk with the doctors and he and Mohd. Usman were then taken to the doctors for their medical examination. Further that since, Mohd. Usman was seriously injured, therefore, he was taken to some big hospital, however, he remained in Mohan Nagar Hospital. Further that he was medically examined there and was admitted. He remained admitted in the hospital for about 15 to 20 days. Further that during that time, his statement had been recorded once or twice by the officials of CB/CID.

Further that when he was discharged from the hospital, he was taken to a Magistrate and his statement was also recorded by the Magistrate. He further deposed qua a specific question that it was night time and the headlights of the trucks were off. Therefore, he was not in a position to identify any of those PAC personals who were present at that time and had fired shots. He further deposed that it was dark at that time as it was night time and he was also frightened at that time. He further deposed that he cannot identify any of the accused.

PW-11 Sh. Babuddin is another survivor and he deposed that about 3 or 4 years prior to 1987, he and his father Mohd. Khalil Ansari used to weave clothes in the Power Loom of Hazi Azimuddin of Mohalla Hashim Pura, Shah Peer Gate, Meerut. Further that on 22.05.1987, his father Mohd. Khalil Ansari were sitting in the house of one Saddiq, Ichauliya Wala. He was also with his father at that time. At about 02.00 or 03.00 pm, 30/35 persons had come in Hashim Pura Mohalla. It was Jumma Day (Friday). Out of those 30/35 persons, a few persons had entered in the house of Sadiq where his father and himself

were sitting with Saddiq. Those 30/35 persons included PAC personnels, Army personnels, police officials and lady police officials. Those persons had asked them to go out of the house as they wanted to search the house. He, his father, Saddiq and his family members then came out of the house. They had stood in the Gali and in the meantime, neighbours and residents of the locality had also gathered there in the gali. Those persons had searched houses of even other persons. Further that the officials of PAC then asked asked them to raise hands and asked them to move. At that time they were 150 in numbers. From the Gali, they had been taken to the road near Pipal Tree, Shah Peer Gate. There they found that around 300 persons were already there. They were also asked to sit by the officials of PAC. There he had noticed that a few vehicles/trucks were lying parked. People were forced to board those trucks and were being sent. He presume that those persons were being sent to Jail. In his presence, his father Mohd. Khalil Ansari had been made to board a truck and was sent somewhere. The PAC officials had then segregated a few persons of Hashim Pura Mohalla and he was one of them. The PAC officials had asked old aged persons and the children to go away and they were allowed

to go and he and other were then asked to board a yellow coloured truck of PAC. In that truck, their strength was 40 or 45. He could identify Azim Kausar Ali of village Hariyat, Muzib-ur-Rahman of his village, Hausala Uddin of village Manhar from amongst them. Further that 14 or 15 officials of PAC had also boarded that truck and their dress was of light yellow colour and they were wearing helmets and they were having rifles with bayonets (Sangeen). It was 07.30 or 07.45 pm (approximately) when the truck had left that place. The truck had moved for about 10 minutes and it was stopped somewhere and a few PAC Jawans also sat from that place in the cabin of the truck. The truck then again moved and had continued to move. It reached near a Nahar and the truck driver then took the truck on a Kacha Rasta and covered a distance of about 1 ½ Kms on the Kacha Rasta. The PAC Jawans from the cabin of the truck then got down and came towards the back portion of the truck. The lights of the truck were then switched off. Further that the *Dala* of the truck was then opened and one person from amongst them was made to alight from the truck. More than one fire had been shot and he was killed, another person was made to alight and he was also fired at more than one shot and killed

and they were thrown in the canal, the third one was also dealt with in the aforesaid manner. On seeing it happening, all of them had been frightened and they raised hue and cry and the Jawans of PAC then fired while they were in the body of the truck. Further that he had sustained bullet injury on the left side of his back just under the left armpit. Thereafter, it was a pin drop silence and thereafter the Jawans of PAC had made the persons sitting in the body of the truck to alight one by one, they fired at them and after causing the injuries they were thrown in the canal. Further that 15 or 16 persons had been dealt with in this manner by the PAC Jawans. He had noticed that some light was coming towards their truck and it appeared to be some vehicle coming towards their truck. The Jawans of PAC became panicky and had said that someone was coming and the driver of the truck then took a turn from a place near the bridge/culvert of the canal and had taken the truck towards the road and the truck was brought on the road. Further that the truck then moved and had continued to move for about 30 minutes and it had reached near a river, the truck was stopped on the pul/culvert and the Jawans of PAC then got down from the truck and stood behind the body of the truck. There also the *Dala* of the truck was

opened and PAC Jawans had fired and killed 15/20 persons one by one and had thrown them in the river. Further that thereafter he was also made to alight from the truck and a fire had been shot at him and he received an injury on the right side of his chest. The bullet had pierced and passed through. (As per court observations recorded by Ld. Predecessor, during his examination the witness has shown the place near his right nipple and pointed out that it was at this place he had received the bullet. He had also shown his back and pointed out that from that place the bullet had made the exit). He further deposed that thereafter he was also thrown in the river, he took some water and thereafter he regained consciousness and he swam and covered some distance and thereafter on a stone near bushes, he made himself lied. Further that thereafter those persons who had were remaining were also fired at, killed and thrown in the canal by the PAC Jawans. Further that thereafter the truck had gone away and thereafter two persons, with torches in their hands, had come on a motorcycle and with the help of the torches they were trying to illuminate the area and on seeing the light of the torches, because of fear, he (PW-11) hid himself, however those two persons kept on illuminating the area with the torches.

Those persons then inquired as to whether there was anyone or not as they wanted to help, he thought that since he had been fired at twice and he may not survive, therefore, why not to take a chance as those two persons may be of some help to him. He further deposed that he was a bit frightened and he then came on the road and found that those persons were police officials and they inquired his name from him and he disclosed his name to them. He further narrated all the facts to them as to what had happened with him and others. After some time a police jeep had come there in which there were a few police officials, he was then made to sit in the jeep and was taken to Link Road Police Station, Ghaziabad. In the police station something was written on papers without inquiring anything from him and his signatures were obtained on those papers. Further he deposed that it was only one paper on which his signatures were obtained by them. Further that from there he was taken to Narender Mohan Hospital in jeep, the police officials met the doctor on duty and had a talk with him and thereafter he was admitted in the hospital, he remained admitted in the hospital for about 2 or 3 weeks. Further that in the hospital, officers used to come to inquire facts from him, they used to

write on papers, however his signatures were not obtained. His Baniyan had been taken by the doctor after it was cut by the doctor and when his baniyan was taken by the the police, his signature was obtained. He also proved memo Ex.PW-11/A. He further deposed that when he was discharged from the hospital, his statement was taken before a judge and his statement was recorded by him.

8.2 OTHER WITNESSES QUA SEARCH OPERATION AND ARREST FROM MOHALLA HASHIMPURA.

PW-19 Iqbal deposed that in 1987, it was the month of Ramzan and he was on fast and he was present at his house. Further that at about 03.00 pm, officials of Provincial Armed Constabulary (PAC) came to his house and took him away forcibly and he was made to sit underneath a pipal tree by the PAC officials. Further that curfew had been clamped in the area on that day he had been taken out of his house. His brother Islamuddin, Naeemuddin, Nizamuddin had also been taken by the PAC officials to that place. One Abuddin, a resident of the Mohalla had also been taken and these four persons namely Islamuddin, Naeemuddin,

Nizamuddin and Abuddin were segregated from them with the intention to let them off later on. Further that he alongwith other residents of the Mohalla had been made to board a truck. There was no space in the body of the truck as it was full of human beings and all of them were taken in that truck to police line. In the police line a number of persons armed with Lathis had boarded the body of the truck. The lathis were studded with iron patties and those police officials had assaulted them with the patties. Further that the occupants of the truck had been given beatings by the police officials for over two hours. In the truck the human beings were lying in a heap and he was at the bottom and was trying to take himself easy and to have the air. The truck was then taken to police station Civil Lines and there were also a number of police officials armed with lathis and a few of them had stood on one side of the truck and a few on the other side. The occupant of the truck were asked to get down. The one who was able to move was assaulted and killed and those who could not move were taken to Medical (Mortuary) thinking that they were dead. Further that he remained in police station Civil Line for about three days and thereafter he was taken to Meerut Jail and since it was full, therefore,

he was brought back to the police station Civil Line and from there he was taken to Fatehgarh Jail where also, he had been given beatings and thereafter he was lodged. He further deposed that in the Jatehgarh Jail, through newspaper, he came to know about a number of persons having been killed and thrown in the Nahar. He was released from the jail after 31 days. He was shown photographs of his brother by the police officials and on seeing the photographs, he identified the dead body of Islamuddin. He further identified his brother in copy of photograph Ex.PW-19/A at point A.

PW-20 Mohd. Saleem deposed that on 22.05.1987 at about 03.00 pm, it was Jumma Day (Friday) and he was present at his house. Further that a number of PAC personnels entered his house and they had taken away his younger brother Naeem, who was aged about 17 years at that time. He deposed that he hid himself in his house. Naeem never came back. He further deposed that he had not identified his dead body. He voluntarily deposed that his father Noor Mohd. had however identified the dead body of his brother Naeem. He further deposed that he was not shown photograph of Naeem Ahmed by the police officials, however he

can identify his brother Naeem in the photograph. After seeing Ex.PW-20/A, he identified his brother Naeem at point A.

PW-21 Mst. Zebunnisa deposed that on 22.05.1987, she was present at her house and it was Jumma day. Further that she, her Jeth Kalwa and her husband were present. Further that at about 02.00 pm police officials of PAC had come to their house. They were 10/12 in numbers and they insisted that they would like to search their house and they infact searched their house. Further that those police officials had taken away her husband and Jeth. Her Jeth Kalwa had come after two months and her Jeth told her that on 22.05.1987 he had been taken to Fatehgarh Jail. She further deposed that her Jeth identified the dead body of her husband on the basis of cloths. She also identified her husband in copy of photograph Ex.PW-21/A.

PW-22 Abdul Hamid deposed that on 22.05.1987, he was present at his house and it was Jumma. Further that at about 02.00/02.30 pm officials of PAC, Local police and Military had come to their Mohalla and they were about 90-100 in numbers. 5-6 officials entered his house and searched his house. At that time, he, his brother Kayyum, Zahir

Ahmed son of Chhota, Javed son of Zahir, Jamir son of Zahir, his sons Saleem and Naim, Waseem son of Rafiq were present. Further that Naeem was aged about 15 years. Naeem and Javed had been separated by those police officials from them and they were taken to police line. He further deposed that from the word police line he mean the place where the police officials used to get training and used to do physical exercise. He further deposed that he was assaulted and he sustained injuries all over his body including his head. He further deposed that from the police line he and other were taken to PS Civil Line and from there he was taken to Abdullapur jail and he remained in Abdullapur jail for about 18 days. He further deposed that he was released on bail. He voluntarily deposed that in that case, he was exonerated. He further deposed that after release from jail, he had searched for Javed, Naim and Zahir, however he could not find them out. He further deposed that the name of his wife was Hajare and she is alive. Further that Javed, Naim and Zahir are not alive and his wife Hajra had identified the dead bodies of Javed and Naim on the basis of their clothes. He further deposed that he was not interrogated or questioned by the officials of CID. During cross-examination by Ld. Spl.

PP, he admitted that he handed over a written complaint bearing his thumb impression to the officials of CID and he had also affixed the photographs of Naim, Javed and Jahir on the complaint.

PW-23 Shakeel Ahmed deposed that in 1987, he used to reside in Hashim Pura near Gulmarg Cinema Hall, Meerut, U.P. and on 22.05.1987 a quarrel had taken place and he was arrested by PAC and military officials. Further that local police officials were also there. About 250/300 person of mohalla Hashim Pura were arrested. From his family, he and his brother Akeel had been arrested and he was removed to Abdulla Pur Jail. He further deposed that his brother Akeel had been made to sit on the Sabir Gate Road. He further deposed that he was released from jail after about one month. Akeel had not been taken to jail with him and when he was released from Jail, he came to know that Akeel had died. Further that he had gone to police station Ghaziabad and from the clothes and photograph of Akeel he identified him and paper in that regard Ex.PW-23/A were prepared.

PW-30 Mr. Shakeel Ahmed deposed that in 1987, he was residing at Hashimpura, Meerut and on 22.05.1987 on the Friday, they

were present in their house when the army and PAC proclaimed in their Mohalla. He further deposed that they were at their houses after offering the namaz of zuma. He further deposed that the entire mohalla people were rounded up and taken to the main road. He further deposed that he hid himself in the house. He further deposed that on 29.05.1987, he had gone to police station and identified the dead body of Nizamuddin by seeing his photograph.

PW-31 Sh. Gaffar deposed that Nizamuddin was his younger brother and on 22.05.1987, it was Friday at about 02.00 pm, the police and military people while taking search had taken the mohalla people with them. Further that Nizamuddin had also been taken by them and he did not come back. He further deposed that after 3-4 months of the incident, a police vehicle had come to their Mohalla and all those people whose near and dear had not come back were asked to go to police station at Ghaziabad for identification. He further deposed that they were asked to identify from the cloths and he identified the cloths of Nizamuddin.

PW-48 Sh. Jamil Ahmed deposed that he was residing in Hashimpura since his birth. Further that on 22.05.1987, he was at his

home and some Magistrate Sahab came in the gali and announcement was made for all to come out in the gali as some checking was to be done and accordingly they all came out in the gali. Further that his father Sh. Qadir Ahmed, his brother Naim Ahmed, his mother Mst. Mehmoodan and himself came out from his house. The person who had come searched their house and also other houses in neighbourhood and nothing incriminating was recovered during the searches. Further that PAC officers took all of them out from the gali on the road and thereafter they selected some people and his father was one of the person selected by them. The selected persons were taken by PAC somewhere in truck but he did not know where they were taken. Subsequently, some of the persons were released and they came back but his father had not returned back. Further that after some days, he saw photograph of his father in a magazine and came to know that some incident had taken place at Nahar. Further that the photograph of his father was of the period when he had been picked up and taken by PAC. He also subsequently came to know that his father was amongst the people who had been killed at Ganga Nahar. He further deposed that he did not know anything else.

PW-49 Mst. Mehmuddan deposed that it was Friday and 22nd day of month in the year 1987 but she did not remember the month. PAC came to her house and they claimed that they would search their house and they all came outside. Further that they all took her husband and many others from the Mohalla with them and it was around 02.30 pm. Her husband could not be traced out till that day. She further deposed that she had also seen photograph of her husband in some book. She had searched for her husband but could not locate him. She deposed that she did not know anything else.

PW-50 Mr. Laik Ahmed deposed that on 22.05.1987 which was Friday and he was present in his house. Further that at about 3-4 pm, PAC people came in the area and a person being called Magistrate was also with them and announcement was made that all should come out as houses were to be checked and accordingly they all came out. Further that his house was checked and nothing incriminating was recovered. Further that his brother Hazi Shamim Ahmed was made to sit in a truck and he was sent to Civil Line PS and then to Jail. Further that after coming out of jail, he came to know through Magazine and newspaper that his brother

had been shot dead near Gang Nahar. Further that his brother had not returned since then. Further that he did not know anything else.

PW-51 Mst. Mehrunissa deposed that she did not remember the date or month but it was month of Ramzan and it was the last friday of Ramzan in the year 1987. PAC came in their area and made announcement for all to come out as houses were to be checked. They were breaking open main gates of houses which were not being opened. Her husband came out and she followed him. Further that PAC surrounded their house and took her husband with them. It was claimed by them that they would leave her husband, however her husband has not returned till that day. Further that it was subsequently through photographs in magazines that she came to know that her husband had been killed and thrown in Gang Nahar. She further deposed that she did not know anything else. She further deposed that her husband appears at point A in photograph Mark P-51-A.

PW-52 Rahis Ahmed deposed that on 22.05.1987 he was present in his house and it was Friday and an officer came and stated that their house was to be searched and asked all of them to come out. Further

that his father, his Chacha and himself came out. Further that on coming out to gali, they were taken to the road and were made to sit there. One officer of the military present there stated that students, ladies and old people should be let off and they were making others sit in yellow truck. He was let off and when he came back home, he came to know from other people that his father had been taken away by them. Further that there was curfew in the area and after about 10-15 days, he came to know that his father had been taken and shot at at Gang Nahar. He further deposed that he had also got lodged an FIR in this regard.

PW-53 Sh. Jamalluddin deposed that on 22.05.1987 it was a Friday and he was present in his house and there was curfew in the area. After Namaz at around 02.00 pm, he came to know that force was collecting outside the gali. He came to know that house searches were to be made and he closed the door of his house and sat inside. Further that he heard noise of his door being knocked and he opened the door and saw 5-6 military people standing outside his door with riffle. They asked him to raise his hands and show them the way to go upstairs. He took them upstairs to the roof through the stairs and on reaching the roof of his

house, he observed that military people with riffles were present on practically every tall house in the area. PAC, local police and ladies police also entered his house and they all searched his house but nothing incriminating was recovered. He further deposed that his sons namely Kamruddin and Riazuddin were brought out of the house, they were aged between 16 to 20 years. He further deposed that he was on the roof of his house and proceedings continued in the area for about 2-3 hours. When the military people came down stairs from the roof of his house, they brought him downstairs. On coming out he observed that about 300-350 male members of the area had been collected by them and he also sat with them. Children of his mohalla who had been collected there were taken away in three PAC trucks and one small vehicle. They had been sent to PS Civil Lines and people over the age of 50 years and less than 10 years were not taken to PS Civil Lines in the trucks. Thereafter military people left the spot after leaving PAC there. PAC asked all of them to stand in a line and thereafter they segregated young and sturdy from amongst them and they were made to board a PAC truck and they were 40-45 in numbers. They all others were let off and the truck was taken away from

the area. His son Qamruddin and other boys of the area were in the said truck. Amongst others were Mohd. Naim, Zulifkar Nasir and many other Bihari people. Further that they all returned back to their houses thinking that the last truck would also be taken to PS Civil Lines. There was curfew in the area and hence they had not moved any application anywhere in that regard at that time. About 10-12 days thereafter, statement of Zulfikar Nasir was published in Jansatta and it was mentioned therein that his son Qamrudin had been shot dead. Subsequently he had gone to Ghaziabad and had moved an application Ex.PW-53/A before SSP in this regard. Thereafter he went to PS Murad Nagar and met the C.O and he showed copy of his application to him and he showed him photograph of his dead son and informed him that he had found his son near the Nahar and that he was alive at that time but in injured condition. Further that he also told him about having taken his son to Mohan Nagar hospital but his son had expired in the way.

PW-54 Parvez Ahmed deposed that on 22.05.1987 he was sitting in house of his neighbour Nasruddin and Qamruddin, Siraj Ahmed and Mohd. Salim were also present there. Further that it was 03.00-04.00

pm when two military officials came there and took them outside the house and they all were brought out in the Chauraha of Hapur Road. Major Pathania separated Qamruddin and Siraj Ahmed and they were made to sit at a side and rest of them were made to board a truck and taken to Fatehgarh jail. Further that on 22.05.1987 they were taken firstly to PS Civil Line and had been sent from there to Fatehgarh Jail on 24.05.1987. He further deposed that he had not seen Qamruddin and Siraj Ahmed thereafter. Further that he remained in jail for about 20-25 days.

PW-55 Dr. Zahiruddin Ansari deposed that on 22.05.1987 he was present in his house and it was holy month of Ramzan and it was last Friday of Ramzan and there was curfew in the area. At about 02.30 pm after Namaz, members of the force i.e PAC, police and military entered the area and announced that all the occupants of the houses should come out of their houses as houses were to be searched. Some of the residents came out of their houses in the gali and those who did not come out of their houses were beaten and brought out forcible by members of the force. He was one of those who came out of their own and after some time, when the gali got over crowded, they were asked to move outside

towards Main Hapur Road and they were made to run towards that directions. Further that on reaching there, he saw some persons sitting under tree across road. He saw a person standing there whom he thought to be a senior officer and he thought of talking to him and he told him that he was an MBBS doctor and a resident of the area and requested him to treat properly and he agreed to his request and asked him to remain there itself and he remained there for about 4-5 hours. He further deposed that other people of the area were also being collected there by being brought to the main road and when one side of the road got over crowded, people started sitting on other side of the road also. Further that one military doctor was attending the persons who had received injuries and when many people had collected there the young ones were separated from the elders and many groups were formed in that crowd. He further deposed that one of the police officer sitting by side of the tree was writing something from amongst the younger lot. Thereafter they were made to board the truck and the truck left the spot. Further that after the first truck had gone, the second one was filled and was taken away from the spot and many trucks were filled and left the spot in that manner during 4-5 hours. He further

deposed that when it was time to open the fast, water was supplied from nearby tap. He also supplied water to the people collected there. After the trucks had left, some of the persons who were not arrested were allowed to go back in the mohalla. One truck which was still lying parked at the spot was then being filled and he saw 2-3 persons in the said truck. One of them was Hazi Shamim Ahmed and the other was Qadir, one was Sadruddin and there were many others and the truck was jam packed. Further that the truck left towards Indira Chowk and he went back to his house. About 2-3 days thereafter, he came to know that more than 400 people had been arrested and sent to jail. He also came to know that out of persons apprehended and taken away from the spot, 42 had not been sent to jail nor had they been arrested. He also came to know that PAC had taken those persons to the Nahar and had killed them. Further that some of them, he came to know subsequently, could not be killed and came back. Two amongst those were badly injured and four were not having any injuries. Further that enquiries has subsequently been made from him by the police.

PW-57 Sh. Sakhawat Ali deposed that in May 1987, he

was standing with his neighbour Sh. N.U Ansari, Advocate outside their house and some people came there and stated that PAC vehicle was loading persons and beating them and they had saved themselves and were coming from Murad Nagar and thereafter he then went back to his home.

PW-58 Sh. Abdul Alim deposed that on 22.05.1987 at around 03.00 pm, he was present in his house and there was an announcement being made on mike that houses were to be searched. Further that military people, PAC and police entered their Mohalla. Door of his house was knocked and as soon as he opened it, he was beaten with Dandas by 4-5 PAC people and he suffered a fracture in his leg on account of the beatings. All of them made to sit in the Gali and around 400-500 people of the Mohalla were made to sit on the main Hapur Road and it was around 05.00 pm by that time. Amongst the Mohalla people, children and old people were separated. He further deposed that his father was one of those who had been separated. Many people were made to board trucks which were of yellow colour and words PAC 41st Batellion were written on the same and trucks left the spot. 40-50 people were being made to sit in a truck. All but two trucks left the spot. He further deposed that

Qamruddin, Hazi Mustakin, Usman Gani, Zulifqar Nasir, Naim, Kadir Chai Wala and the others were made to sit in one of those two trucks. He alongwith many others were made to sit in the other truck. Their truck was taken to police station and the other truck had also left the spot but he do not know as to where it had been taken to. His truck was parked outside the police station and all the occupants thereof were made to stand in two lines. Each person coming down from the truck was being beaten with iron pipes. People in both the lines were made to enter the police station and while doing so were being beaten by PAC who were present there. He further deposed that one Mohinudin and one Menu who both were his neighbours died in the police station on account of beatings received. They were detained in the police station for the whole night and on the next day they were send to Abdulapur jail. He further deposed that he was released from the jail after 18 days and on returning back to the Mohalla, he came to know that occupants of the other truck had been killed by PAC at Gang nahar.

PW-60 Sh. Tanvir deposed that on 22.05.1987, he was present in his house and there was announcement being made asking the

residents of the area to come out of their houses as search was to be conducted. When they came out, all of them including his father, brother and neighbours were taken to the main road. He further deposed that PAC people present there were wearing yellow coloured clothes and started picking up people and were boarding them in yellow coloured buses. He further deposed that as he was a child at that time, he was let off and he went back to his house. His father was made to sit in the yellow coloured bus. Further that name of his brother was Mohd. Rias.

PW-61 Md. Jaffar deposed that on 22.05.1987 it was Friday and he was coming back towards his house from the Masjid after Nammaz. Further that announcement was being made that search had to be conducted. Houses were searched and they were apprehended and taken away. PAC people had brought them to the main road from the gali and his son Mehtab was with him. People were segregated and made to sit in trucks and the trucks were of yellow colour. Further that people were taken away and his son never returned back.

PW-62 Mr. Sher Ali deposed that on 22.05.1987 he was present in house of Akthar in Hashimpura. Further that at about

02.30-03.00 pm, they were coming from the Masjid after Namaaz. PAC and military people came there and brought out every one from their houses and collected them in the mohalla. They all were brought to the main road and when many people collected there, children and old people were separated from the young people. Children and old people were being sent back in the mohalla while the young people were being made to sit in buses present there. Further that he was sent inside back in the mohalla. Hazi Mustkin, Qamruddin and Siraj who were sitting besides him were made to sit in the buses and he did not see them thereafter. He further deposed that about 1- 1 ½ months thereafter, he was told by his mohalla people that he had to go to identify clothes as he was a tailor and had his shop in the area and he accordingly went to police station Link Road Ghaziabad and some cloths were shown to him there and he identified the same as having been sticked by him. He further deposed that he had identified clothes of one Naim and also of some other people whose names he did not remember and memo Ex.PW-62/A was prepared in this regard.

PW-63 Fariduddin deposed that on 22.05.1987, he was

present in his house and it was around 02.30-03.00 pm when announcement was made outside that houses would be searched. Further that military and PAC came there and all of them were brought out of thier houses and they all were taken on the main road and made to sit. They were made to sit separately and his brother Sadruddin was separated from him. It was around 06.30 pm when he alongwith other had been made to sit in a vehicle and sent to Fatehgarh jail. When the curfew was relaxed, his uncle Amir Ahmed came and met him in the jail and when he asked him about his brother, he told him that he had been made to sit in the PAC vehicle. He further deposed that subsequently, it was learnt that his brother had been shot dead at Muradnagar Nahar.

PW-64 Anwar Ahmed deposed that on 22.05.1987, he was coming out of the Masjid after Namaaz and it was around 02.00-02.30 pm. An announcement was made asking the people to come out of their houses as searches were to be made. PAC people and military people had climbed to the roofs of the houses and thereafter they all were brought on the main road. He further deposed that children and old people were being separated from young people and some of the people were also

beaten by them. And they were forced to get into trucks and taken to P.S Civil Line. Further that they were beaten there during the night and thereafter they were sent to the jail.

PW-66 Mr. Sirajuddin deposed that on 22.05.1987 he was present at his house. It was Friday and at about 02.00-03.00 pm, he had returned back to his house after Namaaz. Further that a announcement was made that all should come out of their houses as search was to be conducted. Local police, lady police, PAC and military entered the houses and brought all the residents out of the houses with their hands raised. His house was towards end of the gali. They all were brought to the main road and they all were made to sit down. Amongst the people who were sitting on the road, children and aged were asked to get to a side and he also went towards a side alongwith them. The children and the aged were made to stand in a line and were asked to go back home. Some people from amongst those were also picked out, however he managed not to be picked out and somehow managed to go back to his home.

PW-67 Sh. Abdul Gaffar deposed that on 22.05.1987 at about 02.00 pm, he was sitting in the Baithak of his house and one

Thanedar and one military officer came to him and asked him if he had a gun with him and he told them that he had a gun and he asked his son Suka to hand over the gun to them. Further that his son handed over his gun and two cartridges to them and they asked him to take receipt and he told them that he would take the receipt afterwards but they insisted that he should accompany them and take the receipt and they took him with them. Further that they took him in a bus to police line where police officers gets training. There were many other people with him and they all were beaten. Mohalla people had been made to sit separately on road and in the mohalla and had been taken away in some trucks from the mohalla. Further that after reaching police line when they were being made to get down from the bus, it was asked if any Hindu was amongst them, he should tell his name. At that time, he thought that he should give out his name as being a Hindu but then he decided against it. He was beaten and as a result thereof his left forearm got fractured. They remained in the room in the police lines for two days and thereafter they were taken to P.S Civil Lines. There were many other people there and they all were beaten with shoes. Subsequently, he along with many other

persons had been shifted to Fatehgarh Jail.

PW-68 Sh. Abdul Hamid deposed that on 22.05.1987 at about 02.30 pm he was having food at his house after having come back after Namaaz. There was announcement made asking all of them to come out for search and they all came out from their houses. Further that they were all made to lift their hands and go towards the main road and after they all had reached main road, some people were lifted and made to sit in trucks. 19 people including himself were made to sit in a small truck and from the Mohalla they were taken to police line and they remained there for three days and thereafter they were sent to Fatehgarh jail and they remained there for 5-6 days and then transferred to Manipuri Jail and he was let off after 24 days.

PW-77 Mst. Hazara deposed that on 22.05.1987, it was a Friday and the month of Ramzan. After her children came back after Namaz, they all sat together. She further deposed that immediately military and PAC people alongwith police entered their house and they asked all of them to come out as search was to be conducted. They all were taken out on the road but she did not go out and had remained inside

the house. She further deposed that she did not know anything else. After three months, he was taken to Police station details of which she did not remember where some photographs were shown to her and she identified photograph of her son Naim and of Javed who was son of her Dewar and thereafter clothes were shown to her and she identified cloths of both the boys. She further deposed that her thumb impression was obtained on some papers.

PW-78 Mst. Zarina deposed that on 22.05.1987 at about 02.30 pm she was present in her house and it was Friday. Police, PAC and military came inside their house and took away her husband with them and her husband had not returned thereafter. Further that her son Javed and Zamir had also been taken by them. Zamir returned back home after about 18 days while Javed had not come back.

PW-87 Sh. Mohd. Isa deposed that on 22.05.1987, it was Friday and it was about 04.00-05.00 pm and he was present in the Karkhana in Hashimpura. Further that one hotel is also being run from there. An announcement was made asking everyone to come outside as search was to be taken. His cousin brother Mohd. Haneef went out. Many

officers of police and PAC were present there and Haneef was taken by them in the gali and he hid himself. He further deposed that the entire mohalla was taken by the police and PAC. He further deposed that he never met Haneef thereafter. He further deposed that he made a complaint Mark P-87A to the SSP and after many days he alongwith other Mohalla people had been taken by police to the police station across the Nehar towards Delhi and he identified clothes of his cousin there.

8.3 WITNESSES RELATING TO INVESTIGATION
CARRIED OUT BY POLICE STATION MURAD NAGAR(FIR No.
141/87 P.S. MURAD NAGAR).

PW-33 Inspr. Rajinder Singh Bhagor deposed that on 23.05.1987, he was posted as SO PS Murad Nagar, district Ghaziabad. Further that on that day at about 03.35 am one Kehar Singh came and met him in the police station and he informed him that three persons in injured conditions were lying near the Pul of Gang Nahar, Murad Nagar and thereafter he alongwith two Sub-Inspectors namely Shiv Kumar Dwivedi and Shyam Lal and four constables alongwith driver Kehar Singh went

towards Gang Nehar in official jeep. He further deposed that on reaching there he found two persons present there and both were in injured conditions and on his asking, one of them disclosed his name as Muzibur Rehman son of Sabbir. He further told him that he used to work as Power Loom Machine, Hashim Pura, Meerut in gali in front of Gulmarg Cinema. He further deposed that he (Muzibur Rehman) also told him that he alongwith many other persons had been picked up by uniformed police officials on excuse of search and had been brought from Meerut and had been shot by the said police officials near Murad Nagar Nehar and had been thrown. He further told him that he alongwith the other persons by his side came to the spot via the canal and the another companion was lying on the other side of the pulia. He further deposed that the other person was not in a position to speak. He took both the injured with him in the jeep and they crossed over the pulia and went to other side to search of the third person. After driving for a distance of about one to one and half kilometer, he found an injured by side of the road near the pushta and said injured disclosed his name as Mohd. Usman and he was not in a position to speak much. He brought all the three injured to the police

station and on oral information given by Muzibur Rehman, he got the case registered at about 04.15 am vide crime no. 141/87 u/s 302/307/364/201 IPC. He further deposed that he observed their injuries and got prepared Naksha Majroobi and as their conditions appeared to be serious, he took them to Narinder Mohan Hospital, Mohan Nagar and got them admitted at about 05.20 am. He further deposed that on the way to hospital, one of the injured expired. Intimation regarding death of unknown person was sent to PS Sahibabad which was the nearest police station. After leaving two constables at the hospital, he went to report the matter to District Magistrate as inquest proceedings were to be conducted by Magistrate as the deceased had died while he was with him in the police vehicle. He also requested the District Magistrate to record dying declaration of the two injured Mujibur and Usman as their condition was serious and District Magistrate deputed Addl. District Magistrate to do the needful. ADM marked the matter to Ms. Sneh Lala, ASDM and he handed over the order to the ASDM and thereafter he completed his written proceedings and then returned back to the spot i.e Pulia at Gang Nahar. He further deposed that he inspected the spot on pointing out of Kehar Singh and he collected

blood stained Mitti and Sada Mitti from the spot in presence of Mohd. Hanif and Kehar Singh and the same had been seized vide memo Ex.PW-33/A and the witnesses affixed their thumb impression on the same. Two samples were converted into two separate pullandas and sealed with the seal of RSB. He further deposed that he prepared site plan Ex.PW-33/B. He recorded statement of one constable and SI Shyam Lal and subsequently case was transferred to CBCID. He was duly cross-examined on behalf of accused persons.

PW-56 Sh. N. U Ansari deposed that during end of month of May 1987, Sh. Khalid Hashmi brought Sh. Zulifkar Nasir to his house. Sh. Khalid had earlier talked to him on telephone before coming to his house. One Mirajudin had also come with them. Sh. Shakawat Ali, who was his next door neighbour also came to his house. Zulifqar Nasir was in injured condition and told him everything in respect of what had happened on 22.05.1987. Thereafter he had a telephonic talk with Sh. Saiyed Shabuddin, who was a M.P and also with Sh. Chander Shekhar, M.P. He took Zulfiqar to Sh. Sahabudin alongwith 2-3 other persons. Further that his statement was recorded in this case during course of

investigation.

PW-83 Mohd. Hanif deposed that he was running a tea stall on the pulia of Gang Nahar at Muradnagar. In the year 1987, he had seen a person lying in injured condition near his tea stall. He identified his thumb impression on exhibit already Ex.PW-33/A.

PW-85 Sh. Chander Kant Tyagi deposed that on 28.08.1987, he was posted as Judicial Magistrate, Meerut and on that day an application for recording statements u/s 164 Cr.P.C in respect of Naeem and Usman was moved before him by the IO. Vide his order Ex.PW-85/A he fixed 01.09.87 as the date for recording their statements u/ s164 Cr.P.C. He further deposed that on 01.09.1987, fresh application was filed before him by IO with request that statement of one Zulfikar Nasir was also to be recorded u/s 164 Cr.P.C and he vide his order Ex.PW-85/B ordered that his statement be recorded. Witnesses were present in the court and vide his order dt. Ex.PW-85/C dt. 01.09.87, he ordered that their statement be recorded after lunch. Statement of one witness Mohd. Usman was recorded on 01.09.1987 and the application was adjourned for recording statements of remaining witnesses for 02.09.1987 vide his order

Ex.PW-85/D. Statement of Usman recorded by him u/s 164 Cr.P.C was already Ex.PW-3/A bearing his signature at point X. On 02.09.1987 he recorded statements of Mohd. Naeem u/s 164 Cr.P.C as already Ex.PW-2/A and statement of Zulfikar as already Ex.PW-1/A. He further deposed that vide his order Ex.PW-85/E dt. 02.09.1987, statements recorded were ordered to be kept in sealed cover and sent to ld. court concerned. He further deposed that on 11.12.1987 one application was filed by Inspector R.C. Gautam before Ld. CJM for inspection of statements and IO was permitted to inspect the said statement. Further that vide his order Ex.PW-85/F the statements were ordered to be kept in sealed cover.

8.4 WITNESSES RELATING TO INVESTIGATION
CARRIED OUT BY POLICE STATION LINK ROAD GHAZIABAD
(FIR No. 110/87 P.S. LINK ROAD, GHAZIABAD).

PW-6 Sh. Sukhbir Singh r/o VPO Makanpur, Distt. Ghaziabad, U.P. deposed that there is a canal near their village and it is at a distance of about half kilometer from the abadi of the village. He further

deposed that about 20 years back a number of dead bodies had been found in the canal and he was unable to recollect their numbers, however, it is a fact that the dead bodies were more than one. A number of villagers were present at that time and he was also there. Police officials were also there and police officials had taken out those dead bodies. He had not identified those dead bodies. The police officials had prepared Panchnamas and since he had witnessed the taking out of the dead bodies from the canal, therefore, he signed the Panchnamas as a witness of that particular fact. He proved Panchnama as Ex.PW-6/A.

PW-7 Sh. Ratan Singh deposed that earlier he was working as constable in U.P police and in the year 1987, he was posted as constable at Police Station Link Road, Ghaziabad. He further deposed that he was on Santry duty and his duty hours were from 09.00 pm to 12.00 midnight. A number of persons had come to the police station and informed the police officials that some occurrence had taken place. He alongwith 3-4 more police officials had then rushed towards Makanpur side where they found a young man of 20-22 years in an injured conditions and he was alive. They had brought him to the police station.

He did not know as to where that body had been sent by the Station officer. He further deposed that except this nothing had happened in his presence. He again said, that body had been sent to Mohan Nagar Hospital by the SO, however he had not gone with him. Since, he was resiling from his previous statement, he was duly cross-examined by Ld. Spl. PP.

PW-8 Ct. Ratan Lal deposed that he had been posted in police station Link Road, Ghaziabad in the year 1987 and he had been handed over two dead bodies for being taken to the mortuary near Hindon Bridge and he had deposited those two dead bodies in the mortuary. He further deposed that the names of those two persons are not know to him. He proved Ex.PW-8/A & Ex.PW-8/B.

PW-12 Sh. Digambar Tyagi deposed that in the present case, he had simply heard firing of the shots. He had not seen as to who had fired, who was injured, what had happened to the injured etc. It was way back in 1987 when he had heard the firing shots at about 10.00 pm when he had gone to answer the call of nature at his village. He voluntarily deposed that he did not know as to whether the sound was of

fires or something else. After answering the call of nature, he came back to his house and he did not take any action in this regard. Since, the witness was resiling from his previous statement, he was duly cross-examined by Ld. Spl. PP but despite detailed cross-examination, he did not support the version of prosecution.

PW-13 Inspr. Virender Singh Yadav deposed that in 1987, he was posted as Sub-Inspector at PS Link Road Ghaziabad. The investigation of this case was conducted by him. Again said, on 22.05.1987, an information was received in police station Link Road. Further that Digambar Tyagi had come to the police station at about 08.00 or 09.00 pm and had informed them that on the way of village Makanpur, near the culvert of canal, some firing had taken place. On receipt of this information, it was reduced into writing in the daily diary register but he was unable to recollect its number. He was unable to recollect as to whether the entry had been made by him or by the Moharir as sufficient time had elapsed sine then. He alongwith Digambar Tyagi and a few other police officials had then proceeded in the official jeep to the culvert near the canal on the way to village Makanpur and had seen the place of crime.

On seeing the blood stains, he thought that some crime had been committed there and therefore he searched the nearby places. He further deposed that in the canal, a person was found who was in the water and he was trying to swim to save himself and it appeared that he was unable to come out. He then took out that person from the canal water, he was in injured condition and was bleeding, He had talk with him and he told him that he and a few other persons had been brought in a truck and had been fired at and killed and had been thrown in the canal. SI Ram Lakhan was then deputed to take that injured to hospital via police Station Link Road, Ghaziabad. The idea was to get the writing work done in the police station. He voluntarily deposed that the police station fell on the way from that place to the hospital. He further deposed that name of that injured was Babudeen. He further deposed that he (Babudeen) told that the colour of that truck in which he had been brought was yellow. Copy of DD No. 50 (Mark A) was recorded on the basis of the information given by Digambar Tyagi. He further deposed that he remained at the place of occurrence and had tried to find out as to whether there was any other injured or not. He also tried to find out as to whether there was any other person, dead or

alive near the place of occurrence or not, however he could not find anyone. He further deposed that since Babudeen had told him that the colour of the truck was yellow and there was a PAC battalion nearby, therefore, he went there. The number of the PAC Battalion, which was stationed near there was informed to him as 41st. The distance between the place where 41st Bn. Of PAC had been stationed was about one kilometer from the police station as well as from the culvert. He then made inquiries from the Santry as well as other public persons and he was told that no yellow coloured truck had been seen by them. When he was on way to the police station and the time was around 02.00 am or 03.00 am, a secret informer had informed that a yellow coloured truck had been seen by them going towards culvert. Except this no other information could be gathered by him. He had again gone to the place of occurrence and by that time Station Officer Link Road, Ghaziabad namely Sub Inspector Veer Bahadur Singh had also reached there. He also tried to search the injured or other persons dead or alive near the culvert. He further deposed that investigation of this case had remained with him till 23.05.1987 and thereafter the investigation was conducted by SI Veer

Bahadur Singh. So long the investigation remained with him, he had recorded statement of the injured Babuddin u/s 161 Cr.P.C in the hospital. In the hospital, he had taken the blood stained Baniyan of Babuddin vide Ex.PW-11/A. He further deposed that he inspected the place of occurrence and had prepared the rough site plan Ex.PW-13/A. He had also taken into possession the blood stained earth from the place of occurrence vide memo Ex.PW-13/B. He further deposed that on 23.05.1987, two dead bodies were found in the morning and proceeding u/s 174 Cr.P.C vide Ex.PW-8/A & Ex.PW-8/B were conducted in respect of those two dead bodies. When the proceedings u/s 174 Cr.P.C (Panchnama) were completed by him, nobody identified those dead bodies and both the dead bodies were sent by him to mortuary. Although, the investigation was not conducted by him after 23.05.1987, yet on 24.05.1987 the proceedings u/s 174 Cr.P.C in respect of one more dead body recovered from the canal had been conducted by him vide Ex.PW-13/C, this dead body was also sent to mortuary for postmortem. He further deposed that application for postmortem Ex.PW-13/D was prepared by him and permission was granted by District Magistrate and the postmortem was conducted during

the night. He further deposed that except this, he had not conducted any other investigation or proceedings. He further deposed that he correctly recorded the statement of Babuddin Ex.PW-11/DA and statement of Digambar Tyagi as Ex.PW-12/A. He was duly cross-examined on behalf of accused persons.

PW-14 SI Ram Lakhn deposed that on 22.05.1987, he was posted SI in PS Link Road, Ghaziabad and on that day he was present in the police station and at about 10.15 pm, Digambar Singh had come to police station and informed them that near the culvert/Puliya of the Makanpur canal, firing had taken place and 10/12 fires had been shot. Further that Digambar Singh further told that he suspects that either some loot is being made or there is some violence. SI Virender Pal Singh, SI Sripal Singh Nagar and himself alongwith other police officials had gone to Makanpur canal and reached near the culvert/Pul/Puliya at about 10.40 pm. He further deposed that blood stains were noticed by them near the culvert/Pul/Puliya. It was dark at that time and they with the help of torches tried to see the area near the culvert and at about 11.45 Babuddin was found near the canal and he was brought on the road. He was having

gun shot injuries and it appeared to them that those were the gun shot injuries. He (Babuddin) told them that 30/40 persons had been brought in a yellow coloured truck from Meerut or that a few persons had been shot, killed and thrown in the canal at some distance from that culvert. Babuddin was bleeding at that time and he told them that he had also received two bullet injuries. SI Virender Singh, who was the Team Incharge directed them to take Babuddin to the police station Link Road Ghaziabad and to get the FIR registered and accordingly he and Ct. Attar Singh then took Babudin to PS Link Road, Ghaziabad and on his Statement, the FIR was registered and thereafter he was taken to Narender Mohan Hospital, Mohan Nagar in official jeep. He further deposed that he was unable to recollect as to at what time Babuddin was got admitted in the hospital. He further deposed that after admitting Babuddin in the hospital, he left the hospital and at about am on 23.05.1987, he reached at P.S Link Road, Ghaziabad. He further deposed that on 24.05.1987, he prepared inquest reports of two persons vide Ex.PW-14/A & Ex,PW-14/B and the bodies were not identified at that time.

PW-27 SI Sri Pal Singh deposed that in the year 1987, he

was posted in the police station Link Road, Ghaziabad and on 25.05.1987 he had prepared the Panchayat Nama Ex.PW-27/A and the same is in his handwriting and bears his signatures. He further deposed that on 25.05.1987 he prepared Panchayat Nama already Ex.PW-6/A.

PW-36 SI V.B. Singh deposed that in the year 1987 he was posted at PS Link Road Ghaziabad as SO and on the intervening night of 22/23 May 1987, he had gone to attend a meeting regarding Delhi/UP boarder and SI Virender Singh Yadav was acting as Incharge of police station during his absence. He further deposed that before he returned to the PS from the meeting, he came to know that some persons wearing Khakhi uniform had come in a Khakhi coloured vehicle and had taken some persons to Makanpur Nahar Pulia and had shot them and thrown them there. He came to PS Link Road and then went to the spot i.e Makan Pur Nahar Pulia. He further deposed that SI Virender Singh Yadav met him at the pulia and he informed him that one of the injured had been removed to the hospital through SI Ram Lakhan Singh Yadav. They all started searching for the dead bodies but no body could be located at that time and thereafter they alongwith additional force searched for the

culprits and the Khakhi vehicle, however none could be located. Blood was found on the bricks and floor and hence, sample in that regard were picked up. Further that senior officials had also reached at the spot on receipt of information about the incident and senior officers directed the manner in which further investigation was to be conducted. On 24.05.1987 investigation of present case was taken over by him from SI Virender Singh and he sent report Ex.PW-36/A regarding requisitioning divers. Prior to that one dead body had already been recovered and four dead bodies were recovered subsequently. He reported the matter to Ld. DM for conducting the postmortem as it was already night time and thereafter matter was reported to Ld. CJM seeking permission to record statement of the injured who were admitted in hospital. Further that report was also forwarded to Circle Officer requisitioning documents in respect of dead bodies which had reached (while flowing in the water) within jurisdiction of PS Kalyan Puri, Delhi and application in that regard is Ex.PW-36/B. Further that subsequently investigation was transferred to CBCID. Further that copy of applications moved before Ld. CJM Ghaziabad seeking copy of statement of the injured is Ex.PW-36/C.

PW-45 Ct. Ajay Pal Singh deposed that he had seen carbon copy of Chick No. 106, FIR No. 110 PS Link Road, Gaziabad on judicial file and the carbon copy bears imprint of his signatures at point Mark X. Further that that is carbon copy of copy of Chick No. 106 which was prepared by Head Moharrir and only his signature was subsequently obtained. The document is marked P-45/A.

PW-80 Ms. Snehlata Aggarwal deposed that during 1987, she was posted as Addl. City Magistrate, Ghaziabad and it was a cadre post of Deputy Collector. Further that on 23.05.1987 she had recorded statement of one Babuddin and proved the same statement as Ex.PW-80/A.

8.5 WITNESSES RELATING TO OTHER POLICE STATIONS

PW-9 HC Mangey Ram deposed that as far as he can recollect, it was in 1987. Further that since more than 20 years have passed, therefore, he was unable to recollect the exact date and the month. Further that he was also unable to recollect the exact facts as he could not

locate his statement u/s 161 Cr.P.C, however, he was able to recollect the fact to the extent that while he was posted as constable at PS Kalyanpuri, the IO of the case handed over a dead body for being taken to the mortuary, Subzi Mandi, Delhi and he had brought the dead body of an unknown person to the Mortuary Subzi Mandi, Delhi. He further deposed that so long the dead body had remained in his custody, nobody had tampered with it. He further deposed that he was unable to recollect as to whether he had signed any paper or not.

PW-10 HC Suranjan Singh deposed that before August 1987, he was posted as Constable at P.S Kalyan Puri. Further that at that time, his belt no. was 514. Further that on that particular day, he had reached P.S Kalyan Puri in the morning to attend his duty and IO had handed over a dead body to him and asked him to take that body to the mortuary Subzi Mandi to get the postmortem examination conducted. He further deposed that he and Ct. Mange Ram then brought the dead body to the Mortuary Subzi Mandi and the postmortem was conducted by the concerned doctor. He further deposed that so long the dead body remained in his custody, nobody had tampered with it nor had he and

Mange Ram tempered with the same. He further deposed that after postmortem, they taken the dead body to PS Kalyan Puri and handed over the body to IO.

PW-15 Inspr. Anil Kumar deposed that on 24.05.1987, he was posted as SI at PS Sahibabad, district Ghaziabad, U.P. Further that since a number of dead bodies were recovered in the Jungle of Karanpur near Pul/Pulia/culvert and the area fell within the jurisdiction of PS Link Road, Ghaziabad, the officials of other Police stations were summoned by the Incharge PS Link Road, Ghaziabad to assist them in conducting the proceedings relating to Panchnamas. Further that as such on 24.05.1987, he had gone near the culvert/Pul/Pulia, where a few dead bodies were lying and where he conducted the proceedings u/s 174 Cr.P.C vide Ex.PW-15/A. He further deposed that he commenced the proceedings at about 11.15 am and concluded the same in two hours. Further that thereafter he handed over the papers and dead body to Ct. Kunwar Pal and Ct. Harsaroop for appropriate action. He further deposed that except this he had done nothing in this case.

PW-18 ACP Daya Nand deposed that on 24.05.1987 he was

posted as Sub Inspector at P.S Kalyan Puri and on that day on receipt of information he alongwith Ct. Surjan Singh reached Kondli Nahar and found two dead bodies in the Nahar. Further that officials of Fire Brigade had also reached there and he with the help of fire brigade officials took out those bodies from the Nahar. Further that he prepared inquest report Ex.PW-18/A & Ex.PW-18/B and sent the bodies to Subji Mandi mortuary for postmortem. He further proved his applications Ex.PW-18/C & Ex.PW-18/D for getting the postmortem conducted on those bodies. He further deposed that the dead bodies could not be identified at that time and after postmortem the dead bodies were handed over to PS Link Road as the dead bodies had been connected with the FIR No. 110/87 & 141/87 of P.S Link Road, Ghaziabad vide letter Ex.PW-18/E and Ex.PW-18/F. He further deposed that postmortem reports in respect of those two dead bodies had been collected by him from the concerned doctor on 25.05.1987. Further that the articles which were recovered from the dead bodies were taken into possession vide memo Ex.PW-18/G & Ex.PW-18/H.

PW-24 SI Birbal Singh deposed that on 26.05.1987, he was

posted as Head Constable in police station Dadri, District Ghaziabad and his belt number was 121. Further that on that day, he was the Chief Writer which is equivalent to the Duty officer. He further deposed that on that day at about 07.30 am, HC Gopal Sharma had come to police station and had orally informed about a dead body being lying near the Rajwaha near police post Chhapraula and on the basis of the oral information given to him, he had made entry in GD No. 15 and proved the said entry as Ex.PW-24/A. Further that the original GD register had already been destroyed. He further deposed that information regarding GD No. 15 was given to SI S.D. Mishra for necessary action.

PW-26 Sh. S.d. Mishra deposed that in the year 1987 he was posted in the police station Dadri as Chowki Incharge Saprola District Ghaziabad U.P. Further that on 27.05.1987 in the morning hours an information was received in the police chowki and after making registration of the same in the police station, he went to near distributory (Razbaha) and on reaching there he found the dead body struck in the pulia. He further deposed that the dead body was removed and the Panchayat Nama was registered and the same was recorded by him in his

handwriting. He further deposed that he was accompanied to the pulia by HC Ram Gopal who had given the information and two constables Chand Bir Singh and Ishwar Singh. He further deposed that the public persons/passers by near the pulia were called and they were appointed as Panchas. He further proved Panchayat Nama as Ex.PW-26/A. He further deposed that on completion of formalities of Panchayat Nama, the dead body was sealed and it was sent for the postmortem to the District Hospital, Ghaziabad, U.P.

PW-81 SI Bhojraj deposed that in the year 1987, he was posted in PS Sector 58, Noida, District Ghaziabad. Further that on 24.05.1987 he had conducted inquest proceedings in respect of three dead bodies found within the jurisdiction of PS Link Road Ghaziabad. Further that documents prepared by him in that regard are Ex.PW-81/A, B & C bearing his signatures at points Mark X.

8.6 WITNESSES RELATING TO THE INVESTIGATION

CARRIED OUT BY CBCID

PW-25 Mohd. Akhlaq deposed that in 1987 his father used

to reside at 4, Bagicha Mohd. Hussain, Hashimpura, Meerut 250001. Further that his family and the family of his brother also used to reside there. Since his place of posting was Haldwani, therefore he used to reside in Haldwani, Distt. Nainital. In this case during investigation, he had handed over a photostate copy of the FIR lodged by his mother Smt. Batul Fatima to the officials of CB/CID, U.P Police. He further deposed that his mother Smt. Betul Fatima expired on 02.04.1997. Further that he had seen the photostate copy of written complaint dt. 10.06.1987 and the original of that was written by him and his mother put her right hand thumb impression on the same.

PW-34 Ishwar Singh deposed that in the year 1994, he was posted in CBCID Meerut as Constable. Further that on that day he had gone to measure and verify distance alongwith Inspector R.N. Shukla and Driver Ct. Rameshwar. Further that from their office in Meerut they had gone via police line to Ghaziabad vide Jeep No. UP-32-1330 which was driven by Ct. Rameshwar. He further deposed that as long time had lapsed, he did not remember the distance covered.

PW-35 Ct. Rameshwar CBCID Meerut deposed that in the

year 1994 he was posted as driver in CBCID and was driving Jeep No. UP-32-1330. Further that on that day, on instructions of Inspr. Shukla, he alongwith Ct. Ishwar Singh went in Jeep No. UP-32-1330 from police line Meerut and reached to 41st PAC Ghaziabad and they had measured the said distance as 160 kilometers i.e going and coming back to their office.

PW-40 Retd. Inspector Rangnath Shukla deposed that in the year 1994, he was posted in CBCID, Meerut and he joined investigation of this case alongwith Sr. Inspector Sh. Udavir Singh. He further deposed that the distance between Meerut and Ghaziabad via Makanpur, PAC 41st Battalion Ghaziabad was measured by way of official jeep of CBCID bearing no. UP-32-1330. Further that the distance was measured to be 160 kilometers. Further memo in this regard Ex.PW-40/A was prepared by Inspr. Udavir Singh.

PW-41Retd. Sr. Inspector Udaivir Singh deposed that investigation of this case remained with him from 08.01.1992 till 30.08.1995. Further that during course of investigation, he had exchanged officials communications with the senior officers, Meerut. Further that on 02.02.1994, he prepared a memo regarding route testing and during course

of said testing, he alongwith his staff had gone by the Jeep of CBCID from Meerut to Gang Nahar to Makanpur (Hindon Nahar) to Meerut. Further that the total distance covered was measured and found to be 160 kilometers. Further that on 31.08.1995, he retired and investigation was marked to someone else.

PW-42 Retd. Inspr. Badan Singh Yadav deposed that he investigated the present case from 20.07.1988 till 12.06.1989 and during the course of investigation, he had received the police diary of the earlier IO K.L. Sharma and had gone through the same. Further that he had also got conducted inspection of PAC truck No. URU-1493 which had been used by the accused persons. Further that expert from Lucknow had been called to police line Ghaziabad for inspection of the truck and the expert washed the blood stains found in the truck and had collected the said water mixed with blood and had also taken photograph of the truck. After seen 13 photographs of truck on the judicial file, he deposed that those photographs were taken in his presence and those photographs were Mark P-42/P-1 to 13. During his re-examination u/s 311 Cr.P.C he deposed that he can identify writings and signatures of Inspr. K.L. Sharma and Inspr.

Jai Dutt Sharma. He further identified memo Ex.PW-42/A bearing hand writing and signatures of Inspr. K.L. Sharma.

PW-72 Inspr. Ranbir Singh Bishnoi deposed that during 1995-96 he was posted as Inspector in CBCID, Sector Meerut. Further that upon Inspector Udai Vir retiring from the service, investigation of present case was transferred to him towards end of 1996. Further that matter had been completely investigated before investigation was transferred to him. Further that as the accused had to be arrested, he had sent the relevant enquiries in that regard to the concerned battalions of PAC. Further that after the accused persons were suspended, the charge-sheet was prepared and filed in the court.

PW-76 Sh. Yashpal Talwar deposed that he retired from UP police. Further that in the year 1987, he was posted as Adjutant (Deputy SP) in 41st Battalion, PAC and was then posted in Ghaziabad. Further that on 22/23.05.1987 he was on duty in Delhi. Further that at about 10.00 pm, he returned back to his quarter in the battalion from Delhi. Further that at about 10.30-11.00 pm, he was informed by constable of PAC that the Commandant and the SSP Gaziabad were reaching. Further that M.T.

Section of the battalion and that all the officers had been called there. Further that Sh. Jodh Singh Bhandari was the then Commandant of 41st Battalion, PAC. Further that he went there and the Commandant, SSP and the DM also reached there. Further that they had some talks there and then the Commandant told him that the SSP had to go to MT Section and asked him to accompany him. Further that 5-7 trucks of PAC were lying parked in the M.T section and SSP checked all the said trucks. Further that he climbed on the trucks and checked the same with torch light. Further that there was a pond near the M.T section and it had water and some reddish colour. Further that on seeing which the SSP stated that some vehicle had been washed. Further that thereafter they all returned back to the spot where all the officers were sitting. Further that the SSP and DM left after some time. He further deposed that he cannot say whether or not he would be able to identify the signatures of Mr. S. Bhandari, if shown to him.

8.7 **MEDICAL WITNESSES**

PW-5 Dr. S.N. Aggarwal (retired) deposed that on 25.05.1987, he was posted as Orthopedic Surgeon in district Hospital,

Ghaziabad and on that day, he had conducted postmortem on the dead body of an unknown male. Further that the postmortem had been conducted in sufficient artificial light by the orders of District Magistrate, Ghaziabad. He proved his detailed postmortem report as Ex.PW-5/A.

PW-16 Dr. Jai Prakash deposed that on 25.05.1987, he was posted as Medical Officer, district Hospital Ghaziabad and on that day he conducted postmortem on the body of an unknown male and proved his detailed postmortem report as Ex.PW-16/A. He further deposed that on the same day, Ct. Suresh Chand and Ct. Ashok Kumar of PS Sector 58, Noida brought one more dead body on unknown male and he conducted postmortem on the body of said unknown male and proved his detailed postmortem report as Ex.PW-16/B. He further deposed that the postmortem reports and the bullet were sealed with the seal of hospital and were handed over to the police officials.

PW-17 Dr. S.C. Mishra deposed that on 24.05.1987 while he was working as Medical officer in District Hospital Ghaziabad, he conducted postmortem on the body of one unknown muslim and he proved his detailed report as Ex.PW-17/A. He further deposed that on the

same day, he also conducted postmortem on body of one another unknown male and he further proved his detailed postmortem report as Ex.PW-17/B. He further deposed that on 25.05.1987 he conducted postmortem on the body of three male Muslim unknown persons and proved his detailed report as Ex.PW-17/C, Ex.PW-17/D and Ex.PW-17/E respectively.

PW-28 Dr. A.K. Sharma, deposed that on 25.05.1987 while he was posted as Sr. Physician in District Hospital, Ghaziabad, he conducted four postmortem and proved the postmortem reports as Ex.PW-28/A, Ex.PW-28/B and Ex.PW-28/C and Ex.PW-28/D.

PW-29 Dr. J. Prasad deposed that on 25.05.1987 while he was posted as Medical Officer in District Hospital, Ghaziabad, he conducted two postmortem and proved the postmortem reports as Ex.PW-29/A and Ex.PW-29/B.

PW-32 Dr. A.K. Ratti proved postmortem report no. 431/87 dt. 26.05.1987 as Ex.PW-32/A.

PW-43 Dr. Subodh Tyagi deposed that in 1987, he was posted as medical officer in SVBP Hospital, Meerut. After seen copy of

MLC in respect of Leela Dhar on judicial file, he deposed that in absence of the original, he cannot say anything regarding that copy Mark 43A. During his re-examination he deposed that he had seen document already Mark P69/A, then Ex.PW-43/A bears his signatures at points Mark X, X-1 & X-2. During his re-examination u/s 311 Cr.P.C he deposed that on 23.05.1987 he was working as Medical Officer in Casualty of SVPB hospital, Meerut and after seeing Casualty Admission Register, he deposed that entry no. 1855/87 of 23.05.1987 of patient Leela Dhar, PAC No. 51769 is in the handwriting of Intern Dr. R. Rastogi. Copy of said entry was Ex.PW-43/A. After seeing Original Accident Register, he deposed that the injury at page no. 76, pertaining to patient Leela Dhar PAC No. 51769 aged about 38 years is in his handwriting and proved the same as Ex.PW-43/B. He further deposed that at the time of his earlier examination the hand made copy of said report was tendered as Marked 43/A.

PW-44 Dr. S.C. Dwivedi deposed that in the year 1987, he was posted as Professor of Radiology in LLRM College, Meerut. Further that after seen on record photocopy of report in respect of X-ray no.

206-207/87, he proved that document as Mark P-44A. During re-examination after seeing document Mark P-69-C, he deposed that portion encircle red on the same is Ex.PW-44/A and same is in his handwriting and bears his signatures at point Mark X.

PW-69 Sh. Mam Chand deposed that he has brought the summoned record i.e accidental register w.e.f 06.05.1987 to 05.10.1987 from SVBP hospital, Meerut and photocopy of page no. 76 of the said registered was marked as P-69A. He further deposed that he cannot identify as to in whose handwriting the said page is. He has also brought the Casualty Admission Register from SVBP Hospital, Meerut and copy of entry no. 1855/87 dated 23.05.1987 was Marked P-69 B. He also produced X-ray slip in respect of X-ray no. 206-207/87 in respect of Leela Dhar from LLRM Medical College Meerut and copy of same was marked P-69 C

PW-71 Dr. M.K. Singhai deposed about his postmortem report no. 405/87 and proved the same as Ex.PW-71/A.

8.8 WITNESSES FROM PAC

PW-47 Ct. Driver Padam Singh deposed that in the year 1987, he was posted in 41st Battalion D Company PAC and was on duty in Meerut and was driver of truck no. URC-8405. Further that as long time has lapsed, he cannot tell the exact date when he was called in police line, Meerut for going to lead vehicle no. URU-1352 at 41st Battalion Gaziabad. Further that after checking the vehicle, he took the same and parked it at 41st Battalion Gaziabad. Further that some personnels also sat in the said vehicle before he went and parked it in Gaziabad. Further that he did not know anything else.

PW-70 SI Ram Chand Giri deposed that in the year 1987-88, he was in service of 41st Vahini, PAC, Ghaziabad and was posted as SI MT and his duties were to provide vehicles for PAC as per requirement which used to be informed to him each day in the morning. Further that a running register used to be maintained regarding the vehicles provided. Further that vehicle no. URU-1493 was there under his control during that period. Further that said registered used to be signed by the person taking the vehicle or the driver who used to get the vehicle

refueled. Further that the running register in respect of vehicle URU-1493 for the period 03.01.1986 to 30.06.1988 is Ex.PW-70/A and bears his signatures at various places. Further that in the year 1987 Ishtkar Ahmed was the driver who had taken this vehicle to Meerut. Further that some altercation took place between the driver and sepoy of PAC and the quarter Master Shri Sukhbir Singh Sirohi returned the vehicle alongwith the driver and asked for another vehicle and thereafter Mokham Singh had taken the said vehicle.

PW-89 Sh. Sube Singh deposed that he joined service on 20.05.1962 and retired on 31.03.1998 as DSP. Further that he remained in 41st Battalion PAC from April 1984 till 31.12.1987. Further that the senior most officer in a battalion of PAC is the Commandant. Further that thereafter there are three Assistant Commandant; one Quarter Master; Company Commander (as per number of companies); three platoon Commander in each company; one Subedar Major for the entire Battalion. Further that from April 1984 to December 1987, he had been posted as Company Commander of B Company in 41st Battalion PAC. Further that the 41st Battalion PAC was stationed in Ghaziabad while the relevant

companies could be posted on duty else where also. He further deposed that as he did not remember, he can not say as to where the B, C & G company of 41st Battalion had stationed in May 1987. Further that platoon commander of C Company was Surender Pal Singh in 1987 and his company was stationed in Meerut in May 1987 and not in Ghaziabad. Further that the company was on duty in Meerut. He further deposed that Ram Rattan was Company Commander of C Company in May 1987 and he used to remain in Meerut alongwith the company. He further deposed that he had no knowledge as to where officers posted in C company use to retire after duty was over in Meerut.

PW-90 HC Niranjan Lal Gautam deposed that he was posted in PAC on 28.02.1981. Further that transfer records in respect of officers of PAC is maintained in respective units. Further that he had been posted with 47th Battalion PAC during 2008-2010 and he had been posted in 41st Battalion from 20.12.1991 till July 2008.

PW-91 Ct. Maya Prakash deposed that he remained posted in 41st Battalion PAC from 1981 till 2002. Further that in the year 1987, 41st Battalion was posted in Meerut. Further that at that time, he was in C-

Company of the Battalion. He further deposed that Ram Rattan was the Company Commander of C-Company 41st Battalion PAC in 1987. He further deposed that he had no personal knowledge but he had heard that he (Ram Rattan) had expired. He further deposed that as he had seen him writing and signing, he can identify his handwriting and signature and after seeing the list of the PAC officials posted in 'C' Company i.e Ex.PW-91/A, he identified his signature on the same at point X. He further deposed that Surinder Pal Singh was the Platoon Commander at that time.

8.9 **EXPERT WITNESSES**

PW-37 Dr. S.K. Lehri (Retired Senior Scientific Officer, Grade-I, CFSL, CBI, New Delhi) deposed about his polygraphy test report no. DFSL-89/L-3010 and proved the same as Ex.PW-37/A.

PW-38 Sh. Om Prakash Mani Tripathi (retired as Ballistic expert FSL, Lucknow) deposed about his ballistic report no. 223-Bal-87 dt. 12.08.1987 and proved the same as Ex.PW-38/A. He also proved his

Ballistic report no. 124-Bal-89 dated 04.12.89 as Ex. PW-38/B. His report number CS-4/88 regarding inspection of truck no. URU-1493 is Ex.PW-38/C. He further proved his another ballistic report No. 197/Bal-87 dt. 06.06.1987 Ex.PW-38/D.

PW-39 Sh. Roop Singh (retired as Principal Scientific Officer & Head of Ballistic Division, CFSL, CBI, New Delhi) deposed about his CFSL report no. CFSL-90/F-944 dt. 13.12.1990 and proved the same as Ex.PW-39/A.

PW-82 Sh. Mahesh Narain Tiwari deposed that around 1987, while he was posted in FSL, Lucknow, he was deputed to go to Meerut to inspect a truck which reportedly was involved in some incident there. Further that he went to Meerut and inspected the PAC truck in a police station but he did not find anything in the said truck which could concern to him.

8.10 OTHER REMAINING WITNESSES

PW-46 Sh. Gajender Singh deposed that on 17.11.1989, he was working as photographer with Dainik Jagran, Meerut. Further that he had taken some photographs of the spot at Hashimpura, Meerut and

thereafter he had handed over the same to the newspaper office for publication and he can identify the same if the photographs or the publication is shown to him. He further deposed that he did not remember the date or month when the said photographs were taken by him.

PW-59 Dr. Naseem Zaidi deposed that in the year 1987, he was posted as District Magistrate Ghaziabad and communal riots took place in Meerut in May 1987 and during intervening night of 22/23.05.1987, he was telephonically informed by Sh. V.N. Rai, the then SSP, Ghaziabad that some PAC personnel had killed some people in the jurisdiction of P.S Link Road, Ghaziabad and that he was proceeding to the spot of incident alongwith the then Commandant of PAC. Sh. Rai also requested him to reach the spot i.e 41st PAC Head Quarter. He further deposed that he alongwith some magistrates reach 41st PAC Head Quarter and he met Sh. V.N. Rai who informed him that platoon Commandant had brought a PAC truck washed it and taken it back to Meerut. He further deposed that he also informed him about having detected some red watery blood like substance in the MT section of Head quarter. Further that he had a talk with other PAC officers and thereafter suggested that we all

should go to P.S Link Road and on reaching P.S Link Road, Ghaziabad, they found an injured Babuddin there. He alongwith Sh. Rai had a talk with Babuddin who told them that he alongwith other persons had been picked up from Hashimpura by some “Khakhi wearing persons” and were transported in a yellow color truck. He also told them about some persons being killed near a canal and that some people had been brought to another canal spot and had been shot at. Babuddin also claimed to have received a gun shot wound. He further deposed that he (Babuddin) claimed to have been rescued by the police which had reached the spot. He further deposed that after they had a talk with Babuddin, he was sent to Mohan Nagar Hospital and all the necessary formalities were conducted by the local police in the police station. As the incident involved PAC, Sh. Rai and himself thought it fit to inform higher authorities regarding the incident and at about 03.00 am, on that day, the Chief Minister happened to pass through the road in front of PAC Head quarter going towards Meerut, he alongwith Sh. Rai requested him to halt at the Dak Bunglow, Ghaziabad and they briefed him about the incident. He further deposed that the Chief Minister directed them to accompany him to

Meerut where the DGP and other senior police officers were already camping and accordingly Sh. Rai and himself accompanied the CM to Meerut. They reached Meerut Circuit House where briefing session took place and all officers present there were duly briefed about the incident. The officers were DGP, Commissioner Meerut, I.G Meerut, DM & SSP Meerut and other officers. He as well as Mr. Rai were directed to maintain law and order situation in their area. Mr. Rai returned to Ghaziabad from Meerut at about 06.00 am and he reached Ghaziabad couple of hours later. He further deposed that dead bodies were recovered on 23.05.1987 and also on 24.05.1987. He further deposed that as the matter was serious and sensitive, on advise of the SSP, he recommended Government to hand over the case to CBCID.

PW-65 Sh. G.L. Sharma deposed that prior to 22.05.1987, he was posted as SSP, Varansasi, but as on 22.05.1987, he was on compulsory waiting period and was in Chandigarh. On 22.05.1987 he got a telephone call from the then Home Secretary Sh. Mata Prasad to the effect that he should report to UP Niwas immediately and should call upon the Chief Secretary. Sh. Mata Prasad also hinted that he would be posted

as OSD Law & Order, Meerut to control the communal riots. He further deposed that he went to UP Niwas in Delhi and met the Chief Secretary and he directed him to report in Meerut and that he will get his posting order there. Accordingly, he went to Meerut and he met the DGP, UP, who was present in Meerut. Further that he took over as OSD Law & Order the next day morning i.e 23.05.1987.

PW-73 Sh. V.K. B. Nair deposed that from January 1986 to 31st May 1987 he had been posted as SSP Meerut. Further that there had been some communal problem in Meerut during the period he was posted there and it took place in the month of May 1987 and the same had taken place after the Babri Masjid had been opened for prayers and besides that there was no other specific reasons for the communal problem. Further that some stabbing incidents and arson had taken place in his area during that period and DGP D.S. Bhatnagar came alongwith his team from Lucknow to Meerut. Further that he was relieved of law and order duties w.e.f 21/22 May 1987 and thereafter Sh. G.L. Sharma was assigned as OSD and was looking after law and order. Further that thereafter he was looking after the general discipline of the police force in the area and also

their welfare, accommodation, transport logistics etc.

PW-74 Sh. V.N Rai deposed that on 22.05.1987 he was posted as SP Ghaziabad and at about 10.30 pm on that day Sh. V.B. Singh, Station Officer P.S Link Road Ghaziabad came to him at his residence and informed him that PAC had killed some people at Makanpur village near Nahar. He informed District Magistrate Mr. Naseem Zaidi the said fact and he also informed other offices including Addl. SP Sh. Kamlander Prasad. He requested District Magistrate to reach 41st Battalion PAC and he also went there alongwith his officers and on reaching there he interacted with the officers present there and he was informed that one Platoon Commander Surender Pal Singh had come from Meerut with a PAC truck and had left the battalion for Meerut before he had reached there. Further that District Magistrate reached the battalion at about 11.30-12.00 midnight and he alongwith DM went to the Motor Transport section of the battalion. The ground there was found wet and it appeared that a truck had been washed there. He alongwith DM and other went to PS Link Road and he met one injured Babuddin there and on inquiry, he (Babuddin) narrated the entire facts. Further that he as well as DM

thought it fit to apprise senior officers about the facts. As DGP (UP) was camping in Meerut, they thought it fit to go there and apprise him of the situation but in meanwhile they were informed that CM UP was also going to Meerut and while going there he had to pass through their area and accordingly they waited on the road for CM and when CM convoy reached they stopped it on the road and apprised the CM of the facts. Further that CM invited them to join him till Meerut and accordingly they accompanied him. He further deposed that a meeting took place at Meerut Circuit House in presence of CM, DGP, IG, DIG Meerut, Commissioner and DM Meerut etc. They narrated the entire facts in the meeting and they were asked by CM to maintain law and order situation in Ghaziabad and take appropriate legal action. They returned back to Ghaziabad during early hours of 23.05.1987. Further a case was registered at PS Link Road and another at PS Murad Nagar and on 24/25.05.1987, both the cases were transferred to CBCID.

PW-75 Sh. Kamlendra Prasad deposed that from May 1986 till August 1988, he had been posted as Addl. SP Ghaziabad. During April-May 1987 communal riots were taking place in the adjoining district

of Meerut. The said riots affected district of Ghaziabad and during night of 22/23.05.1987 at around 10.30 pm, he got a message from his S.P Sh. Rai asking him to meet him at his residence as a major incident had taken place and he accordingly went to his residence. Thereafter both of them went to 41st Battalion PAC which was situated on Delhi Ghaziabad Boarder. There was a lot of commotion over there and many officers were seen moving about. After talking to the officers there, they could reconstruct that a PAC vehicle had been brought and washed there. It was also gathered that the same vehicle had been earlier used in abducting some civilians by the PAC from Meerut district where PAC was deployed for riot control duties. From the talks in the battalion, they could gather that PAC jawans had kidnapped and killed some people on the way to the 41st Battalion. After talking to some more officers, he and Mr. Rai went to PS Link Road where one of the survivors Babuddin/Babu Khan also reached there. He further deposed that visualizing seriousness of the incident and to avoid the situation to deteriorate, they took necessary action as were required for protection of survivor and protection of further deterioration of law and order situation.

PW-79 Sh. Vijay Pal Singh deposed that he did not know anything in respect of present case. Further that police never met him nor recorded his statement.

PW-84 Sh. Hari Shankar Sharma deposed that in 1986, he was posted as Dy. S.P. Circle Officer Modi Nagar. One day he had received wireless message from SSP Sh. B.N. Rai to the effect that he should reach Battalion of PAC alongwith its Commandant who used to reside on the first floor of the flats where he was residing on the ground floor. He accordingly reached the battalion alongwith the Commandant and after some time, DM Ghaziabad and SSP Ghaziabad also reached there. SSP was in civil clothes. He further deposed that thereafter all the three said officers left for inspection of the battalion. He further deposed that he did not know anything else.

PW-86 Mr. Parveen Jain deposed that in the year 1987, he was working as Chief Photographer of “Sunday Mail” having its office at 5, Ansari Road. On or about 22.05.1987, there were Hindu Muslims riots in Hashimpura and he was deputed from his office to go there to take photographs and accordingly in the morning of 22.05.1987 he left for

Meerut and on reaching Meerut during noon time, he came to know that Hindu Muslim riots had taken place in Hashimpura and army had reached there. When he reached Hashimpura, he saw army and PAC personnel bringing out people from their houses. He saw army people hitting public with butts of their guns. He further deposed that he hid himself and took photographs. He also saw accompanying PAC personnel threatening general public at gun point. Women were on the roof top and were crying but no one was saying anything to them. He further deposed that as far as he remember, all those public persons were brought on the main road and made to sit there. They all were made to raise their hands and he took photographs. PAC trucks were also found present there. He further deposed that after his job was done, he returned back to his office. The photographs taken by him were published in the Times Magazine as well as in India Today. He further identified and proved photographs taken by him as Ex.PW-86/A1 to A15 and negatives as Ex.PW-86/B.

PW-88 Sh. C.P. Yadav deposed that from the year 1986-89, he was posted as Addl. District Magistrate, Ghaziabad. He did not remember the date, month and year but it was about 25 years back and

summer session, he was called by the District Magistrate Mr. Naseem Zaidi at Link Road PS and when he reached there, he found that 2-3 other magistrates had also been called there. The District Magistrate and SSP were talking to each other while he and other magistrates were standing at a distance of about ten feet from them and they talked for about 30-40 minutes. He further deposed that the then Chief Minister was passing by from near PS Link Road at that time and therefore they all came towards the road. CM stopped there and had a talk with SSP and District Magistrate for about 5-10 minutes and thereafter DM and SSP went alongwith CM directing them to reach the Dak Bunglow. The DM & SSP had a talk with the CM for about 30 minutes in the Dak Bunglow and thereafter CM proceeded for Meerut. After CM left, DM and SSP came out in the varanda and informed them that both of them had been called by the CM to Meerut. DM informed them about some riots having taken place at Meerut and directed them to look after law and order situation in Ghaziabad and thereafter DM and SSP left for Meerut and they all returned back to Ghaziabad city. He directed the junior Magistrates to remain vigilant and take round of the city area and thereafter he returned

back home.

9 DEFENSE EVIDENCE

DW-1 Gulesh Ali, who has been called by four accused persons namely Niranjan Lal, Samiullah, Jaipal and Mahesh, deposed that on 22.05.1987 he was posted in C Company 41st Battalion PAC Ghaziabad U.P as Mess Munsif, on that day, he was on duty at Meerut Police Line where C Company was camping and at about 04.00-05.00 pm, he was asked to go to Pilokhadi Chowki to inquire about availability of flour. He left for Pilokhadi in government truck alongwith other constables at about 07.30 pm who were going to relieve/replace the staff at Pilokhadi Chowki. After inquiries about availability of flour at about 08.00 pm, he left Pilokhadi Chowki alongwith the staff whose duty was over in the said government truck for returning to Meerut Police Line. He further deposed that on the way their said truck was stopped near Hashimpura Mohalla and they were asked to come out and get down from the truck, at that place military and police were arresting the people who had gathered there, that Subedar Surenderpal and other officials including Constables and

Hawaldars made 40-45 persons to sit in a truck. Further that thereafter the force was asked to climb up in the truck and to sit in the cabin as well as in the rear portion and DW-1 also climbed in the said truck. Further that the said truck was taken to Meerut Polie line from Hashimpura Mohalla, DW-1 got down from the truck and Subedar Surenderpal was directing Commander Niranjan Lal to get down alongwith three Constables of his sections namely Samiullah, Jaipal and Mahesh that those four persons got down from the truck and went to their respective camps/tents. He has been cross-examined by Ld. Spl. PP as well as Id. Counsel for other accused persons.

10 ARGUMENTS ADVANCED BY THE PARTIES.

10.1 It is argued on behalf of State that case qua accused persons has been duly proved on record beyond any reasonable doubts. It is argued that the ingredients of offence of abduction and murder by the officials of PAC stands proved from the combined reading of the testimonies of PW-1, PW-2, PW-3, PW-4 & PW-11, which are corroborated by the evidence of other witnesses. Further that identity of the deceased persons have been established by the different witnesses

examined during trial. Further that the cause of death and time of the death of the recovered dead bodies corroborates the case of the prosecution. Further that there is sufficient material to show that truck no. URU-1493 was used in the abduction of 42 persons. Further that there is evidence to substantiate the fact that one of the accused namely Liladhar got injured during the incident by gun shot and this fact corroborates the whole incident. Further that it is proved on record that the weapons of offence are .303 rifles used by the PAC at the time of incident. It is particularly argued on behalf of the victims/complainant that the testimony of DW-1 Gulesh Ali also corroborates the case of prosecution. It is further argued that standard of proof required in cases of custodial violence and death is different from the proof required in other cases. Further that the defects if any, in the investigation cannot benefit the accused in all circumstances. It is submitted that the case has been duly proved against the accused persons and they are liable to be convicted. It is further submitted that alongwith conviction of accused persons, appropriate order for compensation to the victims also be passed.

A specific reliance has been placed upon the documents i.e

identification memo of dead persons Ex.PW-23/A, photographs of abducted persons Ex.PW-86/A-1 to A-15, FSL examination report of truck bearing no. URU-1493 Ex.PW-38/C, photographs of truck Mark P42/P-1 to P-13, truck running register Ex.PW-70/A, list of officers posted with C company, 41st Bn. PAC Ex.PW-91/A, medical documents of accused Leeladhar Ex.PW-43/A & 43/B and ballistic report Ex.PW-38/A.

Reliance is also placed upon certain judgments of the different superior courts including following judgments:

- Munsingh Singh Gautam & Ors. vs. State of M.P 2005 (9) SCC 631.
- State of M.P vs. Shyam Sunder Trivedi (1995) 4 SCC 262.
- State of U.P vs. Ram Sanjeevan (2010) 1 SCC 529.
- Raghuvir Singh vs. State of Haryana (1980) 3 SCC 80.
- Dalip Singh vs. State of Haryana (1993) 3 Supp. SCC 336.
- State of U.P vs. Ram Sagar Yadav (1985) 1 SCC 552.
- State of W.B vs. Mir Mohd. Omar & Ors. (2000) 8 SCC 382.
- State of Rajasthan vs. Kanshi Ram (2006) 12 SCC 254.
- Gajoo vs. State of Uttrakhand (2012) 9 SCC 532.
- Dayal Singh & Ors. vs. State of Uttranchal (2012) 8 SCC 263.

- Ankush Gaikwad vs. State of Maharashtra (2013) 6 SCC 770.
- Suresh vs. State of Haryana 2014 SCC online SC 952 in Criminal Appeal no. 420 of 2012.
- Gangabhawani vs. Rayapati Venkat Reddy & Ors. (2013) 15 SCC 298

10.2 On the other hand, it is submitted on behalf of the accused persons that the case of prosecution is full of discrepancies and contradictions and same is based on false evidence. Further that there are inherent and material contradictions in the statements of witnesses including police official. It is argued that admittedly the forces other than PAC i.e local police and army etc. were also involved in the alleged act of search and arrest on 22.05.1987 but it is not clarified as to why PAC only has been selected for prosecution and on what basis clean chit has been given to army and local police. Further that none of the accused facing trial has been identified by any of the witnesses as culprit nor they are named in the statement of the witnesses recorded by police or other authorities like Magistrate etc. Further that there is no proof to show that

the accused persons were deputed in Meerut on the date of incident and the list of PAC personnels provided by prosecution is of no consequences. Further that there is no list of 644 persons allegedly arrested or the list of 42 persons allegedly abducted or killed, have been proved during trial. Further that all the recoveries of dead bodies and the postmortems are of unknown persons and the deaths are not connected with the incident. Further that no reliable evidence has been led by the prosecution regarding weapon of offence and the ballistic reports are inconclusive. Further that the weapon of offence produced by prosecution are different from the description given by the witnesses and the same were in unsealed conditions when produced in court. Further that there is no reliable evidence to show that truck no. URU-1493 was involved in the incident and even the said truck was not seized during investigation. It is contended that there were several trucks present at the spot and there is no reliable evidence to show that it was the above mentioned truck which was used by the culprits. Further that the polygraphy test conducted by PW-37 are inconclusive. Further that the medical evidence pertaining to accused Leela Dhar and official record pertaining to accused Mokham

Singh are not conclusive to connect them with the alleged offence. Further that accused Buddhi Singh and Basant Vallabh were merely the DD writers and there is no evidence to show that they were deputed in field. It is argued that prosecution has failed to prove its case against the accused to any extent and therefore the accused persons are entitled to be acquitted. The Id. Defense counsels have also relied upon the judgments of different superior courts including following judgments:-

- Alok Nath Dutta & Ors. vs. State of West Bengal (SC), 2006(10) Supp. SCR 662.
- Mousam Singha Roy & Ors. vs. State of West Bengal, (2003) 12 SCC 377.
- Sudama Pandey & Ors. vs. State of Bihar, (2202) 1 SCC 679.
- Jaharlal Dass vs. State of Orissa AIR 1991 (SC) 1388 .
- Hukum Singh vs. State of Rajasthan, AIR 1977 SC 1063.
- Hanumant vs. State of Madhya Pradesh AIR 1952 SC 343.
- Vijayee Singh & Ors. vs. State of U.P AIR 1990 (SC) 1459.
- Kali Ram vs. State of Himachal Pradesh AIR 1973 SC 2773.
- Shivaji Sahab Rao Bobade vs. State of Maharashtra AIR 1973 SC

2622.

- Majendran Langeswaran vs. State of NCT of Delhi, (2013) 7 SCC 192.
- Babu vs. State of Kerala 2010 (9) SCR 1039.
- Ramesh Bhai Chandu Bhai Rathore vs. State of Gujrat (2009) 5 SCC 740.

APPRECIATION OF EVIDENCE.

12 On the basis of charge-sheet and documents attached with the same, some facts in issue have emerged and the material available on record is to be analyzed in light of these facts in issue. These facts in issue are as follows:

- 1. That on 21.05.1987 there was a deadly assault on Provincial Armed Constabulary in Meerut and two rifles of PAC personnels were looted by certain anti social elements and on the same day one Sh. Prabhat Kumar Kaushik was murdered in Mohalla Suraj Kund adjacent to Mohalla Hashimpura in**

Meerut.

- 2. That upon incident dt. 21.05.1987 a meeting of District Administration Officers including police officers took place and consequent upon that, a search for illegal arms in Mohalla Hashimpura Meerut was launched. Curfew was already clamped in the city of Meerut and mission for search and arrest was carried out by the District police, PAC and army.**
- 3. About 644 persons belonging to Mohalla Hashimpura and adjoining Mohallas were arrested u/s 107/151/116 Cr.P.C and arrangements were made to send the arrested persons to police station Civil Lines and Police Lines Meerut with the help of trucks of police PAC and army.**
- 4. That about 42 persons arrested from Mohalla Hashimpura were put in a PAC truck and the said truck, instead of police station or police line, was taken to Gang Nahar Murad Nagar.**
- 5. That at Gang Nahar Murad Nagar, the PAC officials fired at the arrested persons making them get down from the truck and some were fired at in the truck itself and that the PAC Jawans**

after shooting the persons one by one kept on throwing them in Upper Ganga Canal with the impression that they were all dead.

- 6. That apprehending the exposure of crime, the PAC Jawans diverted the truck from Gang Nahar to Hindon river and completed the process of killing and throwing in Hindon waters near village Makanpur, the remaining persons rounded up from Mohalla Hashimpura.**
- 7. That in the incident, the persons namely Zulfiqar, Naeem, Arif, Mohd. Usman, Muzibar Rehman and Babuddin survived the assault and remaining about 35 persons were killed by the official .303 rifles of the PAC officials.**
- 8. That accused Leeladhar sustained injuries during indiscriminate firing in the truck taken place at Gang Nahar Murad Nagar.**
- 9. That the truck which was used in the incident was of 41st Battalion PAC with registration no. URU-1493.**
- 10. That the said truck had come from Pilokhadi Chowki and was**

driven by accused Mokham Singh.

11. That the accused persons facing trial led by the Platoon Commander accused Surender Pal Singh (since deceased), were the PAC officials present on above mentioned truck who committed the alleged crime.

13 The evidence led by the prosecution is to be analyzed in light of above mentioned facts in issue and these issues are being discussed herein after.

14 **Fact No. 1, 2 & 3**

- **That on 21.05.1987 there was a deadly assault on Provincial Armed Constabulary in Meerut and two rifles of PAC personnels were looted by certain anti social elements and on the same day one Sh. Prabhat Kumar Kaushik was murdered in Mohalla Suraj Kund adjacent to Mohalla Hashimpura in Meerut.**
- **That upon incident dt. 21.05.1987 a meeting of District**

Administration Officers including police officers took place and consequent upon that, a search for illegal arms in Mohalla Hashimpura Meerut was launched. Curfew was already clamped in the city of Meerut and mission for search and arrest was carried out by the District police, PAC and army.

- **About 644 persons belonging to Mohalla Hashimpura and adjoining Mohallas were arrested u/s 107/151/116 Cr.P.C and arrangements were made to send the arrested persons to police station Civil Lines and Police Lines Meerut with the help of trucks of police PAC and army.**

These facts are being discussed simultaneously as the same are inter linked. Following witnesses have deposed on these issues.

PW-1 Zulfiqar Nasir, who is an eye-witness deposed that on 22.05.1987, it was Zumma (Friday) and he was reciting Namaz in the evening at about 06.00 PM on the roof of his house when a few military persons came to his house. Further that said military persons took himself, his father, his two uncles and his grandfather outside their house in the street on the road and the said military persons made them sit on the said

road where already 400-500 persons were sitting. Further that persons of their Mohalla thus collected were sitting on the both side of the road and he was sitting in front of a Peepal tree and he saw a big force of military and PAC deployed there , 7 or 8 trucks belonging to military and PAC were also parked there. Further that PAC persons divided the Mohalla people into two groups, one group comprised of the elderly people and the children whereas the second group was of the young persons, they then ordered the group of young persons to sit in their trucks. Further that PAC as well as the Army people both took away the trucks after loading young persons from the spot and that both his Chachas and father were in the group of young persons who were taken away by PAC and military. He further deposed that he did not know as to where they were taken away.

PW-2 Mohd. Naseem is also an eye-witness and he deposed that on 22.05.87, while he was sitting at his house with Naeem S/o Abdul Qadeer and Shahanshah S/o Abdul Haq, PAC and military people reached at their place and arrested all the three of them and brought them to the road in Mohalla Hashimpura. Further that they were made to sit under a

'peepal' tree and 500 or 600 people were already sitting there on the directions of PAC and military. That PAC and military people thereafter started scrutiny of the persons sitting there and this way, some of the persons scrutinized from the said crowd were made to sit in the trucks which were being taken to unknown destination.

PW-3 Mohd. Usman is another eye-witness and he deposed that on 22.05.87 at about 05.15 PM when he was in his house alongwith his brother Hanif, Mohd. Farookh, Md. Irshad, Shahabuddin and his father Bashir Ahmed, military persons came to his house and said that they wanted to search them and took them outside in the lane on the back side where about 50 persons had already been detained by the PAC whose Jawans were seen there. Further that they asked them to raise their hands upwards and move straight and they were made to reach a Peepal Tree at Hapur Road where 400-500 persons were already sitting. Further that in front of that spot, there was a shop of Dr. Jagdish Chauhan where elderly men and children were sitting and being supplied water to drink, he saw yellow coloured trucks of PAC which were standing in an open

condition, he heard some of the PAC people saying them “Take them to the police station”. Further that he gave the keys of his house to his father and kept on sitting over there, the detained people were being sent in the trucks

PW-4 Muzib-ur Rehman is also an eye-witness and he deposed that he is permanent resident of Distict Darbhanga, Bihar and he started working on the power-loom of Abdul Mazid Incholia Wale in Mohala Hashimpura four years prior to the year 1987. He further deposed that on 22.05.1987, it was a day of 'Alvida' in the month of Ramzan and the time was about 2 or 3 PM, Mohalla Hashimpura in Meerut was being searched by the police. Further that searching officials belongs to PAC UP police, Mahila Police and military. He was present in the house alongwith his three Chachas namely Mohd. Sadiq, Mohd. Zameel and Mohd. Azeem. The aforesaid police officials brought them out of the house and made them stand in the gali. They then started searching their house and commanded them to go to Hapur Road near the Peepal tree. On reaching there, he saw that 400-500 people had already been detained there near the Peepal tree. Out of the said crowd of 400-500, about 150

persons belong to Mohalla Hashimpura and the remaining persons belonged to the neighbouring mohallas. Some persons out of the aforesaid 400-500 persons were arrested and sent to jail. His two chachas namely Mohd. Sadiq and Mohd. Zameel were in the group of people who were sent to Jail in trucks

PW-11 Sh. Babuddin is also an eye-witness and he deposed that about 3 or 4 years prior to 1987, he and his father Mohd. Khalil Ansari used to weave clothes in the Power Loom of Hazi Azimuddin of Mohalla Hashim Pura, Shah Peer Gate, Meerut. Further that on 22.05.1987, his father Mohd. Khalil Ansari were sitting in the house of one Saddiq, Ichauliya Wala. He was also with his father at that time. At about 02.00 or 03.00 pm, 30/35 persons had come in Hashim Pura Mohalla. It was Jumma Day (Friday). Out of those 30/35 persons, a few persons had entered in the house of Sadiq where his father and himself were sitting with Saddiq. Those 30/35 persons included PAC personnels, Army personnels, police officials and lady police officials. Those persons had asked them to go out of the house as they wanted to search the house. He, his father, Saddiq and his family members then came out of the house.

They had stood in the Gali and in the meantime, neighbours and residents of the locality had also gathered there in the gali. Those persons had searched houses of even other persons. Further that the officials of PAC then asked asked them to raise hands and asked them to move. At that time they were 150 in numbers. From the Gali, they had been taken to the road near Pipal Tree, Shah Peer Gate. There they found that around 300 persons were already there. They were also asked to sit by the officials of PAC. There he had noticed that a few vehicles/trucks were lying parked. People were forced to board those trucks and were being sent. He presume that those persons were being sent to Jail. In his presence, his father Mohd. Khalil Ansari had been made to board a truck and was sent somewhere.

Apart from above mentioned witnesses the witnesses namely PW-19 Iqbal, PW-20 Mohd. Saleem, PW-21 Mst. Zebunnisa, PW-22 Abdul Hamid, PW-23 Shakeel Ahmed, PW-30 Shakeel Ahmed, PW-31 Gaffar, PW-48 Zameel Ahmed, PW-49 Mst. Mehmuddin, PW-50 Laik Ahmed, PW-51 Mst. Mehrunisha, PW-52 Rahis Ahmed, PW-53 Jamalludin, PW-54 Parvej Ahmed, PW-55 Zahiruddin Ansari, PW-57

Sakhawat Ali, PW-58 Abdul Alim, PW-60 Tanvir, PW-61 Mohd. Zafar, PW-62 Sher Ali, PW-63 Faridudin, PW-64 Anwar Ahmed, PW-66 Sirajuddin, PW-67, Abdul Gaffar, PW-68 Abdul Hamid, PW-77 Mst. Hazara, PW-78 Mst. Zarina and PW-87 Mohd Isha have also deposed on the above mentioned facts. These witnesses have categorically deposed that on 22.05.1987 they were present at their houses etc. in Mohalla Hashimpura when a search was conducted by the officials of different forces like PAC, Police and Army and hundred of persons were taken.

In addition, there is one other important witness who has deposed about the search and arrest of collected people from Mohalla Hashimpura on 22.05.1987. PW-86 Sh. Parveen Jain who was working as Chief Photographer of Sunday Mail was present at the spot on 22.05.1987 and he had taken various photographs i.e Ex.PW-86/A-1 to A-15 with negatives Ex.PW-86/B. This witness is an entirely independent and chance witness who happened to be present at the spot being a journalist and his testimony is supported and corroborated by the documents i.e the photographs and negatives mentioned above. It can be said that he is a natural, genuine and reliable witness. The photographs proved by this

witness have corroborated the facts regarding search and arrest as deposed by above mentioned witnesses who are residents of Mohalla Hashimpura.

So far as the first issue relating to alleged incident dt. 21.05.1987 of the deadly assault on the Provincial Armed Constabulary in Meerut and looting of two rifles of PAC personnels by anti social elements and killing of one Mr. Prabhat Kumar Kaushik is concerned, there is no positive evidence led by prosecution in this regard. There is no witness examined by the prosecution to prove the alleged deadly assault on the PAC. There is no witness regarding the loot of two rifles of PAC and similarly there is no witness who deposed about the alleged killing of Prabhat Kumar Kaushik in Mohalla Suraj Kund adjacent to Mohalla Hashimpura.

However, the facts regarding conducting of a search for illegal arms in Mohalla Hashimpura during subsistence of curfew in the said area and arrest of about 644 persons from Mohalla Hashimpura and adjacent Mohallas are concerned, there are several witnesses who have deposed categorically in this regard as mentioned above. Though there is no record to show that the residents of concerned Mohallas were actually

arrested u/s 107/151/116 Cr.P.C, there is sufficient evidence to show that curfew was already imposed in the area of Mohalla Hashimpura and several hundred persons from several Mohallas including Mohalla Hashimpura were collected near a Peepal tree in Mohalla Hashimpura by the officials of local police, army and PAC. The number of such persons collected at the spot is not specifically proved on record as the different witnesses have given different number and there is also no official record proved during trial which can established as to how many persons were apprehended or arrested in fact. As discussed above, PW-1 has mentioned about 400-500 persons, PW-2 has mentioned about 500 or 600 people, PW-3 has mentioned 400-500 persons, PW-4 has mentioned 400-500 persons while PW-11 has mentioned about total 450 persons who were collected at the spot by the above mentioned forces. Some other witnesses have also deposed about these facts but exact number has not been established on the record. It is also there in the testimonies of above mentioned witnesses and other witnesses that the persons so collected except the lot of 40-45 persons who were taken in the truck involved in the incident, were taken in officials vehicles by the PAC, police or

military.

Conclusions on Facts no. 1, 2 & 3

As a result of combined reading of the above mentioned prosecution witnesses, it can be said that a search operation was conducted by police, PAC and army in Mohalla Hashimpura and adjoining areas on 22.05.1987 and several persons were detained/arrested and taken to different places like police station or police line etc.

15 Facts no. 4, 5 & 6

- **That about 42 persons arrested from Mohalla Hashimpura were put in a PAC truck and the said truck, instead of police station or police line, was taken to Gang Nahar Murad Nagar.**
- **That at Gang Nahar Murad Nagar, the PAC officials fired at the arrested persons making them get down from the truck and some were fired at in the truck itself and that the PAC Jawans after shooting the persons one by one kept on throwing them in Upper Ganga Canal with the impression that they were all dead.**

- **That apprehending the exposure of crime, the PAC Jawans diverted the truck from Gang Nahar to Hindon river and completed the process of killing and throwing in Hindon waters near village Makanpur, the remaining persons rounded up from Mohalla Hashimpura.**

These issues are being discussed simultaneously being inter-related and inter-linked.

Case of the prosecution is that out of about 644 persons collected at Mohalla Hashimpura by the police, army and PAC, a group of about 42 unarmed young boys and men all Muslims from Mohalla Hashimpura of Meerut were put in a yellow coloured PAC truck which was the last remaining truck at the spot. Further that instead of taking them to police station etc. they were taken to Gang Nahar in Murad Nagar where initially three persons were shot at one by one and thrown in Gang Nahar. Further that on seeing this the remaining abducted persons in the truck started screaming for help and at that point the PAC jawans started firing indiscriminately inside the truck and thereafter some other persons were also shot at and thrown into Gang Nahar water. Further that on

seeing the approaching light of another vehicle, the said truck of PAC was taken to Hindon river near Makan Pur village where the remaining persons were shot at and their bodies were thrown into the water. The FIR No. 141/87 PS Murad Nagar was registered on the complaint of PW-4 Muzibur Rehman, one of the survivor in respect of incident occurred at Gang Nahar. FIR No. 110/87 P.S Link Road, Ghaziabad was registered on complaint of PW-11 Babuddin, one of the survivor in respect of incident occurred at Hindon river Makan Pur village.

The prosecution has examined several witnesses on these issues and the testimonies of following witnesses are relevant.

15.1 **PW-1 Zulfikar Nasir** is one of the survivors and eye-witness of the entire incident and he deposed that to the group of elderly people and the children left at the spot (at Mohalla Hashimpura), PAC officials gave directions to maintain peace and go to their respective houses but before they could leave for their houses, PAC officials took out of them the able guarded elderly persons and the boys of his age and in this way about 40-45 people were scrutinized and made to sit in the only truck left

at the spot on which 'PAC' was written and he was in the said group of 40-45 people in the said truck and it was about 08.00 PM. Further he clarified that the colour of said truck was yellow and it bore the writing in white paint 'PAC'. Further that PAC officials after making us sit in the truck gave them directions to keep their heads downwards and not to raise them and that there were 18-20 officials of PAC within the truck at that time. Further that PAC officials had surrounded them in the truck in a manner so that they were not visible to any outsider and that all PAC officials were carrying riffles with 'Sangeen' at their tops. Further that the said PAC officials were wearing 'Khaki' uniforms. He again said, it was a 'Khaki pili' type uniforms. Further that they were strictly instructed not to raise their heads. He further deposed that in case any body raised his head, he used to be rebuked and given a blow with the help of riffle butt. Further that after traveling some distance, the truck stopped. Further that he did not know as to which place it was. Further that he could sense that few more PAC officials boarded the said truck at that time and that the truck again started and came to Delhi road, that after peeping a little bit and identifying the building and other structures around, he could guess that it

was Delhi Road. Further that after a total journey of 1- 1 ½ hour, they reached a Patri of Murad Nagar, Gang Nehar and the said truck then came to a halt. The lights of the truck were then switched off, that the time might have been between 09.00 PM and 10.00 PM, that they then started bringing down the persons in the truck one by one. Further he deposed that the first person to come down the truck thus was one Mr. Yasin of their mohalla and PAC officials then fired bullet shots on said Mr. Yasin and then threw him in the said canal. Further that they then got down another boy whose name was Ashraf and happened to be his neighbourer and he was also shot with bullets and then thrown in the said canal. Further that he(PW-1) was the third person to be brought down the truck, that in the process of himself being dragged down, he fell on the ground and he was also shot while he was lying on the ground. Further that the bullet hit him in his armpit and came out from the side of the back of his chest, that after receiving the said bullet injury, he deliberately stopped breathing, feigning death, that he was also thrown in the said canal. Further that he could catch a few buses around and after getting support from the bushes, he traveled a little distance inside the water and

concealed himself in the bushes there, that while he was sitting in a concealed condition in the bushes, he met a boy named Arif belonging to his Mohalla who had jumped in the waters from the said truck before being shot by the PAC officials. Further that PAC officials were present with the truck when he met Arif in the bushes. Further that he could hear the cries of the people 'BACHAO BACHAO' and the sounds of firing. Further that he could hear the thud 15-16 times that arose after the persons were being thrown in the water. Further that he could thereafter see the headlights of vehicles throwing lights in that area. Further that PAC officials then boarded their truck and left the place in direction from which they had come. Further that he and Arif kept on concealing themselves in the bushes even 1 ½ hour thereafter and then he and Arif ventured to come to the Patri though in a fearful condition and found three persons lying on the said Patri in injured conditions. Further he deposed that one of them was his neighbour namely Qamruddin but he could not identify the remaining two. He and Arif then lifted Qamruddin and started moving towards the pul of Murad Nagar. Further that Qamruddin was writhing in pain and after reaching the pul of Murad Nagar, Arif left the

place in fear. Further that Qamruddin advised him to run away from the place telling him that he had no hope of his survival. Further that he reached Murad Nagar and entered the house of a Muslim Bhai who gave him cloths to wear. Further that he did not know as to where he kept the cloths he had taken off. Further that he(the person who provided him shelter) then brought a 'Hakeem' who gave him first aid and dressed his wounds and also gave him 'Desi Dawai'. Further that the next day, he went to his Phupha namely Mehrazuddin in Ghaziabad. He further deposed that he had narrated the aforesaid incident to the said Muslim Bhai referred by him above and thereafter to his Phupha Mehrazuddin. He further deposed that his Phupha then consulted an Advocate namely Nawabuddin Ansari who was known to Syed Shahabuddin, a Member of Parliament at that time. Further that he was thus taken to Syed Shahabuddin by 2/3 people and he narrated the whole incident to him who consoled him and told him to disclose the incident to Press so as to find the whereabouts of his 'Walid' and 'Chachas'. Further that Syed Shahabuddin then took him to the house of one Sh. Chander Shekhar, a politician, perhaps belonging to Bhartiya Janta Party. Further that he

stayed at the house of Syed Shahabuddin for 8-10 days and his daughter who was a medical student kept on treating him during that period. He further deposed that he gave statement Ex.PW-1/A to the Judge Saheb in Circuit House, Meerut. He also identified one person namely Mehboob Ali in the photograph Mark A, lying in judicial file. He also identified another person namely Yasin in photograph Mark 1 and deposed that Yasin was the person who was shot first by PAC. He further identified persons namely Sarfraz, Mehboob Ali and Qamroodin in photographs. He further deposed that he cannot identify the accused persons present in the court for the reason that it was dark at the time of incident. He was duly cross-examined on behalf of accused persons.

15.2 PW-2, Mohd. Naeem, PW-3 Mohd. Usman & PW-4 Muzibur-Rehman are also the survivors of the incident that happened at Mohalla Hashimpura and Gang Nahar Murad Nagar. They have also deposed on the same line as deposed by PW-1 without any major deviations. These three witnesses have corroborated all the basic facts deposed by PW-1 and which are the basis for present prosecution. These

witnesses have been duly cross-examined on behalf of accused persons.

15.3 PW-11 Babuddin is another survivor and he is actually the eye-witness qua all the three parts of the incident i.e Mohalla Hashimpura, Gang Nahar, Murad Nagar and Hindon River Ghaziabad. He has survived the assault on two occasions i.e one at Gang Nahar and another at Hindon River. He has deposed that the PAC officials had segregated a few persons of Hashim Pura Mohalla and he was one of them. The PAC officials had asked old aged persons and the children to go away and they were allowed to go and he and other were then asked to board a yellow coloured truck of PAC. In that truck, their strength was 40 or 45. He could identify Azim Kausar Ali of village Hariyat, Muzib-ur-Rahman of his village, Hausala Uddin of village Manhar from amongst them. Further that 14 or 15 officials of PAC had also boarded that truck and their dress was of light yellow colour and they were wearing helmets and they were having rifles with bayonets (Sangeen). It was 07.30 or 07.45 pm (approximately) when the truck had left that place. The truck had moved for about 10 minutes and it was stopped somewhere and a few PAC

Jawans also sat from that place in the cabin of the truck. The truck then again moved and had continued to move. It reached near a Nahar and the truck driver then took the truck on a Kacha Rasta and covered a distance of about 1 ½ Kms on the Kacha Rasta. The PAC Jawans from the cabin of the truck then got down and came towards the back portion of the truck. The lights of the truck were then switched off. Further that the Dala of the truck was then opened and one person from amongst them was made to alight from the truck. More than one fire had been shot and he was killed, another person was made to alight and he was also fired at more than one shot and killed and they were thrown in the canal, the third one was also dealt with in the aforesaid manner. On seeing it happening, all of them had been frightened and they raised hue and cry and the jawans of PAC then fired while they were in the body of the truck. Further that he had sustained bullet injury on the left side of his back just under the left armpit. Thereafter, it was a pin drop silence and thereafter the Jawans of PAC had made the persons sitting in the body of the truck to alight one by one, they fired at them and after causing the injuries they were thrown in the canal. Further that 15 or 16 persons had been dealt with in this manner

by the PAC Jawans. He had noticed that some light was coming towards their truck and it appeared to be some vehicle coming towards their truck. The Jawans of PAC became panicky and had said that someone was coming and the driver of the truck then took a turn from a place near the bridge/culvert of the canal and had taken the truck towards the road and the truck was brought on the road. Further that the truck then moved and had continued to move for about 30 minutes and it had reached near a river, the truck was stopped on the pul/culvert and the Jawans of PAC then got down from the truck and stood behind the body of the truck. There also the Dala of the truck was opened and PAC Jawans had fired and killed 15/20 persons one by one and had thrown them in the river. Further that thereafter he was also made to alight from the truck and a fire had been shot at him and he received an injury on the right side of his chest. The bullet had pierced and passed through. (As per court observations recorded by Ld. Predecessor, during his examination the witness has shown the place near his right nipple and pointed out that it was at this place he had received the bullet. He had also shown his back and pointed out that from that place the bullet had made the exit). He further deposed

that thereafter he was also thrown in the river, he took some water and thereafter he regained consciousness and he swam and covered some distance and thereafter on a stone near bushes, he made himself lie. Further that thereafter those persons who had been remaining were also fired at, killed and thrown in the canal by the PAC Jawans. Further that thereafter the truck had gone away and thereafter two persons, with torches in their hands, had come on a motorcycle and with the help of the torches they were trying to illuminate the area and on seeing the light of the torches, because of fear, he (PW-11) hid himself, however those two persons kept on illuminating the area with the torches. Those persons then inquired as to whether there was anyone or not as they wanted to help, he thought that since he had been fired at twice and he may not survive, therefore, why not to take a chance as those two persons may be of some help to him. He further deposed that he was a bit frightened and he then came on the road and found that those persons were police officials and they inquired his name from him and he disclosed his name to them. He further narrated all the facts to them as to what had happened with him and others. After some time a police jeep had come there in which there

were a few police officials, he was then made to sit in the jeep and was taken to Link Road Police Station, Ghaziabad. In the police station something was written on papers without inquiring anything from him and his signatures were obtained on those papers. Further he deposed that it was only one paper on which his signatures were obtained by them. Further that from there he was taken to Narender Mohan Hospital in jeep, the police officials met the doctor on duty and had a talk with him and thereafter he was admitted in the hospital, he remained admitted in the hospital for about 2 or 3 weeks. Further that in the hospital, officers used to come to inquire facts from him, they used to write on papers, however his signatures were not obtained. His Baniyan had been taken by the doctor after it was cut by the doctor and when his baniyan was taken by the the police, his signature was obtained. He also proved memo Ex.PW-11/A. He further deposed that when he was discharged from the hospital, his statement was taken before a judge and his statement was recorded by him.

The above mentioned witnesses have deposed about all the three above mentioned issues no. 4, 5 & 6. These five witnesses, on

combined reading, have given the detailed account of the entire incident starting from Mohalla Hashimpura upto the incident occurred at Hindon River Ghaziabad. Their testimonies are in complete harmony with each other.

Apart from above mentioned witnesses the following witnesses have also deposed on these facts:-

15.4 The witnesses relating to incident taken place at Gang Nahar Murad Nagar (FIR No. 141/87 PS Murad Nagar).

PW-33 Inspr. Rajender Singh Bhagor is the initial IO in respect of case FIR No. 141/87 u/s 302/307/364/201 IPC registered at P.S Murad Nagar, U.P at the information of PW-4 Muzibur Rehman. He has interacted with PW-3 Mohd. Usman and one other person who expired on the way to hospital (Qamaruddin). He also deposed about steps taken by him during investigation before it was marked to CBCID. He has tendered seizure memo Ex.PW-33/A regarding blood stained earth etc and site plan Ex.PW-33/B.

PW-56 N.U. Ansari had interacted with PW-1 Zulfikar Nasir

and talked with Mr. Syed Sahabuddin and Mr. Chander Shekher, both Member of Parliament.

PW-83 Mohd. Hanif joined the investigation with police and is a witness to seizure memo Ex.PW-33/C.

PW-85 Sh. Chander Kant Tyagi was posted as Judicial Magistrate Meerut and recorded the statement of Mohd. Naeem, Mohd. Usman and Zulfikar Nasir i.e Ex.PW-2/A, Ex.PW-3/A and Ex.PW-1/A respectively u/s 164 Cr.P.C.

15.5 The other witnesses relating to the incident taken place at Hindon river Ghaziabad (FIR No. 110/87 P.S Link Road Ghaziabad).

PW-6 Sukhbir Singh deposed about recovery of dead body at Nahar situated near his village vide Ex.PW-6/A.

PW-7 Ct. Rattan Singh deposed about recovery of dead body vide Ex.PW-7/A.

PW-8 Ct. Rattan Lal deposed about recovery of two dead bodies vide Ex.PW-8/A & Ex.PW-8/B.

PW-12 Digamber Tyagi is stated to be the person who

informed the police about the firing incident but this witness has not deposed categorically as per case of prosecution and was even cross-examined by Ld. Spl. PP.

PW-13 Inspr. Virender Singh Yadav is the initial IO in case FIR No. 110/87 who alongwith PW-12 Digambar Tyagi and few other police officials proceeded to the spot at Hindon river near village Makan Pur. He met PW-11 Babuddin and took other steps during investigation. He prepared site plan Ex.PW-13/A and seized the blood stained earth vide memo Ex.PW-13/A. He further deposed about recovery of two dead bodies and inquest proceedings qua the same.

PW-14 SI Ram Lakhan participated in the investigation with PW-13 Inspr. Virender Singh.

PW-27 SI Sripal participated in the investigation and deposed about Panchayatnama Ex.PW-27/1 & Ex.PW-6/A.

PW-36 SI V.B. Singh was the S.O P.S Link Road Ghaziabad and took over the investigation from PW-13. He sent a report requisitioning divers vide Ex.PW-36/A and also wrote one application in respect of dead bodies recovered from the jurisdiction of P.S Kalyan Puri

vide Ex.PW-36/B. He also moved the application before Ld. CJM Ghaziabad seeking copy of statement vide Ex.PW-36/C.

PW-45 Ct. Ajay has deposed about registration of case FIR no. 110/87 P.S Link Road.

PW-80 Smt. Sneh Lata Aggarwal was posted as Addl. City Magistrate Ghaziabad and she recorded the statement of PW-11 Babuddin vide Ex.PW-80/A.

15.6 So far as the facts regarding abduction of about 42 persons from Mohalla Hashimpura in the PAC truck is concerned, the testimonies of PW-1, PW-2, PW-3, PW-4 & PW-11, who all are survivors and were present in the said truck, is quite specific and categorical. PW-1 has described that directions were given by the PAC officials to the group of elderly people and children left at the spot to maintain peace and go to their respective houses before they could leave for their houses, the PAC officials took out of them the able guarded elderly persons and the boys of his age (PW-1 must be around 17 years of age at the time of incident) and this way about 40-45 persons were scrutinized and made to sit in the only

truck left at the spot on which 'PAC' was written. Similarly, PW-2 Mohd. Naeem described that at about 08.00 pm, he saw that only truck of PAC with yellow colour was left there and about 50 persons left at the spot after 08.00 pm were made (to sit) in the yellow PAC truck. PW-3 Mohd. Usman described that after some short of scrutiny and segregation about 50 young men were made to stand on one side and thereafter they were made to sit in a yellow coloured PAC truck. PW-4 has described this fact that out of the persons left at the place near Peepal tree, PAC segregated young and strong persons who were about 50 in number, very young and old persons were allowed to leave for their house, one truck of yellow colour belonging to PAC was standing there, PAC persons commanded them to sit in the said PAC yellow coloured truck. PW-11 has described that the PAC officials then segregated a few persons of Hashimpura Mohalla and he (PW-11) was one of them, the PAC officials had asked old aged persons and the children to go away, they were allowed to go, he (PW-11) and others were then asked to board a yellow coloured truck of PAC, in that truck their strength was 40-45. Some other witnesses have also deposed on these facts showing that out of several hundred persons

rounded up in mohalla Hashimpura a last bunch of about 40-45 persons were boarded in a yellow coloured truck of PAC on which 'PAC' was written. Also that about 18-20 PAC Jawans also got into the same truck.

15.7 In this regard, it is argued on behalf of accused persons that there were different type of forces operating at the spot on the date of incident including local police, PAC and Army and it is not clear from the record as to by whom those 40-45 persons were abducted as there are contradictions and improvements in the statements of eye-witnesses in this regard. It is also submitted that none of the eye witnesses have given the registration number of concerned truck nor they have specific knowledge about the colour of the uniform of the officials who made them board in the truck nor any name or rank has been provided.

15.8 If the testimonies of above mentioned injured/eye-witnesses are analyzed, it is quite clear that the so called improvements in their statement are in form of further explanation and the same are not contrary to the earlier statements given to police. May be the injured/eye-witnesses

have not been able to give the truck number, name and ranks of the concerned officials, the facts deposed by them are sufficiently explicit and reliable to reach at a conclusion that the bunch of 40-45 persons, was made to board in the PAC truck which was the last truck available at the spot and about 18-20 PAC officials also boarded the same. It cannot be lost sight of that as per description given by the witnesses the abducted persons were in a state of terror. The wisdom and common sense of these witnesses cannot be challenged to an extent that they cannot even make distinction between the trucks or uniform or identification of the officials by their uniform that it was a PAC truck and the officials were PAC officials. It does not make any difference if some witnesses have described the uniform of the officials as Khakhi uniform or others have described it as Pilli or Khakhi Pilli. Usually there is a significant difference between the uniforms of different forces and even a common man can very well distinguish as to which uniform pertains to which force. The contradictions or improvements as claimed by the defense counsel are minor in nature so far as the description of the truck and the accompanying officials being related to PAC, is concerned.

15.9 So far as the incident allegedly taken place at Gang Nahar Murad Nagar is concerned, the testimonies of PW-1, PW-2, PW-3 & PW-4 and PW-11 are quite clear, specific, explicit and descriptive in this regard. All these witnesses have claimed that they were in the same truck which was taken to Gang Nahar from Mohalla Hashimpura. The incident at Gang Nahar Murad Nagar has three parts. Firstly three persons including Zulfikar Nasir (PW-1) were initially shot at one by one and thrown into Gang Nahar and out of them PW-1 subsequently survived. Secondly, when PW-1 Zulfikar Nasir was being shot at the remaining abducted persons inside the truck started shouting '*Bachao Bachao*' and to make them silent the PAC officials made indiscriminate firing inside the truck in which several persons were injured and probably some of them expired there inside the truck itself. Thirdly, after indiscriminate firing inside the truck the PAC officials killed some other persons, around 15-16 in number, one by one and threw them in the Gang Nahar. PW-2 Mohd. Naeem, PW-3 Mohd. Usman and PW-4 Muzibar Rehman were amongst those persons and who survived. The testimony of these witnesses is quite

consistent with each other and there are no major deviations or contradictions. The other witnesses i.e PW-33, PW-56, PW-83 and PW-85 have also corroborated the facts deposed by the eye-witnesses as discussed above, regarding the incident occurred at Gang Nahar Murad Nagar which was initially investigated by P.S Murad Nagar vide FIR No. 141/87.

15.10 As far as the incident occurred at Hindon River near Makan Pur village is concerned, a combined reading of the testimonies of PW-1, PW-2, PW-3, PW-4 & PW-11 make it clear that upon noticing the head lights of an approaching vehicle, the accused persons stopped firing and the truck was then taken to Pul/culvert of Hindon River near Makan Pur village where the PAC officials got out of the truck and opened the *dala* (back door) of the truck and they again started bringing down the abducted persons from the truck one by one and throwing them in canal after firing at them by rifles. About 15-20 persons were thrown in the Hindon canal. PW-11 Babuddin is the sole eye-witness of the incident which has taken place at Hindon River and despite some deviations his

testimony is found to be completely reliable. The facts deposed by PW-11 have been further corroborated and explained by the other witnesses ie. PW-13, PW-14, PW-36, PW-45 and PW-80 as discussed above. So the alleged facts regarding the incident occurred at Hindon River near Makan Pur village stand proved on record.

15.11 So far as earlier statements given by PW-1, PW-2, PW-3, PW-4 & PW-11 before the police or Magistrate i.e Ex.PW-1/A, Ex.PW-1/DA, Ex.PW-1/DB, Ex.PW-2/A, Ex.PW-3/A, Ex.PW-3/DA, Ex.PW-4/A, Ex.PW-4/DA, Ex.PW-11/DA & Ex.PW-11/DB are concerned, the same have been duly explained by these witnesses. The witnesses have clarified that they were threatened by the police to not to name the PAC in the statements to be given to authorities. This explanation given by the witnesses is quite natural and genuine and otherwise also, it can easily be understood as to what will be the state of mind of a person who has been subjected to such a brutal experience. The culprits had thrown the above mentioned witnesses in water by presuming them to be dead and they have survived the assault only by the

grace of God. The witnesses, if did not mention all the facts in their earlier statements or if they have given a different version before the police and Magistrate, the same stands duly clarified and explained and the same is not fatal to the case of prosecution so far as the commission of offence is concerned. All the above mentioned witnesses are found to be truthful, genuine and reliable witnesses.

Conclusions on facts in issues no. 4, 5 & 6.

In view of above discussion, it can be concluded that all the above mentioned three facts in issue at serial no. 4, 5 & 6 have been duly proved on record. It has been established that about 42 persons abducted from Mohalla Hashimpura were put in a yellow colour PAC truck by PAC officials, the said truck, instead of police station or police line, was taken first to Gang Nahar Murad Nagar where several abducted persons were shot at and thrown into waters of Gang Nahar, Murad Nagar and thereafter the remaining persons were shot at Hindon River near Makan Pur Village, Ghaziabad and thrown into waters of Hindon River by presuming all of them to be dead.

16 Fact no. 7.

- **That in the incident, the persons namely Zulfiqar, Naeem, Arif, Mohd. Usman, Muzibar Rehman and Babuddin survived the assault and remaining about 35 persons were killed by the official .303 rifles of the PAC officials.**

16.1 As per case of prosecution about 42 persons were abducted from Mohalla Hashimpura, Meerut in a PAC truck and they were shot at Gang Nahar Murad Nagar and Hindon River village Makan Pur Ghaziabad, U.P. It is clear from the earlier discussion that about 40-45 persons belonging to Mohalla Hashimpura were taken in the truck concerned and they were shot at as mentioned above. So far as number of injured survivors and dead persons and their identity is concerned, the prosecution has examined four type of witnesses i.e

- a) Injured/survivors i.e. PW-1, PW-2, PW-3 PW-4 & PW-11
- b) Witnesses relating to recovery of dead bodies i.e. PW-6, PW-7, PW-8, PW-9, PW-10, PW-13, PW-14, PW-15, PW-18, PW-24, PW-26 & PW-27.
- c) Medical witnesses who conducted postmortem i.e PW-5, PW-16,

PW-17, PW-28, PW-29, PW-32 and PW-71.

- d) Witnesses relating to identification i.e PW-1, PW-3, PW-4, PW-11, PW-19, PW-20, PW-21, PW-22, PW-23, PW-25, PW-30, PW-31, PW-48, PW-51, PW-53 and some other witnesses.

It is stated on behalf of state/complainant that apart from five injured persons i.e PW-1, PW-2, PW-3, PW-4 & PW-11, there are eleven dead bodies which have been identified by the witnesses and there are 22 other persons who were abducted in the said truck but their dead bodies were not found. Alongwith written arguments, the complainants have submitted the list of all these persons which is being discussed herein after.

16.2 Injured persons

At serial no. 1 to 5 in the list provided by the complainants, there are names of eye witnesses namely Zulfikar Nissar (PW-1), Mohd. Naeem (PW-2), Mohd. Usman (PW-3) Muzibur Rehman (PW-4) and Babuddin (PW-11). The medical documents of these witnesses have not been proved as per law during trial despite the fact that MLC etc. of these witnesses are available on record. But, the medical documents are only

corroborative piece of evidence. The witnesses have described the whole incident and assault in detail when examined in court. As per oral account of the incident, all the occupants of the truck including PW-1, PW-2, PW-3, PW-4 & PW-11 were assaulted by firearm and were thrown into water presuming them to be dead by the PAC officials. The testimonies of the eye-witnesses are sufficient to prove that they were shot at by PAC officials with intention to kill them. Some medical documents of PW-3 have been tendered during his statement also. Further the injuries of PW-4 & PW-11 were noticed even by Ld. Predecessor during their examination in court. The overall facts and circumstances of the case and the testimonies of eye-witnesses are sufficient to establish that above mentioned persons/witnesses got injured during the assault.

16.3 Dead persons

The prosecution has claimed that about 35 persons have been killed in the assault launched by officials of PAC but no details or list of such killed persons have been brought on record or proved during trial. The names of following persons from serial no. 6 to 16 are mentioned in

the list provided by the complainant and it is submitted that they were killed in the said incident and their dead bodies have been identified during investigation.

Name of Mohd Iqbal S/o Dilsher Khan is at serial no. 6 in the list provided by the complainants and it is argued that PW-21 has deposed qua him. PW-21 Ms. Zebunnisa is wife of Mohd. Iqbal and if her testimony is considered the same is not specific to the effect that her husband was taken in the concerned truck of PAC which was involved in the incident. Dead body of Mohd. Iqbal has been identified by his elder brother namely Kalua who has not been examined during trial while PW-21 identified the photograph of her husband on photostate copy of photograph Ex.PW-21/A and it is not clear from record as to by whom and under what circumstances the document Ex.PW-21/A was prepared and how the same is connected with the present incident. Reference is also made to document Ex.PW-23/A which is one document in form of identification memo supposedly prepared during investigation but name of Mohd. Iqbal is not there in the said document. Moreover, the status of the document Ex.PW-23/A has not been explained or clarified during trial. It

is not clear by whom and under what circumstances the said document was prepared. Another document Ex.PW-62/A available on record is also in form of identification memo but again it is not proved as per law as to what is the status of that document and by whom and under what circumstances the same has been prepared.

Name of Islamuddin S/o Hafijuddin is at serial no. 7 in the list provided by complainants and reliance is placed upon the testimony of PW-19. PW-19 Iqbal is brother of Islamuddin and he has identified the dead body of Islamuddin on photograph Ex.PW-19/A but again his testimony is not specific to show that Islamuddin was in the above mentioned PAC truck or not. There is no other evidence to show that he was seen by anyone in the truck concerned. The circumstances leading to his death have not been explained on record.

Name of Javed S/o Zahir Ahmed is at serial no. 8 in the list provided by complainants and reliance is placed upon the testimony of PW-22 Abdul Hamid, PW-77 and PW-78. So far as PW-22 is concerned, he has identified Javed on the copy of complaint Mark A. PW-77 also claimed to have identified the photograph of Javed son of her devar from

photograph but she could not identify her thumb impression on identification memo Ex.PW-23/A. PW-78 is mother of Javed and she simply deposed that his two sons namely Javed and Jamir were taken by police, PAC and military and that Jamir returned back after about 18 days but Javed had not come back till date. As a result of combined reading of above mentioned three witnesses, it can be assumed that Javed S/o Zahir Ahmed has expired but the circumstances leading to his death have not been properly established. It is not proved that he was in the same truck which is involved in the present incident.

Name of Ayub S/o Zaeed is at serial no. 9 in the list provided by complainants and reliance is placed upon document Ex.PW-23/A according to which the dead body has been identified by one Mohd. Illyas but the said Mohd. Illyas has not been examined during trial and the evidentiary value of Ex.PW-23/A is in itself under doubt as mentioned above. Again it is not proved as to how he has expired. He has not been seen by anyone in the truck in question.

Name of Naeem S/o Noor Alam is at serial no. 10 in the list provided by complainants and reliance is placed upon the testimony of

PW-20 and document Ex.PW-23/A. PW-20 is brother of Naeem and he identified him on Ex.PW-20/A but he has not deposed that his brother was in the same truck. No witness has claimed that he was seen in the truck in question.

Name of Allauddin S/o Haffijuddin is at serial no. 11 in the list provided by complainants and reliance is placed upon the statement of Azidam and Gaffar (PW-31) and document Ex.PW-23/A. PW-31 has not deposed about Allauddin during his examination and his signatures have also not been shown to him, although he had identified his signatures at point C on Ex.PW-23 qua identification of other person namely Nizamuddin. Apart from above there is no evidence to show that Allauddin was in the same truck or not. Hence the death of this man can not be attached to the case in hand.

Name of Akeel S/o Azimuddin is at serial no. 12 in the list provided by complainants and reliance is placed upon the testimony of PW-23 Shakeel Ahmed and document Ex.PW-23/A. PW-23 has identified the photograph of his brother and identified his signature on Ex.PW-23/A. There is no direct evidence or reliable circumstantial evidence to show

that he was in the same truck at the time of commission of offence. Evidentiary value of Ex.PW-23 is in itself under doubt as discussed earlier.

Name of Jamshed S/o Zainuddin is at serial no. 13 in the list provided by complainants and reliance is placed on the statement of Zainuddin and Arif who have not been examined at all in the court. Name of Jamshed is mentioned in document Ex.PW-62/A which is also in form of identification memo pertaining to dead bodies but as discussed earlier it is not explained as to by whom and under what circumstances the said document was prepared. Further it is not established on record that Jamshed was in the same truck or not.

Name of Rizwan S/o Innamulla is at serial no. 14 in the list provided by complainants and reliance is placed upon the statement of Naseem (mother) and Afroz (sister), who have allegedly identified his dead body from photograph and cloths as per document Ex.PW-23/A but none of them have been examined during trial and connectivity of document Ex.PW-23/A is already under doubt for want of evidence as per law as discussed above. There is no evidence to the effect that this man

was present in the same truck.

Name of Munne S/o Alladia is at serial no. 15 in the list provided by complainants and reliance is placed upon the statements of Nanua and Mohd. Ilyas as per Ex.PW-23/A but they have not been examined during trial. There is no evidence to show the presence of this person in the truck in question.

Name of Hafizzuddin S/o Munsu is at serial no. 16 in the list provided by complainants and reliance is placed upon the statements of Qutubuddin and Dilshad as per document Ex.PW-62/A but they have not been examined during trial. Moreover there is no direct or indirect evidence to prove the presence of this man in the truck in dispute at the time of incident.

16.4 Names of following persons at serial no. 17 to 38 are mentioned in the list provided by complainants and it is claimed that they were abducted and killed during the concerned incident but their dead bodies were never found.

Name of Naim S/o Abdul Hamid is at serial no. 17 in the list provided by complainants and reliance is placed upon the testimony of PW-22 Abdul Hamid and PW-77 Hazara. The testimonies of PW-22 & PW-77 are not specific to the effect that Naim was in the same truck at the time of incident.

Name of Mohd. Yasin (resident of 4, Bagicha Mohd. Hussain, Hasimpura, Meerut) is at serial no. 18 in the list provided by complainants and reliance is placed upon the testimonies of PW-1(Zulfiqar), PW-2(Mohd. Naeem) and PW-25(Mohd. Akhlaq, the son of Mohd.Yasin) It is duly established from the record that a person namely Mohd. Yasin was there in the same truck in which 40-45 persons were abducted and that he was the first person shot at by the PAC personnels, but his dead body could not be recovered nor he has been seen alive after the incident.

Name of Nizamuddin S/o Abdul Shakul is at serial no. 19 in the list provided by complainants and reliance is placed upon the testimonies of PW-31 Gaffar and PW-30 Shakeel Ahmed. Dead body of Nizamuddin was identified by above mentioned two witnesses from

photographs but there is no evidence to show that he was in the same truck. It is not proved as per law under what circumstances he has expired.

Name of Qadir Ahmed is at serial no. 20 in the list provided by complainants and reliance is placed upon the testimonies of PW-48 Zameel Ahmed (son) and PW-55 Dr. Zahiruddin Ansari. The testimonies of PW-48 and PW-55 is not specific to show that Qadir Ahmed was in the same truck. His dead body has not been recovered and PW-48 deposed that he came to know that his father was amongst the people who had been killed at Gang Nahar. His statement in this regard is found to be hearsay material and no basis has been provided for such assumptions.

Name of Khadir is at serial no. 21 in the list provided by complainants and reliance is placed upon the testimonies of PW-49 Mehmuddan (wife) but testimony of PW-49 is not specific on any of the aspects.

Name of Hazi Shamim Ahmed S/o Wali Mohd. is at serial no. 22 in the list provided by complainants and reliance is placed upon the testimonies of PW-50 Liak Ahmed (brother), PW-51 Mehrunnisha (wife) and PW-55 Zahiruddin Ansari. The testimonies of none of the three

mentioned witnesses is specific enough to show that Hazi Shamim Ahmed was in the truck involved in the incident. Photograph of Hazi Shamim Ahmed has been identified in Mark P-51/A which at the most suggest that he was one of the persons collected by the PAC, Police and Military in Mohalla Hashimpura.

Name of Hazi Mustkin (resident of house no. 20, Bagicha Mohd. Hussain, Hasimpura, Meerut)is at serial no. 23 in the list provided by complainants and reliance is placed upon the testimonies of PW-52 Rahis Ahmed (son), PW-60 Tanveer (son), PW-58 Abdul Alim and PW-62 Sher Ali. A combined reading of these four witnesses establishes the fact that Hazi Mustkin was taken in the same truck which is involved in the incident, alongwith persons namely Qamaruddin, Usman, Zulfiqar etc.

Name of Qamruddin s/o Jamaluddin (resident of H.No. 36, Bagicha Mohd. Hussain, Hasimpura, Meerut) is at serial no. 24 in the list provided by complainants and reliance is placed upon the testimonies of PW-1, PW-2, PW-53 Jamalluddin (father) and PW-54 Parvez Ahmed. A combined reading of the testimonies of these four

witnesses make it sufficiently clear that Qamruddin was there in the same truck and he was badly injured by the gun shot injuries and he died during investigation. He has been identified by his son in photograph Mark F.

Name of Sadruddin S/o Mohd. Ali Ulla is at serial no. 25 in the list provided by complainants and reliance is placed upon the testimonies of PW-63 Farduddin (brother) and PW-55 Dr. Zahiruddin Ansari. The testimonies of these two witnesses is not specific that Sadruddin was taken in the same truck. Although, it is mentioned in the statement of PW-55 that Sadruddin was amongst 2-3 persons seen by him in one truck which was still lying parked at the spot which was being filled. PW-63 has also deposed on the basis of hear say that subsequently it was learnt that his brother had been shot dead at Murad Nagar Nagar. There is no reliable evidence to show that he was present in the truck concerned at the time of commission of offence.

Name of Mehtaf S/o Jafar is at serial no. 26 in the list provided by complainants and reliance is placed upon the testimony of PW-61 Jafar (father) but testimony of this witness is not specific qua abduction of his son in the same truck.

Name of Zaheer Ahmed is at serial no. 27 in the list provided by complainants and reliance is placed upon the testimonies of PW- 78 Mst. Zarina (wife) who has simply stated that police, PAC and military came inside there house and took away her husband with them, who did not return thereafter.

Name of Mohd. Hanif is at serial no. 28 in the list provided by complainants and reliance is placed upon the testimonies of PW-87 Mohd. Isha (cousin) but his testimony is not specific that he was taken/abducted in the same truck.

Name of Mohd. Azeem i.e. the uncle of PW-4 is at serial no. 29 in the list provided by complainants and reliance is placed upon the testimonies of PW-11 Babuddin and PW-4 Muzibur Rehman(nephew). Testimonies of these witnesses is specific and clear to show that Mohd. Azeem was there in the same truck and was shot at by the PAC officials during indiscriminate firing taken place in the truck at Gang Nahar. It is claimed that Mohd. Azim expired at the spot but his dead body could not be recovered.

Name of Kousar Ali r/o village Hariyat, is at serial no. 30 in the list provided by complainants and reliance is placed upon the testimonies of PW-4 and PW-11. Testimonies of these witnesses is sufficient to show that person namely Kausar Ali was present in the same truck but there is no proof of his death as dead body has not been recovered or identified. Name of this person has been described as Kausar Ali of village Hariyat in the statement of PW-11 while PW-4 has simply mentioned Kausar. Complete details about his parentage and address are not available.

Name of Hansalauddin is at serial no. 31 in the list provided by complainants and reliance is placed upon the testimonies of PW-11. It is there in the testimony of PW-11 Babuddin that a person namely Hansalauddin was there in the same truck but there is no proof of his death as the dead body had not been recovered or identified otherwise. Further, details about parentage and address of this person are also not available.

Name of Arif is at serial no. 32 in the list provided by complainants and reliance is placed upon the testimonies of PW-1,

Zulfikar Nasir. As per statement of PW-1 the person namely Arif was there in the same truck and was injured but he had not expired. The said person namely Arif escaped from the spot near Gang Nahar and no clue about his subsequent movement is there on record. No details about his parentage and address are available on record.

Name of Sarfraj is at serial no. 33 in the list provided by complainants and reliance is placed upon the testimonies of PW-1 Zulfikar Nasir but neither the testimony of PW-1 nor any other witness is sufficient and specific to show that he was in the same truck though it is there in the testimony of PW-1 that said person belonged to Mohalla Hashimpura as identified from the photograph. The source and relevance of the said photograph has not been explained during trial.

Name of Mehboob Ali is at serial no. 34 in the list provided by complainants and reliance is placed upon the testimonies of PW-1 Zulfikar Nasir but testimony of PW-1 or any other witness is not sufficient and specific to show that he was in the same truck though it is there in the testimony of PW-1 that said person belonged to Mohalla Hashimpura as identified from the photograph. Again, the source and relevance of said

photograph has not been established.

Name of Hanif is at serial no. 35 in the list provided by complainants and reliance is placed upon the testimonies of PW-1 Zulfikar Nasir but testimony of PW-1 or any other witness is not sufficient and specific to show that he was in the same truck, though, it is there in the testimony of PW-1 that said person belonged to Mohalla Hashimpura as identified from the some photograph.

Name of Mohd. Azim is at serial no. 36 in the list provided by complainants but it is clear that he is the same person whose name is mentioned and discussed at serial no. 29.

Name of Mohd. Kaushar is at serial no. 37 in the list provided by complainants and reliance is placed upon the testimonies of PW-4 but it seems that he is the same person whose name is mentioned and discussed at serial no. 30.

Name of Ashraf is at serial no. 38 in the list provided by complainants and reliance is placed upon the testimonies of PW-1, Zulfikar Nasir and it is clear that person namely Ashraf was shot at Gang Nahar Murad Nagar and thrown in water but there is no proof regarding

his death as the dead body has not been recovered as per record. Further, there are no details about parentage or address of this person.

16.5 All the witnesses relating to recovery of dead bodies have deposed that all the dead bodies were of unknown persons. PW-6 Sukhbir Singh has deposed about recovery of one dead body vide Ex.PW-6/A. PW-7 Ct. Rattan Singh has deposed about recovery of one dead body within jurisdiction of P.S Link Road vide Ex.PW-7/A. PW-8 Ct. Rattan Lal has deposed about recovery of two dead bodies within jurisdiction of P.S Link Road vide Ex.PW-8/A & Ex.PW-8/B. PW-9 HC Mangey Ram, PW-10 HC Suranjan Singh and PW-18 ACP Dayanand have deposed about recovery of two dead bodies within jurisdiction of P.S Kalyan Puri Delhi vide documents Ex.PW-18/A to H. PW-13 Inspr. Virender Singh Yadav has deposed about recovery of one dead body within jurisdiction of P.S Link Road vide Ex.PW-13/A & Ex.PW-13/B. PW-14 SI Ram Lakhan has deposed about recovery of one two dead bodies within jurisdiction of P.S Link Road vide Ex.PW-14/A & Ex.PW-14/B. PW-15 Inspr. Anil has deposed about recovery of one dead body within jurisdiction of P.S

Sahibabad vide Ex.PW-15/A. PW-24 SI Birbal Singh and PW-26 S.D. Mishra have deposed about recovery of one two dead bodies within jurisdiction of P.S Dadri vide Ex.PW-24/A and Ex.PW-26/A. PW-27 SI Sripal Singh has deposed about Panchayatnama of dead bodies within jurisdiction of P.S Link Road vide Ex.PW-27/1 & Ex.PW-6/A. PW-81 SI Bhoj Raj has deposed about inquest proceedings of three dead bodies vide Ex.PW-81/A, B & C. It is clear from the testimonies of above witnesses that all the dead bodies were recovered as dead bodies of unknown persons and the same were not identified at that stage.

16.6 Similarly, all the medical witnesses who conducted the postmortem on different dead bodies have also mentioned in their reports that the dead bodies were of unknown persons. PW-5 Dr. S.N. Aggarwal conducted postmortem on the dead body of one unknown person vide Ex.PW-5/A. PW-16 Dr. Jai Prakash conducted postmortem of two dead bodies of unknown persons vide Ex.PW-16/A & Ex.PW-16/B. PW-17 Dr. S.C. Mishra conducted postmortem on the dead bodies of five unknown person vide Ex.PW-17/A to E. PW-28 Dr. A.K. Sharma conducted

postmortem on the dead bodies of four unknown persons vide Ex.PW-28/A, B, C & D. PW-29 Dr. J. Prasad conducted postmortem on the dead bodies of two unknown persons vide Ex.PW-29/A & Ex.PW-29/B. PW-32 Dr. A.K. Ratti conducted postmortem on the dead body of one unknown person vide Ex.PW-32/A. PW-71 Dr. M.K. Singh conducted postmortem on the dead body of one unknown person vide Ex.PW-71/A. **So, it is clear that all the dead bodies were not identified till the time postmortem was conducted.**

16.7 A combined reading of all the witnesses falling in four different categories as discussed above leads to following conclusions regarding the injured persons and the dead persons:-

Firstly, the persons namely Zulfikar Nashir (PW-1), Mohd. Naeem (PW-2), Mohd. Usman (PW-3), Muzibur Rehman (PW-4) and Babuddin (PW-11) were shot at by the PAC staff during the incident but they survived.

Secondly, the person namely Quamaruddin was present in the

same truck, he was shot at by the PAC officials, he was found by the police in injured condition and he subsequently expired. His death and identification stands duly proved.

Thirdly, the persons namely Mohd. Yasin, Hazi Mustkin and Mohd. Azim were present in the same truck and shot at by the PAC officials but it cannot be said conclusively that they were dead or not as neither their dead bodies could be recovered nor they were otherwise located.

Fourthly, the persons namely Ashraf, Arif, Kaushar Ali and Hansalluddin were also there in the same truck but neither their dead bodies have been recovered nor the complete details about their identification/parentage/address have been established during trial.

Fifthly, some other dead bodies were recovered during investigation but the same were either not identified or it could not be established that they were in the same truck.

Lastly, it is also there in evidence that several persons are missing but there is no proof that they were in the same truck or not.

16.8 Cause of death

As per case of prosecution, several dead bodies of the occupants of the truck in question were recovered from different places as discussed above. It is also case of the prosecution that all these persons were killed by the PAC officials by their officials .303 rifles. Though, some of the dead bodies recovered during investigation have not been properly identified or linked with the alleged incident, the postmortem reports prepared by different medical officers on such dead bodies have established that all the dead persons were having gun shots injuries and the cause of death was 'due to' shock and haemorrhage' resulting from such injuries.

16.9 Weapon of offence

The case of prosecution as mentioned above is that the occupants of the truck were killed by the PAC officials by their official .303 rifle. Seventeen rifles, supposedly seized during investigation, were got examined from FSL alongwith other exhibits i.e one fired bullet, six metal pieces/fired bullet pieces and one mutilated jacket piece.

In this regard if testimonies of PW-1, PW-2, PW-3, PW-4 & PW-11 are seen, it is found that the witnesses have mentioned that the PAC officials were carrying rifles with sangeens. Ten unsealed rifles without Sangeens were shown to PW-1 Zulfikar Nasir, PW-2 Mohd. Naeem & PW-3 Mohd. Usman and after seeing the same, they deposed that there could be similar rifles used in the offence.

PW-38 Sh. Om Parkash Mani Tripathi is the Ballistic expert who proved his three reports in this regard. As per report Ex.PW-38/A, one fired bullet (recovered from one of the dead body) was having characteristics similar to .303 rifle and it seems to have been fired from .303 rifle. As per report Ex.PW-38/B, all the seventeen .303 rifles were tested and compared with fired bullet but no conclusion could be given due to want of sufficient characteristics marks. As per report Ex.PW-38/D, six metal pieces/fired bullet pieces were examined but no conclusion could be given.

PW-39 Sh. Roop Singh is also a Ballistic expert and he has given his report Ex.PW-39/A to the effect that the mutilated jacked piece could not be linked positively with any of the seventeen .303 rifles for

want of sufficient characteristics marks.

Further, although, seventeen rifles have been sent to FSL for examination but there is no record or evidence to show under what circumstances the said rifles were seized and from whom they were seized. It is not clear as to which rifle was recovered from which accused or from which office or store. No independent witness has been examined to prove the seizure of weapon or ammunition. No official record of issuance of arms and ammunition has been proved on record despite the fact that the offenders are members of armed forces. There is nothing on record to show that any of the above mentioned seventeen rifles were actually issued to the accused persons or they were having possession over the same on the relevant date and time. Moreover, the rifles have been produced in unsealed conditions during trial. Further so many fires have been allegedly made but not even a single empty cartridge has been recovered or proved on record. No subsequent opinion has been taken from the doctors concerned regarding the weapon of offence.

The only FSL opinion that one fired bullet was having characteristics similar to .303 rifle is not conclusive to say that the weapon

of offence is the recovered rifle/rifles.

17 Facts in issue no. 8 to 11

- **That accused Leeladhar sustained injuries during indiscriminate firing in the truck taken place at Gang Nahar Murad Nagar.**
- **That the truck which was used in the incident was of 41st Battalion PAC with registration no. URU-1493.**
- **That the said truck had come from Pilokhadi Chowki and was driven by accused Mokham Singh.**
- **That the accused persons facing trial led by the Platoon Commander accused Surender Pal Singh (since deceased), were the PAC officials present on above mentioned truck who committed the alleged crime.**

The case of the prosecution is that one of the accused namely Leela Dhar got injured during the firing inside the truck and the truck of PAC which was used in the incident was of the 41st Battalion of PAC with registration no. URU-1493, which had come from Pilokhdi Chowki and

was driven by accused Mokam Singh. Further that the PAC officials who were present in the said truck and who committed the offence were officials of 'C' Company of 41st Battalion and they were led by Platoon Commander accused Surender Pal Singh (since expired). The testimonies of following witnesses are relevant on these issues.

17.1 IDENTITY OF THE TRUCK INVOLVED IN INCIDENT
BY ITS REGISTRATION NUMBER.

Although, it has already been observed during earlier discussion that the truck concerned was of the PAC but the identity of the truck by its registration number has not been so far established. None of the witnesses who claimed to be eye witnesses, have given the registration number of the truck which was involved in the incident. The prosecution has examined some other witnesses to establish that the registration number of the concerned truck was URU-1493.

PW-34 Ct. Ishwar Singh of CBCID, PW-35 Ct. Rameshwar of CBCID, PW-40 Inspr. Rangnath Shukla of CBCID and PW41 Inspr. Udaivir of CBCID are the witnesses who have measured the route which

was allegedly taken by the truck in question at the time of commission of offence i.e from Meerut to Gang Nahar to Makan Pur to Meerut and it is reported that total distance was found to 160 KM and memo Ex.PW-40/A was prepared by them.

PW-59 Dr. Naseem Zaidi the District Magistrate, PW-74 Sh. V.N. Rai, the SP Ghaziabad, PW-75 Sh. Kamlander Prasad Addl. S.P and PW-76 Sh. Yashpal Tanwar, Addl. S.P have deposed to the effect that on the basis of interaction with the officers present at 41st Battalion PAC they came to know that Platoon Commander Surenderpal Singh had come from Meerut with a PAC truck and had left the Battalion for Meerut . On the basis of this information the motor transport section of the 41st Battalion was inspected and the ground there was found wet and it appeared that a truck had been washed there. It was also noticed that there was a pond near the M.T Section and it had water and some reddish colour on the basis of which they concluded that some vehicle had been washed.

PW-42 Inspr. Badan Singh Yadav of CBCID has taken the photographs of the truck no. URU-1493. PW-70 Sh. Ram Chand Giri has produced the running register of vehicle no. URU-1493 of relevant period.

PW-82 Mahesh Narain Tiwari is the expert from FSL Lucknow who has not proved any report and simply deposed that he inspected a PAC truck in the police station at Meerut but he did not find anything in the said truck which could concern him. PW-38 Sh. Om Parkash Mani Tripathi has also examined the truck no. URU-1493 and he gave his report Ex.PW-38/C in which it is mentioned alongwith other facts that a 6x6 inch metal patch was welded at the back side of the truck (peeche ke bhag main painde par) and there was also a depression dent which was possible by striking of a projectile.

On the basis of above mentioned evidence, it is made out that there is no direct evidence to connect the truck no. URU-1493 with the incident and the prosecution has relied upon the route measurement, inspection of M&T section 41st Battalion and FSL result Ex.PW-38/C to prove that it was truck no. URU-1493 which was used by the PAC officials in commission of alleged offence. If the entire evidence brought on record by prosecution during trial is considered, it revealed that there is no direct evidence in this regard and the prosecution has relied upon certain circumstances to reach at a conclusion that it was truck no.

URU-1493 used in the crime. So far as witnesses relating to inspection of the M&T section of 41st Battalion are concerned, they have acted upon the information given by someone and they only concluded on the basis of wet earth and reddish water present at the spot that some vehicle has been washed there. There is nothing on record to show that it was truck no. URU-1493 which was taken in the M&T section or washed there. Further it is not clear what was that reddish substance seen at the spot by the witnesses. There is no seizure of that reddish substance nor there is any chemical examination of the same to suggest that there was blood mixed in the water due to washing of truck. Further if so many persons were shot at inside the said truck during the indiscriminate firing, then presence of blood should be there for a long time even after washing of the truck. No blood has been found or lifted from truck no. URU-1493. So many senior officers have inspected the spot but no concrete evidence has been collected by them or proved during trial. Conclusions cannot be drawn on the basis of assumptions and presumptions conceived by the investigating agency without any supporting material.

Similarly, the alleged measurement of route taken by the

truck involved in incident is of no consequences to connect the truck no. URU-1493 with the offence. It could have been of some help if other record regarding deployment and running register of all the vehicles was examined and proved to show any unusual movement of the truck concerned.

Further, the report of FSL Ex.PW-38/C is also not of much help to the prosecution as the truck has been examined by PW-38 on 03.01.1988 i.e much after the alleged incident and possibility of some other factors necessitating the fixing of patch on the body of truck cannot be ruled out. Proximity of examination is always a key to correctness but the same is missing in the present case. Also, as per case of prosecution indiscriminate firing was opened by PAC officials inside the truck at Gang Nahar and in that situation bullet marks would have been there at different places inside the truck but no such marks except the one alleged patch of 6x6 inches, has been found in the body of truck during examination by the expert/experts.

Apart from above circumstances there is no other reliable material to show that it was truck no. URU-1493 which was used by the

culprits during commission of offence. No chain has been established to reach at a definite conclusion about connection between the offence and above mentioned truck. Admittedly, riots were going on in Meerut City and several vehicles were deployed. The prosecution had the obligation to bring on record some reliable and conclusive evidence to show that truck no. URU-1493 was the truck which was used by the culprits.

17.2 IDENTITY OF ACCUSED PERSONS AS CULPRITS

It is contended on behalf of the prosecution that the accused persons facing trial led by Subedar Surenderpal Singh were the PAC officials who have committed the offence. Apart from other evidence the prosecution has also relied upon the medical documents of accused Leela Dhar and list of officials of PAC wherein names of all the accused persons are mentioned and accused Mohkam Singh has been mentioned as driver of above mentioned truck. The testimonies of following witnesses are relevant for considering the issue of identity of accused persons as culprits.

17.3 Eye-witnesses account on identity of culprits

PW-1 Zulfikar Nasir, PW-2 Mohd. Naeem, PW-3 Mohd. Usman, PW-4 Muzibur Rehman and PW-11 Babuddin are the eye-witnesses who have survived the incident. All these witnesses, when examined in court have not identified any of the accused persons as the culprits. In absence of identification of culprits by the eye-witnesses, the burden was on the prosecution to establish the identity of culprits with the help of positive circumstantial evidence. So far as facts deposed by these witnesses are concerned, **PW-1** has stated that there were 18-20 officials of PAC within the truck at that time. Further that PAC officials had surrounded them in the truck in a manner so that they were not visible to any outsider. Further that all PAC officials were carrying rifles with 'Sangeen' at their tops. Further that the said PAC officials were wearing 'Khaki' uniforms. He again said, it was a 'Khaki pili' type uniforms. **PW-2** has stated that said PAC officials were carrying official rifles with them. Further that they were also wearing black iron helmets on their heads. Further that some of the rifles were carrying 'sangeens' at their tops. Further that the truck was then taken to a petrol pump near Mawana bus stand via Nanak Chand College and 5 or 6 PAC Jawans then boarded the

truck at that point and they took their seats in the cabin of the truck. Further that they all were in 'Peeli' uniform. **PW-3** has stated that that they were made to sit on the floor of the truck where 15-16 PAC Jawans with helmets on their head and rifles in their hands, stood around them inside the truck and asked them not to raise their heads. **PW-4** has stated that 14-15 Jawans of PAC also boarded the said truck at that time. Further that PAC jawans were wearing yellow coloured uniform and were carrying rifles with sangeens at their tops and were helmets. **PW-11** has stated that 14 or 15 officials of PAC had also boarded that truck and their dress was of light yellow colour. Further that they were wearing helmets and they were having rifles with bayonets (Sangeen). It is explained by the witnesses that it was dark at the time of incident. The explanation given by these witnesses can otherwise also be accepted as clearly they were in a horrified state of mind and the culprits were in officials uniforms and it is not easy for anyone to identify the culprits.

17.4 Other witnesses examined by prosecution to connect the

accused persons with the offence.

Apart from testimony of above mentioned witnesses, the prosecution has examined some other witnesses to connect the accused persons, who are facing trial, with the alleged offence. These other witnesses include PW-37 Dr. S.K. Sekri Senior Scientific Officer who conducted Polygraphy test of eleven suspects and submitted his report Ex.PW-37/A. As per report Ex.PW-37/A, he conducted polygraphic test of 11 persons out of which persons namely Surender Pal Singh, Leela Dhar, Om Parkash and Mokham Singh were impleaded as accused in this case. Accused Surender Pal Singh and Om Parkash have already expired and proceedings against them have already abated. So far as accused Leela Dhar and Mokham Singh are concerned, the report Ex.PW-37/A has not given conclusive observations. In part A of report qua accused Leela Dhar it is mentioned that according to test and analysis the answer given by him is “perhaps incorrect”. The part B observed that the answers are “perhaps correct” while part C mentioned that no opinion could be furnished on the question mentioned in that part. Similarly the report qua accused Mokham Singh is also in two parts. Part A mentioned that the answers

given by accused Mokham Singh in that part are “Perhaps incorrect” while part B mentioned that no opinion could be furnished qua the answers mentioned in that part. It is clear that the report of polygraphy expert is not conclusive and otherwise also such reports have no evidentiary value of their own and same are not substantive piece of evidence.

Further PW-89 Sh. Sube Singh is retired DSP and he remained in 41st Battalion PAC from April 1984 to 31.12.1987. He has deposed about the hierarchy of PAC staff and that he was posted as Company Commander of B company in 41st Battalion PAC.

PW-90 HC Niranjan Lal Gautam has remain posted in different battalions of PAC on different times and he has deposed that the transfer record in respect of officers of PAC is maintained in respective Units.

PW-91 Ct. Maya Prakash remained posted in 41st Bn. PAC from 1981 till 2002. He deposed that in the year 1987 the 41st Bn. was posted in Meerut and at that time, he was in C Company of the Battalion. Further that Sh. Ram Rattan Ram was the Company Commander and he

tendered the document Ex.PW-91/A i.e list of the officials of C Company 41st Battalion PAC.

17.5 Additional Evidence to show involvement of accused Leela Dhar in the incident.

Apart from the report of polygraphic test given by PW-37, the prosecution has also relied upon the testimonies of PW-43 Dr. Subodh Tyagi and PW-69 Sh. Mam Chand, Pharmacist of Sardar Vallab Bhai Patel Hospital, Meerut. It is case of prosecution that accused Leela Dhar sustained bullet injury in his eye during the indiscriminate firing occurred inside the truck at Gang Nahar Murad Nagar and that he was subsequently examined by PW-43 at the above mentioned hospital. PW-43 has proved the casualty admission register Ex.PW-43/A and injury report Ex.PW-43/B showing that accused Leela Dhar was treated by him. As per medical record, the said accused was brought to hospital on 23.05.1987 by Subedar S.P. Singh and he had sustained an injury caused by a firearm which was half a day old. It is argued on behalf of State that as per list Ex.PW-91/A, the accused Leela Dhar was posted in C Company

PAC, he was taken to hospital by Platoon Commander Surnder Pal Singh who is mentioned as Subedar S.P. Singh in Ex.PW-43/B and that the bullet injury mentioned in medical report was sustained during indiscriminate firing inside the truck. It is submitted that this fact proves that it was the C company of PAC which was involved in the incident and accused Leela Dhar was one of the culprit. On the other hand, accused Leela Dhar has taken a stand that the said injury was caused by striking of a pointed glass particle against Cornea during the riots duty as two communities were quarreling and throwing petrol bombs on each other. It is also contended that PW-43 is a general Medical officer and not an eye-specialist and no report of an eye-specialist or eye surgeon has been brought on record despite the fact the patient was referred to eye surgeon by PW-43 at the time of examination. If the testimony of PW-43 is analyzed in light of the contentions made on behalf of accused, the objections raised by ld. defense counsel are found to be forceful. Admittedly, PW-43 is not an eye expert. The patient was referred to eye-surgeon but no report of eye-surgeon has been produced. No nature of fire arm has been mentioned in the report of PW-43 and as per opinion of

PW-43 the injury could have been caused by any fire arm. It is also admitted by PW-43 during cross-examination that injury no. 1 could have been possible by way of pellet hitting against the cornea and such pellet could have been result of an accidental fire. It is also admitted by PW-43 that as per his report there was no tattooing, blackening or charring round the wound. Further it is admitted that the injury mentioned in the report was possible by the striking of any pointed glass particle against cornea. The facts suggested by PW-43 are in consonance with the explanation given by accused Leela Dhar during cross-examination of PW-43 and also during his statement u/s 313 Cr.P.C that the said injury was caused by striking of a pellet or pointed glass particle against cornea during the riots duty as two communities were quarreling and throwing petrol bombs on each other. It can also not be forgotten that admittedly riots were going on in Meerut City at the relevant time. It is well settled law that two views are possible on a particular fact then the one favoring the accused is to be accepted by the court. In such circumstances, it can be said that the medical record of accused Leela Dhar is not a clear and conclusive circumstance to connect him with the alleged incident, particularly when

none of the witnesses have deposed about his presence either in Mohalla Hashimpura or inside the truck concerned. No eye-witness has said that one of the PAC official was also injured by gun shot during the indiscriminate firing taken place inside the truck at Gang Nahar, as claimed by the prosecution. Moreover, there is no disclosure statement of this accused or any recoveries effected from him have been produced on record during trial. Simply because he is member of 41st Battalion PAC and suffered an injury in eye, it cannot be presumed that he was in the said truck or that he sustained injury during the indiscriminate firing inside the truck at Gang Nahar Murad Nagar.

17.6 Additional evidence to show involvement of accused

Mohkam Singh in the incident.

It is case of prosecution that the concerned truck had come from Pilokhadi Chowki and was being driven by accused Mohkam Singh. Apart from the report of polygraphic test the prosecution has relied upon the testimony of PW-91 Ct. Maya Prakash who has produced the list of officials posted with C Company 41st Battalion PAC at the time of

incident i.e Ex.PW-91/A. Name of accused Mokham Singh is mentioned at serial no. 89 in the said list as driver of truck no. URU-1493. The claim of prosecution is challenged by the defense counsel on two accounts, firstly that the truck no. URU-1493 was not involved in the incident and secondly that accused Mokham Singh was not driving the said vehicle at the relevant time.

It is clear from the record that none of the witnesses has identified accused Mohkam Singh as driver of the concerned truck or as one of the culprits. So far as involvement of truck no. URU-1493 is concerned, it has already been discussed and observed in the preceding paragraphs that there is no reliable and conclusive evidence to show the involvement of said truck in the incident. So far as the question of accused Mohkam Singh being the driver of truck no. URU-1493 is concerned, it cannot be disputed that his name is mentioned in Ex.PW-91/A as driver of said truck but at the same time the testimony of PW-70 Ram Chand Giri is also to be taken into consideration. Said witness has produced the running register of truck no. URU-1493 and proved the relevant entries vide Ex.PW-70/A. Name of the driver or

accused Mohkam Singh is no where mentioned in the running register of the truck and as per facts deposed by PW-70 in his examination-in-chief, in the year 1987 Istkar Ahmed was the driver who had taken the said vehicle to Meerut, some altercation took place between the driver and Sepoys of PAC and the Quarter master Sh. Sukhbir Singh Sirohi returned the vehicle alongwith driver and asked for another vehicle and thereafter Mohkam Singh had taken the said vehicle. The facts deposed by PW-70 are in some contradictions with the facts deposed by PW-91. It has no where been clarified as to how name of Mohkam Singh has come in the list Ex.PW-91/A if Istkar Ahmed was the driver in the year 1987 as stated by PW-70. There is no record to show under what circumstances, the driver was changed and the concerned person namely S.S. Sirohi mentioned in the statement of PW-70 has not been examined to clarify the circumstances. In absence of any corroborative evidence the contents of Ex.PW-91/A cannot be taken as gospel truth and the said document cannot be made basis to connect the accused Mohkam Singh with incident in question. There is no conclusive evidence to show that accused Mohkam Singh was the driver of concerned truck or otherwise present in the said

truck at the time of commission of offence.

Ld. Counsel for victim has also referred to the testimony of DW-1 Gulesh Ali and submitted that although, said witness has been examined by the accused persons, his testimony strengthens the case of the prosecution. On the other hand, ld. Defense counsels have submitted that testimony of DW-1 favours the four accused persons who have called him, to some extent but the same is not at all helpful to the prosecution. If testimony of DW-1 Gulesh Ali is considered in light of submissions made in this regard, it is found that the facts deposed by this witness are very general in nature and the same do not establish any fact at all on record. His testimony is not helpful either to any of the accused persons or to the prosecution for want of specification.

17.7 Evidence to show involvement of other accused persons.

Apart from document Ex.PW-91/A, virtually there is no other evidence direct or indirect against the remaining accused persons to connect them with the alleged incident. The relevance of Ex.PW-91/A is being discussed in coming paragraphs.

Conclusions on facts in issue no. 8, 9, 10 & 11.

17.8 From the material available on record the identity of the actual culprits has not been established and the material is not sufficient to connect the accused persons facing trial with the alleged offence. None of the witnesses have identified anyone of the accused as actual culprit. Apart from absence of direct evidence against the accused persons, the circumstantial evidence produced by prosecution is also not sufficient to establish their identity as culprit. As per the documents attached with charge-sheet, though not proved by prosecution as per law, various companies of 41st Battalion were deployed in the city of Meerut on and around the date of incident and these documents suggest that there were about 30 (thirty) companies and two platoons of PAC, deployed there, making the number of total PAC personnels posted in Meerut, in several hundreds. It is not clear from the record as to on what basis the names of the accused persons have been short listed. Name of Subedar Surender Pal Singh has come on record as Platoon Commander but there is no other document or evidence to clarify the basis for including the other accused persons in the present case. Accused Surender Pal Singh has already

expired and as per list Ex.PW-91/A there are names of 89 officials of 'C' Company of 41st Battalion of PAC in the same. It is not clear as to on what basis names of present 19 accused persons have been selected for prosecution. Accused persons were arrested after several years of the incident but the basis for such arrest has not been explained during trial. There are no disclosure statements or recoveries effected from any of the accused persons. No weapon of offence has been connected with any of the accused persons. No record of arms and ammunition has been proved during trial despite the fact that the accused persons are members of armed force where each and every arms and ammunition is issued against record. No record qua exact place of posting of different companies of 41st Battalion PAC including the 'C' Company has been brought on record or proved as per law. Further, no witness from army or local police, who were present and participating in the search operation with PAC, have been examined to explain the circumstances/true facts. There is no evidence that any of the accused persons were actually present in or Incharge of the truck in question. There is no reliable evidence except the above mentioned few unproved circumstances, against the accused

persons who are facing trial.

If the entire evidence led by prosecution on above mentioned four fact in issue i.e 8, 9, 10 & 11 is weighed in light of above discussion, it is found that it has not been proved to any extent that truck no. URU-1493 pertaining to 41st Battalion PAC was the truck which was used in the incident. Further it is also not established that the said truck had come from Pilokhadi Chowki and was being driven by accused Mokham Singh. The circumstances relating to treatment of accused Leeladhar are also not conclusive to connect him with the offence. It is not established beyond doubts that the accused persons facing trial were the PAC officials, who actually committed the offence.

18 **Final discussion**

Since there is lack of direct evidence against the accused persons, the case in hand has virtually converted into a case of circumstantial evidence against the accused persons facing trial despite the fact that there are several eye witnesses to the whole incident. Most of the basic facts except the identity of the culprits have been duly proved and

established on record as discussed above but the evidence required to connect the accused persons with the crime is actually missing.

In **Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 SC 1622**, while dealing with a case relating to circumstantial evidence, the Hon'ble Supreme Court has laid down following conditions precedent before conviction could be based on circumstantial evidence:-

Firstly, the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

Secondly, the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

Thirdly, the circumstances should be of a conclusive nature and tendency;

Fourthly, they should exclude every possible hypothesis except the one to be proved; and

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

It has been argued on behalf of the state as well as victims that the victims were subjected to brutal, unconscionable and unprovoked violence by the accused persons who belonged to C Company of 41st Battalion PAC posted in Meerut and therefore it is a case for custodial torture and deaths. Further that the rules pertaining to appreciation of evidence in such like cases is different from the rules of appreciation of evidence in other criminal cases. In this regard, reference has been made to the judgments of Hon'ble Supreme Court in **Munsi Singh Gautam &**

Ors vs. State of M.P, 2005 (9) SCC 631 wherein it has been observed that in cases of police torture or custodial death direct ocular evidence of the complicity of the police personnels is rarely available and that this reality must be taken into accounts by the court when appreciating the evidence and that the courts are required to have a change in their out look approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed”.

The Id. Counsel has also relied upon the judgments of Hon'ble Supreme Court in **State of M.P vs. Shyam Sunder Trivedi (1995) 4 SCC 262** wherein it has been observed that generally speaking it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Further that bound as they are by the ties of brotherhood, it is not unknown that the police personnels prefer to remain silent and more often than not even pervert the truth to save their

colleagues. Further that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubts, by the prosecution, ignoring the ground realities the fact situations and the peculiar circumstances of a given case often result in miscarriage of justice and make the justice delivery system a suspect.

The Id. Counsel has also relied upon Raghbir Singh vs. State of Haryana (1980) 3 SCC 80, Dalip Singh vs. State of Haryana (1993) 3 Suppl. SCC 336 and State of U.P vs. Ram Sagar Yadav (1986) 1 SCC 552 on this aspect.

On the other hand, Id. Defense counsels have rebutted the arguments of the Id. Spl. PP and Id. Counsel for victims and it is submitted that the judgments relied upon by Id. Spl. PP and Id. Counsel for victims are not applicable in the facts of the present case as it is a case of actually no evidence against the accused persons.

If the facts of the present case are analyzed in light of the judgments relating to appreciation of evidence in custodial torture and death cases, relied upon by Ld. Spl. PP and Id. Counsel for victims it becomes clear that the said judgments are practically applicable qua some

of the facts and circumstances and not qua the remaining. The benefit of the principle of liberal interpretation as laid down in the above mentioned judgments has been given to prosecution on the issue of the alleged contradictions/improvements in the statement of the eye-witnesses in respect of facts no. 1 to 6 mentioned above relating to search, arrest, abduction and killing of the persons belonging to Mohalla Hashimpura by the officials of PAC. Benefit of liberal interpretation has also been given to some extent on the issue of identity of injured/dead persons/victims and cause of death under fact in issue no. 7 as mentioned above. But in my opinion, such liberal interpretation cannot be extended on remaining facts i.e facts relating to identity of weapon of offence (issue no 7), identity of truck by its registration number and identity of the accused persons(issues no. 8 to 11). In-fact, the said judgments, without disputing the importance of the rule laid down therein, are found to be distinguishable on facts on some material aspects. In those cases the identity of the accused/culprit/responsible officials was not in dispute and only the facts and the evidence regarding ingredients of offence were in question. On the other hand, in the case in hand, the basic facts and ingredients of

offences are established but the identity of culprits is in question. It cannot be forgotten that the case in hand is not a small case having minor punishment. The punishment prescribed for the alleged offence is not less than life imprisonment or death penalty and in that eventuality the conviction cannot be based on weak evidence by ignoring the basic principals of appreciation of evidence simply because the case is of custodial deaths.

It is also argued on behalf of the victims that once it is established that the accused persons had abducted the victims from Mohalla Hashimpura, the burden of proving as to what happened to those abducted men, shifts to accused persons by virtue of statutory requirement u/s 106 of the Indian Evidence Act as the said facts are within special knowledge of accused alone but they have not led any evidence to disprove the allegations against them. In this regard, a reference is made to the judgments of Hon'ble Supreme in **State of West Bengal vs. Mir Mohd. Omar & Ors. (2000) 8 SCC 382** and **State of Rajasthan vs. Kansu Ram (2006) 12 SCC 254**. The above contention made on behalf of victims is not found to be forceful as there is no evidence to show that the

abducted persons were in custody/control of the accused persons facing trial and therefore there does not arise any question of shifting of burden of proof on the accused persons.

Similarly, it is also argued that this is a case where police officers investigated the culpable act of violence of fellow police officers and it comes as no surprise that linked as they are by virtue of their professional and personal ties, the investigating agency conducted a shoddy investigation. Further that such shoddy investigation cannot be used to benefit the accused, particularly, since the crime in question was committed by those entrusted with the task of protecting citizens. In this regard, reliance is placed upon the judgments of Hon'ble Supreme Court in **Gajoo vs. State of Uttrakhand (2012) 9 SCC 532** and **Dayal Singh & Ors. vs. State of Uttranchal (2012) 8 SCC 263**. After careful perusal of record, the present contention is found to be not of much help to the victims as the defects in the investigation are of such a nature which go to the very root of the prosecution case and if ignored the same can cause a serious prejudice to the accused persons and such ignorance may result into miscarriage of justice.

It is well settled law that **fouler the crime is, the clearer and plainer ought the proof to be.** In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof. (**ref. Balwinder Singh vs. State of Punjab in AIR 1996 SC 607**).

Similarly in **Hanumant vs. State of M.P 1953 CrLJ 129** the Hon'ble Supreme Court has observed that in dealing with circumstantial evidence, rules specially applicable to such evidence must be kept in mind. In such cases, there is always the danger that conjecture or suspicion may take the place of legal proof. It is also observed in the same judgment that there must be a chain of evidence so complete as not to leave any reasonable grounds for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities the act must have been done by the accused.

On the basis of discussions under different facts in issue

from serial no. 1 to 11 mentioned above, it has to be concluded that it has been duly proved and established on record that several hundred persons belonging to different Mohallas of Meerut city were apprehended or arrested by PAC and other forces from Mohalla Hashimpura on 22.05.1987 out of which about 40-45 persons belonging to Mohalla Hashimpura were abducted in a yellow colour PAC truck by the PAC officials. It is also proved that those abducted persons were subsequently shot at and thrown into the waters of Gang Nahar Murad Nagar and Hindon River Ghaziabad. It is further established that some of them survived, some expired and some are still missing. But it has not been proved beyond reasonable doubts that the accused persons facing trial are the PAC officials who abducted and killed the people from Mohalla Hashimpura or that the registration number of the truck was URU-1493 belonging to 41st Battalion PAC.

All the circumstances relied upon by the prosecution to connect the truck no. URU-1493 and the accused persons are capable of raising some suspicion but the same have not been proved conclusively beyond reasonable doubts. The statements of the witnesses relating to

identity of the truck being with registration no. URU-1493 and identity of the accused persons are non conclusive and do not inspire confidence. Virtually, there is no clinching evidence on record without infirmities on the circumstance relating to identity of the truck and accused persons. The accused persons can not be convicted on the basis of scanty, unreliable and faulty investigation which has gaps and holes. Not a single circumstance relied upon by the prosecution inspire confidence to establish the guilt of the accused persons.

In view of above discussion, I am of the view that the evidence adduced by the prosecution is not sufficient to record the guilt for the offences the accused persons have been charged with. Various incriminating circumstances relied upon by the prosecution are not sufficient to draw an inference of guilt of accused persons and the chain of circumstances has not been cogently or firmly established and the circumstances have no definite tendency to unerringly point toward the guilt of the accused.

It is very painful to observe that several innocent persons have been traumatized and their lives have been taken by the State agency

but the investigating agency as well as the prosecution have failed to bring on record the reliable material to establish the identity of culprits. The accused persons facing trial are entitled to benefit of doubts existing in the case of prosecution.

Hence, in these circumstances, all the accused persons namely Suresh Chand Sharma, Niranjana Lal, Kamal Singh, Rambir Singh, Sami Ullah, Mahesh Prasad, Jaipal Singh, Ram Dhyam, Sarwan Kumar, Leela Dhar, Hambir Singh, Kunwar Pal Singh, Budha Singh, Budhi Singh, Mohkam Singh and Basant Vallabh are acquitted of all the charges framed against them. All accused persons are on bail in this case, their bail bonds will remain in force for a period of six months in terms of section 437A Cr.P.C. Case property if any be released to its rightful owners. Original documents, if any be released in favour of rightful owner after cancellation of endorsement, if any.

File be consigned to Record Room.

**ANNOUNCED IN THE OPEN COURT
TODAY i.e.ON 21st March 2015**

**(SANJAY JINDAL)
ASJ:04:WEST:THC:DELHI
21.03.2015**