

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr. Appeal No.16/2012 & Cr.M.A. No.17/2012;
Cr. Appeal No.17/2012 & Cr.M.A. Nos.18/2012 & 97/2012;
c/w
Confirm Ref. No. 09/2012

Date of Decision: 21.10.2014

Cr. Appeal No.16/2012

Satpal Singh.

Vs.

State and others.

Cr. Appeal No.17/2012

Sewak Singh

Vs.

State and others.

Coram:

Hon'ble Mr. Justice Virender Singh-Judge

Hon'ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For the Appellant (s) :	Mr. Sunil Sethi, Sr. Advocate with Mr. Ravi Abrol, Mr. Mohsin Bhat & Mr. Aijaz Mehrab, Advocates.
For the Respondent(s) :	Mr. Gagan Basotra, Sr. AAG & Mr. Monish Chopra, GA for State. Mr. L.K.Sharma, Advocate for the complainant.

Whether approved for reporting in Law Journal/Digest? Yes/No

Whether approved for reporting in Media/Newspaper? Yes/No

Per Bansi Lal Bhat J.

1. These two appeals arise out of a common judgment of conviction dated 02.02.2012 recorded by learned 2nd Additional Sessions Judge, Jammu on File No.74 Sessions titled ***“State Vs. Sewak Singh and ors.”*** by virtue whereof appellants – Satpal Singh and Sewak Singh (hereinafter to be referred to as the ‘accused’) stand convicted under Sections 302/120-B and 201 RPC. In terms of order of sentence formulated on 06.02.2012, the learned Trial Court slapped sentence of imprisonment for life and a fine of Rs.4,000/- upon the convicts for

commission of offence under Section 302/120-B RPC and in default, to further undergo simple imprisonment for six months. They were also sentenced to undergo simple imprisonment for two years and fine of Rs.2,000/- for commission of offence under Section 201 RPC. In default of payment of fine, they were directed to suffer further simple imprisonment for three months. Both substantive sentences were directed to run concurrently. The judgment of conviction and order of sentence have been assailed by the two convicts/accused by filing separate appeals. Reference made by the learned Trial Court in terms of provisions of Section 374 Cr.PC is taken up together with the appeals which have been clubbed for hearing.

2. The facts leading to prosecution of accused along with one Jagjit Singh, who was initially declared an absconder and against whom proceedings under Section 512 Cr.PC were set in motion died during the course of trial. Facts leading to prosecution of accused, as reflected in the charge-sheet are that on 13.10.1998 at 10:05 PM, accused-Sewak Singh, Incharge SP (Operations) – Poonch based at Surankote lodged a written report with Police Station Surankote stating therein that PSI – Ajay Gupta along with driver Mohammad Akram, Constable-Satpal Singh *alias* TT and Abdul Razaq – bodyguards, while returning from patrolling duty/naka, were ambushed by anti-national elements near TCP crossing in which PSI – Ajay Gupta received bullet

injury on his head. It was stated in the written report that the bodyguard had retaliated the fire and PSI - Ajay Gupta had succumbed to injuries in the hospital. This led to registration of case under FIR No.172/98 for offence under Sections 302/120-B, 121, 122 RPC, 7/25/26/27 Arms Act and Section 3 of EAO (Enemy Agents Ordinance) by Inspector – Jagjit Singh posted as SHO-Surankote at that time. Investigation was embarked upon. The blood soaked jacket of driver Mohammad Akram, SLR of accused Satpal Singh, AK-47 Rifle of Constable – Abdul Razaq and Gypsy No.8692/2E were seized. Later the investigation was taken over by Inspector – VP Samyal on 27.10.1998 when SHO – Jagjit Singh proceeded on leave. Subsequently investigation was transferred to Crime Branch, Jammu. The investigation revealed that accused Sewak Singh and PSI - Ajay Gupta (hereinafter to be referred to as the ‘deceased’) had a scuffle in the month of August, 1998 at Surankote. Accused Sewak Singh had slapped the deceased who retaliated and in the process, turban of accused Sewak Singh fell on the ground. Both officers threatened each other and accused Sewak Singh declared that **“time will show who will kill whom?”** The scuffle created inimical relations between the two. On 13.10.1998 in the evening, there was a party in the house of accused Sewak Singh in which CO (Commanding Officer) and 2 IC of 27 RR, a local contractor Abdul Khaliq besides the

deceased participated. The Army officers and the contractor left after sometime. However, the contractor returned shortly thereafter with more alcohol and shared drinks with the deceased. Later the contractor requested accused Sewak Singh for arranging transport for dropping him at his residence. Accused Sewak Singh asked the deceased, driver Mohammad Akram, Constable Abdul Razaq and accused Satpal Singh to drop contractor Abdul Khaliq at his residence. The investigation further revealed that while the contractor and others were boarding the official gypsy, accused Sewak Singh whispered something in the ears of accused Satpal Singh. Besides he checked the vehicle three times to ensure that all had boarded the gypsy. Contractor Abdul Khaliq and his PSO Shakeel Ahmed were dropped at the residence of Contractor. While the gypsy was returning to Police Station, accused Satpal Singh was seated on the rear seat just behind the deceased. While approaching TCP crossing a rifle shot was heard inside the gypsy. The driver looked behind and found the door of gypsy closed. He saw the SLR of accused Satpal Singh in firing position aimed at the deceased who had fallen in his lap. Mohammad Akram told the accused Satpal Singh that he had fired the shot but the accused Satpal Singh claimed that the fire had come from outside. The driver shouted that accused Satpal Singh *alias* TT had killed the deceased. The vehicle was stopped and accused Satpal Singh jumped out of the

vehicle and fired two more shots in the air. He was overpowered by Abdul Razaq and the members of patrolling party of 83 Bn. of CRPF. His weapon was seized. Constable Abdul Razaq, being armed with his AK-47 Rifle, rushed to the residence of accused Sewak Singh with the seized SLR and informed him that accused Satpal Singh *alias* TT had killed Ajay Gupta. Accused Sewak Singh frowned upon him and told him to shut his mouth. Abdul Razaq handed over the seized SLR to accused Sewak Singh. Later the seized SLR was again found in possession of accused Satpal Singh at the time body of deceased was lying in hospital. The Army Officers had checked the AK-47 Rifle of Abdul Razaq and SLR of Satpal Singh and found three rounds missing from the SLR of accused Satpal Singh. Investigation further revealed that on the directions of accused Sewak Singh, uniform of the deceased was obtained from his residence and the civil dress donned by the deceased was replaced with uniform though his T-shirt could not be removed. The blood stained pent removed from the body of deceased was consigned to flames by accused Satpal Singh in hospital premises. Blood stained clothes of deceased were burnt on instructions from accused Sewak Singh and the gypsy involved in the occurrence was washed. Moreover, a false FIR was registered and false report entered in DD of SOG. It was further revealed that accused Sewak Singh persuaded the

eye witnesses to give false evidence during inquiry. It was further revealed that prior to occurrence accused Sewak Singh had told accused Satpal Singh in his bedroom that the deceased be eliminated by enacting a false encounter. ASI-Mohammad Niaz Manhas, Duty Officer in Police Station, Surankote reported the incident to SHO Jagjit Singh who informed SP Poonch that Constable Satpal Singh had killed PSI Ajay Gupta at TCP crossing. This fact was reflected by the SHO in the inquest form and CD File. However, he did not seize the blood splashed gypsy used in the crime immediately. SHO – Jagjit Singh entertained a false FIR prepared on dictation of accused Sewak Singh. The investigation culminated in filing of charge-sheet for offence under Sections 302, 201, 218 and 109 read with 120-B of RPC against accused Sewak Singh, offence under Sections 302, 201 and 120-B RPC against accused Satpal Singh and offence under Sections 218, 201 and 120-B RPC against accused Jagjit Singh.

3. Accused Sewak Singh and Satpal Singh pleaded not guilty to charges framed against them for offence under Sections 302, 120-B and 201 of RPC. They claimed to be tried. Prosecution was accordingly directed to adduce evidence at the trial, resume whereof is reproduced hereunder from the impugned judgment as some portion of the original record of evidence is torn at the bottom or is partly illegible.

4. **PROSECUTION EVIDENCE**

PW Sunita Gupta: She deposed that she married with the deceased four years ago while he was serving in SOG at Surankote. On 02.10.1998 at 7.30 P.M, she reached Surankote accompanying her brother-in-law, namely Vikas Gupta, from Jammu and at that time an operation was going on. She further stated that her husband at the relevant time was on operation duty and came back at 8.30 P.M. It was told by the deceased to her that he had killed two militants and in this regard a party of officers was being organized by accused no.1, namely Sewak Singh. She and her brother-in-law, namely Vikas Gupta and her deceased husband joined the aforesaid party. Inspector Parveen Sharma and deceased Ajay Gupta used to share kitchen and take meal together. Her deceased husband, namely Ajay Gupta had told her that there was a scuffle between him and accused no.1 Sewak Singh and in this regard Inspector Parveen Sharma also narrated. It has further come in the statement of this PW that on 13th of October 1998, she was cooking meal and at the relevant time her husband was also there. At the same time, one constable came and asked deceased Ajay Gupta that SP was calling him. There upon, her deceased husband and Inspector Parveen left the quarter and after few minutes

came back. At that time, it was told by her deceased husband that he was going for dropping Khaliq as per the instructions of SP Sahib and asked the witness to bolt the door from inside. Her husband, at that time, was in civil dress. This witness heard sound of three bullets and explosion of one bomb. After an hour, one cook, namely Chander Parkash came there and asked the witness for the uniform and shoes of the deceased, which were sought by the SP Sahib as her husband had to go on long operation. It was 10/10.30 P.M at the relevant time. Uniform and shoes were handed over to said cook Chander Parkash by this witness. On next morning at 5.A.M, Parveen Sharma and constables accompanying him asked this witness to leave for Jammu, as it was risky for her to stay there. It was further told by them that her husband had gone for a long operation. She was sent to Jammu by boarding a bus, accompanying a constable, whose name she was not knowing. On reaching Jammu, she came to know that her husband was dead.

On cross-examination, at the instance of counsel for accused no.1, this witness further stated that she got a telephone call and was asked by her deceased husband to come at Surankote, accompanying her brother-in-law, on the occasion of "Karva Choth". It has further recorded in the statement of aforesaid witness

during cross-examination that in the month of January 1999, her statement was recorded by the lady police officer. On the day of occurrence, she became suspicious that her husband was murdered. There was rumor that her husband was killed in an ambush. After sometime C.M came to resident of this witness, accompanying DIG and other Police Officers. DIG of Police remarked at that time that her husband was got murdered, as SP was heading the SOG and he would had arranged a false firing. This witness was confronted with her statement recorded by the police u/s 161 of Cr.P.C. Statement recorded by the police was read over to her, wherein it was not found recorded that her husband was killed in an encounter organized by Sewak Singh. She was employed as a teacher as per order of the C.M She got Rs. 2.00 lacs as Ex-gratia relief from DG Police. Her brother-in-law, namely Vinay Gupta got employment in police. She got employment on 8th of March 1999.

No question was asked by defence counsel of accused no.2 , though opportunity in this regard was given to him.

PW. Kewal Krishan : He deposed that deceased Ajay Gupta was his son and was posted in SOG, Surankote, as Sub-Inspector. In the month of August 1998, this witness had gone at Surankote. He asked his son to get leave as there was work at home. At this, his

son, Ajay Gupta, went to accused Sewak Singh, present in the court and came back after some minutes and told that he did not get leave. Thereafter, he asked him to take him to SP Sahib. His son got introduced him with SP Sahib. He made a request to SP Sahib, for leave. At this, he replied that his son could not get leave, as he had misbehaved with him. Simultaneously, he asked him to forgive Ajay Gupta by considering him as child. Thereafter, he came back. He stayed for a night. During his stay, at Surankote, some police personnel told him that hot words were exchanged between Ajay Gupta and SP Sahib. This witness came back on 16.08.1998. In the month of September, marriage of Ajay was fixed. On 04th of September, his marriage was solemnized. He stayed for sometime at Jammu and thereafter, returned back to his duty. After sometime, he sent wife of Ajay Gupta with his younger son to Surankote. His younger son, came back to Jammu on 10th of October 1998. In the morning of 14.10.1998, one Chander Shekhar, son of Bishwa Nath Khajaira, resident of Poonch, came to his residence, at Jammu and told this witness that Ajay had sustained injuries. Thereafter, he along with Chander Shekhar, came in bazaar and made a telephonic call to accused Sewak Singh for knowing the condition of Ajay Gupta. It was told by accused Sewak Singh that he had sustained a bullet injury and was serious. After

sometime, few persons came to his residence, who told that Ajay had died in an ambush.

On cross-examination by the defence counsel of accused no.1, this witness further stated that he firstly got recorded his statement on 28.01.1999, before Crime Branch and earlier to that, no any statement was made by him. He verbally used to request DG and IGP for investigating the matter regarding the death of deceased Ajay Gupta. They were at Jammu and as such, not knowing as to whether any FIR was lodged. However, it was heard that matter was being investigated by DIG Rajouri. He had not made any application in any court that the investigation be got conducted by new Investigating Officer. He went to Surankote in the month of August and in the same month, Ajay came to Jammu in first week of August from Surankote. This witness further stated that he had come on the eve of Raksha Bandhan. He is not remembering when he came earlier to month of August. He is not knowing as to whether the deceased was absent from duty, earlier to his visiting the Surankote. Ajay came two days earlier to his marriage, at Jammu and went back after his marriage. This witness is making statement in the court after four years of recording of his statement, before the police. He had made statement before the Investigating Officer that they got Rs.2.00 lacs as Ex-gratia relief pertaining to the

death of his son, Ajay Gupta. He, however, had not read the order by which relief was granted, as he was not at his residence at that time. Wife of Ajay Gupta, namely Sunita Gupta had not filed any application with the government for appointment as her husband had died, while on duty in police. His son, namely Vinay Gupta was appointed as ASI, in the year 2003. Wife of Ajay Gupta was also provided with job. Both of them, were appointed on compensate grounds.

PW. Vikas Gupta was given up by the prosecution. A reference, in this regard, is on the record of the file. To elaborate, Spl. PP has got recorded his statement in this regard, on 02.08.2005.

PW. Noor Mohd. He deposed in examination-in – chief that on 13th of October 1998, he was on his duty at Police Station Surankote. In those days, accused Sewak Singh was posted SP(Operation) in Surankote and accused Satpal Singh was employed as Constable in SOG. He knows the deceased Ajay Gupta from his face look. On 13th of October 1998, at 9.30 P.M, this witness was on patrolling duty with one SPO, namely Khalid Hussain and a Section of Cr.P.F, near TCP. During patrolling, this witness found a BP Gypsy came from the residential accommodation of accused Sewak Singh and proceeded towards bazaar side. After 5/10 minutes, he saw the same Gypsy from, the distance of 100 gaj and

heard sound of firing. After a few minutes, the same Gypsy halted near the place where they were patrolling. At this, accused Satpal Singh opened the back door of the said Gypsy and dropped. At the same time, another constable Razaq also came out.. Thereafter, accused Satpal Singh was asked by someone from Gypsy **'Not to fire'—'Not to fire'**. However, he fired twice after dropping from the said Gypsy. He was carrying a SLR with him. Consequent thereupon, C.R.P.F personnel snatched SLR from him and handed over to Razaq. They saw the deceased Ajay Gupta, lying in the lap of the driver, with the torch light and blood was oozing. Thereafter, Razaq proceeded towards house of SP Sewak Singh with his weapon and SLR of accused Satpal Singh. At that time, accused Satpal Singh and deceased were in civil dress. After some time, few SOG officials came there and taken the Gypsy to the hospital. Thereafter, this witness went to police station and told the duty officer, namely Niaz Manhas that deceased Ajay Gupta has got bullet injury. It was, however, not told who caused that bullet injury. SHO came in the Police Station and at the same time, there was a bomb blast in the family quarters. In that blast, few persons were killed and some were injured. Thereafter, there was firing.

On cross-examination by the defence counsel of accused no.1, namely Sewak Singh, the witness further

deposed that they were at a distance of 50 gaz from the TCP when the Gypsy stopped near them. It took the Gypsy three minutes to reach near them after sound of fire. Near the TCP, there is a bungalow of Brigadier Sahib. There was an army guard on that bungalow. However, nobody was on TCP at that time. Seven CRPF personnel were accompanying this witness. Gypsy was not visible to them when they heard the sound of first bullet shot. He is not remembering the name of CRPF personnel, who snatched SLR from accused Satpal Singh. However, CRPF personnel handed over the SLR to Razaq. No identification mark was put on the SLR, either by this witness or somebody else. Accused Satpal Singh fired two shots immediate after coming out from the Gypsy. They, however, did not inquire from him as to why he has made fire shots. This witness himself saw the deceased on front seat, opposite to driver seat, by using torch light after opening window of the Gypsy. They snatched the rifle from the accused Satpal Singh, because he had made fire shots in the air. He told one Niaz Sahib in the Police Station that Razaq had taken both the rifles. His statement was recorded by lady SP. He is not remembering as to whether this was got recorded in the statement before the police that Razaq had taken both the rifles. He denied his recorded statement by the police to the extent that the blast

occurred during their patrolling. He further deposed that it occurred after they reached the police station. There were four persons in the Gypsy, namely Driver, deceased Ajay Gupta, Razaq and accused Satpal Singh. Out of them, only two persons were carrying weapons at that time. Accused Satpal Singh was having SLR with him. However, he had not seen which type of rifle Razaq was carrying at that time. Place of occurrence is surrounded by terrorist infested area, where oftenly, they carry their activities. They have been directed to remain alert as terrorist firing can be occurred at any time. The distance between the place of blast and TCP is 150/200 gaz. This witness has not seen the rifle, which was earlier seen by him with accused Satpal Singh, either after aforesaid incident, or on that day in the court.

During cross-examination, the witness stated that his statement was recorded by lady SP, after one and half months of the occurrence. Occurrence took place on 13.10.1998. After recording his statement, by lady SP, same was read over to him. His signatures were, however, not taken on his aforesaid statement. He came to know after fire shot that one of the police personnel, boarding the Gypsy, had killed the deceased with fire shot.

On cross-examination by the defence counsel of accused no.2, namely Satpal Singh, witness further

stated that accused T.T opened the rear window/door of the Gypsy and jumped out of it, when it stopped near to this witness. Simultaneously, Constable Abdul Razaq followed the aforesaid accused by jumping out of the Gypsy and tried to snatch rifle from him, but did not succeed. Thereafter, Arfan Ullah, Incharge CRPF and one Yadav of CRPF, snatched the rifle from accused T.T and handed over to constable Razaq. Somebody from Gypsy asked accused T.T not to fire as Ajay Gupta had received fire shot. He is not knowing who spoke from inside the Gypsy. Constable Abdul Razaq proceeded towards the house of SP Sahib, after snatching rifle from accused Satpal. Thereafter, they went to police station within 15 minutes.

PW. Abdul Razaq (Constable) : He deposed that on 13th of October 1998, he was posted in SOG at Surankote. At that time, SP Operation was Sewak Singh. Accused Satpal Singh constable was his PSO. He knew Ajay Gupta, Sub- Inspector. At 7/7.15 P.M, some Army Officers accompanying a contractor, namely Abdul Khaliq, came to the residence of accused Sewak Singh. After sometime, they went back. At that time, Ajay Gupta was in his quarter. Abdul Khaliq, Contractor, came back with a liquor bottle. Accused Sewak Singh called Sub-Inspector Ajay Gupta and Inspector Parveen to his residence. They remained in the quarter for a long

time. This witness was not knowing what they were doing there. Thereafter, at about 9.00 P.M, accused Sewak Singh asked his cook to call driver and PSO. When they reached there, accused Sewak Singh, Parveen Kumar, deceased Ajay Gupta and Contractor, were already outside the quarter. Accused Sewak Singh asked driver Mohd. Akram for dropping Abdul Khaliq at his residence. At this, constable Imtiaz boarded the vehicle. He was asked by the accused to get down from the vehicle and directed this witness and accused Satpal Singh, to go. Accused Sewak Singh asked Abdul Khaliq and his PSO, namely Shakil Ahmed to board the vehicle. Ajay Gupta , deceased, was also directed to proceed. At the same time, accused Sewak Singh asked them to have inspection of Patrolling Party after dropping Abdul Khaliq at his residence. Thereafter, accused Sewak Singh again checked the vehicle for finding who boarded it. Before boarding the vehicle, accused Sewak Singh and accused Satpal Singh were found talking to each other. This witness is not knowing what they talked. Abdul Khaliq was sitting on front seat and three PSOs were on the rear seats of the vehicle, when Ajay Gupta started driving it. However, he could not control the vehicle, as he had consumed the liquor. At this, he and Shakeel Ahmed PSO asked driver Mohd. Akram to drive the vehicle. Thereafter, vehicle was stopped by deceased

Ajay Gupta and he came down .At this, Abdul Khaliq occupied the back seat, whereas, Ajay Gupta boarded the front seat of the Gypsy. Abdul Khaliq and his PSO Shakeel Ahmed were dropped in Hardi Street. Thereafter, they were coming to camp side. At that time, deceased Ajay Gupta was sitting on the front seat and accused Satpal Singh was boarding seat rear to front seat of the Gypsy. This witness was sitting on the rear seat to the driver seat. Gypsy was bullet proof and was closed. On the way, when they reached TCP, he heard sound of a fire shot from inside the Gypsy. This witness raised hue and cry and asked driver Mohd. Akram to stop the vehicle as a fire shot has caused by accused Satpal Singh. At this, driver stopped the vehicle near TCP. They found a fire shot injury caused on the head of deceased Ajay Gupta and saw him falling in the lap of the driver. Thereafter, he dropped from the vehicle after opening back door. At the same time, accused Satpal Singh also jumped out of the vehicle. He raised hue and cry that accused Satpal Singh had caused fire shot. Accused Satpal Singh @ T.T was carrying SLR rifle with him. This witness was having AK-47 rifle. In the meanwhile, accused Satpal Singh made two fire shots in the air. He snatched the rifle from the accused Satpal Singh and CRP personnel caught him. Thereafter, he went to accused Sewak Singh at his residence along with

snatched rifle of Satpal Singh .He told the accused Sewak Singh that accused Satpal Singh had made the fire shot, which hit the deceased Ajay Gupta and he died. Rifle was received by cook of the accused Sewak Singh, namely Rangeel Singh from this witness. Thereafter, accused asked driver Salim, Imtiaz and Inspector Parveen to take the deceased Ajay Gupta, immediately, to hospital. Thereafter, Salim and Parveen came near the vehicle running and took the deceased to the hospital. At that time, deceased was wearing Pant of Track suit and a T-shirt. A leather sandal was being worn by the deceased on his feet. Deceased was taken to hospital. This witness also went there. After half an hour, accused Sewak Singh reached the hospital. Inspector Parveen Kumar asked his cook, namely Chander Parkash to bring the uniform of deceased Ajay Gupta and wore it to him. Thereafter, cook Chander Parkash, Salim and accused Satpal, changed the clothes of the deceased. He is not knowing where the worn clothes were taken by them. Army officer came there and checked the magazines of SLR of the accused Satpal Singh and AK-47 rifle of this witness and found three rounds missing from the magazine of SLR of the accused. At this, army people returned the magazines to them. Thereafter, accused Sewak Singh accompanied the army officers by boarding on a vehicle. Thereafter, a

blast occurred and firing started. After that, accused Sewak Singh and his PSO went to the police station. This witness also accompanied them. In the police station, a message was written by accused Sewak Singh. He is, however, not knowing the detail of the message. Thereafter, they and accused Sewak Singh left for their respective rooms. On next day, cook Rangeel Singh called this witness and Mohd. Akram and they went to the room of accused Sewak Singh. Accused Satpal Singh was already in the room. Accused Sewak Singh asked them what had happened. This witness narrated the whole occurrence to the accused Sewak Singh. Thereafter, accused Sewak Singh asked them to make similar statements, otherwise they would be in trouble. At this, a specific question was asked to this witness by Spl. PP, which was not allowed by the court as the same was suggestive. This witness further deposed that earlier to this occurrence, on 13th of December 1998, deceased Ajay Gupta had not gone on his duty at a nakka. At this, accused Sewak Singh asked the Head constable to call the deceased Ajay Gupta from his quarter. When deceased Ajay Gupta came out, accused Sewak Singh asked him as to why he had not gone on his duty. He replied that he was going on his duty. At this, exchange of hot words occurred between them. Accused Sewak Singh slapped Ajay Gupta and due to that, his

spectacles fell down. Simultaneously, deceased Ajay Gupta started making fists blows to accused Sewak Singh. His turban fell down. In the meanwhile, SHO Jagjit Singh and other officers intervened and separated them. At the same time, accused Ajay Gupta declared that he would not spare the accused Sewak Singh and would kill him. Simultaneously, accused Sewak Singh, in fury, also declared that he could not kill him, and let them see, who would kill. This occurrence took place on 13th August and not on 13th December.

On cross-examination by defence counsel of accused no.1, namely Sewak Singh, witness further deposed that firstly his statement was recorded by SDPO Mendhar, namely Mukesh Singh. This statement was recorded at 8.30 A.M of next day of the occurrence, at Surankote. He has made the same statement which he had made in the court on that day, to the SDPO. SDPO asked SHO Samyal, to record his statement. Statement of Mohd. Akram was not recorded in presence of this witness. Neither this witness, nor Mohd. Akram was arrested in this case. On the third day of the occurrence, he, accused Satpal Singh and Mohd. Akram were transferred to P/S Mendhar. He and Mohd. Akram, were posted with SHO Mendhar. Accused Satpal Singh was arrested by SHO, police station Surankote after 3/4 days of his joining at Mendhar Police Station. Site Plan was

prepared at 11/12 O'clock on next day of the occurrence. At the time of occurrence, there were two police guides with the CRPF patrolling party. He is not knowing as to whether on the day of occurrence, accused Sewak Singh had consumed the liquor as he was standing at some distance from this witness. Ten days earlier to the occurrence, militants made attack on SOG Camp. A compromise was arrived immediate after the scuffle was over between the deceased Ajay Gupta and accused Sewak Singh and their relations became normal. He further stated that thereafter, they started discharging their duties without any ill will. After this happening, deceased Ajay Gupta used to go on operation along with accused Sewak Singh. Thereafter, deceased Ajay Gupta used to follow the orders of accused Sewak Singh. He used to visit the residence of accused Sewak Singh. There were small holes of 4x4 inches in the Gypsy in question, to have firing from inside.

On cross-examination by the defence counsel of accused no.2, namely Satpal Singh, this witness deposed that he knew the accused Satpal Singh from the year 1996. Accused Satpal Singh was working as subordinate to deceased Ajay Gupta. Relations between the two were normal. There was no any enmity between them. No any exchange of words took place between the deceased Ajay Gupta and accused Satpal Singh in the

vehicle, on the day of occurrence. This witness himself took the SLR from the hands of accused Satpal Singh, after the occurrence. CRPF personnel were also accompanying at that time. Constable Noor Mohd. was also present on spot. One SPO, namely Khalid Hussain was also there. He handed over SLR to accused Sewak Singh, who given it to cook Rangeel Singh. He did not see Rangeel Singh handing over the SLR to anybody. However, this witness, after half an hour, saw accused Satpal Singh, carrying the same SLR. He did not inquire from Satpal Singh, how he got back the SLR. Accused Satpal Singh made two fire shots in the air, when he was taking the SLR from him. At that time, this witness was carrying AK-47 rifle. In reply to court question, it is stated that the accused no.1 Sewak Singh, told him to make statement that the fire shot came from outside and also hit from outside.

On this, defence counsel for accused no.1, namely Sewak Singh was allowed to again cross-examine the witness.

On further cross-examination, this witness deposed that his three statements were recorded during investigation. First statement was recorded after next day of the occurrence and second statement was recorded after 8/10 days of the same. He is not remembering after how many days, his statement was

recorded by the crime branch. His third statement was recorded in English by SP Shikha Goel. Its translation was made in Urdu and was read over to him. It was 5.30/6.00 A.M, when the accused Sewak Singh asked them to make similar statements. At that time, Mohd. Akram SPO, accused Satpal Singh and cook Rangeel Singh were there. Besides them, nobody was there. Accused Sewak Singh asked them in this regard, in his bed room. There was light inside, but outside, there was darkness. This witness was not present, when the accused Satpal Singh came to the bed room of the accused Sewak Singh. He and Mohd. Akram reached there afterwards. Cook Rangel Singh had called them by coming in their rooms. He came to court for get recording his statement as a message was received in this regard by SP, Poonch, who directed him to attend the court. Mohd.Akram met this witness many times, after the occurrence. However, they have not met from a long time ,as duty of Mohd. Akram is at Surankote, whereas, this witness is posted at Poonch. Mohd. Akram told him about four months back that his statement had recorded in the court. Accused Sewak Singh asked them, in local pahari language, to make statements that the fire shot came from outside, otherwise, they would be in trouble. He, however, not stated in his three statements, made before the police that accused Sewak

Singh asked in this regard in pahari language. He, however, told in this regard in Urdu language. Accused Sat Pal had not made any statement before the S.P. Sahib. More so, no inquiry was made from accused Satpal, in his presence. They did not say anything when the accused Sewak Singh asked them to make the aforesaid statement and left for their rooms. He and Mohd. Akram never made plan for making a particular statement. He, however, made up his mind to speak truth. Accused Sewak Singh had not compelled any body to make wrong statement. Nobody has compelled this witness, till date, for making statement, as such, question does not arise for making complaint against anybody. He remained free to make statement before police during investigation. Nobody has compelled Mohd. Akram for making a particular statement. At the time of occurrence, there was darkness inside the vehicle. It is not possible to find out exactly how fired occurred and what was its position. Army personnel were not in the police station when accused Sewak Singh inquired from this witness regarding the occurrence. This witness had not inspected the Gypsy from outside. Weapon and rounds were issued to this witness, prior to 5/6 months of the occurrence. Accused Satpal Singh was also got the weapon and ammunition, 5/6 months prior to

occurrence. This witness is not remembering, how many rounds, he had used during the aforesaid period.

PW. Mohd. Akram(Constable) : He deposed that in the month of October 1998, this witness was posted as SPO—driver in SOG, Surankote. He knew Ajay Gupta, Sub-Inspector. Accused Sewak Singh was posted as SP, Operation. On 13th of October 1998, this witness was residing in govt. quarter, in front of official house of SP, Operation, at Surankote. At 9.30 P.M, he heard that driver was being called. He came out in civil dress. Vehicle Gypsy was standing there. This witness also stood near it. He saw S.I Ajay Gupta, Khaliq Contractor and his PSO, standing outside in front of gate of official residence of S.P. Abdul Khaliq and Imtiaz Constable told this witness that vehicle was to be taken outside. He told them that he was coming after wearing uniform. They said that there was no need to wear uniform. Thereafter, Abdul Khaliq, accused Satpal Singh, Razaq, PSO of Khaliq and Ajay Gupta, boarded the vehicle. They had to go Hardi street of Surankote, for dropping Khaliq, contractor. At that time, SP Sewak Singh was also present there. Ajay Gupta said that he would also go. SP Sewak Singh directed them to come back after dropping Khaliq Contractor. At that time, Ajay Gupta was in civil dress, whereas, accused Satpal was in uniform and other constables were also in uniform.

When they reached near TCP after dropping Abdul Khaliq Contractor, Ajay Gupta was on front seat of the Gypsy, which was bullet proof. There was darkness inside the Gypsy, as such, position of the constables sitting on rear seat was not visible. A fire shot occurred near TCP and deceased Ajay Gupta fell in the lap of this witness. He was perturbed as that area was infested with militants. At the same time, he saw the patrolling party, at a distance of about 100 meters. This witness stopped the Gypsy and constable inquired from where the fire shot came. At this, accused Satpal @ TT asserted that it came from outside. Said Razaq asked Satpal Singh @ TT not to come out from the vehicle, as he had to check his rifle. In the meanwhile, both of them came out from the vehicle. He further stated that the door of the vehicle was opened at Hardi Mohalla when Abdul Khaliq was dropped there. He is not knowing as to whether it was closed at that time or not. This witness did not find them there after they (Abdul Razaq and accused no.2 Satpal Singh @ T.T) dropped from the vehicle. Ajay Gupta had fallen in the lap of this witness after receiving fire shot. CRPF/ Police Personnel of patrolling party came near to his vehicle. Thereafter, driver Salim and other constables came there. It was 9.45 P.M at that time. Vehicle was taken to the hospital. Ajay Gupta was kept on a bed and taken inside the

hospital. Doctor, after seeing him (deceased Ajay Gupta) declared that he was dead. After about 20 minutes, SP Sewak Singh and other police officers including SHO, also came in the hospital. At that time, all of sudden, a blast took place. Heavy loss was caused to the building of Police Station. Thereafter, firing also started. In the meanwhile, Commanding Officer of RR also came there. Dead body of deceased Ajay Gupta was lying there. Commanding Officer checked the magazines of SLR of accused Satpal Singh @ TT and AK-47 of Constable Razaq and asked as to why rounds were less in the magazine of accused Satpal Singh @ T.T. On this, Satpal Singh @ T.T replied that he made firing in retaliation. He is not knowing what happened afterwards. Both rifles i.e. SLR and AK-47 were taken by Commanding Officer with him. However, both were returned afterwards to the police. His clothes were fully blood stained. He further stated that he was standing in a corner. His statement was recorded during investigation. This witness was got declared as hostile at the prayer of Spl. PP.

Spl. PP put following contents of his statement recorded in terms of Section 161 Cr.P.C to this witness:-

“Somebody called from outside by saying SP (Op) Sh. Sewak Singh has called the driver”

On reply to aforesaid question, this witness further deposed that it was correct that SP Sewak Singh asked

him to drop Abdul Khaliq when he went to his official residence. This is also correct that SP Sewak Singh further told this witness that he had already ordered Satpal Singh @ T.T and Abdul Razaq for dropping Abdul Khaliq at his residence. This is also correct that S. Sewak Singh asked Ajay Gupta to board the vehicle and on return check the patrolling in the bazaar. This is also correct that at that time accused no.1 Sewak Singh was talking something with accused no.2 Satpal Singh @ T.T . He is, however, not knowing what they were talking. Prior to start of the vehicle, accused no.1 Sewak Singh checked as to whether all the people including Satpal Singh @ T.T had boarded the vehicle.

On further cross-examined by Spl. PP, witness further deposed that the door of the vehicle was closed when Satpal Singh was sitting inside it and mouth of his SLR was towards the front side. On the front side, Ajay Gupta was sitting. At that time, this witness said that fire shot had made by Satpal Singh. However, Satpal Singh @ TT replied that fire has come from outside. On the back seat PSO, Abdul Razaq was sitting. He also said Satpal Singh @ T.T that fire shot had not come from outside, but it had been fired from his rifle. He also stated that door of the vehicle was closed. Abdul Razaq asked Satpal Singh @ TT that he would check his rifle, as fire shot had not come from outside. At this,

grappling took place between Satpal Singh and Abdul Razaq as Abdul Razaq was in process of snatching the rifle from him. In the meanwhile, both of them came outside the vehicle and at that time, this witness was inside it. He heard sound of two fire shots, which were made by accused Satpal Singh @ T.T. Simultaneously, CRPF personnel and Abdul Razaq succeeded in snatching the rifle from him. Thereafter, Abdul Razaq along with snatched rifle proceeded towards the residence of accused Sewak Singh. Thereafter, this witness took Ajay Gupta to hospital. In the hospital, doctor declared him dead. At the same time, accused Sewak Singh came there. Chander Parkash cook and Rangeel Singh brought the uniform of Ajay Gupta from his residence. Cook Chander Parkash told this witness that he had brought the uniform as per the order of SP Sahib, which was got worn to the dead body of Ajay Gupta. This witness further stated that uniform was got worn to the dead body by Chander Parkash, Rangeel Singh and Mohd. Salim. It is correct that pant of Ajay Gupta was taken by accused Satpal Singh @ T.T . Accused Satpal Singh was carrying SLR with him when he came in the hospital. It is also correct that on 14.10. 1998, SP Sewak Singh asked this witness to make a statement that door of the vehicle was opened and fire shot came from outside, when he was called by him. It is

not correct that this witness washed the vehicle at his own. However, Raghubir Singh came to him and asked that SP Sahib has ordered to wash the vehicle. This witness was upset as he could not sleep for the whole night. He, however, said that he could not wash the vehicle as the water was not available nearby. Raghubir Singh by accompanying Ex-serviceman constable washed the vehicle. He is not knowing from where water was brought. S.P was Sewak Singh at that time, who was standing outside his official residence. This witness further deposed that he would have discussed regarding the occurrence with his several colleagues. He discussed in this regard, on 13th day i.e. the day of occurrence, with Noor Mohd, Constable Abdul Razaq and Shakeel Ahmed. He is not remembering the names of others. On next day of the occurrence, DIG and IGP came on spot. He also narrated the occurrence to DIG, namely K. Ranjiran in presence of DGP. Besides them, other police officers were also present there. After next day of the occurrence, 10/15 officers were gathered on spot. He is, however, not remembering the names of any other officer. Among them, IGP, SP Sewak Singh and SDPO Mukesh Singh were present there. The date was 14th and time would be 10.00. He and Abdul Razaq narrated the whole of the occurrence to those officers. SDPO Mukesh Singh, had recorded their statements. On 14th

at 10.00, he and Abdul Razaq made the statements with their own consent. After 3/4 days, their statements were again recorded by SP Shikha Goel in Urdu.

This witness was again cross-examined by defence counsel of accused no.1 on 09.09.2000. The witness deposed that after 15/20 days of the occurrence, this witness was posted with SHO Mendhar. At that time, Dy.SP was Mukesh Singh. This witness remained at Mendhar for three months. At the time of occurrence, SHO Jagjit Singh was posted in Police Station Surankote. SHO Jagjit Singh had not recorded any statement of this witness. During his posting another SHO was posted at Surankote. His name was Ved Samyal. He inquired from this witness regarding the occurrence. Ved Samyal SHO, had not read over his recorded statement to him. In the month of October, he was again called in the police station and inquiry was conducted from him. His statement was also recorded. That statement was read over to him. He, however, did not sign on the statement. At that time, many officers were present there. He is not knowing their names. Second time when statement of this witness was recorded by SHO Samyal, nothing new was inquired from this witness. On 15.07.2000, he got recorded his statement in the court without any pressure. He made statement before SHO Samyal, which was earlier made

by him in the court that accused Sewak Singh checked the vehicle and asked as to whether all including accused Satpal Singh had boarded the vehicle before it was about to proceed for dropping Abdul Khaliq contractor. Statement was read over to this witness, which was found not containing in this regard. He was not knowing earlier where they have to proceed after dropping Abdul Khaliq as that was not disclosed to him. However, Abdul Razaq told him that thereafter, they have to go to police station. He is not knowing who called the driver from near by the residence of SP Sewak Singh. It is not correct that Ajay Gupta asked this witness for dropping Abdul Khaliq. Initially, Ajay Gupta drove the vehicle for a distance of 100 gaz. However, it could not plied by him. Thereafter, he stopped the vehicle. He cannot say as to why he failed to drive the vehicle. Sewak Singh accused did not say anything when Ajay Gupta started driving the vehicle. Abdul Khaliq was sitting on the front seat when vehicle was being driven by Ajay Gupta. This witness at that time, sat on the right side of the vehicle. This witness had not visited the spot along with Shikha Goel. SHO Ved Samyal, recorded his statement in the police station Surankote. He is not remembering as to whether he ever went to place of occurrence with SHO Ved Parkash. However, site plan was prepared by one SGC at about 8.00 A.M on next day

of the occurrence. At that time, he was accompanying him and many people were collected there. He is not remembering as to whether he accompanying him inside official residence of accused Sewak Singh. After receiving bullet, Ajay Gupta did not speak anything. Vehicle was repaired in the Workshop of the police station. Vehicle was of having 95/96 model. SP Sewak Singh only refused Imtiaz to accompany the vehicle. He did not ask anybody else not to accompany the vehicle. He further deposed that he firstly discussed regarding the occurrence with constable Noor Mohd and thereafter, went to hospital. In the hospital, Commanding Officer had not inquired from this witness where the occurrence took place. He, however, made him to understand regarding place of occurrence. After occurrence, CRPF personnel snatched the rifle from accused Satpal Singh @ TT and handed over to Abdul Razaq. However, this witness saw again the rifle with accused no.2. It would have taken 10 minutes to reach hospital after the rifle was taken by Abdul Razaq from accused Satpal Singh. Abdul Razaq had gone towards the official residence of SP Sahib. CRPF personnel neither seized,, nor sealed the rifle. They only taken the rifle from accused no.2 and handed over to Abdul Razaq. Accused was not taken in custody by CRPF personnel, when rifle was taken from him. Rounds were counted when the rifle was taken by

Commanding Officer from accused no.2. Counting was done by the bodyguard of Commanding Officer. Bullet having 7.62 Caliber is used in the SLR. He is not knowing as to whether, bullet having 7.62 Caliber can be fired from other rifle. He has not undertaken training of arms. Bullet was hit on the back side of the head of Ajay Gupta. Thereafter, it hit metal strip over the wind screen. This had seen by this witness on next day in the morning. After receiving bullet shot, deceased fell in the lap. It is wrong that his head struck against Dashboard.

PW. Kulinder Kumar: He deposed that on 13th of October 1998, duty of this witness was at Surankote, within J&K. He was on patrolling duty, accompanying by Havaldar Arfan Ullah. There were six CRPF personnel and two police personnel, namely Constables Noor Mohd and Khalid Hussain in the patrolling party. It was 9.30 P.M, when they reached TCP gate, while patrolling. At the same time, a bullet proof vehicle came from the official residence of SP and gone towards bazaar while crossing them. After 10/15 minutes, the vehicle came back. A sound of fire shot was heard from inside the bullet proof vehicle, while it was near to TCP crossing. After sometime, it stopped near their Patrolling Party and simultaneously, he heard from inside the vehicle that TT had killed Ajay Gupta. Bullet proof vehicle was closed at that time. T.T accused and one Sepoy came

down from the vehicle, when it stopped. At the same time, T.T accused, present in the court, made two fire shots in the air with his SLR. Their patrolling party members and Havaladar snatched the SLR from the accused T.T. Accused T.T ran towards bungalow of S.P Sahib, when the SLR was snatched from him by Havaladar. Thereafter, vehicle went towards hospital. He is not knowing as to whether the Havaladar handed over the SLR to anybody. Section Commander of Patrolling party closed the patrolling and went to SHO Police Station. He also went to SP Sahib for giving him information. SP was, accused present in the court. SP went to hospital and saw deceased Ajay Gupta there and came back. Thereafter, a blast took place and they took the positions.

On cross-examination by the defence counsel of accused no.1, namely Sewak Singh, witness further stated that bungalow of SP is located at a distance of about 100 meters from TCP. When he heard the sound of fire shot, bullet proof Gypsy was at a distance of 50 feet from him. Bungalow of SP Operation and Police Station are visible from the place where he was standing at that time. His statement was recorded by the police. In presence of this witness, police did not prepare site plan. This has not been stated by this witness before the police that some constable ran towards the bungalow of

SP Sahib, after snatching rifle from T.T. His statement recorded by the police to the aforesaid extent, is wrong.

On cross-examination, witness further stated that during those days, militant related occurrence used to occur. Place of occurrence is located very near to the police station. Vehicle stopped near to them at its own. They had not given any signal to it for stoppage. This witness had not inquired who called from inside the vehicle. This witness is not knowing accused Satpal Singh, 3/4 months prior to the occurrence. This witness had not seen how many persons were inside the Gypsy, though it stopped near to them for 10/15 minutes. However, two persons came out from its rear door and one of them, was accused Satpal Singh. This witness had neither seen the deceased, nor driver inside the vehicle. He is not knowing the name of the person, who came out along with Satpal Singh, from the vehicle. He , however, remains with them on duty. He is not knowing what arms he was carrying. Accused Satpal Singh made two fire shots and tried to flee towards the house of accused Sewak Singh. He ran 20/30 gaz . Accused Satpal Singh was caught after being chased by CRPF personnel. He cannot tell the name of the person, who snatched the rifle from Satpal Singh. Rifle of accused Satpal Singh remained with the Commander of the patrolling party, which was later on handed over to the

police. This witness did not see the blood lying inside the Gypsy. Besides him, other CRPF personnel had gone for seeing the dead body inside the vehicle. After 10/15 minutes, police party came on spot and taken the Gypsy with them. Rifle, which was snatched from accused Satpal Singh, had not seen by this witness on that day in the court.

PW. Chander Parkash : He deposed that he knew the accused present in the court. In the month of October 1998, he was posted as SPO/Cook in STF, at Surankote. Accused Sewak Singh was SP there. He also knew deceased Ajay Gupta, who was Sub-Inspector. He was the cook of the accused SP Sahib. Accused SP asked this witness to keep prepare the meal, as he would leave at any time for operation. This was said two months ago of the occurrence. At 2.30 P.M, accused SP came back. At that time, deceased Ajay Gupta was standing outside. He saluted the SP accused. At this, SP accused enquired from the deceased Ajay Gupta as to why he has not joined operation, despite 3/4 messages. He further remarked that he used to sleep inside. At this, deceased Ajay Gupta asked the accused SP to talk with manner. To this, accused SP said the deceased Ajay Gupta, **“ Bustard – why are you talking rubbish.”** In reply, deceased Ajay Gupta said the SP that **his father was a “Bustard”**. At this, accused SP slapped the deceased

Sub-Inspector Ajay, whose cap fell down. Simultaneously, Ajay Gupta deceased, also slapped the accused SP, whose turban fell down. Thereafter, they entered into a scuffle. SP remarked that his honor was interfered. Both of them, cocked their guns. At this, SHO Jagjit Singh separated the SP accused and Inspector Parveen Kumar taken away Ajay deceased. Nothing happened thereafter. After two months, on 13th of October of year 1998, he was the cook with deceased Ajay Gupta. Ajay Gupta, deceased asked this witness to prepare meal as Parveen Inspector had come. He served meal to both of them. They started eating the meal. At the same time, Imtiaz, Guard of accused SP, knocked the door. He told this witness that accused SP had called the deceased Ajay Gupta and Inspector as the Commanding Officer of Army had come to him. They left the meal and proceeded to the residence of accused SP. Parveen Inspector came back. However, deceased Ajay Gupta did not come back. Thereafter, Parveen took the meal and left for unknown destination. After one hour/ one and half hour, Ajay Gupta came there and told his wife that he is going outside. He was also asked to accompany him. He said that he would remain with the wife of the deceased. At about 9.30 /10.00 P.M, firing took place near TCP. Thereafter, he left the place for sleeping. He heard hue and cry. He went towards the

gate by opening the door and found accused SP standing in his gate. At the same time, he found bodyguard of accused SP, namely Razaq, coming there by running. SP accused inquired who had come. At this, Razaq replied that he had come. Accused SP inquired as to why there is hue and cry. At this, Razaq replied that TT accused, had killed Ajay Gupta by a fire shot. Thereafter, SP accused asked him to shut his mouth. Razaq further told the accused SP that he had brought weapon, by snatching it from the accused TT. Thereafter, he went inside. Raghubir Singh, SGC, asked this witness what had happened. This witness told him that Razaq was telling that TT accused had killed Ajay Gupta with fire shot and he had come after snatching weapon from him. After 10/15 minutes, Inspector Parveen came to him and asked him not to disclose death of Ajay Gupta to his wife. In case, he did, he would do away with his life. Thereafter, Parveen Sahib left. He, however, remained sitting there. After half an hour, Sarfraz constable was sent by accused SP, who knocked their door. He inquired as to why he had come. He replied that accused SP had sent him to bring the uniform of Ajay Gupta. Thereafter, he knocked the door and asked the wife of Ajay Gupta that accused SP was demanding uniform of her husband. Wife of Ajay Gupta, handed over the uniform alongwith belt and shoes, after opening the

almirah. He left alongwith Sarfraz, with uniform. He saw bullet proof Gypsy, standing near the hospital. Driver Akram was washing his blood stained clothes. Thereafter, they went inside the hospital and found dead body of deceased Ajay Gupta on a civil cot. Accused SP, Parveen Inspector and Munshi Mohd. Hussain, were present there. SP accused asked this witness to get wear the uniform to the dead body of the deceased Ajay Sahib and left the place. He, however, remained standing. At this, Inspector Parveen slapped him and asked as to why he is not complying the order of accused SP. Thereafter, he, driver Salim and accused Satpal Singh @ TT, got wear the uniform pant to the dead body after taking off civil pant. However, T-shirt did not taken off. Uniform shirt was put over the same. Parveen Sahib asked to lift the blood and apply around the collar of the uniform. He applied the blood on right and left side of the collar. Parveen Inspector asked that throw the civil pant in some nullah. At this, Munshi Mohd. Hussain slapped this witness twice and said as to why he was being involved himself in a murder case. Thereafter, accused TT left for unknown place after taking civil pant. At the same time, accused SP and Brigade Commander came there. At the same time, a blast took place. Thereafter, Brigader Commander and accused SP talking with each other. Brigade Commander inquired who were the PSOs

accompanying Ajay Sahib. Brigade Sahib then asked the bodyguard to count the ammunition. It was said that SLR had been used for fire shot. There were three rounds less in the SLR. However, other gun was having full rounds. On next morning, at 5.30/6.00 A.M, Parveen Inspector came to him and asked where wife of Ajay Gupta had gone. He replied that she was in bathroom. At this, Parveen Inspector told wife of deceased Ajay Sahib that her husband had gone on two months leave. He asked wife of Ajay Gupta to leave by second bus, which is about to go. She packed two bags and one attachi and boarded the Gypsy.

On cross-examination by defence counsel of accused no.2, witness further stated that he was not knowing name of the army personnel, who counted the rounds. This witness had not seen the said SLR, in the court.

On cross-examination by defence counsel of accused no.1, namely Sewak Singh, this witness further deposed that he is not remembering the date of eighth month when he joined as cook with accused SP. He remained with accused SP for twenty two days in the month of August. Thereafter, he employed as cook in STF Lines. In those twenty two days, Ajay Sahib used to visit the SP accused. After scuffling, Ajay Sahib used to visit SP Sahib. They also went together on operation.

Earlier to this statement, he made statement before the Crime Branch. He also narrated in this regard to SDPO Mendhar, namely Mukesh Singh. This witness had not disclosed about the death of deceased Ajay Gupta to his wife. This witness had not told the wife of the deceased as to why the uniform was required. She had also not enquired in this regard. This witness had worked for about two and half months with deceased Ajay Gupta. Counting of rounds were effected on the Verandah of the hospital. There were twenty rounds in the magazine of Razaq, whereas, seventeen rounds were present in the magazine of accused Satpal Singh. Wife of deceased was dropped in the Gypsy of the accused SP which was not bullet proof. He is, however, not knowing how wife of deceased went to Jammu. He is not remembering the date when his statement was recorded by the SDPO. He is also not remembering what was recorded in his statement by lady SP.

PW. Habib-Ullah : He deposed that in the year 1998, he was posted as ASI. This witness knows accused Sewak Singh, who was posted as SP (Operation) at that time. He was also knowing PSI Ajay Gupta. Deceased Ajay Gupta was working as subordinate to accused Sewak Singh S.P. In the month August 1991, he was coming back after having meal at bazaar. He found SHO Jagjit Singh, Inspector Parveen, SGC Moharar, Riaz

Head constable and some other SOG personnel near the quarter of SP Operation. SP Operation Sewak Singh, PSI Ajay Gupta were exchanging hot words. This witness also stopped there. Accused SP Operation firstly slapped deceased Ajay Kumar and deceased caught hold his hand, when he was about to slap again. In the meanwhile, scuffle took place. In this scuffle the spectacles of deceased fell down and at the same time, turban of accused Sewak Singh fell down. Employees present there intervened and separated them. Thereafter, both of them, took out their pistols and cocked. They threatened each other that they would do away with each other's life. SP Operation declared that – **time would tell who kill whom**. Thereafter, SHO, took SP Operation Sewak Singh, in the room of Inspector Parveen and Ajay Gupta was also taken in his room. On 13th of October 1998 at 9.00 P.M, he was in his family quarter. He heard the sound of three fire shots. After 10/15 minutes, there was a blast in his family quarter. He was injured and taken to hospital. He remained there for three days. On 28th of October 1998, SHO Vijay Kumar Samyal, Inspector, taken him to the place where the deceased Ajay Gupta was murdered and lifted ordinary and blood stained clay and two empty cartridges from there. Seizure memos were prepared. He identified his signatures and admitted contents of those,

which were already exhibited as **EXPW—MH**, **EXPW—MH--1** and **EXPW—MH—II**. Afterwards, his statement was recorded by SP Crime Branch.

On cross-examination by defence counsel of accused no.1, this witness further deposed that on 02.05.1999, his statement was recorded by the police. His statements were also recorded as to seizure memos. Those were recorded on spot, when the seizure memos were prepared. His statements were recorded twice. Firstly, when the seizure memos were prepared and secondly, by Shikha Goel. Statement as to seizure memo was recorded by SHO and other statement during investigation was recorded by Shikha Goel. Except those statements, no other statement was recorded of this witness. He remained under treatment in the hospital from 13th of October to 15th of October. His first statement pertaining to seizure memos, was recorded on 28.10.1998. On that day, he was knowing that Ajay Gupta had died. Two months earlier to the occurrence, scuffle took place between deceased Ajay Gupta and accused no.1. During aforesaid two months, this witness saw both of them many times.

On cross-examination by defence counsel of accused no.2, he further stated that accused no.2 was present at the time of preparation of seizure memos. Abdul Hamid came on spot, immediately, as his shop

was situated opposite the place of occurrence. He was, however, not called. There was only one shop and other shops were under construction. After scuffle, deceased Ajay Gupta and SP Operation never went jointly for operation. He is not knowing as to whether, deceased Ajay Gupta and accused SP Sewak Singh had gone jointly on an operation.

PW. Sarwan Singh, SG No.165, Special Branch

Poonch: He deposed that in the month of June 1998, he was posted as Incharge of SOG. He used to issue ammunition in those days. He issued SLR No.16148797 to accused present in the court, namely Satpal Singh No.597/P alongwith three empty magazines and three hundred live rounds and made entry in this regard on page 1 to S. No.21. Satpal Singh was constable. This is in his handwriting and on the front, there are signatures of accused Satpal Singh. It was exhibited as **EXPW—SS**. He further stated that the SLR shown to him in the court, was the same, which was issued by him to the accused. Its Butt number is 166 and is already marked as 1. Number of the Butt, is also contained in the register. On 13.10.1998, he was on nakka duty at Hardi Mohalla, Surankote. He went on nakka duty along with 10/12 constables. He saw Ajay Gupta deceased and his wife standing outside the gate of their quarters. He stated that report 19 is in his handwriting and bears his

signatures, which has already been exhibited as **EXPW-KC**. However, report with regard to leaving is not in his handwriting.

On cross-examination by defence counsel of accused no.2, witness further deposed that as per exhibit **EXPW—SS**, magazine was issued to the accused on 23.06.1998, whereas, the serial nos. 18 and 20 are dated 24.06.1998. Numbers of the rounds are not contained in the register. Ammunition of one SLR can be used in other SLR.

PW. Zulifkar Ahmed: He deposed that he was posted at Surankote from the year 1997. In the year 1998, he was posted as PSO with SHO. In the first week of August 1998, a scuffle took place between accused Sewak Singh and deceased Ajay Gupta. Accused Sewak Singh caused a slap on the face of the deceased Ajay Gupta, by which, his spectacles fell down and when, he was about to slap again, deceased caught hold his hand. At the same time, deceased Ajay Gupta also slapped accused SP Sewak Singh, due to which, his turban fell down. Thereafter, both of them cocked their rifles. Deceased Ajay Gupta declared that he would kill the accused. At this, accused SP Sewak Singh replied by saying that – **‘Time would show, who would kill whom’**. In the meanwhile, after hearing noise of scuffle, few officers and other people collected there. SHO asked

that Ajay Gupta be handed over to him for get him medically checked as he had consumed liquor. At this, SP accused said that FIR was not to be registered against him and he would see him at his own. On 13.10.1998, at about 7.00 P.M, Commanding Officer of 27 and his 2IC, came to the quarter of SHO Surankote, wherefrom, they went to the quarter of accused SP. As per instructions of SHO, this witness brought meal from the quarter of SP accused. At 8.30 P.M, this witness slept. ASI Niaz Manhas, told the SHO that it was conveyed by the CRPF Patrolling Party that accused present in the court, namely Satpal Singh @ TT had killed Ajay Gupta with a fire shot in bullet proof Gypsy, near TCP. SHO, after hearing this, perturbed. Thereafter, he told in this regard, to SSP Poonch on telephone. Thereafter, he, SHO and 3 /4 boys took the dead body to hospital at Surankote. After sometime, SP Sewak Sigh also came to SHO, in the police station and inquired as to whether he had informed the SP Poonch. However, SHO denied that he had informed the SP Poonch. At this, accused SP told him that they would inform him, together. After sometime, SHO Surankote went to the quarter of accused SP Sewak Singh. In the morning, when they went to bring SHO, they saw bullet proof Gypsy standing outside the quarter of accused SP, which was washed. Blood was also washed. His

statement was recorded by SP Shikha Goel, which was read over to him.

On cross-examination by defence counsel of accused no.1, witness further deposed that he was not remembering as to whether, DIG, IGP came there on second day of occurrence. However, SP Poonch came there next day, who saw the vehicle. Scuffle, which happened with deceased of accused SP, took place outside his residence. Deceased was not standing outside, when accused SP came there, but was get called through SPO Shakeel. Chander Parkash cook was standing there when accused SP and SHO came there. 3/4 police personnel were also standing there. He is, however, not remembering their names. Scuffle took place between deceased and accused for 15/20 minutes. SHO, however, was trying to end the scuffle. Besides, SHO, SOG personnel also tried to intervene. After scuffle was over, both of them went to their respective quarters. On next day, this witness had gone to his residence. He is not knowing the nature of the relations of SP accused with the deceased during his life time, after the occurrence. Deceased Ajay Gupta and accused SP used to go together on operation. He brought the meal from the quarter of SP at 7.30/ 8.00 P.M ,which was eaten by the SHO at 9.00 P.M. He slept at 9.00 P.M. However, within 10/15 minutes, Duty Officer, namely ASI Mohd.

Niaz, came there, who narrated the occurrence to him. SHO talked, regarding occurrence, on telephone for 3 /4 minutes with SP Poonch. He went to hospital along with SHO. There was blood on BP Gypsy. On the day of occurrence light was not off. Light remained '**on**' till he remained in the hospital. There was a big bulb, where the BP Gypsy was parked. They saw the blood inside the Gypsy by opening its door with a torch. Distance between TCP and police station is 5/6 metres. Blast only took place in the police station and not at TCP. Blast took place at about 10/12 O' Clock. Gypsy was washed at night and also in the morning. A team of Special Cell headed by ASI Rather, came from Poonch. His statement was recorded by the said team. However, his signatures were not obtained. In the month of February 1999, his second statement was recorded by SP Shikha Goyal. He is, however, not remembering the time period of recording of his earlier statement. ASI, Rather, recorded statement of this witness in the Police Station Surankote. He saw HC Raghubir Singh arrested in lock up at Mendhar. He is not knowing as to whether HC Raghubir Singh was arrested by SDPO Mendhar, namely Mukesh Singh . Mohd. Akram , driver, was also called by SDPO for investigation. However, SHO was never called by SDPO. SHO Jagjit Singh not called anyone as he had not investigated the matter. Reader of SP Shikha Goyal,

translated the statement, recorded of this witness in Urdu. This witness had taken arms training from the Army for three months. He can handle any kind of fire arm .There were PSOs with SHO Jagjit Singh.

On cross-examination by defence counsel of accused no.2, this witness further deposed that it was 8.30/9.00 P.M, when Mohd. Niaz came to SHO in his quarter. He is not knowing as to whether patrolling party of CRPF, told in his presence to Mohd. Niaz regarding arrest of accused no.2 or not. It is further not known as to whether it was told by them to Mohd Niaz regarding seizure of his weapon. It was not told to Mohd Niaz where the accused no.2 had gone after making fire shot. At 9.30 P.M, this witness had seen accused no.2 armed with weapon, in hospital, near the dead body. He further stated that after half an hour of blast, this witness saw the accused no.2 in the hospital. Thereafter, he came back to police station from hospital. At 10.15 P.M, he saw accused no.2 with accused no.1 in the police station. At that time, he had not seen weapon with accused no.2. He is not knowing from where the accused no.2 was arrested.

PW. Koul Chand: He deposed that in the month of October 1998, he was posted as Store-keeper of SOG Surankote. At that time, accused Sewak Singh was SP Operation, Surankote. Accused Satpal Singh was also

posted as constable in SOG, Surankote. Deceased Ajay Gupta was posted as PSI, SOG, Surankote, in those days. He is not knowing where Ajay Gupta was on duty, on 13.10.1998, as the officers resides separately from them. Daily Diary remains in custody of Munshi. Daily Diary was in custody of Mohd. Hussain, Head Constable Munshi. Entries in Daily Diary are recorded by the Munshi. On 13.10.1998, he was the In-charge of the Line, as the Line Officer was on leave on that day. He identified his signatures over the entry dated 14.10.1998. Head Constable Munshi Mohd. Hussain is dead. He is , however, conversant with the handwriting of the deceased Mohd. Hussain. Reports in the Daily Diary, having nos. 14 and 19, are in the handwriting of Mohd. Hussain, who told this witness that accused no.1 had asked him to keep blank the Daily Diary, as entries were to be made afterwards. Entries of reports having nos. 14 and 19, were recorded on 14.08.1998. Report, having no. 14 was exhibited as **EXPW—KC**, whereas, report no. 19 was exhibited as **EXPW—KC-1**. SHO concerned of Police Station Surankote prepared 3 / 4 seizure memos, through which, SLR, one magazine and seventeen rounds were recovered/seized from accused Satpal Singh. Same was prepared in presence of this witness. He admitted its contents and identified his signatures over the same. It was exhibited as **EXPW—**

KC-2. Seized SLR, rounds and magazines were shown to him in the court, which were marked in serial nos. namely **Mark-1** and **Mark-II** . Thereafter, AK-47 rifle was seized from constable Abdul Razaq alongwith magazine and 30 live rounds. He admitted its contents as correct. It was exhibited as **EXPW-KC-3**. AK-47 was shown to this witness in the court, which already stands marked as '**Mark-III**'. Magazine and rounds are the same which were seized from Abdul Razaq, which already stand marked as **Mark-IV**. Thereafter, a bullet proof Gypsy, having number JKO2E—8692, was seized. Seizure memo was prepared. He admitted its contents as correct and identified his signatures over the same. It was exhibited as **EXPW-KC-4**. A jacket and a trouser were seized from driver Mohd. Akram. Seizure memo was prepared. He admitted contents of seizure memo as correct and identified his signatures over the same. It was exhibited as **EXPW—KC-5**. This witness identified the clothes as the same, which were seized. After sealing, impression of seal namely 'Ring' was kept on his sapurdnama. He identified his signatures and admitted the contents of sapurdnama as correct. It was exhibited as **EXPW—KC-6**. In presence of this witness, seized material/ articles were sealed with the impression of 'Ring'.

On cross-examination by defence counsel of accused no.1, this witness further deposed that on the day of occurrence, he was not present there. On the next day of occurrence, he also did not come to the police station as his duty was in SOG Camp, which is situated at a distance of half kilometer from the place of occurrence. On the day of occurrence, he was store-keeper and In-charge of the Line. On the next day of occurrence, deceased Mohd. Hussain, Head Constable Munshi, met him at 8.00 A.M, whose duty was at that time, in Line. Head Constable Munshi told him, on next morning of occurrence, at 8.00 A.M, regarding keeping Daily Diary blank. However, he had not produced before him the Daily Diary at that time and only verbally told. This witness had not talked with anybody in this regard. This witness has got recorded his statement twice. Firstly, his statement was recorded by SHO, on 14th of October 1998, when the seizure memos were prepared. Time of recording of statement was 12/1.00 P.M. At that time, besides him, Ali Haider, Mohd. Afzal and bodyguards of SHO were there. Accused no.2 and Abdul Razaq were also present there, at that time. SHO came on spot and asked them to bring their weapons, as the same are required to be seized. Accused Satpal and Abdul Razaq were standing in front of the office, at that time. Both of them, were not present at that time in front

of office of SP Operation. He is not remembering who had gone for calling both of them. Besides, recording of statement of this witness, SHO recorded statements of two other persons. He is not remembering how many impressions of seal were applied on the packets of seized arms. Haider Ali was helping the SHO at that time. Seized live cartridges were seen by this witness and checked them. Numbers of those were, however, not checked. Ammunition of SLR is not available with militants, but it is available with the army. SHO did not call any civilian at the time of seizures. His second statement was recorded by SP Crime Branch about 4/5 months of the occurrence, at Dak Bunglow, Surankote.

On cross-examination by the defence counsel of accused no.2, this witness further deposed that accused no.1 was inside the room and Abdul Razaq was outside when the SHO came there. Accused Satpal Singh was not arrested at that time. Custody of his weapon was with him. It is not known as to whether accused Satpal Singh was possessing carbine also. SLR was loaded when the accused Satpal Singh came to SHO. It is wrong that the accused Satpal Singh brought the SLR. It is also wrong that infact SLR rifle was brought by constable Abdul Razaq. He was not knowing that the proceeding of seizure was to be effected. No civilian was called as

witness by the SHO at the time of seizure. Accused Satpal Singh was not arrested even after seizure.

PW. S.Joginder Pal Singh(then SSP Poonch): He deposed that in the month of July/August of year 1998, he was posted as SP Poonch. At that time, Sewak Singh was posted as SP, Operation, Poonh. Deceased Ajay Gupta PSI, was also posted in Special Operation Group Surankote, during those days. No any complaint, in writing, had made by accused Sewak Singh against the deceased, prior to occurrence. It was however, told by then SHO, Surankote, that there was misunderstanding between accused Sewak Singh and deceased Ajay Kumar. However, it was resolved in to a patch up. This has been conveyed to him about 3 /4 months of the occurrence. On the day of occurrence, at about 10.40/ 10.45 P.M, he was told by accused Sewak Singh, then SP, on telephone that militants had attacked the vehicle of SOG, when it was coming towards Surankote town. It was also conveyed by accused Sewak Singh that militants had attacked the police station and firing was continuing. At that time, he developed communication on telephone, with Brigadier Tara Singh and asked him to help them, immediately. After half an hour, this witness got telephone of then SHO, Surankote, who told him that Sub-Inspector Ajay Gupta and three constables had died and firing is continuing intermittently. This

witness further stated that requisite instructions were passed to him. He could not go on that day at Surankote, as the army authorities stopped him to go. On next day, at 8.00 A.M, he proceeded for Surankote and found dead body of deceased S.I Ajay Gupta in Surankote hospital. He inspected the dead body and requested the Medical officers for conducting its postmortem. He also conveyed in this regard to the SHO, who was accompanying him. He saw parked the above referred Gypsy near the gate of police station and asked the SHO for its photography. There was blood lying on front and driver seat of the Gypsy. There was an impression of bullet on the frame of wind screen of the above referred Gypsy. The witness was declared hostile and the Spl. PP was allowed to cross-examine the witness subject to consideration of objection raised by accused at the time of final disposal.

On cross-examination by Spl. PP, witness further deposed that he had not handed over the investigation of the case to the Crime Branch. It was, however, handed over by DIG Rajouri-Poonch range. Earlier to this, a special team was constituted by this witness, who was investigating the matter. Its reference would be in the papers. It is correct at the last, investigation of the case was conducted by Additional SP, Shikha Goyal, who only talked with him regarding the case and not recorded his

statement in terms of Section 161 Cr.P.C. He, for the first time, came to know that his statement was recorded in terms of Section 161 of Cr.P.C. He is not knowing as to whether his recorded statement in terms of Section 161 Cr.P.C had been made part of the file.

On 29.03.2003, this witness was cross-examined by Spl. PP. He deposed that he informed the Additional SP Shikha Goyal, regarding detail of the facts & circumstance of the case. He elaborated that he given information with regard to the facts of the case, which were brought to his notice, by the then Investigating Officer. All the police stations in the District were under his administrative control, including police station Surankote. He was only Supervisory Officer. He is not remembering as to whether the Investigating Officer has talked, with regard to sending of a letter by the accused Sewak Singh complaining misbehavior of deceased Ajay Gupta, with him, prior to occurrence. He never conveyed to accused Sewak Singh that he was himself competent to take action against the deceased. On the day of occurrence, then SHO told him on telephone that firing was made on the vehicle of SOG and he had heard that Ajay Gupta had got bullet injury. More so, it was also told that there was firing on police station also. Earlier to this, it was told by accused SP Sewak Singh on telephone that there was firing on their vehicle. During

aforesaid talk with Shikha Goyal, this witness had not told her that Satpal Singh had fired shot upon deceased Ajay Gupta. He made a guess on seeing the dead body of the deceased that the bullet had hit from behind the head and it had come out from the front. Back side of the head of the deceased was separated. He is not knowing as to whether bullet was inside the frame of wind screen. However, vehicle was bullet proof and there were less chances of going out of the bullet. He directed the SHO to seize the evidence lying in the Gypsy. He remained on that day for sometime in Surankote and found that vehicle had washed. He thought that the vehicle would have washed after collecting of evidence from it. He passed the instructions as aforementioned to SHO, in presence of SDPO Menhedar. This witness had not conveyed to Investigating Officer Shikha Goyal, during aforesaid talk with her, that despite his directions, SHO had not lifted samples and collected evidence from the vehicle, before it was washed. It is correct that according to his record, Special Team was constituted for investigation on 17th October 1998, by this witness. In between 14th October to 17th October 1998, investigation was conducted by then SHO. This witness has not taken any action against then SHO for dereliction of duty, in between 14th October to 17th

October, as then SDPO had not brought anything in this regard, in his notice.

On cross-examination by defence counsel of accused no.1, witness further stated that due to militancy, Surankote was sensitive area in District Poonch. On next day of the occurrence, when he reached Surankote, he came to know that militants had also attacked the police station and two constables were killed. There was a rumour in Surankote that bullet of accused Satpal Singh @ T.T had hit deceased Ajay Gupta. However, none of the witness had corroborated in this regard. On that day, he met with Constables, Army officers and others. On that day, 10/11 police personnel were also injured in that militant action.

In further cross-examination, a general question was asked by the defence counsel that in case, somebody, while holding weapon by keeping his hand on its trigger and due to jump to the vehicle, there could be an accidental fire shot and it could not be. In case, it happens, it is due to negligence of the concerned. However, expert can tell in this regard. Next day of the occurrence, many superior police officers came to Surankote. They had also got information regarding the occurrence and issued necessary instructions. On 30th of November 1990, he was SSP Poonch. He is not remembering as to whether Rupees Two lacs were paid

to the legal heirs of the deceased Ajay Gupta , as Ex-gratia relief, by DGP, by order no. 3959/1998, dated 30.11.1998. In case, any copy of this order, if received by his office, had not brought to his notice. However, it is correct that Ex-gratia relief amount is payable to the legal heirs of the police personnel, who are killed in militancy activities. Prior to paying Ex-gratia relief , reports of the concerned officers are sought.

On cross-examination by defence counsel of accused no.2, witness further deposed that there was a rumor regarding making of fire shot by the accused Satpal Singh, which hit deceased Ajay Gupta. It was, however, not told by the SHO, who were creating this rumor. He did not find accused no.2 arrested, when on 14th of October, he reached police station. This witness had not inquired anything from accused no.2. He told regarding the aforesaid rumor to Shikha Goyal, during his talk with her. Accused no.2, namely Satpal Singh, was arrested 2/3 days of the occurrence. He immediately got information in this regard from then SHO. No corroboration of the rumor came to the notice of this witness, while he stayed at Surankote. He verbally instructed the then SHO, for keeping an eye on accused Satpal Singh on the basis of aforesaid rumor. It was told by then SHO that accused no.2 was arrested because he had fired two gun shots in the air, after coming from the

vehicle. This was verified by the CRPF personnel. Weapon was seized after his arrest.

PW. Sheikh Mohd. Yunus: He deposed that on 13.10.1998, duty of this witness was of patrolling from TCP to bazaar Surankote. He was accompanied by six personnel. Among them, there were one Havaldar and one Lnk and four constables. They, were six including him. There were also two constables from civil police. They had gone on duty at 9.30 P.M. At TCP, their Commander had asked them to stand in a row. During their duty, one Gypsy came from the residence of SP Surankote and stopped for sometime in front of the gate of police station. Thereafter, it had gone towards Surankote bazaar and after sometime, it came back. In front of TCP, there was a fire shot and its sound was heard. At that time, that vehicle was at a distance of 50/60 feet from them. Simultaneously, it was heard that **T.T, had killed the Sahib.** There was a slope and when the vehicle came near to them, their Commander stopped the vehicle. At this, T.T jumped out by opening the window and at the same, another personnel also jumped outside. T.T fired two shots, immediate after coming out. Their Commander and another constable caught hold him. Name of that constable was R.D Yadav and name of Havaldar was Arfan Ullah. They tried to snatch the SLR from T.T. However, in the meanwhile,

police constable succeeded in taking weapon from him and went towards residence of SP. Thereafter, their commander opened the door of the vehicle and found Ajay Gupta lying dead. There was a fire shot injury on the back side of his head and was lying on the legs of the driver. Legs of the driver were soaked with blood. He is not remembering as to whether deceased was in uniform or in civil dress, at that time. Thereafter, driver took the vehicle towards hospital. T.T accused, whose real name is Satpal Singh, is present in the court. He identifies him. After leaving of the vehicle, their commander asked them to go to police station and they come to the police station. They told, all regarding the occurrence, to ASI Khalid Hussain. According to his guess work, he would be Duty Officer at that time. Thereafter, they entered into line. At the same time, a bomb blast occurred in family quarters of police. He further stated, which seems to be at his own, that Khalid Hussain was their guide.

On cross-examination by the defence counsel of accused no.1, witness further deposed that he was posted 3 /4 months prior to the occurrence, at Surankote. Their unit used to perform duty with SP, Operation. His statements were recorded thrice. Once, it was recorded by the police and two times, verbal inquiry was conducted from him. He cannot tell the name and

rank of the officers, who firstly and secondly recorded his statements, as they were in civil dress. On third time, a lady officer recorded his statement in Army Guest House, which was located on a hillock. Firstly, his statement was recorded on the rear side of the police station. Firstly, there was a fire shot and thereafter, Gypsy stopped. There is a turn where the fire shot occurred. This is wrongly recorded in his statement u/s 161Cr.P.C dated 7.2.1999 that he rushed towards the vehicle. It is correct that their Commander, namely Arfan Ullah got stopped the vehicle. It is wrongly recorded in his statement under section 161 Cr.P.C that Gypsy, at his own, stopped at a distance from them. He was cross-examined by counsel of accused no.1 and he further deposed that in presence of this witness, none asked to take the Gypsy to the hospital. It is wrongly recorded in his statement that a constable came there and asked the driver to take the Gypsy to hospital. However, this witness saw the Gypsy going towards hospital.

On cross-examination by defence counsel for accused no.2, this witness further stated that he saw the Gypsy coming while it was at a distance of 50/60 gaz from him. After fire shot, Gypsy stopped. They went near the Gypsy by dividing themselves into a group of two persons, when it was stopped by their Commander. He

is not knowing, who among them, firstly went near to the Gypsy. This witness was knowing T.T earlier, as he used to go with them on Operation. He was also knowing other person from face, who came out of the Gypsy, as he also used to accompany them on Operation. He is not remembering what weapon was being carried by that person. T.T. made two fires after coming from the Gypsy, one towards the Army Camp and other towards them. However, both were fired in air. They had not fired in retaliation. Their two constables, namely Arfan Ullah and R.D Yadav caught hold the T.T and SOG constable, who dropped from the Gypsy, snatched the SLR rifle from him. It was heard from the vehicle that **T.T had killed the Sahib**. He was not knowing as to whether the constable, who ran with rifle, was involved in to a murder case or not, as their Commander had not directed them to stop him. No scuffle took place when rifle was snatched from T.T. However, T.T raised hue and cry that he be taken to SSP Sahib. He remained for some time with them. He is not remembering who had taken T.T from the spot. Their Commander had not ordered them for keeping T.T there. No army personnel came there, when fire shot occurred. He is not remembering that the constable, who ran towards residence of SP, was carrying one or two arms. Except aforesaid two constables, no other came out from the Gypsy. He had

not cared how many persons were sitting in the Gypsy, when he went near to it. Their commander opened the door of the Gypsy. In their presence, police did not come on spot. Thereafter also, police did not take this witness to the spot. It is wrongly written in his statement under section 161 Cr.P.C that they went to police station after blast. The witness further deposed that he is not remembering as the occurrence took place four years ago, as to whether, he got recorded in his statement before the police or not that T.T raised hue and cry 2/3 times, that he be taken to SP Sahib. However, he is not remembering, what he got recorded in his statement before the police.

PW. S. Raghubir Singh : He deposed that in the month of June 1998, he was transferred to SOG Surankote from District Special Branch, Poonch and at that time, accused Sewak Singh was posted as SP Operation SOG. He also knowing deceased Ajay Gupta, who was posted as Sub-Inspector in SOG. This witness also knows accused Satpal Singh, present in the court, who was also posted as constable in SOG, Surankote. He stated that he was not knowing about anything prior to the occurrence. Occurrence took place on 13.10.1998. It was 9/9.30 P.M. He was sleeping at that time. He heard sound of firing. Parveen Kumar was also with him. They wore uniform and stood up on their duty. After half

an hour, a blast took place and they heard its sound. They could not sleep for whole of the night. Next morning, they came to know that Ajay Gupta had died. No any talk took place between this witness and accused Sewak Singh. In the morning, officers came there. Parveen Kumar handed over a letter contained in an envelop to him, for handing over to SHO, Police Station Surankote. He had not read that letter, as it was kept in a closed envelop. His statement was recorded before the Magistrate, in terms of section 164 Cr.P.C, which was got recorded by him with his own consent. Judge Sahib had written, what he stated before him. Copy of statement is forming part of the file. He admitted the statement recorded in terms of Section 164 Cr.P.C, before Municipal Magistrate, Jammu, which was read over to him in the court, as correct. It was exhibited as **EXPW—RS.**

On cross-examination by defence counsel for accused no.1, witness further deposed that on the day of occurrence, no any talk took place between him and accused Sewak Singh. More so, at night also, no talk took place between them. This witness neither saw, nor heard anybody talking with accused Sewak Singh. He further denied that any talk took place between him and accused Sewak Singh prior to the occurrence. 10/15 days earlier to the occurrence and during that, no talk

took place between accused Sewak Singh and deceased Ajay Gupta in his presence. There were good relations between the accused Sewak Singh and deceased Ajay Gupta. There was no any illwill or enmity between them. Accused Sewak Singh had got cordial relations with his subordinates. One month, prior to death, relations were also cordial between deceased Ajay Gupta and accused Sewak Singh. His statement was only recorded in Crime Branch. On 22nd of October 1998, this witness got message from the office of SDPO Mendhar, namely Mukesh for attending his office. He went to his office, as per his order. His bodyguard searched him. His service revolver was taken by them. Thereafter, he presented himself before SDPO. After inquiry, he was sent to barrack. At 8.00 P.M, he was taken to some unknown place after blindfolding him. He was handcuffed at that time. He was subjected to his thrashing. He became senseless and remained in custody for four days. On 28/29th October, he was taken out from the lock up and was posted on duty. A note is recorded by the court, containing details of the impressions of the injuries shown by the witness in the court. Statements got recorded by this witness, before the Crime Branch and Magistrate in the shape of exhibit **EXPW—RS**, were made by him due to fear that he would not be again subjected to thrashing. Those statements were not

based on facts. On the day, he was called by SDPO, Mendhar, namely Mukesh, accused Satpal Singh and Constables, namely Abdul Razaq and Mohd. Akram were also present there. On the night of occurrence, police station was attacked, wherein two constables died and 10/12 constables were injured.

On cross-examination by defence counsel of accused no.2, witness further stated that he never heard that a scuffle took place between the deceased and accused Satpal Singh. After the death of deceased Ajay Gupta, he had not heard in this regard. When this witness was under arrest in Mendhar Police Station, accused Satpal Singh was also there in lock up. He is not knowing as to whether accused no.2 was also subjected to beating. He had, however, not made any reference as to his aforesaid thrashing, in his statement before the Judicial Magistrate, because of fear. PW. Abdul Khaliq was given up at the trial by the Spl. PP and as per Statement of learned Spl. PP forming part of record.

PW. Mohd. Niaz Manhas, ASI: He deposed that he knew the accused present in the court. In the month of October 1998, he was posted as ASI, in Police Station Surankote. He was also knowing deceased PSI, Ajay Gupta. On the night of 13.10.1998, he was Duty Officer in the police station Surankote. At about 9.30 P.M, he

heard a sound of fire shots. He went near to Santry, who was on duty at gate and enquired, where the fire shot occurred. He replied that there was a noise towards check post. In the meanwhile, patrolling party consisting of CRPF personnel and constable Noor Mohammad and SPO Khalid came there. He enquired from Noor Mohammad, where the firing had occurred and what happened. At this, Noor Mohammad constable, told to this witness that accused, namely Satpal Singh @ T.T had caused a fire shot to Ajay Gupta. He further enquired from him as to whether Ajay Gupta was alive or dead. In reply, he told that he had been taken to hospital. He went to quarter of SHO and told him in this regard. SHO came to police station from his quarter and conveyed a message on telephone to SP of District, namely J.P Singh that T.T had caused a bullet shot to Ajay Gupta. In the meanwhile, a blast took place in their family quarters. Forty constables were injured in that blast and were taken to hospital. SP Operation, came in the police station. He sat there and saw where the fire shot occurred and how it happened. He also enquired regarding blast. SP Poonch was not informed on telephone regarding Ajay Gupta and blast, but a message was flashed. It was conveyed through message that Ajay Gupta was killed in an ambush/ nakka and blast occurred in police station.

On cross-examination by defence counsel of accused no.2, this witness further deposed that Santry was on the gate of police station. The place where the firing took place, is situated at a distance of 600/700 meters. This witness had not asked the Santry to go on spot, but only enquired where the fire occurred. On hearing sound of fire shot, he came out. Patrolling party which came there, was consisting of six CRPF personnel and two constables of police station. He is not knowing when the FIR was lodged. He had not got recorded statement of any of the member of the patrolling party, because the SHO, himself, was there. He is not knowing anything about T.T. In his presence, no scuffle took place.

PW. Ved Samyal (Investigating Officer): He deposed that from 24.10.1998, he remained posted as SHO, Police Station Surankote. Earlier to him, S. Jagjit Singh was posted as SHO there. This witness investigated the case in hand w.e.f. 27th of October 1998. First of all, he recorded the statements of witnesses as referred in the challan. He also inquired from other witnesses. He visited the place of occurrence, as earlier prepared site plan was not complete. During inspection of the place of occurrence, he seized two emptied of cartridges from the side of the road. Those were seized and sealed. He identified his signatures over the seizure

memo already exhibited as **EXPW—MH/2** and admitted its contents. He seized ordinary and blood stained clay from the spot and prepared seizure memos in this regard, which are already exhibited as **EXPW—MH** and **EXPW-MH/1**. He identified his signatures over the same and admitted contents. He also lifted the ordinary and blood stained clay from the place, i.e. outside the official residence of SP, Operation, where the Gypsy, used in the occurrence, was washed. Photography of that place was also got effected. He identified his signatures and admitted contents of seizure memos, prepared as to aforesaid lifting of ordinary and blood stained clay, already exhibited as **EXPW—LH/1** and **EXPW—LH**. During investigation, he came to know that clothes worn by the deceased were not seized. It was informed by BMO that at the time of postmortem, clothes worn by deceased were kept in custody of Kala Khan, Chowkidar of the Hospital. Aforesaid Kala Khan handed over one Khakhi colour pant, two pieces of uniform shirt, T-shirt and one belt, to this witness. However, there were blood stains over the belt, shirt and T-shirt. There was, however, not blood stain over the pant. He identified his signatures over the seizure memos already exhibited as **EXPW—KK/2** and **EXPW—KK/1**, pertaining to aforesaid seizures. A bandage, having sample of blood of deceased, was also seized, separately. He admitted its

contents and identified his signatures over the same, which is already exhibited as **EXPW—KK**. He also prepared site plan of the place from where the clothes of the deceased and bandage were seized. It is in his handwriting and bears his signatures. It was exhibited as **EXPW—VP**. Site plan of place of occurrence, is also in his handwriting and bears his signatures. It was exhibited as **EXPW—VP/1**. He also prepared the site plan of the place, where the Gypsy was washed.

On 21.04.2007, he was again examined by Spl. PP and witness deposed that thereafter, he obtained postmortem report and obtained opinion of the doctors pertaining to injuries caused as detailed in the postmortem. He obtained copy of Khasra Girdhawari and site plan of place of occurrence from the revenue department, which are forming part of the file. Daily Diary and register maintained for ammunition, belonging to SOG, were seized. Seizure memo, i.e. exhibit **EXPW—RS**, pertaining to Daily Diary, is in handwriting of this witness and bears his signatures. He also identified his signatures over the seizure memo, pertaining to seizure of register, pertaining to Arms & Ammunition. He also admitted its contents as correct. It was exhibited as **EXPW-VP/6**. Seal with which packets was sealed, was kept on the sapurdnama of Suresh Kumar. He admitted the contents of supurdnama, dated

28.10.1998, exhibit as **EXPW—SK** and identified his signatures over the same. During investigation, he got information that some evidence is lying in the Gypsy, wherein, deceased was murdered. He seized four pieces of blood stained ragzine, two pieces of blood stained foam of front seat of the Gypsy and one blood stained lever rubber bush, were seized. He admitted the contents of exhibit **EXPW—OP**, as correct, which was prepared with regard to aforesaid seizure. An emptied of cartridge of SLR was recovered from below the seat of the Gypsy, where the deceased was sitting and was seized and a seizure was prepared in this regard. He admitted the contents of aforesaid seizure memo as correct and identified his signatures over the same. The witness examined the seizure memo and stated that the emptied bullet was recovered from the backside of the spare tyre (stapni) below the front seat.

Witness further stated that photography of the place from where the emptied of cartridge was recovered/seized, was got effected. The Gypsy was bullet proof, wherein deceased was murdered. Its front glass is thicker as compared to glass of ordinary vehicle. It is not possible for the bullet to go inside. There was an impression of bullet in the iron frame over the front glass of the Gypsy. Seizure memo dated 01.11.1998 was prepared in this regard with an impression seal which was kept on the supurdnama

of Inayat Hussain. He admitted the contents of supurdnama, already exhibited as **EXPW—MA**. One foot piece, was cut in Workshop by the mechanic, where there was an impression of bullet and two metal pieces, which were earlier recovered from the vehicle, were seized. He admitted contents of seizure memo, as correct, which has already been exhibited as **EXPW—GKS**. Those were sealed and seal was kept on supurdnama. He identified his signatures over the exhibit **EXPW—VK**. He stated that photographs forming part of the challan are the same, which were got photographed by him. Same already stand exhibited as **EXPW—MH - 1 to 10**. He admitted contents of seizure memo, as to seizure of photographs which was exhibited as **EXPW—VP/7**. Seized items were got re-sealed from the Executive Magistrate and some of the material was sent to FSL Jammu. He recorded the statement of the witnesses. Thereafter, investigation was transferred to Crime Branch.

On cross-examination by the defence counsel of accused no.2, this witness further deposed that on 27.10.1998, he got the investigation of the case, as per order of SSP, Poonch/ SDPO, Mendhar. He visited the spot on 28.10.1998, at 8.00 A.M. There is entry in this regard in the Daily Diary. On 28th of October 1998, he prepared the site plan, by visiting the place of

occurrence and seized two emptied of cartridges of SLR. Earlier, SHO had also prepared the site plan. He prepared the site plan in presence of the eye-witnesses. SPO Zulifkar Ahmed, SPO Lal Hussain, SPO Mohd. Akram and SPO Khazrine Shah were present on spot, alongwith him, at that time. These witnesses were also present at the time of preparation of earlier site plan by the then SHO. Two of them, were the bodyguards of the then SHO. Those emptied cartridges were little underneath the earth. However, those were visible from outside. Those remained there from the day of occurrence. He had inspected the Gypsy after 15 days of the occurrence. He had not got verified the date, when the Gypsy was washed. Gypsy was parked at the place, where it was washed. It is wrong that he planted the emptied of cartridges before recovery.

On cross-examination by the defence counsel of accused no.1, witness further deposed that on 27.10.1998, he got the investigation of the case. He got recorded statements of 44 witnesses. Nobody had complained with regard to his investigation. It is correct that as per law, witnesses are required to be summoned and thereafter, their statements are to be recorded. He had not enclosed the notices sent for summoning the witnesses, either with the Case Diary or with the challan. According to his investigation, information given

by accused no.1, in the police station, was wrong and truth was something else. Lodging of false report, is an offence. It was not proved in the investigation, conducted so far, by this witness, that information given by accused Sewak Singh for lodging FIR in police station Surankote, was correct or wrong, as his investigation was not complete, at that time. He had not got lodged any FIR against accused no.1 for lodging wrong FIR . He investigated the same FIR , which was earlier registered. Accused no.1 had not interfered in his investigation, directly or indirectly. He, however, approached him, but he had not made any entry in this regard in the C.D. file. Gypsy was seized, earlier to his investigation. In his presence, the Gypsy was not washed. According to his investigation, it was not plied after the occurrence. This witness has got personal knowledge that it was not plied. However, no any witness stated in this regard. During his investigation, accused Jagjit Singh was died. This witness had not interrogated Jagjit Singh, during his investigation, as he was in the hospital. He had also not interrogated accused no.1. According to record, Gypsy having no. JK02E-8692, was seized on 14.10.1998. Witnesses to the seizure memo of Gypsy, dated 14.10.1998, are Koul Chand and Mohd. Afzal. During his investigation, he got recorded the statements of Koul Chand and Mohd. Hussain, in terms of Section 161

Cr.P.C. Earlier to his investigation, Jagjit Singh had recorded statements of witnesses, namely Koul Chand, Mohd. Afzhal and Ali Haider Shah, in terms of Section 161 Cr.P.C. Among them, he only recorded the statement of PW, namely Koul Chand, during his investigation. He has not verified as to whether the Gypsy was searched at the time of its seizure by Jagjit Singh, or not. He also not verified as to whether anything was recovered or not from the Gypsy, at that time. Nothing has got verified in this regard, from Jagjit Singh. He had also not verified in this regard, from witnesses, namely Koul Chand, Mohd. Afzal and Ali Haider Shah. It has also not got verified as to whether they had made statements on their own or at the instance of Jagjit Singh. He had not thought it proper to verify in this regard. He has further not got verified as to whether the statements recorded by Jagjit Singh, were correct or not. He obtained C.D file, containing these statements, from the Reader of Jagjit Singh and handed over to SP Shikha Goyal, when the investigation was handed over to her. In his presence, Daily Diary was not seized from Rajinder Singh. Daily Diary was produced by Head constable Mohd. Hussain. Rajinder Singh is a witness to this seizure. In case, Rajinder Singh stated in the court that Ammunition register and Daily Diary were not seized from him, then,

he had made a wrong statement in the court. Sukhwinder Singh would have wrongly stated in the court to the extent that there were three holes in the piece which was cut from the Gypsy. It has wrongly been stated by Sukhwinder Singh in court that no any metal piece of bullet was seized in his presence. Seizure memo prepared in this regard, contains his signatures.

PW. Ali Haider, Constable: He deposed that SHO sealed the seized material with a ring and handed over the same to ASI Koul Chand, on supurdnama. Supurdnama was prepared in this regard. He identified his signatures over the same. It already stand exhibited as EXPW—KC/6.

On cross-examination by defence counsel of accused no.2, witness further stated that he is not knowing as to why civil witness was not called at the time of handing over of the seal/ ring to police personnel.

PW. Mohd. Hamid: He deposed that from the place of occurrence, clay was lifted by the police and was packed. His signatures were obtained on a paper. More so, he identified his signatures over the seizure memo, prepared for seizure of blood stained clay. Its contents are admitted as correct by this witness. It was exhibited as EXPW-MH. Besides this, two empties were seized. Seizure memo in this regard, was prepared. He signed it.

He admitted its contents as correct. It was exhibited as **EXPW—MH/1**. He also admitted the contents of seizure memo prepared as to seizure of ordinary clay, as correct. It was exhibited as EXPW—MH/2.

On cross-examination by defence counsel of accused no.2, this witness deposed that he is not knowing the material of the seized empties.

PW. Alam Din: He deposed that police personnel shown him small bottles, one containing ordinary clay and other having blood stained clay. Material in this regard, was seized from the road side. Papers were prepared in this regard and his signatures were obtained. He identified his signatures over the exhibit **EXPW—LH** and denied its contents. He, simultaneously, denied contents of exhibit **EXPW—LH/1**, but admitted his signatures over the same. He further stated that small bottles were shown to him in the office of SP, Operation. This witness was got declared hostile by Spl. PP and was cross-examined.

On cross-examination by Spl. PP, this witness stated that small bottles were not filled in his presence, but those were already filled.

PW. Lal Hussain: He deposed that in the month of October 1998, he was posted in the police station at Surankote. In his presence, ordinary and blood stained clay was seized from the office of SP, Operation, where

the Gypsy having no. JKO2E—8692, was parked. He admitted the contents of seizure memos, pertaining to seizure of ordinary and blood stained clay, as correct and were exhibited as **EXPW-LH** and **EXPW—LH/1**.

On cross-examination by defence counsel of accused no.1, witness further stated that SHO, Ved Parkash, prepared the aforesaid seizure memos. 100/150 grams of clay were lifted from two places and were seized, which were filled in plastic boxes and were marked '**E**' and '**M**'. Same were sealed. He had not seen the seized clay in the court on that day. It was, however, seized on 28th of October 1998, at 10/10.30 A.M.

PW. Kala Khan (Sweeper): He deposed that in the month of October 1998, he was posted, as sweeper, in hospital at Surankote. He is not remembering the date. However, in the morning, BMO told him that a postmortem was to be conducted of a dead body. A small piece of bandage and blood stained under shirt were seized by SHO, Samyal and seizure papers were prepared in this regard. He admitted the contents of seizure memos as to bandage and under shirt and were exhibited as **EXPW- K** and **EXPW-K/1**. A shirt was also seized and seizure memo was prepared in this regard. He admitted its contents as correct. It was exhibited as **EXPW—K/2**.

PW. Sudesh Kumar : He deposed that a ring was handed over to this witness. Paper in this regard was prepared. His signatures were obtained over the same. He identified his signatures over the same. It was exhibited as **EXPW—SK.**

On cross-examination by defence counsel of accused no.2 witness further deposed that after lifting the ring by the Inspector , it was handed over to him, which was blood stained.

PW. Mohd. Hussain SGC: He deposed that in the month of October 1998, he was posted as SGC in Police Station Surankote. He is a photographer. Photographs, 10 in number, of the dead body of the deceased Ajay Gupta , were snapped by this witness. He also snapped the photographs of vehicle having number : **JKO2-8692.** Same are forming part of this file. Those were marked as **EXPW—MH/1** to **EXPW-MH/10.**

On cross-examination by the defence counsel of accused no.1, witness further stated that he had not seen negative of the photographs. Same would have been lying with the Crime Branch.

PW. Om Parkash: He deposed that he was working as tailor in the month of October/November 1998 at Poonch. He cut four pieces of ragzine from the front seat of the Police Gypsy, having number JKO2-8692 and also two pieces of foam. Police seized aforesaid material and

prepared seizure memo in this regard. He admitted its contents as correct. It was exhibited as **EXPW—OP**.

The witness identified the seized articles. Besides him, Mohd. Sadiq and Subash put their signatures over the same. In his presence, an emptied of bullet was found from the below the front seat of the vehicle. Seizure memo was prepared of the same. He identified the said emptied shown to him in the court, as the same, which was found and seized. Seizure memo was exhibited as **EXPW-OP/1**.

On cross-examination by defence counsel of accused no.1, witness deposed that SHO Samyal, searched the Gypsy in presence of this witness, at the day time. Mohd. Ishaq opened the seat of the Gypsy. He is not knowing who fitted it back. He further stated that emptied of the cartridge, was found from below the spare tyre(stapni). He is not knowing as to whether spare tyre was seized or not. Emptied of bullet was lying inside the spare tyre.

PW. Mohd. Ishaq : This witness was got deleted by Spl. PP. This is apparent from statement of Spl. PP dated 23.11.2004.

PW. Subash Chander, Photographer, Crime Branch: He deposed that in the month of October/November 1998, he was posted as Photographer Section, Poonch. SHO was searching

bullet in the Gypsy having number JK02E-8692. There was blood spots over the seats. He clicked photographs there. He snapped three photographs of the vehicle, which are forming part of the file. Those three were marked as **1,2 and 3**. Emptied of cartridge of SLR , was lying underneath the seat. SHO lifted it from there and seized. Its seizure was prepared and his signatures were obtained over the same, which is already exhibited as **EXPW—OP/1**. He identified the emptied of bullet as the same, which was seized. In his presence, Om Parkash, cut four pieces of ragzine and two pieces of foam. He identified the seized pieces in the court, as the same, which were seized. He identified his signatures over the exhibit **EXPW-OP**.

On cross-examination by defence counsel of accused no.1, witness further stated that he snapped photographs, prior to seizure. Photograph, which was snapped of emptied of bullet, is not forming part of the file. Photographs were snapped by the close range . He did not snap photograph of spare tyre(stapni).

PW. Mohd. Alam: He deposed that in the month of November 1998, he was posted as ASI, at Poonch. In his presence, a supurdnama of a ring was prepared in his presence. That ring was used for sealing. In presence of this witness, ragzine of the blood stained seat was seized. He identified his signatures, over the seizure

memo, prepared in this regard and admitted its contents. It was exhibited as **EXPW- MA**.

On cross-examination by defence counsel of accused no.1, witness stated that he was not remembering with whom, the seized material was kept. Four pieces were seized on 01.11.1998.

PW. Abdul Ghani(Retired Patwari): He deposed that in the month of November 1998, he was posted as Patwari Surankote. He was asked to prepare the site plan of place of occurrence. It is in his handwriting and bears his signatures. It was admitted as correct. It was exhibited as **EXPW—AG**. He also handed over copy of Khasra Girdhwari, pertaining to Kh. No. 489, which is forming the part of the file. It is in his handwriting and bears his signatures.

On cross-examination by defence counsel of accused no.2, witness further stated that there are shops, near the place of occurrence, which are, however, not shown in the site plan. There is a road and houses at some distance of the place of occurrence. Nobody was present at the time of preparation of the site plan.

PW. Gulshan Kumar Sharma: He deposed that in the year 98, he was posted in DPL, Poonch. He cut a piece of sheet, measuring one foot, near the bullet proof glass by using Welding Set and found pellets of bullets from inside the vehicle. Those were seized and sealed.

He identified his signatures over the seizure memo, prepared in this regard and also admitted its contents. It was exhibited as **EXPW-GKS**.

On cross-examination by defence counsel of accused no. 1, witness further stated that the vehicle in question was brought in the Police Line. On 13.10.1998, he got information regarding the occurrence. On the same day, concerned police station also got information in this regard.

PW. Sukhvinder Singh: He deposed that in the month of October/ November 1998, he was posted as SPO, Mechanic in District Police Lines, Poonch. A Gypsy, having No. JK02E-8692 was brought to him. He cut a piece from front side of the Gypsy, which was containing 2/3 holes and handed over to the police. His signatures were obtained on the seizure memo. However, its contents were not read over to him. His signatures were obtained on blank paper.

On cross-examination by defence counsel of accused, this witness further stated that nobody other had signed that paper, when this witness signed it. Police did not get any bullet or its pellet from the place wherefrom the piece was cut.

PW. Jasmit Singh was given up by the Spl. PP. His statement was recorded in this regard.

PW. Rashid Khan: He deposed that in presence of this witness, a seizure memo was prepared. A ring, used for creating impressions was kept on supurdnama of this witness. He identified his signatures over the supurdnama and admitted its contents, which already stand exhibited as **EXPW-VL**.

On cross-examination by defence counsel of accused no.1, witness further stated that he was not completely remembering that on 11.05.1998, proceedings in the matter was effected in his presence. However, it is correct that on 11.05.1998, ring was placed on his supurdnama. On 11.05.1998, ASI Aurangzeb prepared the papers. He is not remembering where from this ring was brought. Ring was of yellow colour. He is not knowing the kind of its metal. ASI Aurangzeb shown him the ring.

PW. Vijay Kumar Dutta: He deposed that in the month of November 1998, he was posted as SGC in Police Station Poonch. On 05.11.1998, his duty was in the police station. He went in the Workshop of DPL. He saw the mechanic of the workshop cutting a frame where there was an impression of bullet shot. In his presence, a piece of iron frame and two pellets were seized. Seized material was sealed with a impression of ring. That ring was kept on the supurdnama, in presence of this witness. Supurdnama was prepared. His

signatures were obtained in English, over the same. He admitted the contents of supurdnama, as correct. It was exhibited as **EXPW—VK**.

On cross-examination by defence counsel of accused no.1, witness further stated that he has come for his examination as witness in case FIR no. 172 for offence u/s 302 RPC. His statement was recorded on 5.11.1998, by Inspector Ved Parkash Samyal. He is not remembering the sketch of the ring and metal used for its preparation. All proceedings regarding supurdnama were undertaken on 5.11.1998, in District Police Line, Poonch.

PW. Rajinder Singh, Head Constable: He deposed that in the month of August 1998, he was posted in SOG, Surankote. In presence of this witness, no proceeding was undertaken. This witness was got declared as hostile and was cross- examined by Spl. PP.

On cross-examination by Spl. PP, witness further stated that the contents of seizure memo, pertaining to seizure of Daily Dairy are wrong. He, however, identified his signatures over the same. He further stated that in his presence, Daily Diary was not seized. Register, pertaining to Arms & Ammunition, depicting index at page 01, dated 20.6.1998, was in possession of this witness. This register had taken by Munshi Mohd. Hussain, SOG, of Police Station Surankote, from him.

Entries, were used to be recorded, with regard to distribution of Ammunitions, in the register. He had, however, not made any entry in the said register, as he had taken charge from the last 2/3 days. There is an entry of name of Satpal Singh, at page 05 of the register. There is an entry regarding issuance of one SLR and 300 live cartridges. Seizure memo, as to seizure of Daily Diary, is exhibited as **EXPW—RS**. He handed over the register, pertaining to Arms & Ammunition to Munshi of the police station. He identified his signatures over the seizure memo. He had not got any receipt from the Munshi

On cross-examination by defence counsel of accused no.2, witness further stated that on 23.06.2009, Arms & Ammunition was supplied to accused Satpal Singh, through entry no.21, in the register.

On cross-examination by defence counsel of accused no.1, witness further stated that his statement was not recorded by the police. Daily Diary cannot be kept blank. This witness had not made any entry in the Daily Diary. He is not knowing Urdu. He had made 2/3 entries in the Arms & Ammunition Register.

PW. Arfan Ullah : He deposed that in the month of October 1998, he was posted in Police Station Surankote. Sewak Singh, accused, present in the court, was posted as SP, Operation. Accused Satpal Singh@ T.T

was posted as constable there. He also knows deceased Ajay Gupta, who was Sub-Inspector of police. On 13th of October 1998, he was on duty from 6.00 P.M to to 12 O'clock of the same night... He was Commander of a team consisting of Lnk , four constables of CRPF and two police constables. At 9.30 P.M, they were, at a distance of 50 feet towards Police Station from TCP. At the same time, a bullet proof Gypsy having no. JKO2E-8692 , came from the official residence of accused SP Sewak Singh and went towards bazaar. At 9.45 P.M, a fire shot occurred from inside the Gypsy. It was coming back at that time from the place where it had gone. After hearing sound of fire shot, he ordered members of his section **'to take positions'** . He, however, directed that **'there was no need to fire'**. At the same moment, said Gypsy stopped near to them. At this, accused T.T, came out from the Gypsy by opening its door, while armed with SLR. Simultaneously, another constable of police came out from the Gypsy. Thereafter, accused T.T fired two shots in air. At this, other police constable caught hold rifle of accused T.T. After this, he (this witness) and another constable, namely R.D Yadav, overpowered him. Other police constable after taking the rifle from the accused, went to towards the residence of accused Sewak Singh.

At this, Spl. PP asked the witness as to whether he heard anything else, besides the sound of fire shot. In reply to this question, witness stated that he heard, a constable saying that **TT had killed Gupta Sahib**. He cannot say, who was that constable. T.T accused asked them, when he was caught that he be allowed to meet to SP Sahib. At the same time, few police personnel came there from the official residence of SP. They handed over accused T.T to them. After handing over him, they checked the Gypsy and saw Gupta Sahib lying on the legs of the driver, who was in civil dress and in pool of blood. He asked the driver to take the Gypsy to hospital. He closed his section and went towards police station. An ASI was on duty in the police station. He is not knowing his name. He informed him regarding the occurrence. A bomb blast took place, in Family Lines, when he was about to go to his Company Commander. Thereafter, they started bringing the injured in front of the police station. No firing took place, when fire shot occurred from the Gypsy.

On cross-examination by defence counsel of accused no.1, witness further stated that he was making statement in a murder case of deceased Ajay Gupta. Police recorded statement of this witness. He went on leave for fifteen days after the occurrence. His statement was recorded in terms of Section 161Cr.P.C in

the year 1998. Thereafter, no any statement of this witness was recorded by the police. He has not got recorded statement referred to his name dated 20.4.1999. He further stated that accused T.T asked at that time, he be taken to SP Sahib. He is not knowing what had written in his statement. He is not knowing Urdu. Police, however, read over his recorded statement to him. T.T accused made request for having meeting with SP Sahib. He is, however, not knowing as to whether he was taken to SP or not.

On cross-examination by defence counsel of accused no.2, witness further stated that vehicle was stopped at a distance of 10 feet. There were five persons, including deceased, in the vehicle and only two come out carrying SLR and AK47 in their hands. Others did not come out of the vehicle. There was a scuffle between those two persons for snatching weapon. They also took part in the aforesaid scuffle. He and R.D. Yadav caught hold the accused T.T . Weapon of accused T.T was taken by other constable who dropped from the vehicle. Other constable left the spot after taking his own weapon and weapon of accused T.T. They had not tried to stop him. They had not enquired how the occurrence took place and who involved in the same, before allowing other constable to leave the spot. He saw the injured inside the vehicle. R.D Yadav also saw him in the vehicle. Two

persons, who did not come out from the vehicle, were not asked by them for coming out. They allowed accused T.T to go with the constables, who came from the official residence of SP Sahib. Constables came there within two minutes after they took the arms from him and was overpowered. On the basis of his request, he was allowed to go with them to the residence of SP. They had not inquired from accused T.T, how the occurrence took place, after overpowering him. Gypsy remained standing for three minutes. Nobody had come for taking it. However, they asked police personnel to take the injured to hospital. This is wrong that accused T.T remained standing for 10/15 minutes and left the spot at his own. Statement, if given by any witness that the accused T.T remained standing on spot for 10/15 minutes and then left, is a wrong statement. They had not seen as to whether the remaining persons in the Gypsy were carrying arms or not. They had not tried to inquire from anybody, how the deceased died , even after seeing the deceased as dead. Army Unit is located at a distance of 60/70 gaz from the place where they were standing. No army personnel came there after hearing sound of fire shot. There are 15 shops on one side of the road, near the place of occurrence and same number of shops are on the other side of the road. There are houses on the rear side of the shops. Nobody came on spot after

hearing firing shot sound. In his presence, police did not come on spot. He was also not taken to the place of occurrence.

PW. Mukesh Singh, then SDPO Mendhar: He deposed that he knew the accused person present in the court. In the month of Oct.98, accused Sewak Singh was posted as SP Operation at Surankote and accused Sat Pal Singh, from SOG Surakote, was posted as PSO with him. This witness was posted as SDPO Mendhar in those days. J.P. Singh was SP Poonch at that time. PSI Ajay Gupta from SOG, was also posted at Surankote. On 13th of October 1998, at 11.30 P.M, this witness got a telephone from Sh. J.P. Singh, SP Poonch that PSI Ajay Gupta had been killed and a blast took place at Surankote. It was night time and condition of road was bad, as such, he left for Surankote on 14th of October, at 4.30 A.M, from Mendhar, which was in his jurisdiction as SDPO Mendhar. He reached Surankote at about 6.15 A.M. First of all, he went to hospital where he saw the dead body of PSI Ajay Gupta. Head of the dead body was totally detached. There was uniform on the dead body. Shoulder of the shirt was containing blood spots. Thereafter, he went to family quarters, where blast took place. There was debris around the family quarters. Thereafter, he inspected the bullet proof Gypsy having no. JK02E-8692, which was standing in front of the

quarter of accused Sewak Singh(then SP Operation). There were blood and flesh pieces sticking the inner ceiling of the Gypsy. There were blood stains on both front seats of the Gypsy. He asked then SHO to get the photography of the Gypsy and seize blood and flesh pieces. [A note is recorded that on saying of Spl. PP, this witness further stated that there was a bullet impression in the frame over the front glass]. This witness further deposed that after sometime, he found Gypsy in question washed. When he inquired from driver Mohd. Akram as to why the vehicle was washed, he replied that it was done as per instructions of Sardar Ji. He, however, not disclosed, who was that Sardar. Thereafter, SP Poonch came there. He inquired from accused Sat Pal in presence of SP Poonch, namely J.P.Singh and SP Operation. During inquiry, he told this witness that while they were coming back after dropping Contractor Khaliq, they were ambushed and a bullet came from outside, he bent down his head and that bullet hit PSI Ajay Gupta. Thereafter, DIG and IGP also came on spot and they inquired the matter from the people. He directed SHO, Surankote to investigate the matter. He also asked him to inquire the matter from the eye-witnesses. He, simultaneously directed the SHO to seized the vehicle in question and blood spots. Besides inquiring from Sat Pal Singh, he also made inquiry from

Constable Razaq, who told that first fire shot was made by Satpal Singh, accused, and other two fire shots were made by him in the air, after coming outside the Gypsy. Then, SHO had not shown good performance of the investigation. On 18th of October, then SHO, got leave on medical base. Thereafter, Ved Parkash Samyal, was posted as SHO. A Special Team was constituted by SP, Poonch. Special Team, thereafter, investigated the matter further. SHO Ved Parkash was the Investigating Officer and this witness was appointed as Supervisory Officer. One ASI, namely Aurangzeb was also made one of the member of the Special Team. After recording statements of the witnesses, involvement of Satpal was surfaced. Thereafter, investigation of the case was shifted to Crime Branch, as per order of PHQ. He sent a letter to BMO, Surankote for seeking his opinion as to whether fire shot had hit the deceased PSI Ajay Gupta from a close range or from a long range. In answer, it is opined by the doctor that death had occurred due to close range fire shot. That letter is not forming the part of challan file. However, the reply in this regard address to this witness, is forming part of the challan file. It was marked as **Mark—A**. He, being Supervisory Officer of Special Investigating Team, found that murder had committed by accused Satpal Singh. Motive behind the

murder was a scuffle, which took place between accused SP, Sewak Singh and PSI Ajay Gupta(deceased).

On cross-examination by defence counsel of accused no.1, witness further stated that his statement was recorded by the police. Earlier to his reaching the spot, nothing was seized. Then SHO seized vehicle and rifle, prior to his going on leave (on 18th). He only made inquiry and not recorded the statements of the witnesses. He, at that time, directed then SHO, to record the statements of the eye-witnesses. Diaries, sent to him till he remains as SDPO, Menhedar, were not containing the statements of the witnesses. There was reference of the statements of the witnesses. He had not read those statements. I.O used to discuss with him and get guidelines. He used to convey guidelines to Investigating Officer **Vijay Singh Samyal**, till Jan/Feb. He used to read the Diaries through his Reader, namely Kala, and thereafter, passed instructions to I.O. None of the accused was arrested till month of February, as all involved, were police personnel and there was no chance of their fleeing. This witness had called Satpal Singh for 4/5 times and used to inquire from him how the incident took place. However, he never called accused Sewak Singh for inquiry. He discussed regarding the occurrence with Colonel Sarvjeet Singh of 21 RR,

Surankote. On the day of occurrence, firing and blast were occurred at Surankote.

On cross-examination by defence counsel of accused no.1, this witness further stated that he had brought record of inquiry with him and same is being submitted. First inquiry was initiated on 26.10.1998. He sent a report to SP, Poonch, who replied on 09.03.1999. M.L. Mehra was directed to complete the inquiry. However, there is no inquiry report of M.L. Mehra, on record. There is a letter showing that order was made to M.L. Mehra, Deputy SP, HQ, for inquiry. Mohd. Akram and Abdul Razaq were not attached at Mendhar, but they were used to call there. SGC Raghubir Singh never remained in his custody. However, he was also used to call. This is not recorded in police Diary. This witness had not arrested, as the offence was not proved against him, till he remains Supervisory Officer of the SIT. Accused Sewak Singh was also not arrested by him, as no offence was proved against him, during his time. He is not knowing as to whether any compensation was paid to the legal heirs of PSI Ajay Gupta, or not. Compensation is paid for death by militants and not in case of murder.

PW. Parveen Kumar: He deposed that he knew the accused. He was also knowing deceased Ajay Gupta. He was posted as Typist in the office of SP accused Sewak

Singh, in those days. On 13th October 1998, deceased died. At that time , this witness was in his quarter, accompanying by SGC Raghubir Singh and Constable Ramneek Singh. On 13th of October 1998, at 9/10.00 P.M, they were sitting in the quarter after taking meal. They heard sound of a fire shot. Raghubir Singh and Ramneek Singh, started wearing uniforms. At the same time, two more fire shots occurred. Thereafter, they came outside the quarter in Verandah. After sometime, cook Chander Pal came there and told that deceased Ajay Gupta got the bullet shot and had been taken to hospital. At this, he went to hospital and saw the dead body of Ajay Gupta, on a cot, who was in civil dress at that time. At the same time, constable Satpal Singh @ TT (accused present in the court), Abdul Razaq and accused SP Sewak Singh were standing there. Accused Satpal Singh was in uniform and was armed with SLR. He put a bed sheet on the dead body of the deceased, after taking it from the store. Thereafter, he came back to his quarter. He remained sitting for 10/15 minutes in a room, belonging to Wireless personnel. At the same time, constable Sarfraz came there, who asked as to whether somebody had told regarding the occurrence, to the wife of deceased Ajay Gupta, or not. He replied in negative. Thereafter, he and Sarfraz proceeded towards hospital and at the same time, a blast occurred. After

sometime, police personnel started bringing injured to the hospital. Injured were mostly police personnel. On next day, at 8/9.00 A.M, he went to his office. Accused SP Sewak Singh asked him to write a letter. He taken out a pen and a paper. At the same time, SP (accused present in the court) started dictating him the letter. This witness wrote it and accused signed it. He asked him to mention number and date as 13th. He mentioned number and date over the letter and handed over it to SGC Raghubir Singh, who went to police station. On that day, Reader of accused SP Sewak Singh, was on leave and he was discharging his duty. Letter was shown to him. He saw it. He further stated that it was written on 14.10.98 ,but date was mentioned as 13.10.98. It is in the handwriting of this witness and signed by accused SP Sewak Singh, in his presence. He admitted its contents as correct. It was exhibited as **EXPW—PK**.

On cross-examination by defence counsel of accused no.1, witness further deposed that except him, nobody was knowing that letter was written on **14.10.98**, but it was dated as **13.10.98**. He knows personally SGC Raghubir Singh, but not knowing that he had been cited as witness in the case.

On cross-examination by defence counsel of accused no.1, witness further deposed that he had written **EXPW—PK** as per dictation of Sahib. Entries

were recorded by this witness in the Dispatch Register, in the office. He had made the same entry, in the register, which was recorded in **EXPW—PK** . He had made entry in the Dispatch Register, according to direction of SP Sahib. On the day of occurrence, he had not gone to the residence of Sewak Singh and also not on 14.10.98 to the residence of accused Sewak Singh. However, he had gone in the office.

PW. Mool Raj, S.I : He deposed that he remained posted from December 98 till March 99 in 12 Bn. JKAP in General Branch, Jammu. He knows accused no.1, who presented his joining report, before him. He had seen the same, which is forming part of the file. Accused no.1 had written it himself and signed in my presence. He identified his signatures over the same. It was exhibited as **EXPW—MR**. A team from Crime Branch, consisting of two Dy.SPs, came to him, in March 1999 and demanded joining report of accused no.1. As per order of Commanding Officer, Joining report of accused no.1 was handed over to the Crime Branch.

PW. Mohd. Razaq, Tehsildar: He deposed that on 05.11.98, he was posted as Naib Tehsildar, Executive Magistrate, Surankote. Police got re-sealed sealed packets from him. He issued a certificate. It is in handwriting and bears his signatures. It is correct. It was exhibited as **EXPW-MR**. On 06.11.1998, two more

packets were got re-sealed from him. He issued certificate, which is in his handwriting and bears his signatures. It was exhibited as **EXPW—MR/1**.

On cross-examination by the defence counsel of accused no.2, this witness further stated that he had not opened the sealed packets. He only re-sealed it and wrote its detail in certificate. Certificate is in the handwriting of office clerk. Request letter is not forming the part of challan file. Packets had not seen by this witness on 6th, also. He written letter as per instruction of the police.

On cross-examination by defence counsel of accused no.1, witness further stated that he had not mentioned in his report, how many seals he had applied and what were their marks. Certificate is not in his handwriting.

PW. Mohd. Akram S/O Sher Khan, SPO: He deposed that in his presence, a ring/ seal was handed over to Suresh Kumar, on his supurdnama. He identified his signatures over the same, which already stand exhibited as **EXPW—SK**.

On cross-examination by defence counsel of accused no.2, witness further stated that he had gone on 28th at 8.30 A.M with police party and supurdnama was written at 3 / 4.00 P.M. Ring was not used in his presence.

PW. Abdul Rashid Lone, Dy. SP: He deposed that in the March 1999, he was posted as Dy.SP, Crime Branch, Jammu. Investigation of the case, was with Dy. SP, namely Mohd. Amin Khan. On 19. 03.99, he had gone along with aforesaid Investigating Officer to 12Bt.HQ, where they had to take the handwriting of Sewak Singh. ASI, Mool Raj, produced Joining Report of Sewak Singh and an Inquiry Report, containing his signatures, before them, which were seized as a piece of evidence. Those were seized as per exhibit **EXPW—MR-1**, which is in the handwriting of this witness. It is dated 19.03. 1999. Joining Report and Inquiry Report, forming part of the file, are the same. Those are already marked as **Mark-1** and **Mark-2**.

On cross-examination by defence counsel of accused, witness further stated that he had come on that day, in the court, as a witness in the case and not as an Investigating Officer. Exhibit **EXPW—MR** was not written in presence of this witness. This witness had never worked with accused Sewak Singh. He had mentioned above that he had to obtain handwriting of accused Sewak Singh, as per instruction of Investigating Officer.

PW. Ghulab Chand, S.I : He deposed that in the month of March 1999, he was posted as ASI in Crime Branch, Jammu. Investigation of the case, FIR No. 172

of 1998, was transferred to Crime Branch Jammu. Investigation of the case was initially effected by Shikha Goyal, IPS, Addl. SP, Crime Branch, Jammu. Investigation of the case was given to Dy. SP Amin Khan, after the transfer of said Shikha Goyal, who directed this witness for recording statements of some witnesses, at Surankote. He, on 20.03.1999, recorded statements of the witnesses, namely Arfan Ullah—Havaldar, CRPF, Constable Shakeel Ahmed, Subash Chander – Ex-serviceman and LT. Col S. Sarbjeet Singh. Those statements were handed over along with Daily Diaries, to Dy.SP Mohd. Amin Khan.

On examination by Spl. PP, this witness further stated that he recorded statement of Col. Sarbjeet Singh, Commanding Officer, in terms of Section 161Cr.P.C and was read over to him.

On cross-examination by defence counsel of accused no.1, this witness further deposed that it was correct that he was the one of the member of the team of investigation along with Investigating Officer Shikha Goyal. He had not written himself any diary in the case. He, however, recorded statements of four witnesses, including PW. Sarbjeet Singh. He had not sent any notice to PW Sarbjit Singh, in writing, but SHO, sent a message to him, on telephone. He had not mentioned name of the SHO. More so, he neither mentioned

number of the telephone of SHO, through which, message was sent to the witness, nor the number of the telephone of the witness. It is correct that witness Sarbjeet Singh was superior to SHO and this witness, in rank. He is knowing that under rule witnesses are required to be summoned for recording their statements during investigation. He had not read the statement, got recorded by the witness, namely Saravjeet Singh. This witness never remained as Investigating Officer of the case. Witness stated in further cross-examination that on 19.03.1999, he had not written in the Diary (Gemni) that he is proceeding for Poonch. It is correct that witness Col. Sarbjeet Singh had not identified this witness in the court, while get recording his statement. Said witness further denied that this witness never recorded his statement, during investigation.

On cross-examination by defence counsel of accused no.2, this witness further stated that on 19.03.1999, he got investigation of the case. He is not remembering as to whether, weapon was seized or not, at the time, he got investigation. He recorded further statement of witness, namely Arfan Ullah. He only investigated on 20.03.1999. Besides Arfan Ullah, he recorded statements of witnesses, namely Sarbjeet Singh, Constable Shakeel Ahmed and Ex-serviceman Subash Chander. He recorded their statements about

five months after the occurrence. He did not inquire as to why they had not got recorded their statements, earlier, with regard to occurrence. This had not come in his investigation that the family of the deceased got compensation because he died in militant attack. All the aforesaid four witnesses had come in the police station for get recording their statements. He had not sent any docket to them.

PW. Dr. Bibha Rani Ray, Principal Scientific Officer, Central Forensic Science Laboratory, New

Delhi: In examination-in-chief, the witness stated that I am of the Head of the Lie Detector Division CFSL, New Delhi and am M.A. Ph.D. Psychology. As on today, I have 17 plus years experience in this field. I would not be able to recognize the accused Satpal. His signatures are on his consent form and graphs and the questioner which were asked when sent for the polygraph examination. I have seen the report furnished by me on the file bearing no. CFSL-99/L-76 dated 22nd of Feb.99. The name of the suspect regarding whom I have furnished the report was constable Satpal Singh. This report was forwarded by me to the Inspector General of Police, Crime and Railways, Jammu. This report is regarding FIR No. 172/98 P/S Surankote, District Poonch(J&K), I subjected constable Satpal Singh to (lie detector test) polygraph examination. I have given the results of my examination

in my report which is signed by me. Its contents are correct and is marked as **EXPW—BR**. It comprises of two pages.

In cross-examination by the counsel on behalf of the accused no.1 has stated that the person who was subjected to polygraphic test remained with me for one day. Approximately, I spent six hours. I can confirm from my record for being exact which is with me. When the person was brought to me for that I have to consult the record. After consulting the record the witness stated that at 3 PM the person was brought before me on 12th of Feb.1999. The person was discharged at 7.30 P.M on the same day. He was brought by SP Crime and Railway, Jammu, namely Ms. Shikha Goyal to me. When he was brought to me, he was not handcuffed. Whether he was arrested or not, is not written in the brief facts, so I cannot say whether he was under arrest or not. I did not put him the question whether he was under arrest or not. I did not ask the person (subject) as to whether he was in custody and regarding the period of his custody. I considered him as a free man. It is correct to say that I considered him as a free man and he has replied the questions accordingly. This was one of the facts regarding my examination, but my report was based completely on Polygraph test. I was not assisted by any body during the examination of the subject.

Before proceedings to conduct the Polygraph test, I have not got the subject medically examined. To know the mental condition of the subject, I did not get him examined from a psychiatrist, since I am myself a psychologist. So, I could assess after examining him, his mental status also. I was sure that the mental condition of the subject was all right. He was employed at that time in J&K Police and posted at Poonch. I did not ask Ms. Shikha Goyal that where from the subject was brought. I only asked him about his address and posting place. I discussed the case with Shikha Goyal, who was the I.O of the case. She gave the full case history. The facts were presented by the I.O in writing and then I also discussed about the same with the I.O. I.O had told me and given in writing also about the involvement of the subject in the case. I consulted the I.O and the information given was taken into consideration in my report. Then stated that while framing the questioner for the polygraphic examination test of constable Satpal brief facts of the case and the pointers given by the I.O were considered. The report is based on the polygrams recorded from the examination of constable Satpal, the subject. Written report given by the I.O. to me was already prepared, it is with me today. It is in my record, which I have brought with me today. I received the fax message as faxed. It was not presented by any person to

me. The fax message was delivered to me on 12th of February 1999 by the Director CFSL whereas the Director CBI received it on 10th of Feb. This fax message does not state that the I.O was deputed to me. I did not send any written consent or intimation to the IGP regarding the examination of Satpal. The, then Director CBI has marked Yes, for examining the subject. There is nothing in the records that Director CBI or any one from my unit or office had sent any consent in writing for the examination of the suspect. From the record, it seems that there would have been some telephonic conversation between the Director CBI and IGP Crime and Railways. Jammu. Because there is yes on the letter dated 10.2.99, so I can only say that there could have been telephonic conversation. There is no any written record regarding the fixing of the date as 12th for the examination of the suspect and its communication to J&K Police. The date of examination of the suspect was fixed by me **on 12th for 12th**. I do not remember the time when I fixed the date, must be in the fore-noon. When fixed the date, the I.O had contacted me and given me the case history. It must have taken one and a half hour for framing five questioners. These questioners which are presently in my record with me, I had not sent any copy of those to the I.G.P Crime and Railway, Jammu. This record was seen by the Director CFSL.

After examining, it was sent back to my Division for records. Till date no body has summoned this record from my office. I was instructed by the Inspector General of Polie Crime and Railway, Jammu to come with the record today in the court. During the course of the examination of the suspect by me, the I.O did not remain there. I had asked the suspect that as to whether he has been threatened or subjected to beating but my record does not bear the testimony to this effect. I remember I have asked. In the pre-test interview, when I talked to the suspect, he was able to understand the conversation and he agreed voluntarily to take the polygraphic test. Pre-test conversation with the suspect does not form part of the record and was not submitted to the I.G.P Crime and Railways. I cannot say how many questions I had put to the suspect to know about his mental condition. Must have been 15 to 20 questions, but those questions have not been recorded. The suspect was 9th pass as stated by him. The suspect was talking in Hindi. I have not recorded his mother tongue. Since I have asked the questions in Hindi, he was able to answer those in Hindi. There was half an hour break in between the pre-test and final test and the final test and the polygraph test was, without any break, conducted. This polygraphic test continued for three hours continuously. I do not remember having served anything

to the suspect but he must have asked for water and during the break between the pre-test and final test he would have been provided with tea as well. I cannot assess that suspect would have been subjected to interrogation or not, if so, for how much period. I did not ask from the suspect whether the suspect was interrogated by the I.O. I have not asked from the subject when he started his journey for the said test. I have not asked the suspect where he had stayed for the night. I do not think that the suspect was empty stomach. The polygraphic test was started in my laboratory initially in the year 1973. I have appeared in many courts as an expert on the subject. I am not aware of any case where my report has been accepted or not. Throughout my career, I have not come to know whether my report has been accepted in any case or not. In one case, Subhra Lahri which was murder case, 14 persons were subjected to the lie detector test. On the basis of polygraphic report, bail plea of three of the subjects was rejected and they were convicted also on the basis of other evidence also besides polygraphic test. I have not gone through that case. I had not joined the department till then. During the pre-test period consent letter was taken from the suspect. Must be after half an hour after starting the pre-test, the consent letter was taken. This consent letter is signed by him. I have read over and

explained the contents of the consent letter to the subject, but I have not written so in the consent letter. I have told the suspect to read and understand, then I also explained the same to the suspect. In pre-test, we make understand the suspect what is the purpose of the polygraphic test and how it can be conducted. I also told him that reply given by the suspect would be used against him as an evidence in the case. This aspect is not written but I asked the same before conducting the test. I told to the suspect that he was not obliged to subject himself to the polygraphic test and I have not recorded this aspect also. Those questions were put to the suspect in presence of the I.O in the pre-test I.O was not in uniform . Suspect did not decline to make his statement. All the questions framed by me were in Hindi in the questioners. I had framed all the questions in one go. I did not give the copy of the questioner to the suspect but I read the questioner to the suspect before subjecting him to the polygraphic test. The answers given by the suspect were not recorded in Hindi. I know Hindi. The questioners are in my hand writing. Each question has not been signed by the suspect but the questioners as a whole were signed by the suspect. I got the points from the I.O and on those points, I asked the questions from the suspect. The answers of the suspect have been recorded by me in English in my handwriting. After one

questioner consisting of 11 questions one polygraphic print was taken. Then the result of the polygraphic test was based on the comparison of relevant questions with the controlled question. I prepared the report on 22nd of Feb and submitted the same on the same day to my Director. Earlier the report was prepared by me on 17th of Feb. At the time of putting my first questions to the suspect, facial and bodily movements were observed during the examination. I did not find any gesture of the suspect at the time of putting him the question. So I have not recorded the same. My report is based solely on polygrams. My observation as a psychologist, I have recorded the observation of the suspect in general not on the polygrams. The reactions of the questions were not recorded by me but it is being depicted by the polygrams. This polygraph machine was purchased by CBI in the year 1973, The machine which I used for the test was purchased in the year 1983. M/S Laffayatly Instrument Company had manufactured this machine. I joined Haryana FSL in 1986 and at that time I had undergone six months training for operating such machine. I have not received any training from any foreigner. When the machine is being installed by the manufactures, instructions are given by them. I was not instructed by the manufactures to operate the machine, which had taken the polygraphs of the suspect. But, I

had received the training to operate the machine from the first time for the same during my service. I was given the manual of this machine when it was purchased. I have gone through the manual, a number of times. It must be comprising of 50 pages but it is difficult to give the exact number. I do not remember the exact number of the chapters. May be 9 to 10 chapters must be there. The manual pertains to maintenance and operation of the machine. One or two would have been for the maintenance of the machine. Caliberisation is done periodically after every 6 months. We have calibration machine and calibrate it ourselves. In 2001, it was lastly maintained. Month, I do not remember. Till 2001, it was maintained. It is not possible for me to remember that on the date of the test, prior to that for how much period the machine was maintained. It would have been done by the end of 1988. Once Rs.5000/- have been spent for the service of the machine. Normally, the machine does not develop any defect, but for proper working order, it is to be serviced periodically. Simple chart roll is provided for the polygraphic tests. There is no specific thickness for the same. I have asked from the suspect about the motive of the occurrence. From the graph, I can make out that suspect was normal. The position of the mind of the suspect gets relected in the polygrams as per polygrams nothing else was in the mind of the suspect

except the response of the questions put to him. At the time of pre-test also nothing was boiling in the mind of the subject except to answer my questions. He was replying normally. According to polygrams, subject had made some false replies also. In total 55 questions were asked from the subject. As per the graph, subject gave correct and in-correct answers are depicted from the graph. In the answers which are deceptive are being marked by me today on the graph. This machine depicts in the graphs blood pressure, pulse rate, respiration and galvanic skin resistance. All these things depend upon the physical condition of an individual. These can be different from individual to individual. Polygraphic science was introduced in the year 1895. From 1941 to 45 it took the full shape but in India, it was introduced in the year 1973 only at CFSL at CBI New Delhi. This is conclusive report . It is correct up to 90 to 95% and in three percent cases we are not in a position to give opinion. In USA, this test has been taken as perfect and conclusive but it is admitted in evidence with some stipulations there and not in India. No further question is put.

PW. H.C Bhagat Scientific Officer, FSL, Jammu

on S/a dated 1.4.2003: On examination in chief, conducted by APP, the witness stated that the report placed on the file prepared by Mr. R.S. Jamwal in my

supervision which was signed by R.S. Jamwal and countersigned by me. My expert Sh. R.S. Jamwal has examined the case, 17 sealed packets were received on 14th of November 1998 which were forwarded by Superintendent of Police, Poonch through Sub-Inspector Number 2345/ NGO under letter no.GD—FSL/ 98/17150-51/ GB dt. 7th of November, 1998. Packet no.1 was sealed with 12 intacts seals out of which five seals tallied with the specimen signatures forwarded by Executive Magistrate, Ist Class Swarn Kote. On opening, it contained 1 SLR bearing no. Rifle 7.62 MMIAI NO.16148797 which was marked as exhibit no. F-519/98. Packet no.2 was sealed with intact seals of which two seals tallied. On opening it was found to contain 1 SLR Magazine filled with 17 live cartridges of which three bearing marking OFD 7.62 M8085 + OFB 7.62 MBO 93+ 8 OFB. 7.62 MBO 95+ 5 CFB 7.62 MBO 95 which were respectively marked as F-520/38 to F-537/98. Packet no.3 was found sealed with 9 intact seals impression of which four tallied, on opening it was found to contain 1 AK47 Rifle without magazine bearing body no. K11510 and was marked as Exhibit F-538/98. Packet no.4 was found sealed with 6 intacts seal of which three tallied on opening it was found to be contained 1 AK47 Magazine filled with 25 live cartridges and five mis-cartridges. 2 (59381 + 28(53988) which

were marked as F-5399/98 to F-569/98. Packet A was found sealed with to intact seal impression of which one tallied on opening it was found to be contained 2 fired cartridges cases bearing marking 7.62 MBO OFB 85+ 7162 MBO OFB 94 which was marked as F-570/ 98 and F-571/ 90. Packet(i) was found sealed with 2 intact seals of which one tallied, on opening, it was found to contain one fired cartridges bearing marking 7162 NBO 94 which was marked as exhibit F-572/98. Packet K was found sealed with 8 intact seals of which five tallied on opening it contained 1 iron sheet with two suspected holes which was further marked as Exhibit F-573/98. Packet L was found sealed with five intact seals of which three tallied on opening it was found to contain 2 fired bullet jacket fragments which were collectively marked as Exhibit F-574/98. Note. 9 packets bearing marking P.C,D, E, F, G, H, J and 5 were sent to Biology / Serology. Section in original sealed condition for examination. Rifle marked F-519/ 98 and F-538/98 were subjected to thorough physical examination. Cartridges swaps were passed through the barrels of both the rifles and chemically tested. The suspected holes on the iron sheet and the fired bullet Fragments were also subjected to thorough examination. The cartridges cases marked 521 / 98 plus F 540 were test fired through rifles marked F 519/ 98 and F 538/98

compared with the fired cartridges cases marked F-570/98 to F-572/98 under comparison microscope and it was found that :-

- 1) 7.62 MMSLR and the AK47 marked F-519/98 and F-538/98 were found in normal working condition.
- 2) The 7.62 MMSLR and the AK47 marked F-519 and F-538/98 had been fired through prior to their receipt in the Laboratory.
- 3) The two fired cartridges cases marked F-571/ 98 and F-572/98 had been fired through the 7.62 MMSLR marked F-519/98.
- 4) The fired cartridges case marked F-570/98 had not been fired through the 7.62 MMSLLR marked F-519/98.
- 5) The two suspected holes present on the iron sheets marked F-573/98 had been caused by fired bullets.

The report was prepared by Mr. R.S. Jamwal, Scientific Assistant Physic and Ballistics FSL Jammu whose signatures I can identify and it also bears my signatures.

At this stage the defence counsel objected to the receipt of report in evidence.

Note:- Subject to final hearing on the point this report is marked as EXPW-SC.

Note:- The prosecution is permitted to open the seals of Mark F 519/ 98 SLR NO. 19148797 which

is the same SLR. It also bears our Lab. Marking F 519/98. It is marked as 'I'. Permitted to open seals of F-570 to F 537, 538, F 539 to F 569. Next packet 570 , F 571, F 572, F 573, F -574. F 520 to F 537 containing the cartridges. AK 47 shown to me in the Court our Laboratory marking as 538 and the number of the AK 47 K 11510. It is the same which was examined by us. It is marked as Mark 'III'. The Magazine of AK-47 is the same which bears laboratory marking 539/98 to F 569/98. It was the same magazine and cartridges which were examined by us. It was marked as Mark' IV'.

The packet containing two fired bullets opened in the Court bears our Laboratory marking F 570/98 and F 571/98 these are the same cartridges cases which were examined by us. It were marked s Mark'TV' and Mark'VI'. The packet containing one fired cartridges opened in the court bears our laboratory marking F 572 /98 which is same cartridge case which we examined in the Laboratory and it is marked as Mark 'VII'. The packet F 573/98 is opened in the court which bears our Laboratory marking F 573/98 and it is the same Metallic sheet which we examined in the Laboratory. It is marked as Mark 'VIII'. Packet F574/98 opened in the Court

contained two metallic Fragments these are the same which we have examined. It is marked as Mark'IX'. In reply to letter No. Addl. Superintendent of Police / 99/2395 dated 25th of Feb. 99 in connection with Report Number 03/GSL/ 99 dated 8th Jan. 99 from Addl. S.P. C and K Jammu and your endorsement dated 25th of Feb. 99 the query raised is replied as under:-

From the reconstruction of scene of crime and taking all the physical parameters using bullet proof Gypsy the possibility of firing through the SLR in question. From the rear left seat of vehicle towards the left upper portion of winds screen frame cannot be ruled out. This opinion was given by me in response to the query. It bears my signatures and its dated 20-2-99 is correct. It is marked as EXPW—HC/1. The witness further stated that four paper packets marked P-33/99 P-4/99, P-5/99 , P-6/99 were received from Biology / Serology Section on 22nd of March 1999 in the Physic section in connection with Case FIR no.172/98 U/s 302/120-B/121-122 RPC and 7/25 260 AA Police Station Swarn Kote. The unsealed paper packets marked P-3/99 was found to contain clay sample with pebbles which marked as EXPW-CMP-119/99. The 2nd unsealed paper packet marked-4/99 was to contain some stained clay sample with pebbles which were marked as EXPHEW CMP 129/99. 3rd sealed packet marked as B-

5/99 was found to contain some stained clay sample with pebbles which were marked as EXPHW CMT 121/99. The 4th sealed packet marked as B-6/99 was found to contain some stained clay sample with pebbles and were marked as EXPHEW CMT-122/99. All the samples were subjected to physical microscopical and density gradient tests and it was found that:

- 1) the exhibit CMT-119/99 and Exhibit CMT 120/99 are similar.
- 2) the exhibit CMT -121/99 and Exhibit CMT 122/99 are similar.

The report was prepared by Mr. Masood Sadiq Scientific Assistant FSL Jammu under my supervision. The entire examination was conducted by Masood Sadiq under my supervision and this report was countersigned by me. I identify my signatures. The report is correct and subject to arguments at the final state it is marked as EXPW-HC/2.

In cross-examination by defence counsel for accused No.2, stated that at the time of re-construction of the crime scene the height of the deceased was informed to me. I do not remember it how not I have mentioned in the report. At the time of reconstruction of crime scene we made record of various measurements including the measurement of the portion of head which will be out stressed from the head rest. The height of the accused no.2 was also not informed to me. The height of

the back seat of the Gipsy is also mentioned in the internal record which has been kept in my office record. I do not remember the height at which the bullet had hit the wind screen not I have mentioned the same in the report also. This must also be mentioned in the internal record lying in my office. I cannot recollect as to which part of the wind screen the bullet was hit. Bullet can deflect after hitting a major bone however, no such information was given to me. If the bullet fired from the left back seat and the person who is sitting in front and the bullet passed through the body of the person unobstructed it will hit the centre of the wind screen. In case of slight deflection it may go to right side. In the present case we have not done the test firing while reconstructing the scene of crime. However, in the laboratory the test fire was done by Mr. R.S.Jamwal. The test fire was conducted on the firing box provided in the laboratory. The Photomicrographs were not taken for comparison of the test bullet with the bullets sent to us. For microscopic comparison as the Camera was not functioning. However, we could see by our naked eye, specimen seal impression not I can recalled it. However, the packets were sealed. I have not mentioned the specimen seal impression in my report. In Exhibit PWHC so far as packet I is concerned out of 12 seals only five tallied with the specimen seal impression rest were not.

In whole of this report EXPHC in none of the packets which were sent to our laboratory testing, the seal impressions on the packets tallied with the specimen seal impression totally. There was only one specimen seal impression which was sent to us. F-570 fired cartridge was neither fired through SLR nor through AK47. This fired cartridge of 7.67 MM Caliber was fired from a weapon which could not be identified. 7.62 MM Caliber cartridge can be fired through fire arm having Caliber 7.62 MM. The hole present in the iron sheet marked F-573 has been caused because of some fired bullet. However, it could not be said which bullet it was. As per Exhibit EXPW HC AK 47 had fired through however, no cartridge case was sent to us which can be linked with AK47. The paper packets which has been mentioned in EXPW HC 2 were unsealed when the same were received by me. The record of internal report I have mentioned above for re-construction of scene of crime is lying in my office which can be produced by me.

At this stage the counsel for the accused requested the court that the witness be directed to produce the record above mentioned i.e. reconstruction the crime scene. Prayer is allowed and the witnesses is directed to produce the record. The statement of the witness was deferred with direction to produce the record. The witness further stated that I am submitting the record

comprising of 33(Thirty-three) leaves in the shape of file, as per the direction of the Court. I have checked the record so presented in the Court. There is no re-construction of Crime-scene in this record. The only record which was with me which is being presented in this Court, and there is no other record, the record with regard to re-construction of crime-scene. There is no lack in record dt. 25th of February, 1999 which required the re-construction of crime scene. This letter is from the office of the Addl. Superintendent of Police, Crimes and Railways Jammu. This letter was replied on the next day of the receipt of the letter. As per my reply letter, I have not mentioned that any record was constructed regarding re-construction of the Crime-scene. This letter of Superintendent was received on 25-2-1999, as per endorsement of Director, F.S.L on the same. I have not gone to the place of occurrence, at the time of re-construction of the crime-scene or any time, thereafter. It was done only in the Laboratory. At the place of occurrence, no record was re-constructed regarding crime-scene, but it was constructed in the Laboratory.

On cross- examination by the counsel on behalf of the accused no.1, stated that test was carried by my Expert, in my presence. I did prepare rough notes. Then, stated we entered the same into our register in the F.S.L. After examining the documents, the record of the

examination is firstly entered in the register maintained in the F.S.L and from that the report has been prepared. Those entries were recorded in the register that can be stated after seeing the register. It may have been on the same day or the next day. When we prepare the report, it is not been mentioned in the report that same has been prepared and compared with the entries made in the register maintained in the Laboratory. The report is being prepared by the Examiner after consulting the register maintained one. We prepare the report collectively. I have prepared the report on the basis of the entries maintained in the register, but I have not compared but it is based on that . Original record is the register which we maintain in the Laboratory which is our internal record. That does not contain entries of this case, but entries of each and ever case is made in that register. This case was marked for examination by whom, it does not transpires from the record. I was asked a query whether the bullet was fired or not, not about the chemical composition in the bullet. Chemical—composition can also be examined in the Laboratory, if it is asked or required. The pieces of wind screen of having the whole in it was chemically examined by me. Smoke material around the hole from the wind –screen was examined. Chemical composition material was not done by me as it was not required.

Chemical composition of that, material is the sure test which has been fired and used from the particular gunshot. I had recorded the chemical composition of the smoke material on the piece of wind-screen in my internal record, but that I have not reflected in the record presented in the Court today. On the basis of that chemical test we frame the report. I am certain that I have not examined the bullet material used for test firing so as to determine the chemical composition of the material. I cannot say the chemical composition of the material of the cartridge and the material on the piece of wind-screen were the same or not, because, the same were not examined in the Cartridge used. What was the quantity of the smoke material on the material of piece of wind-screen, I have not mentioned in the report. Since, I am a Ballistic Expert also, I can say that the chemical material being used in the bullet is a nitro-glycerin and nitro cellulose. Almost, all the materials used in the fire-arms causes smoke and colour of cauler around the bullet determines the chemical material used in the bullet. I have not taken note, what was the colour of the material around the hole of wind -screen. I have not examined any of fired bullets from L.M.G. A bullet of 7.62 Caliber can be fired through any such weapon which is 7.62 -Caliber. I am not aware of the weapons, which have this much or similar caliber. The material of

which fire was fired in the laboratory has not been preserved, because that is being used in all the cases. I have not mentioned the hole which was caused by test-fire. This fire was not fired on a hard substance or on such a substance on which the fire was alleged to have been used in the case. We tested test-fire on a Card – board piece and Cotton-material. When the case was sent to me for examination, the history of case was also conveyed to me. As per the history of the case, bullet in the case was fired on a hard substance. The material which was there on the Card-board after using the test-fire was not noticed by me and has not been mentioned in the records . The colour of test-fire used at the time of test fire has also not been noticed, nor it was required.

PW. Mool Raj, Scientific Officer, FSL, : In examination in chief , stated that on 18th January 99, I was posted as Scientific Assistant in FSL Jammu and I received 9 sealed packets from Physics and Ballistics Branch forwarded by Superintendent of Police, Poonch vide his letter No. CB—FSL/98/1715 dated 7.11.98 through S.I Balwant Singh No.2345 NGO in connection with a case FIR NO.172/98 under sections 302/120-B, 121, 122 RPC, 7/25, 26,27 I.A . P/S Surankote. The packets were sealed with the impression of the seals which tallied with the specimen seal impression forwarded by the Magistrate. After examination, I have

submitted the report of the said contents of packets. Various chemical and microscopical examinations were conducted of the contents of the packets which revealed the presence of blood in exhibits shown in the report marked as B-3/99, 2 B-14/99 except for B-6/99 and B-8/99 alongwith the serological results quoted in the said report No. 162/ FSL 99 dated 27.2.99. In addition to this one more packet was received in Biology and Serological Division on 4.3.99 whose result has been quoted in the report No. 175/FSL 99 dated 6.3.99 which is marked as EXPW MR-1 dated 12.6.2004. The report consists of two pages bearing report No. 175/ FSL/99 dated 6.3. 1999. The said reports bear my signatures and are correct. I have returned the examined articles after re-sealing them to the concerned police authorities which can be identified only from the record which is available in the office. The re-sealed packets presented in the court are the same which were returned to the police.

In cross-examination by the counsel on behalf of the accused no.2, has stated that the packets were received by me after 2 ½ months after the date of dispatch by the S.P. Poonch. I did not go for D.N.A. profile because there is no such facility available. We did not go for such grouping because we were not having such facility available. No further question was put. No

question by the counsel for the accused No.1 is put to the witness.

PW. Sh. K.K. Raina, Scientific Officer, FSL, Jammu, on oath today 9.7.05 in examination in chief, has stated that on 18.1.99, I was posted as Scientific Officer FSL, Jammu when 9 sealed packets were received from Ballistics Division FSL, Jammu, which were received from S.P Poonch vide his letter No. CB-FSL/171/98 dated 7.11.98 through S.I. Balwant Singh No. 2345/NGO, in connection with FIR no.172/98 p/s Surankote. As incharge I entrusted this case to Sh. Mool Raj Scientific Asstt, for examination and report, who after examination under my guidance and supervision, submitted the same vide report No.162/FSL/99 dated 27.2.99. Same has already been exhibited as EXPW MR, which has been counter-signed by me.

In continuation to EXPW MR, one packet in opened condition marked ' L' was also received from Ballistics and Physics Div, FSL, Jammu, which had been received from Addl. S. P Crime and Railway Jammu, vide his Letter No. ADDL. S.P/ 99/ 2395 dated 25.2.99. This packet was also entrusted by me to Sh. Mool Raj Scientific Asstt. as Incharge of the Division, for examination and report, which he examined and reported, vide his report No. 175/ FSL/99 dated: 6.3.99,

which had already been exhibited as EXPW MR/1 on 12.6.04 and this report is also countersigned by me.

In cross-examination by counsel on behalf of accused No.2, witness has stated that packet EXPW-MR were brought to me by Sh. H.L. Bhagat, Scientific Officer of Ballistic and Physics Div, FSL, Jammu. He had himself brought these packets to me and not under the direction of Director of FSL. I was given specimen seals alongwith authority and forwarding letter. Only one seal of Magistrate intact and no seal of investigating Officer. On each of the packet I found only one seal of Magistrate. After conducting the tests result were shown to me by Sh. Mool Raj Scientific Asstt.

PW. Col. Sarvjeet Singh, presently posted at Darjiling: On examination by Special P.P, he has stated that in October 1998, I was posted as Commanding Officer 27 RR stationed at Surankote, J&K. I know accused Sewak Singh as he was S.P. Operations in Surankote in Oct.1998. On 13th of October, I alongwith my 2 I.C. Col. Purshotam alongwith one Khaliq, who was our source, went to the house of accused No.1 to get some information. Accused No.1 was about to start his dinner and was on the Dinning Table. Accused No.1 offered us drink, we had the drink. Accused No.1 then told us that he did not have any mature information so he said that he would share the information with us

after 2 days and then a joint operation would be launched. In the meantime, the deceased came in and we got up and congratulated him. The reason for extending congratulation to him was that as per accused No.1, the probation of the deceased was over. Then accused No.1 requested me that the deceased was hosting a party in respect of his confirmation and promotion so provide him some liquor from Canteen. I told him that deceased can come to the Canteen tomorrow and take the liquor. The matter got concluded and we left. Two hours after my Adjutant spoke to me on telephone that some police party had come and wanted some liquor. Since Canteens are closed by the evening and so my Adjutant wanted my permission to open the canteen. I told my Adjutant that don't open the canteen but provide police party some liquor from officers Mess. Some time after same Adjutant spoke to me again on telephone that he has received an informant from Police Control Room that a police party has been ambushed and they want re-enforcement. I asked my 2 IC Col. Purshotam to rush on spot alongwith Q.R T (Quick Reaction Team) Col. Purshotam communicated to me on Radio set that there was nobody on the roadside and no such ambush there. I advised Col. Purshotam to go to Control Room and confirm it and he again communicated to me that there was nobody in Control

Room even. I again asked him to go to local police and get the details from them. Col. Purshotam spoke to me again probably from Police Lines, Surankote and he told me that there was no ambush at all but there was probably a case of accidental firing. Col. Purshotam wanted me to talk to accused Sewak Singh saying that he was demoralized. I asked my 2.I.C to return back and in the meantime, I informed my Brigadier about the incident and also intimated him that since there was no ambush so I am withdrawing with Q.R.T. Col. Purshotam persuaded me to talk to accused No.1 saying that he was demoralized and discouraged due to the incident then I spoke to accused No.1 on Radio set. I found accused No.1 completely broken down and he told me that he has lost one of his men. Then accused no.1 called me to a Dispensary where the body of deceased was lying on a cot and was covered by a blanket. There was also a Jeep within the premises of Dispensary in which accident/ incident had taken place. The said Jeep had been washed because there was a lot of water around it and I had been told that it had been washed. From the Dispensary itself I called my 2 IC to come fast to the Dispensary. After a wait both accused No.1 and Col. Purshotam came to the Dispensary. Accused No.1 spoke to me first and said that he had lost one of his men and wanted me to help him by showing it as a case

of joint operation so that the family of deceased can get some benefit. I declined it to do so and advised accused No.1 to talk to his SP. He told me that he cannot talk to his SP because communication link has been snapped. I offered him to come to my Unit to talk to his S.P on Army Line but he did not. Thereafter, we left back to our Camp. We informed the Brigadier that it was not a case of ambush at all but probably a case of accidental firing and we closed the matter there. My statement was not recorded by police but a lady police officer had come to me and she wanted to know the details and I had given her the details as I gave today in the court and it was all verbal and nothing was recorded . I have not counted the cartridges nor was I concerned with this. Note Statement dated 20.3.99 attributed to witness was read over to the witness in the open court. He denied having given any such statement to Police. At this stage Special PP declared the witness hostile and he wanted to cross-examine. Permission granted.

On cross-examination by Special P.P, he has stated that I do not remember whether ASI Gulab Chand Manhas (present in Court) has recorded any statement of mine on 20.3.99. I have heard the statement dated 20.3.99 which he has been read over to me by the I.O today but no such statement has been given by me at

any stage of the investigation of this case. There was no more question.

On cross-examination by counsel for accused No.1, except SP Operation Sewak Singh and SHO, the witness deposed that I do not know anybody person to whom reference has been made in the statement dated 20.3.99. While taking liquor I along with my 2 IC and source Khaliq were present there besides SP Operation there was no one else who took drinks with us. There was no formal invitation to me, it was as a matter of chance that we assembled there and had some drinks. Other than Sewak Singh all of us left back together in Police vehicle because we have no vehicle of our with us.

On cross-examination by counsel for accused no.2, witness deposed that I did not go to the place of incident. I cannot say whether constable Sat Paul Singh was there, or not. Nobody identified Sat Paul Singh nor I did make any effort to know him. Nothing was done in my presence in the Hospital by the Police nor was anything done by Army personnel in the Hospital in my presence. The reason for accused No.1 asking me to make a case of joint operation was that he wanted to help the family of the deceased consisting of his wife and a child. I found accused No.1 highly disturbed on account of loss of his officer. I would have also disturbed like him had I lost any of my Officers.

PW. Dr. Mohd. Rashid Khan, Surgeon Specialist

SDH, Mendhar: On examination in chief stated that on 13th of Oct, 98, I was posted as Surgeon Specialist Sub District Hospital, Swarnkote. The dead body of the deceased was brought to me by the police of P/S Surankote identified by Mohd. Niyaz ASI and Mohd. Shafi Dar SI of Police Station Surankote. A board of doctors was constituted to conduct the postmortem by BMO Surankote comprising of four doctors namely Dr. M.H. Shah BMO Surankote, myself, Dr. Gh. Abdul Malik M.O and Dr. Ashutosh also M.O. The dead body was brought on 13th of Oct.98 at 9.55 P.M and postmortem was conducted on 14th of Oct.98 at 8.30 AM. The injuries were found on the body of the deceased. The injuries were multiple injuries on the head as detailed in the certificate on the file.

1. Incised wound on the right side of the forehead on the frontal region size 4" long up to 1" short of eye brow.
2. Incised wound on the middle of frontal region just reaching up to the upper part of the forehead touching hair line. It was 2" long .
3. An incised wound over the left frontal region upto 2" short of left eye brow.
4. Multiple incised wounds over right parietal to occipital region, of variable size. Right parietal bone and occipital bones were cut into pieces. Brain matter was crushed and dribbling out.

5. Incised wound over the right temporal region which was above one wound 4" long. More over, central part of the vault was missing and all the membrane of the brain were torn, on the dorsal object of the brain substance.

The opinion of the board of Doctors was that death of the deceased occurred because of the multiple incised wounds over the head resulting into multiple fracture of underlying bones cutting through and through and leading to injury to the brain matter and death was occurred. The time duration of the death was 10 to 12 hours at the time of postmortem. The certificate has been issued by all the doctors of the board including myself which is on the file. It has been signed by me. The other members of the Board of doctors have also signed it. Its contents are correct and it is marked as EXPW-MR. The injuries were sufficient to cause death in the ordinary course of nature. Some clarifications were sought from me and other members of the board have given the answer to the clarifications in writing. It was asked that where were the injuries on the body of the deceased. The word "body" as used in the post mortem report means that body except the head. There was no other injury on the body except the head. Second clarification asked to the board of doctors was as whether in case of high velocity close range gun shot,

injuries where there is a burst injury on the head, the wound so caused may look like incised wounds as it is in the case of the deceased Sh. Ajay Gupta. Wounds of the skull were caused by multiple pieces of bones which struck against the skin of the skull with a force. The clarifications were replied and furnished to the SHO on second of Nov. 98. These clarifications were signed by the doctors of the Board and by me also. Its contents are correct and it is marked as EXPW MR-1. Again a clarification was sought from the board of doctors as to whether the injury could be caused by a close range gun shot. The clarification was asked by SDPO Mendhar. The observation was that the injury sustained on the skull of the deceased Ajay Gupta could be possible by a very close range high velocity bullet less than one feet and not from a long distance of gun shot. This too has been signed by the board of doctors and by me also. It is dated 29th of Oct.98. Its contents are correct. It is marked as EXPW MR 2.

In cross-examination on behalf of the accused No.1 has stated that dead body was received on 13th of Oct.1998 at 9.55 PM. The post mortem report has been filled by Doctor Gh. Ahmed Malik Medical Officer, SDH Surankote, in presence of all the members of the Board of Doctors including myself. There is a column in the post mortem report from about the cause of death in the

same it has been written that the deceased was “alleged to have been killed by a gun shot injury on the head near check post Surankote”. This information was supplied by the police officials accompanying the dead body. Other than this information no other information was given to me as to who had killed the deceased. Police of P/S Surankote has approached to constitute the Board of Doctors to conduct the autopsy of the deceased. In medical terminology MLC means medico legal cases. We are not concerned with the FIR. When we are asked by the police we conduct the post – mortem with definite authority letter from a competent police official. We received a written authority letter in the instant case for the conduction of the autopsy. That letter of authority is not on the file and the file has been examined in the open court. I do not remember whether I have gone through the contents of the authority letter or not. This was the duty of the BMO to do the needful. I joined my service as a doctor in Sept1979 and since then I am working as a doctor. I have conducted so many autopsies in many MLC cases. Usually, an application is written by the competent police officer that such and such accident has occurred and post mortem be conducted. I cannot say whether FIR number is always written on such type of letters or not. There was no liquor contents in the dead body as we have examined

the dead body to that extent also. No further question is put to the witness.

In cross examination by the counsel on behalf of the accused no.2, witness stated that all the wounds mentioned in my certificate were incised wounds. There was no punctured wound. There was no entry and exit wound of the bullet. There was no mark of entry of bullet on the back of the head. No body has shown any bullet to me in this case. Most likely it was hit by the bullet. I cannot say the caliber of the bullet which might have hit the deceased. No further question is put to the witness by the counsel on behalf of the accused No.2 to the witness.

PW. Dr. Mumtaz Hussain Shah, Deputy Director Health, Jammu. In examination in chief in Oct. 98, I was posted as BMO Surankote and post mortem of one Ajay Gupta was conducted by the board of doctors. I was also one of the members of the board. Post mortem report EXPW MR bears my signatures as well. Its contents are correct. Injuries have been detailed in the post mortem report. The multiple injuries were found on the head of the dead body. I.O sought some clarification from the board of doctors. That was responded and that also bears my signatures as member of the board and as BMO also. It is already marked as EXPW—MR-1. Its contents are correct. EXPW MR/2 also bears my

signatures as member of the board and as BMO also. Its contents are correct.

In cross-examination by the counsel on behalf of the accused No.1 has stated that the post mortem was conducted under my supervision. The dead body was received on 13th of Oct.98 at 9.55 PM. The concerned SHO requested for the conduction of the postmortem on the dead body of the deceased. Form Mazroobi was also filled by the concerned police. I have seen the form mazroobi prior to the conduction of the post mortem on the dead body. The number of FIR 172/98 has been mentioned by me in the report which bears EXPW MR-1. I had gone through the contents of the form mazroobi before the conduction of the postmortem. I have received a letter in which FIR No. was mentioned which I have given in my report. The mention which, I have made in EXPW MR-1 was mentioned in view of the letter which had been received in the office and must be in the office. This letter regarding the quiry was received from the police after conduction of the post mortem. We have received a letter for the conduction of the post mortem in our office. The letter was of the same date 13th of Oct.98. That is in the form of injury, form and not letter. I have seen the injury memo prior to the conduction of the post mortem. That is in the file and today I have seen that. This injury memo was received prior to the conduction of

the post mortem and this injury memo is dated 14th of Oct.1998. No traces of liquor were found in the dead body because no test was conducted to that effect.....

In cross-examination by the counsel on behalf of the accused No.2 stated that we have started the conduction of the postmortem at 8.30 AM on 14th of Oct. 98. Closing time of postmortem has not been mentioned in the post mortem report. We prepared the post mortem report on the same date and time. I don't know but after the closure of the postmortem how much time, I cannot also say. It is very difficult to say whether the deceased received one gun shot injury or more mentioned the entry wound on the dead body. I have also not mentioned on my report, I cannot state which injury was the entry injury and which of the injury was the exit injury. Other than the Board of doctors there were 3/4 doctors. I cannot state today who opened the dead body. I did not open the dead body. This also I cannot state whether I have opened or not. We have saw, hammer, scissors and chisels to open the skull It was already almost open. We also opened as per necessity and normal instruments were used to open the dead body. I cannot state whether the injured received the injury from the back or forehead or any other part of the skull. We found some bones coming out of the wound and have not mentioned that bones were cut into pieces and were

exposed. Again the doctor said that on the post mortem there is no mention that no bone had come out of any wound. Every gun shot is high velocity shot. Air gun is low velocity. Velocity depends upon the guns also the distance from where it is fired. We are not expert in bullets and cannot state how many bullets are there. Velocity depends upon the speed. I do not know whether the bullets are classified as high velocity or low velocity. We must have seized the bullet but I do not remember because nothing has been shown to me today in the court. I do not know the number of bullets which were seized by me. From the type of injury I can say the distance between the victim and the weapon from which the bullet was fired was less than one foot. I have read it from Modies Jurisprudence that if the bullet is fired from a very close range, it will give a shape of blast on the part of body like skull. So on the basis of that I can say in this case the shot must have been fired from one foot of distance. The nature of the impact of the bullet depends upon the nature of the weapon used. The destruction of the body will not be to that extent if the fire is pistol fire and at a distance of 12 feet whereas if it is a gun fire at a farther distance, it is more destructive. Because there are multiple injuries, it could have been ascertained from the nature of the weapon of offence used. Once, it is not known whether it is pistol fire gun

or gun fire, so about distance it cannot be exactly stated. I have not mentioned in my report that the gun shot was a rifle shot. But I can say from the injuries that the injury inflicted was by a rifle shot. Rifle can be any gun like 12 bore gun also. 12 bore rifle has multiple pellets. It is possible by that also at a very close range. Close range I can say touching the skull. At the time of query whether the post mortem report was alongwith the quiry or not but we have the office copy. No further question is put.

PW. Sh. Ashok Sharma, Addl. District and Sessions Judge, Doda: On examination by Special Public Prosecutor the witness stated that in February 1999, I was posted as Special Municipal Mobile Magistrate Jammu. I have recorded statement of SGC Raghbir Singh No.128/ P in terms of S.164 on 24.2.99. I have seen the statement on record. It bears my signature and is in my hand. The statement is true account of what was stated by the witness. I recorded the said statement after satisfying my self about the voluntariness of the person giving the statement and thereafter on being satisfied that the person was stating without any force and out of his free will. The statement is exhibited as EXPW-AK. An application was moved by Raghbir Singh himself also on 23.2.99 with the request to record his statement. The application has been

endorsed by me and bears my signature. It is marked as Mark "A". The statement was recorded on the next day. There was no order about his custody because he was not in custody. There was no mention of any complaint from the person who wanted to depose in his application dated 23.2.99.

On cross-examination by defence counsel the witness deposed that the purpose of recordings the statement under S.164 Cr.P.C is to preserve the original virgin of a person who wants to depose voluntarily without any coercion or compulsion. It is a fact that a witness cannot on his own seek to record his statement in terms of S. 164 Cr.P.C .On 23.2.99 two applications one from the person whose statement had been recorded and one from the police were moved before me for recording the statement under S. 164 Cr.P.C. The application dated 23.2.99 signed by Raghbir Singh presented before me by him only and there was no police official accompanying him I did not pass any order on the said application except making an endorsement "File" on it. The application moved by police for recording statement of Raghbir Singh under S.164 Cr.P.C was moved before the application of Raghbir Singh so there was no necessity of writing any order on the application of Raghbir Singh and it was made a part of the application moved by police. I did not make any

endorsement on the application of Raghbir Singh notwithstanding the fact that an application was already moved by police for the same purpose. There is no such endorsement on either of these two applications to show as to which of them was moved first and which last. Since the application of Raghbir Singh has been marked as “ File” that to my recollection is due to the fact that police application was moved earlier. The application of Raghbir Singh was moved directly before me. The application of Raghbir Singh bears a No.188. I don't know what this number signifies. Police application was transferred to me by the then CJM under No.1130 dated 23.2.99. I did not ask any question from Raghbir Singh as to why he had moved application on his own although an application was moved in this behalf by police already and on that application he was advised to come next day. The application of Raghbir Singh although having been moved after an application was already pending from police was marked as Mark “ File” simply as it could not be refused . This is a fact that Raghbir Singh was accompanying police and present before me when the first application was moved by Addl. SP Shikha because he was in custody . He must have gone with police on 23.2.99. On 24.2.99 Raghbir Singh might have come on his own or with police I cannot say. I must have examined the case diaries before recording the statement

of Raghbir Singh but there is no mention in the record. I do not remember whether there was any statement of Raghbir Singh recorded during investigation in terms of S.161 Cr.P.C on the case diary. The statement under S.164 Cr.P.C is recorded in question answer form. The statement in this case is not in question answer form. The portion of the statement which relates to ascertaining the voluntariness of the person giving the statement has to be in question answer form and then what the person states always to be in narrative form. Question answer portion of the statement recorded under S.164 Cr.P. C of any individual is of essence for the reason that it helps in ascertaining the voluntariness of the person to give the statement and at the same time the person deposing is cautioned that in case he deposes the statement could be read against him as well. The statement under S. 164 Cr.P.C is recorded on oath and statement in this case has also been recorded on oath. There is no mention in the statement of any question to the person deposing as to whether he was giving the statement voluntarily or not. I have not recorded any Certificate at the end of the statement as is mandated under S. 164 Cr.P.C because that is not necessary in all cases. No such question was asked from Raghbir Singh as to whether he faced any torture from police for giving the statement in court. The statement was deferred till

next day because the person deposing was given time to think as to whether he wanted to give the statement or not although there is no mention in the record. I have not mentioned anywhere that Raghbir Singh was brought before the court by the Investigating Officer. It was not necessary for me to note-down the name of I.O in the record. Before recording the statement of the witness Raghbir Singh . I did not examine mentally or physically. The application bearing endorsement mark “ A” was not necessary . I did tell Raghbir Singh that his application was not needed but there is no mention of it in the record. I don't remember what was the reply of Raghbir Singh to this question. I don't remember at what time did Raghbir Singh attend the court and what was the time -gap his coming to the court and his recording the statement . I did tell Raghbir Singh on 23.2.99 that his statement would be recorded on next day.

PW. Rakesh Hangloo, Incharge Scientific Officer, Documents FSL,Jammu: In examination in chief stated that in March, 1999, I was posted as Scientific Officer ,FSL, Jammu in the documents Section when the documents of this case were forwarded by Dy. S.P. Head Quarter Crime and Railways, Jammu in Case FIR No.172/98 Us. 302,201,218,109 and 120-B RPC, P/S Surankote, vide letter NO. C/R/558 dated 20.3.99.

These documents were received in the FSL on the same date. The documents of this case were examined with scientific aids and the opinion was given in two parts; 1. Red enclosed admitted writings marked 'A1 and A3 could not be connected with the red enclosed question writings marked Q 1 and Q2. Reasons of the opinion are mentioned in the report No. 246/FSL/99 dated 23rd of March, 99, (2). The red enclosed admitted signature marked A 2 and the red enclosed question signature marked Q 3 have been written by one and the same person and the reasons of the opinion are also mentioned in this report. Opinion based on reasons are also mentioned in the above quoted report and the said report bears my signatures. Contents of the same are correct. It is marked as EXPW RH.

Letter No. SP/OPS/ FIR/ 550 dated 13.10.98 has been seen by me which is on record and is already exhibited EXPW RK. This documents has been examined by me and compared by me with an application dated 7.12.98 which is on the file and is marked as mark 1 and enquiry report bearing No. PNQ/E dated 28.1.99, same is also on the file and has been seen by me. It is marked as mark 2.

PW. Sh. R.L. Dhar, Director FSL, Jammu: In examination in chief , has stated that on 27.2.99 I was posted as Director FSL Jammu and Sh. K.K. Raina and

Mool Raj were posted as Scientific Officer and Scientific Assistant, respectively in F S L Jammu. I am well conversant with their signatures. Report No. 162/ FSL/ J/99 dated 27.2.99 sent to Supd. Of Police POonch from my Laboratory bear signatures of Sh. K.K. Raina and Sh. Mool Raj , which is correct, is already exhibited as EXPW MR. Similarly report no. 175/ FSL/ J/ 99 dated 6.3.99 bear signatures of Sh. K.K. Raina and Sh. Mool Raj , which has been sent to Addl. S.P. Crime and Railways Jammu from Laboratory, which is already exhibited as EXPW MR/1. I have forwarded the report No. 243/ FSL/ 99 dated: 23.3.99 and 224/ FSL/99 dt: 23.3.99 and 221-23/ FSL/ 99 dated 23.3.99 were sent by me to Asstt. Surgeon DH Rajouri, S.P. Rajouri and S.P. Poonch under my letter No. FSL/ 99 221-23 dt: 23.3.99 , which bears my signatures, marked as EXPW RL.

Report No. 243/FSL/99 bears signatures of Sh. H.C. Bhagat Scientific Officer and Sh. Masood Sadiq Scientific Asstt. Of my Laboratory. I identify their signatures, it is already marked as EXPW HC/2.

Report No. 246/ FSL/99 dt: 23.3.99 bear signatures of Sh. Rakesh Hangloo and myself , which was forwarded to Dy. S.P. Crime and Railways, Jammu which bears my signature and marked as EXPW RL/1.

Report No. 175/FSL/ 99 dt: 6.3.99 bear signatures of Sh. K.K. Raina Scientific Officer and Sh. Mool Raj

Asstt. Scientific , which is correct and I identify their signatures and report is forwarded to S.P. Crimes and Railways vide letter No. 181/ FSL dt: 9.3.99, letter is marked as EXPW RL/2 and report is marked as EXPW RL/3. Examination of exhibits pertaining to the case referred by supdt. under letter No. CB-FSL/ 98/ 17150-51/ GB dt: 7.11.98 sent to our Laboratory and received in the Laboratory for examination and marked as EXPW RL/4. Letter of Sh. H.C. Bhagat dated 26.2.99 already exhibited as EXPW HC was forwarded to the Addl. S.P. Crime and Railways Jammu under my letter No. FSL/J99.351-52, dated 26.2.99, it bears my signatures and marked as EXPW RL/5.

Report No. 03/FSL/ J/99 dated 8.1.99 bear signatures of Sh. H.C. Bhagat Scientific Officer and Sh. R.S. Jamwal Scientific Asstt. I identify their signatures and are correct, which are already marked as EXPW HC.

In cross-examination by counsel on behalf of accused no.1, has stated that it is true that every articles/ documents referred in the EXPW RL/4 were received in my office. I have not received articles personally. I have not opened the articles because those were sealed. I have not tallied the seals with the specimen seals whereas referred the same to expert, who examined the case. It is true that articles were addressed to the Director. I have not maintained the list of the

articles, whereas, it was maintained by the experts. I have examined only hand- writing part under my supervision. Report has been given by Sh. Rakesh Hangloo, which was counter signed by me. This is the only job I have done in this case. EXPW RH is being only document pursuant to which I had examined under my supervision. I have not done anything personally in this case. It was done under my supervision. It is true that examination of the articles “handwriting” was made by Sh. R.K. Hangloo, and it was only counter –signed by me, as I am the Sr. most one of the hand-writing, expert. I have not examined the hand-writing, but I have seen it. The observation made by Sh. R.K. Hangloo were seen by me on the microscope, as well. Since, report has been counter-signed by me, it transpires that I have seen the very document, otherwise my signature would have been on other documents, as well. In the report there is no mention of my separate observation or verification. I have forwarded the report of all other experts to the concerned Investigating Officers. No more question was asked in cross-examination.

PW. Masood Sadiq, Scientific Officer , FSL, Jammu, on oath dated 5.5.06 stated that I received 4 unsealed paper packets Marked B-3/99—B-6/99 by biology and Serology Section on 22nd March 99 in Case

FIR No. 172/98/U/S 302, 120-B, 121,122, RPC 7/25 Arms Act, 3/6 EAO P/S Surankote(Poonch).

In first packet B-3/99 , it was found to contain some stained clay sample with pebbles, which was further marked as Exhibit Cml—119/99 by me.

The second packet B-4/99 was found to contain some stained clay sample with pebbles, which was further marked as Exhibit Cml—120/99 be me.

The third packet B-5/99 was found to contain some stained clay sample with pebbles, which was further marked as Exhibit Cml—121 /99.

The fourth packet B-6/99 was found to contain some stained clay sample with pebbles, which was further marked as Exhibit Cml—122/99.

On examination of these above sample, it was found that Exhibit Cml--199/9 and Exhibit Cml—120 /99,were similar, and Exhibit Cml—121/99 and Exhibit Cml—122/99 was found similar. Certificate in file dated 23.3.1999 bears my signatures . Its contents are correct. It is already exhibited as EXPW—HC/2.

On cross-examination by counsel of accused no. 1 stated that report Exhibit EXPW HC/2 was initially prepared by me in my own hand and later it was typed by my stenographer. I do not know as to when FIR in said case was registered by police. Before, I could proceed in matter I had examined original file from

where I have mentioned the FIR No. and offences. File was received from biology and Serology Section along with Sample. I do not know date of occurrence. I do not know as to who had handed over file and sample to biological and serological section. I do not know as to who had conducted initial investigation in case and also I do not know as to who had conducted subsequent investigation. I do not know as to which police agency was investigating the matter, when file had come to me. I do not know whether , there was any addition or other offences, in addition to the offences, which I have mentioned in report. I did not feel it proper mention the title of case, or person, who were involved (arraigned) as accused in FIR, because title is not required for us, as we are only concerned with FIR and our subject.

On cross-examination by counsel of accused no.2, stated that I do not know when the packets were given by police to biology and serology section . These packets were forwarded to me by biology / Serology as routine without covering order. I cannot say, for how many days, these unsealed packets were lying with biology and serology dept./section.

PW. Shikha Goyal, Investigating Officer: She deposed that in the year 1998-99, I was posted as Additional SP, Crime & Railways, Jammu. Accused persons are known to me. In January 1999,

investigation of the case FIR no.172/98,relating to murder of PSI, Ajay Gupta was handed over to me. After taking investigation, I examined witnesses, including the family members of the deceased, other eye-witnesses and some important witnesses. I visited the scene of occurrence, at Surankote. Then ,I got recorded the statement of Raghubir Singh, u/s 164 Cr.P.C. The polygraphic examination of accused Satpal Singh, was got done at CBI, New Delhi. On 03.03.1999, my cadre was changed, so I handed over the investigation of the case to Dy.SP, Mr. Khan. I had recorded the statements of PWs, 10,14,16,23 ,32 and 44 namely Mohd. Salim , SPO, M.H.C Mohd. Hussain, H.C Riaz Hussain 136/P, Inspector Parveen Sharma no.190/NGO, SGCT Mohd. Afzal 413, SOG, Anayat Hussain S/O Mohd. Sharif, Ex-man driver with P/S Surankote, u/s 161 Cr.P.C, who died during trial before giving their statements in the court. I visited the scene of crime in Surankote and then camped at Poonch, where I examined various witnesses. At Surankote, I examined Khalid Hussain Shah (PW.5), and Noor Mohd (PW.4). At Poonch, I examined eye-witness Abdul Razaq (PW-6) and Mohd. Akram(PW.7). I also examined some CRPF personnel, who were on patrolling duty at the time of incident, namely Kalinder Kumar(PW.9) and Manav Ram (PW.8), SPO Mohd. Salim (PW.10). On 7th of February 1999, I visited the

residence of then Superintendent of Police, J.P Singh and recorded his statement. The investigation remained consigned to me upto 3rd of March 1999. On 24.02.1999, I arrested accused no.1 Sewak Singh . As per my investigation, on the day of incidence, there was a small party at the residence of accused no.1 in which, Commanding Officer, 2IC of 27RR participated along with one Abdul Khaliq, a civilian. In this party, deceased was also present along with some other persons including Inspector Parveen Sharma.

On cross-examination by defence counsel of accused witness further deposed that only one FIR was registered in the case in hand. No second FIR was registered. It is correct that registration of FIR is required for investigation. No separate FIR was registered against accused Jagjit Singh and accused Satpal Singh. As per record, FIR was sent to Magistrate on 15.10.1998. There is, however, no reference of time. This witness had started the investigation in the case w.e.f 20th of January 1999, whereas, occurrence ,as per her investigation, had taken place took on 13th October 1998. This witness had not investigated how many times, accused Sewak Singh and deceased had gone on Anti-militancy Operation, after happening of incident of scuffle between them, in the month of August 1998. This is correct that in the incident of scuffle, which took in

the month August, firstly deceased slapped the accused Sewak Singh, whereby his turban fell down. This witness had not presented challan in the case. It had presented by some other Investigating Officer. Investigation of the case was not complete, when she was transferred. Scuffle, which took place between the accused Sewak Singh and deceased started with hot words and during that deceased made a slap on the face of the accused. Witnesses, namely Abdul Razaq, Mohd. Salim and other witnesses got recorded their statements during investigation. Department got the information regarding the scuffle, when accused Sewak Singh sent a complaint to SP Poonch (PW. J.P. Singh). J.P Singh, SP Poonch, had got recorded in his statement before her that he asked accused Sewak Singh that he was a competent officer to take action against the deceased. She asked PW. J.P. Singh, to hand over the record pertaining to that complaint, to her. He, however, failed to do so, till she was transferred. She had not given written notices to the witnesses, prior to recording their statements. They were, however, called through their senior officers. She is not knowing as to whether PW.29 had been given up by the prosecution. It had not come in her investigation as to whether department had taken any action against the deceased for slapping the accused. As per her investigation, enmity was still subsisting between them.

Deceased was, however, complying directions of the accused, as he was his superior officer and had to discharge his duties in the department. It is correct that they were at visiting terms. However, it does not mean that the accused had ended animosity. During investigation, wife of the deceased had stated before her that on 13th of Oct.1998, one constable had come to their residence and conveyed that accused Sewak Singh is calling deceased and Inspector Parveen. It was further disclosed by the wife of the deceased that both of them left their residence for the residence of accused no.1. However, as per her investigation, both did not come back together. Firstly, Parveen came back and after sometime, deceased came there. According to her investigation, deceased went to the residence of accused Sewak Singh at 8.00 P.M and came back about after half an hour. There was a party on the day of occurrence at the residence of accused Sewak Singh, who called the deceased, through constable Imtiaz, there. It had been told by Constable Imtiaz to this witness that on the day of occurrence, a drink party was going on at the residence of accused Sewak Singh. It has, however, come in her investigation that the deceased was specially invited by the accused. It has been found in the investigation that drink party was started at 7.30 P.M and it continued for about one hour. PW. Parveen

Sharma got recorded in his statement before her that deceased Ajay Gupta consumed liquor in the party. She is not knowing as to whether, viscera was sent to FSL or not. In her investigation, she found involvement of accused Jagjit Singh (dead) in the occurrence, as such he was arrayed as an accused. It had been stated by PW. Raghbir Singh in his statement, recorded in terms of Section 164 Cr.P.C, that he heard the accused Sewak Singh saying accused Satpal Singh to show the encounter of the deceased. She further stated that it was got recorded by the witness that SP Sahib was saying that they would show the encounter of Gupta Sahib. PW. Raghbir Singh was called by this witness, through his superior officer. It has come in her investigation that the accused lodged a false complaint and on the basis of which, FIR was registered. According to her investigation, she proved commission of offences under sections 302/120-B/201/218/109 RPC & 27 of Arms Act. Offence u/s 218 RPC was added for lodging of false FIR. She got the investigation of the case w.e.f. 20th of January 1999. She has not investigated, where the witness was in between 20th Jan to 22nd Feb.1999. She got recorded the statement of the witness on 22nd of Feb.1999. She recorded statement of PW. Abdul Khaliq on 23rd of February 1999. On 2nd of March 1999, she handed over investigation to another Investigating

Officer. She got satisfied on 24th of Feb.1999 that accused Sewak Singh was involved in the commission of offence. She got report of polygraph test on 23rd of Feb.1999, with regard to accused Satpal Singh. Accused Sewak Singh was arrested by her on 24th of February 1999. She has recorded in Diary No. 55 dated 24.02.1999, regarding the involvement of accused Sewak Singh. None of the prosecution except PW. Raghbir Singh has stated that accused Sewak Singh was heard saying to Satpal Singh to cause murder of deceased. She arrested the accused Sewak Singh in her office of Crime and Railway . On 24th of February 1999, she has informed regarding the investigation in the case to I.G, Crime. According to her investigation, on 13.10.1998, Commanding Officer, his 2IC and Contractor Abdul Khaliq came to the residence of accused Sewak Singh. He had asked his cook namely Kuljit Singh to call Parveen Sharma and Ajay Gupta and thereafter they came to his residence and after sometime, Army Commandant, his 2IC and Abdul Khaliq, left his residence. However, after sometime Abdul Khaliq, came back with a bottle of liquor and thereafter, he and Ajay Gupta consumed liquor. Abdul Khaliq, asked accused Sewak Singh for dropping him at his residence. At this, he called his driver, namely Akram and PSO Razaq and asked them to drop Abdul Khaliq at his residence. At the

same time, accused Sewak Singh saw Satpal Singh standing outside and asked him for dropping. Deceased had consumed liquor when he firstly came back to his residence from the residence of accused Sewak Singh. This has come in the investigation of this witness. It has got recorded by Pw. Raghbir Singh in his statement in terms of Section 161 Cr.P.C that he heard accused Sewak Singh saying accused Satpal Singh to show the encounter of deceased. She has not taken any action against the PW. Raghbir Singh for not disclosing in this regard, prior to happening of the occurrence. However, nobody had stated before her, during her investigation that he heard saying accused Sewak Singh to accused Satpal Singh to kill the deceased and show his encounter. This is correct that immediate after the occurrence, ASI Manhas had informed then SHO Jagjit Singh (deceased). Deceased SHO, however, did not lodge FIR as per his information. ASI Manhas had got recorded in his statement before her that FIR was not registered till 8.00 A.M of 14th of Oct.1998, as his duty was up to 8.00 A.M. She has got recorded statement of PW. Raghbir Singh in terms of Section 164 Cr.P.C. This is wrongly stated by PW. Raghbir Singh in the court that he had made statement in terms of Section 161 Cr.P.C and Section 164 Cr.P.C.,under fear of being again subject to thrashing. She never asked SDPO Menhdar,

to call any witness while she was Investigating Officer of the instant case. This has come in her investigation that on 02.10.1998, accused Sewak Singh and deceased Ajay Gupta had gone on joint operation. She got recorded statement of PW. Sunita Gupta in her office. She had written her statement. She is not knowing as to whether any Ex-gratia relief was got by PW. Sunita Gupta. She is further not knowing as to whether she got Rs.2.00 lacs as Ex-gratia relief. None of the officers has told this witness that PW. Sunita Gupta got Rs.2.00 lacs as Ex-gratia.

On her further cross-examination, she deposed that she recorded statement of PW. J.P. Singh in terms of Section 161 Cr.P.C. It was stated by PW. J.P. Singh before her that SHO, Surankote told him that accused Satpal Singh caused fire shot to deceased and thereby killed him. This is wrong that PW. J.P. Singh constituted Special Team on 14.10.1998, for the investigation of the case, but it was formed on 17.10.1998. SDPO Mendhar, namely Mukesh Singh was appointed as Supervisory Officer of the aforesaid team. On 5th of February, she summoned Crime File in case FIR no.173/98 from SHO, Surankote. On 6th of Feb.1999, she asked SHO, V.P. Samyal to produce constable Satpal before her and on the same day, he was directed to arrest Satpal. On 11th of February 1999, accused Satpal Singh was taken to

Delhi, by her, for his polygraph test. She has got recorded the statements of PWs. Parveen Sharma and Chander Parkash. It has not come in her investigation that Parveen Sharma slapped Chander Parkash and asked him to get wore the uniform. She, once, got recorded statement of PW. Abdul Razaq. According to record, only two statements had been recorded of PW. Abdul Razaq, one is in Urdu and other is in English. This had not come in her investigation that PW. Parveen Sharma asked PW. Chander Parkash to apply blood to the uniform of the deceased. Gypsy was not got stopped by anyone, after giving signal with hand. Two statements of PW. Sheikh Mohd. Yunus were recorded. She recorded his statement, in English, on 07.02. 1999 and other statement in Urdu was recorded by V.P. Samyal on 31.10.1998. She firstly got translated the aforesaid statement of the witness. In her statement, she got recorded that Head Constable Arfan Ullah and Constable R.D Yadav overpowered Satpal Singh and the other constable, who had jumped out of the vehicle ,snatched the SLR of Satpal Singh and ran towards the resident of S.P.

However, aforesaid reference is not contained in the firstly recorded statement of PW. Sheikh Mohd. Yunus and as such, she recorded his further statement.

A specific question was asked to Shikha Goyal, Investigating Officer, containing reference of statement of PW. Abdul Razaq that after the scuffle between the deceased Ajay Gupta and accused Sewak Singh, their relations became normal and they used to discharge their duties in normal way.

In reply, she stated that no such statement was made before her by the said witness.

Another question was asked to this witness as to whether PW. Chander Parkash got recorded before her that accused Sewak Singh and Ajay Gupta were on visiting terms. She denied that such a statement was made by PW. Chander Parkash, before her in investigation. She, first of all, recorded statement of PW. Sunita Gupta. on 27th of January 1999. She, however, started her investigation on 20th of January 1999. She denied that she delayed the recording of statements of the witnesses. She obtained an expert opinion from FSL and made it part of the file.

On cross-examination by the defence counsel of accused no.2, she further stated that she had not again prepared the site plan of the place of occurrence. According to her investigation, it was prepared in the morning of 14.10.1998. One SGC Kulwant Singh was present at the time of preparation of the site plan. In her investigation, PW. Mohd. Akram had stated that site

plan was prepared in his presence. She did not reconstruct the occurrence. However, she visited the place of occurrence. She went on spot on 2nd of February 1999, accompanying by her staff. She after inspecting the C.D file, stated that on 14.10.1998, then SHO seized the rifle from accused Satpal. According to her investigation, rifle of accused Satpal Singh was handed over to accused Sewak Singh by PW. Abdul Razaq, but it was later on again seen with accused Satpal. None of the witness has, however, stated before that he saw accused Sewak Singh handing over rifle to accused Satpal. It is correct that CRPF personnel had allowed accused Satpal Singh to leave, after rescuing him. This is correct that till the morning of 14.10.1998, accused Satpal remained in the hospital, where the dead body of the deceased was lying. He was in the hospital from the night of 13th. His weapon was with him. During that, PW. Abdul Razaq came to hospital for sometime. It is correct that the area where the occurrence took place, is militancy infested area. She had not got permission from the Magistrate for getting polygraph test of accused Satpal Singh. As per her investigation, there was no any dispute or personal enmity between the accused Satpal Singh and deceased Ajay Gupta. They were knowing each other and were working together. Cartridges were seized earlier to her investigation. Those were seized on 28.10.1999, by the

earlier Investigating Officer, from the spot. She further clarified that the same were seized after 15 days of the occurrence, from the spot. She, again, recorded statements of the important witnesses, in order to have their detail statements. It is wrong that she was not having faith on the earlier investigation, as such , she again recorded statements of the PWs. She had investigated the matter w.e.f 30th of January 1999 till 3rd of March 1999. She visited the place of occurrence, once, on 2nd of February 1999. She was shown the place, wherefrom cartridges were earlier recovered, by the staff accompanying her. It was got recorded in the FIR that deceased had died in militancy related firing. She had not investigated as to whether the legal heirs of the deceased got any Ex-gratia relief. According to her investigation, accused had murdered deceased Ajay Gupta, and it is not correct that he had killed in firing of militants. This is wrong that accused Satpal Singh was not present at the time of occurrence and no any weapon was seized from him on 14.10.1999. PW-Raghubir Singh has stated regarding the talk in between accused Sewak Singh and Satpal Singh.

That concludes the resume of evidence brought on record by prosecution. Examined under Section 342 Cr.PC, accused denied the allegations leveled by prosecution witnesses and pleaded innocence. Accused

Sewak Singh pleaded that he had been informed that the deceased was hit by a bullet fired by militants and he had lodged FIR accordingly. Accused pleaded that they had been falsely implicated in the case. Accused have adduced evidence in defence, brief resume whereof is reproduced hereinbelow;

DEFENCE EVIDENCE

DW. Abdul Khaliq: He, at the instance of defence counsel, deposed that he knew accused no.1, namely Sewak Singh, who was posted as SP, Operation in the year 1998, at Surankote. He is, however, not knowing accused Satpal Singh. He is, however, knowing deceased Ajay Gupta, who was posted as Sub-Inspector at Surankote, in the year 1998. He is not remembering the name of the month. He stated that on 13th of year 1998, he had gone in the Army Head quarter of 27 RR, located at Potha. It was 5.30 at that time. He had gone there as police has retained Identity Card of his known person. There he met with Col. Saravjeet Singh and Adjutant Col. Purshotam Singh, who were standing outside their office. He talked with Col. Purshotam Singh, with regard to Identity Card. He got back, Identity Card, on the instructions of Col. Purshotam Singh. After returning the identity card of that person, Col. Purshotam Singh asked this witness, how he had came there. He told that he had come by boarding a scooter. At this, Col.

Saravjeet Singh asked him to accompany them, as they had also to go towards City. Thereafter, both the Colonels, their bodyguards and this witness, proceeded towards Surankote, on foot. When they reached near Police Station Surankote, they said that they would meet accused Sewak Singh, at his official residence, for getting some information from him. Thereafter, they went to the residents of accused Sewak Singh and found him in his drawing room. Accused no.1 welcomed them and asked them to sit. Thereafter, Col. Purshotam Singh enquired from him regarding secret information. In reply, accused Sewak Singh remarked that there were many news and whenever he would get correct information, a joint operation would be launched. In the meanwhile, accused Sewak Singh asked his cook for preparing tea. At this, Col. Purshotam Singh remarked that it was not a tea time and demanded whisky for drinking. It was 8.00 P.M at that time. Thereafter, all of them, drank liquor and in the meanwhile, Ajay Gupta also came there. On his arrival, it was said by accused Sewak Singh that deceased had become confirmed SHO, as such, he had to arrange a party. He asked Col. Saravjeet Singh for providing liquor from his canteen. He assured the accused that whenever they would come to him, liquor would be provided from canteen. At about 8.45 P.M, on 13th, Col. Purshotam Singh asked accused

Sewak Singh for dropping them, in his bullet proof Gypsy. Thereafter, Col. Saravjeet Singh seated on driving seat and bodyguards boarded back seats. He and driver of Gypsy seated on the laps of the bodyguards. This witness was dropped near his residence in the bazaar. Except driver of the Gypsy, nobody, either PSO or SP Sahib, was accompanying the Gypsy. Thereafter, he did not come back to the residence of accused Sewak Singh. On next morning at 7.00 A.M, on 14th , he got information that Ajay Gupta had died at previous night. He is not knowing, how he died. He is an A-Class Contractor and is a respectful person of the Poonch District. He knows IPS Officer Shikha Goyal. Once she had gone to Surankote and called this witness, at Police Head Quarter, Jammu. She asked this witness to make a false statement against accused Sewak Singh that he had got murdered Ajay Gupta. She threatened him that she would involve him in some false case, as he had refused to become witness. He made the same statement before Shikha Goyal, as made on that day in the court. However, she did not satisfy with his said statement and sent him back. She asked him that he would be called whenever, there would be a need. Thereafter, he was not called.

On cross-examination by Spl. PP, this witness further stated that he was knowing Col. Saravjeet Singh

and Col. Purshotam Singh, because he was supplying information to them, relating to militancy. He was accompanying Iftikar Hussain when he visited the Army Head quarter. His Identity Card was retained by the army 2/4 days earlier. His house is situated at a distance of 500 meters from the Army Camp, whereas, official residence of accused Sewak Singh was situated at a distance of two kilometers from it. In those days, militancy was at peak. They came out at 5.30 P.M from the Army Camp. Dusk begins at 5.30 / 6.30 P.M in the month of October. Surankote bazaar is situated at a distance of two kilometers from the Army Camp. Col. Saravjeet Singh and Col. Purshotam Singh were two higher officers of the army. It is not correct that two higher army officers did not leave the Army Camp together. In case anyone of those had to go out, he would have to go in bullet proof vehicle. It was known to Col. Saravjeet Singh and accused Sewak Singh that the liquor was consumed. It is also in the knowledge of the accused Sewak Singh that he had provided Gypsy as demanded by Col. Purshotam Singh. Col. Saravjeet Singh was also conversant in this regard. It is not correct that he had gone in the vehicle of Col. Saravjeet Singh and came back with liquor. This is also wrong that accused Sewak Singh had sent him for brining liquor in his vehicle. Shikha Goyal had not recorded any of his

statement. Statement recoded in his name U/s 161 Cr.P.C had not been made by this witness. This witness had not lodged any complaint to her senior officer for advancing threats to him. He was not earlier knowing Shikha Goyal. He is not knowing as to whether there was animosity between Shikha Goyal and accused . Driver of the Gypsy was PW. Abdul Razaq. He had consumed two pegs of liquor on that day. It is not correct that he is making a false statement in the court.

DW. Gurbachan Singh : He, at the instance of defence counsel of accused no2, deposed that he knew accused Satpal . In the year 1998, accused no.2 was in custody. He is, however, not remembering its date. He got information regarding the firing on next day, when he was sitting in the house of father of the accused, police came there and asked Satpal as to whether his ammunition is complete. He answered in positive. Thereafter, his ammunition was checked and was found complete. However, police taken him with them after arresting.

On cross-examination by Spl. PP, witness further deposed that there was a talk of town that firing took place. Accused was posted at Surankote. This witness is the resident of Simbal. He is not knowing as to whether happening of incident of firings are common there. He is not knowing as to whether accused had come at his

residence on leave or otherwise. They had gone to Poonch, two days earlier to the firings. He is not knowing the kind of the gun which the accused was carrying. Police did not seize any gun on spot. He is not knowing the quantity of ammunition issued to the accused. One of the relative of the accused had asked this witness for appearing in the court as defence witness.

DW. Chattar Singh : He, at the instance of defence counsel of accused no.2, deposed that he knew accused namely Satpal Singh. In the evening of 13th of October 1998, he heard that militants had attacked police station Surankote, in which 3/4 constables and 1 / 2 officers were killed. On that day , accused no.2 was at Poonch and had gone to SP office Poonch. On the day, militants attacked the police station, accused was at his residence. On next day, police officers came to his residence and inquiry was conducted with the regard to rounds and thereafter, they took him with them. He was, at that time, in the house of Satpal. House situated adjacent to the house of accused Satpal Singh, belongs to his relative, whose name is Tarlochan Singh.

On cross-examination by Spl. PP, witness further deposed that he was the resident of Poonch and that day was 3rd day of his stay at Jammu. He had also come earlier from Poonch for making statement. He is not related to accused Satpal Singh. Accused Satpal Singh is

a police employee. He is not knowing where he was posted. Surankote is located at a distance of 17 Kms, from Poonch. He is not knowing for how many days, he had come on leave. Accused was armed with AK-47. Accused was taken from his residence at 10/11 O'clock. He is not knowing as to whether accused had come from Surankote after fleeing or otherwise. Relative of accused had told this witness that there was a date in the court. He, however, cannot tell the name of that relative. Rupees Four hundred is the fare from Poonch to Jammu.

5. Heard the rival sides and perused the Record. It is contended on behalf of appellants-accused that the case has been cooked up to frame the accused. It is submitted that the alleged motive of crime does not hold water as the evidence brought on record by prosecution establishes that though there was a scuffle between the deceased and accused-Sewak Singh two months prior to the occurrence, subsequently amity had been restored and the relations *inter se* them had become cordial. It is further submitted that the duo had jointly participated in a number of anti-militancy operations thereby ruling out the theory of ill will harboured by accused-Sewak Singh to hatch a conspiracy for elimination of deceased. It is further argued that while the gypsy was returning after dropping contractor Khaliq at his residence, a shot

fired from outside hit the deceased seated on the front seat of the gypsy. Firing of two shots in air from his SLR by accused-Satpal Singh is thus portrayed as a natural reaction of firing in retaliation. Thus, the theory projected on behalf of appellants-accused is that the deceased was hit by a bullet fired by unknown militants from outside the vehicle and even the family of deceased did not dispute this theory and derived benefits available to personnel of Police fighting militancy like Ex-gratia relief and jobs for the widow and brother of deceased. It is lastly submitted that the evidence of Ballistic Expert too does not support the theory of deceased having been shot from a close range inside the vehicle and that the facts and circumstances brought out in evidence do not show existence of conspiracy *inter se* the accused to liquidate the deceased.

6. Per contra, learned Senior Additional Advocate General submitted that this is a case of cold blooded murder committed in pursuance of a conspiracy hatched *inter se* the accused. Referring to evidence, both direct and circumstantial brought on record by prosecution, it is contended that the scuffle that ensued between the deceased and accused around two months prior to occurrence was of such a magnitude that accused-Sewak Singh had slapped the deceased in presence of others while the latter had retaliated resulting in felling

down of turban from the head of accused-Sewak Singh, who suffered indignation and humiliation in presence of his subordinates and in reply to threat of deceased openly declared that “***time will tell who will kill whom?***”. It is further submitted that removal of turban of accused Sewak Singh professing Sikhism was not an ordinary event and though he did not eliminate the deceased then and there but harboured enmity in his mind pocketing the insult for the time being with resolve to eliminate the deceased at the opportune time. It is further argued that the direct evidence of the members of Police team boarding the Gypsy, testimonies of CRPF Personnel posted near the place of occurrence at TCP, the opinion of Ballistic Expert and the Forensic evidence coupled with proof of circumstances leaves no room for doubt that accused Satpal Singh fired the fatal shot inside the Gypsy blasting part of the head of deceased leading to his death and that Satpal Singh had accomplished the task agreed to be done in furtherance of conspiracy hatched *inter se* the accused. It is lastly submitted that this is a fool proof case where ample evidence is available to nail the accused for the gruesome murder of deceased.

7. Having been taken through the evidence adduced at the trial and having given our anxious consideration to the arguments advanced at the Bar, we, on reappraisal of

evidence adduced during trial find that the modes of proof adopted by prosecution to bring home guilt of the accused include direct evidence, proof of circumstances, opinion of Medical and Ballistic Expert and the documentary evidence. Before embarking upon to re-appreciate testimonies of eye witnesses, we deem it appropriate to refer to the genesis of occurrence. It is of great significance to note that accused-Sewak Singh was posted as SP (Operations) at Surankote when the deceased was shot dead in the evening of 13th October, 1998. The case was registered on the basis of a written report lodged by the accused-Sewak Singh which has been exhibited as EXPWPK at the trial. It is on the basis of this written report that case under FIR No.172/98 came to be registered at Police Station Surankote on 13.10.1998 at 10:05 PM. It is not disputed that the alleged occurrence took place near TCP Samote which lies at a short distance from Police Station Surankote. It is true that FIR is not a piece of substantive evidence and can only be used for a limited purpose, nonetheless the version disclosed therein, when emanating from an accused alleged to have committed murder in pursuance of a conspiracy hatched with co-accused, is relevant to unravel the truth. Accused – Sewak Singh claimed in the written report that on 13.10.1998 at about 9:45 PM, while the deceased was returning in the

Gypsy plied by Driver Mohammad Akram with bodyguards - Constable Abdul Razaq and Constable accused Satpal Singh travelling with him, the vehicle was ambushed by anti-national elements near TCP crossing resulting in bullet injuries to deceased on head. It was claimed in the written report that the bodyguard had retaliated the fire and removed the deceased to hospital where he succumbed to injuries. It is, therefore, manifestly clear that the version emanating from accused Sewak Singh in respect of the alleged occurrence is that the Gypsy of deceased while returning from patrolling/naka was ambushed by militants. We will now proceed to re-appreciate the evidence adduced at the trial bearing in mind the ambush theory advanced by accused-Sewak Singh.

8. **DIRECT EVIDENCE:** To comprehend the sequence of events, we, in the first instance, take up the testimony of PW-Col. Saravjeet Singh then posted as Commanding Officer 27 RR Stationed at Surankote. According to his testimony, he along with his 2 IC – Purshottam Singh and contractor Abdul Khaliq landed at the residence of accused Sewak Singh and shared drinks with him. Deceased Ajay Gupta and Inspector Praveen Sharma also joined them. Accused Sewak Singh told the Colonel to provide some liquor to deceased who would be arranging a party on his confirmation as Sub-Inspector.

Colonel along with his 2 IC and Contractor- Abdul Khaliq left thereafter. The testimony of this witness has thus established the presence of deceased at the residence of accused Sewak Singh immediately before the deceased boarded the Gypsy which was deputed by accused Sewak Singh to drop contractor – Abdul Khaliq at his residence. It is in testimony of PW-Chander Prakash that the accused Sewak Singh deputed Imtiyaz to call the deceased and Inspector Praveen Sharma to his residence. Thus, the first circumstance in the chain of events stands established.

9. Now we need to focus on the eye witness account of the bodyguard-Abdul Razaq and driver –Mohd. Akram who were accompanying the deceased in the gypsy. PW- Abdul Razak deposed about calling of deceased- Ajay Gupta and Inspector Praveen Sharma by accused Sewak Singh when the contractor Abdul Khaliq had landed at the residence of Sewak Singh with a bottle of liquor. PW-Sunita Gupta- the wife of deceased has corroborated the factum of summoning of her husband and Inspector Praveen Sharma by accused Sewak Singh and their departure from the residence of deceased. According to PW-Abdul Razak, it was at about 9 PM that accused Sewak Singh called driver and PSO through his cook. This is corroborated by driver Mohd. Akram. Testimony of PW-Abdul Razak corroborated by Mohd.

Akram establishes the fact that accused Sewak Singh asked them and deceased Ajay Gupta to drop contractor Abdul Khaliq at his residence in Hardi Mohallah, Surankote. He also directed the deceased to go on a checking round after dropping the contractor at his residence. It is in testimony of PW-Sunita Gupta that the deceased returned from the residence of accused Sewak Singh and informed her that he was going out to drop contractor Abdul Khaliq. He assured her that he would be returning after sometime. The testimony of PW-Abdul Razak corroborated by driver Mohd. Akram establishes that at the instance of accused Sewak Singh, deceased, contractor Abdul Khaliq and his PO-Shakeel Ahmed and accused Satpal Singh *alias* TT boarded the gypsy. Accused Sewak Singh checked the vehicle to ensure that all of them have boarded the gypsy. It is established by the testimony of these witnesses that the deceased was in the driving seat and he plied the gypsy initially but on account of being under heavy influence of liquor, he began to falter and driver – Mohd. Akram had to take charge of driving. Testimony of Abdul Razaq further establishes that after the contractor – Abdul Razaq was dropped at his residence and the gypsy was returning back, sound of gunshot was heard inside the gypsy. At that time, only four persons namely driver – Mohd. Akram in driving

seat, deceased on the front seat, accused Satpal Singh on the rear seat just behind the deceased and constable Abdul Razaq were the occupants of gypsy. This fact is not in much controversy and the facts disclosed by accused Sewak Singh in his written report furnishing the basis of lodging the FIR also admits this factual position. The aforesaid written report has been proved by PW-Praveen Kumar and exhibited as EXPWPK. PW-Raghubir Singh was deputed to Police Station with the aforesaid report for lodging FIR. Authorship of EXPWPK is proved to be that of accused Sewak Singh by Rakesh Hangloo – Scientific Officer Documents, FSL Jammu who on comparison of the signatures opined that the written report EXPWPK bore signatures of accused Sewak Singh. Thus, it is established beyond doubt that besides the deceased seated on front seat and Mohd. Akram in driving seat, the accused Satpal Singh and PW-Abdul Razaq were seated on the rear seats with accused Satpal Singh seated just behind the deceased.

10. Testimony of Mohd. Akram establishes that accused Satpal Singh was holding SLR, barrel whereof was pointed towards front seat of the gypsy on which deceased was seated. In his deposition, he maintained that upon hearing of the sound of gunshot, he cried that accused Satpal Singh had fired the shot. PW-Abdul Razaq, also seated on the rear seat opposite to the

accused Satpal Singh asked Mohd. Akram to stop the vehicle as accused Satpal Singh had fired the shot. He wanted to check the SLR carried by accused Satpal Singh and forbade him to leave the gypsy. However, accused Satpal Singh pleaded that the shot had been fired from outside. This was strongly refuted by PWs- Abdul Razaq and Mohd. Akram who maintained that the doors of gypsy were closed. According to driver – Mohd. Akram, the deceased, after being hit by the bullet in his head, fell in his lap. The reaction of PWs-Abdul Razaq and Mohd. Akram in the given set of circumstances appears to be a natural reaction and attributing of the fatal gunshot to accused Satpal Singh is not shown to be emanating from any motive for false implication of accused Satpal Singh. The evidence standard by PWs- Abdul Razaq and Mohd. Akram is not shown to be tainted or emanating out of enmity, ill will or malice. It is also not shown that these witnesses have been planted to frame the accused on account of personal animosity, professional rivalry, jealousy or ill will. Their version is natural and highly probable. The gypsy, admittedly, was a bullet proof vehicle with its doors closed. The Board of Doctors which conducted postmortem on the body of deceased was of the opinion that the injuries sustained by deceased in his skull could be possible by a very close range high velocity

bullet fired from less than one foot and not from a long distance. PWs- Dr. Mohd. Rashid and Dr. Mumtaz Hussain Shah have proved the postmortem report marked EXPWMR. These doctors along with Dr. Abdul Malik and Dr. Ashutosh were the members of Board of Doctors which conducted postmortem examination on the body of deceased. Following injuries were found on the body of deceased:

1. Incised wound on the right side of the forehead on the frontal region size 4" long up to 1" short of eye brow.
2. Incised wound on the middle of frontal region just reaching up to the upper part of the forehead touching hair line. It was 2" long.
3. An incised wound over the left frontal region upto 2" short of left eye brow.
4. Multiple incised wounds over right parietal to occipital region, of variable size. Right parietal bone and occipital bones were cut into pieces. Brain matter was crushed and dribbling out.
5. Incised wound over the right temporal region which was above one wound 4" long. Moreover, central part of the vault was missing and all the membrane of the brain were torn, on the dorsal object of the brain substance.

The opinion of the board of Doctors was that death of the deceased occurred because of the multiple incised wounds over the head resulting into multiple fractures of underlying bones cutting through and through and leading to injury to the brain matter and death occurred. The time duration of the death was 10 to 12 hours at the time of postmortem. The injuries were sufficient to cause death in the ordinary course of nature. This report, duly proved at the trial, read with the replies furnished in the clarification sought by SHO marked EXPWMR1 and EXPWMR2 clearly establishes that the deceased had sustained multiple injuries in the form of incised wounds on parietal, temporal and occipital region on right side of his head due to high velocity bullet fired from less than 1 feet. The postmortem examination report and the opinion of the Medical Board along with clarifications clearly establish that the deceased was hit by a bullet in the skull resulting in a burst causing multiple incised wounds due to fracture of bones on the right parietal, temporal and occipital region of the skull of deceased. This could be possible only from a gunshot fired from a very close range of upto 1 feet from behind the deceased hitting the bullet on the right side of his

head and blasting a portion thereof. This would rule out the probability of the deceased having sustained injuries in a gunshot fired from outside if the window pane located on left side of deceased were left open as suggested by learned counsel for appellants-accused. The argument that some evidence suggested that the fire had come from the open window pane hitting the deceased, is on the face of it, fallacious for in such situation the deceased would have been hit in the skull on left side of his head. The findings of Medical Board knock the bottom of the argument advanced on behalf of accused. Absence of entry and exit wounds of bullet with marks of smoke and tattooing is not difficult to explain as the right side portion of the head of deceased had got blasted. It is accordingly found that the deceased was hit in his head by the bullet fired from SLR held by accused Satpal Singh who was seated just behind the deceased who was occupying the front seat and the nozzle of the SLR held by accused must have been nearly touching the head of deceased.

11. It is in testimony of PW-Abdul Razaq that when the gypsy was stopped near TCP, accused Satpal Singh jumped out of the gypsy after forcing open the door. The witness also alighted from the vehicle and as the

witness, raised a hue and cry that the accused Satpal Singh had fired a gunshot, the CRPF and Police personnel at the TCP immediately rushed towards him. Meanwhile, accused Satpal Singh fired two shots in air. The CRPF personnel overpowered the accused Satpal Singh and the witness snatched his SLR. Besides the testimonies of PWs-Abdul Razaq and Mohd. Akram, we have the evidence emanating from the members of CRPF/Patrolling Party Arfan Ullah Khan, Sheikh Mohd. Younus, Kulinder Kumar and Noor Mohammad who have unanimously deposed that two shots were fired in air by accused Satpal Singh after he jumped out of Gypsy. PW-Noor Mohammad claimed that he heard a gunshot fire about hundred yards away and within minutes the gypsy stopped near the TCP. According to the witness, accused Satpal Singh opened the rear door of gypsy and jumped out while somebody from inside the gypsy forbade him from opening fire. However, the accused fired two shots from his SLR. Since it was about 9:30 PM, the witness switched on his torch at the instance of driver Abdul Razaq and it was found that the deceased was lying in the lap of driver and bleeding from his wounds. PW-Kulinder Kumar too has stated on similar lines. According to him, the sound of a gunshot was heard coming from the bullet proof gypsy when the gypsy was reaching near the TCP morh. The

gypsy halted near TCP and somebody remarked from inside the gypsy that the accused TT had shot dead Ajay Gupta. The witness has supported the prosecution version by claiming that the bullet proof vehicle was totally closed and the accused and bodyguard had jumped out only after the door was opened. He also supported the version of accused Satpal Singh having fired two shots in air through his SLR. He maintained that the SLR was snatched from the accused and the same was held by the havildar. PW-Sheikh Mohammad Yunus, who was the member of the CRPF patrolling party deposed that while the gypsy was returning from Surankote Bazar, a gunshot was fired from inside the gypsy while the gypsy was barely 60 yards away from the TCP. He also claimed to have heard an inmate of the gypsy remarking that the TT had killed the deceased. The vehicle was stopped and accused TT jumped out after opening the rear door. TT fired two shots before he was nabbed by the Patrol Commander and Jawan RD Yadav. The Police Jawan snatched the SLR of accused. PW-Arfan Ullah Khan, the Havildar commanding the joint patrolling party of CRPF and Police at TCP point at the relevant time deposed that he had heard the sound of a gunshot coming from within the gypsy. He commanded his Jawans to take position but not to open fire. When the gypsy stopped near them, accused TT

jumped out after opening the door. TT was holding an SLR in his hand and he fired two shots in air. The Police Jawan snatched his rifle. The witness claimed that he along with Jawan RD Yadav overpowered the accused TT. The witness further deposed that one of the Jawans travelling in the gypsy had stated that TT had shot dead the deceased. The testimonies of the Commander and members of joint patrolling party of CRPF and Police establishes beyond doubt that the gunshot was fired from inside the gypsy and no fire had hit the gypsy from outside. It is in testimony of PW-Noor Mohammad that it was later in the night when SHO was inquiring about the incident that a blast had occurred in the family quarters of Police Station in which there were some casualties besides some people getting injured and the bomb blast was followed by firing. Admittedly the joint patrolling party members have no reason to suppress truth and come up with a false story. Being posted near and at the place of occurrence on patrolling duty, they are natural witnesses and their testimonies have not been assailed on the ground that they had a motive in falsely implicating the accused Satpal Singh. The version coming from the mouth of these witnesses is found reliable and convincing. This rules out the defence version of a fire having been shot from outside the gypsy to eliminate the deceased. Finally we have the

testimony of Colonel Sarvjeet Singh, the then Commanding Officer of 22 RR stationed at Surankote who claimed that upon getting an information from Police Control Room that a Police Party had been ambushed, he directed his 2 IC – Colonel Purshottam to rush on spot along with QRT (Quick Reaction Team). 2 IC communicated to him that there was no ambush at all. The witness has further deposed about attempt on the part of accused Sewak Singh to persuade the witness to help him by showing it as a case of joint operation so that the family of deceased can get some benefit. The witness declined to oblige him and informed his Brigadier that it was not a case of ambush at all but probably a case of accidental firing. The testimony of this witness causes fatal blow to the defence version that the gypsy was ambushed by militants resulting in death of deceased.

12. Learned Senior Counsel for appellants further argued that even in the event of this Court coming to a finding that the deceased was killed due to gunshot fire from SLR held by the accused Satpal Singh, still it would be a case of accidental firing. He emphasized that being posted in a militancy prone area where operations were going on, the accused and other Jawans on patrol duty would always be expected to be holding their rifles with fingers on triggers and releasing of a bullet accidentally

could not be ruled out. This argument, on the face of it, is devoid of merit. If this were a case of accidental firing, the accused Satpal Singh would not have, after jumping out of the closed gypsy, fired two shots in air which, on the face of it, appears to have been done to mislead the investigators into believing that there was an ambush. The theory of ambush as also the plea of accidental firing are thus found to be false deserving outright rejection.

13. It is in testimony of PW-Abdul Razaq that after accused Satpal Singh fired two shots in air, he snatched the SLR of accused Satpal Singh while CRPF personnel caught hold of the accused. The witness has deposed that he went alongwith the rifle of accused to residence of accused Sewak Singh and informed him about the fatal shot fired by accused Satpal Singh causing death of deceased. According to this witness, the SLR of accused was delivered to cook Rangeel Singh. All members of the joint Patrolling Party of CRPF and Police whose testimonies have been referred to hereinabove have corroborated the version of PW-Abdul Razaq on this aspect. SLR of accused Satpal Singh as also the AK-47 of PW-Abdul Razaq came to be seized by SHO Jagjit Singh on 14.10.1998. Besides 17 live rounds of SLR and 30 live rounds of AK-47 were also seized. This is proved by the testimony of PW-Koul Chand, who has proved the

seizure memos in regard to aforesaid arms and ammunition. Seizure of SLR 7.62 mm bearing butt no.166 was made from accused Satpal Singh whereas AK-47 bearing no.11510 has been seized from PW- Abdul Razak. It appears that one emptied bullet of SLR was seized from the gypsy on 01.11.1998 by the then SHO- VP Samyal. It was found from the stepney (spare tyre) lying below the front seat of the gypsy while the same was parked in Police Line Poonch. This is proved by the testimony of SHO-VP Samyal and PWs-Subash Chander and Om Prakash who testified to seizure memo marked EXPW-OP/1 in this regard. SHO-VP Samyal also testified to having got a piece of iron sheet from frame of the front wind shield of the gypsy cut and seized vide seizure memo EXPW-GKS duly proved by PWs – Sukhwinder Singh and Gulshan Kumar Sharma – both mechanics. The cut piece measured 1 foot. Some metallic pieces were found inside the cut piece of iron frame. PW- H.C.Bhagat, Scientific Officer, FSL-Jammu is the Ballistic Expert who examined the seized SLR, SLR Magazine filled with 17 live cartridges, AK-47 Rifle, its magazine filled with 25 live cartridges and two fired cartridge cases. He also examined one fired cartridge, one iron sheet with suspected holes and two fired bullet jacket fragments. Regarding the emptied bullet recovered from stepney below the seat of gypsy the

Expert opined that the cartridge had been fired through the seized 7.62 mm SLR. In regard to two other seized cartridges, he opined that one of these has not been fired through 7.62 mm SLR but the other one had been fired through the said SLR. Thus, the Expert evidence of the Ballistic Expert connects the fired cartridge, empty whereof was recovered from stepney lying below the front seat of gypsy, with the seized SLR. Besides one of the two emptied cartridges recovered vide seizure memo marked EXPW-MH2 is opined to have been fired through the said SLR though the other empty is not connected with the seized SLR. The testimony of witness also proves that the suspected holes on the iron sheet cut from the frame above the front wind shield of the gypsy had been caused by the fired bullet. Thus, the Expert opinion goes along the prosecution version and corroborates the testimony of PW-Abdul Razaq in all material particulars.

14. Learned Senior Counsel for appellants next argued that there has been crude padding by the Investigation Officer. This argument appears to have been developed for the failure of investigating agency to recover the empty of fired cartridge of SLR on 14.10.1998 and the fact that one of the two empty cartridges recovered vide seizure memo marked EXPW-MH2 does not relate to the seized SLR. The argument has no substance.

Accused Sewak Singh happened to be posted as SP (Operations) at the relevant time. He wielded influence as he was commanding the anti-terrorist operations in the terrorist infested area of Surankote. Despite being informed by PW-Abdul Razaq that accused Satpal Singh had shot dead the deceased and he had snatched the SLR from the former which the witness delivered to cook Rangeel Singh under instructions from accused Sewak Singh, the said accused lodged a false written report with the Police Station alleging killing of deceased in an ambush by anti-national elements. The then SHO-Jagjit Singh who recorded FIR on the basis of such report and soft peddled the investigation, obviously succumbing to influence of accused Sewak Singh. Jagjit Singh was subsequently removed from investigation and arrayed as co-accused in the case. Therefore, the factum of investigation proceeding on the desired lines of accused Sewak Singh and lacking of a vigorous approach on the part of Investigating Officer to explore the gaps in investigation like delayed recovery of the emptied cartridge cannot be termed as crude padding. Similarly, recovery of two emptied cartridges from the spot including one opined to have been fired from SLR cannot be termed so. The presence of other emptied cartridge belonging to some other type of firearm

discovered after a vigorous investigation may not be difficult to explain as many encounters and exchange of firing between the militants and the security forces are said to have taken place at or near the TCP from where the army camp and Police Station are not located far away. Therefore, the argument raised on this score is found to be without substance.

15. Testimony of PW-Koul Chand, ASI who was discharging functions as Storekeeper and also as Line-Incharge proves the entries of 13.10.1998 in Roznamcha besides the contents of seizure memo. His testimony establishes issuance of SLR in question and 300 rounds of ammunition to accused Satpal Singh. PW-Rajinder Singh, Head Constable who was declared hostile to prosecution, admitted that the goth register relating to issuance of arms and ammunition was taken from him by Munshi of Police Station. His testimony also establishes that ammunition was issued to accused Satpal Singh on 23.06.1998. Testimony of PW-Sarin Singh establishes that the SLR in question with three magazines and 300 rounds of ammunition were issued to the accused Satpal Singh from whom SLR along with 17 live rounds was seized vide EXPW-KC2. It has come in prosecution evidence that after PW-Abdul Razaq handed over the snatched SLR of accused Satpal Singh to cook Rangeel Singh at the

bidding of accused Sewak Singh, the said SLR was again found in custody of accused Satpal Singh to whom the same was entrusted by none else other than accused Sewak Singh in furtherance of the conspiracy.

16. On re-appreciation of the evidence brought on record during trial, it is established to the hilt that the accused Satpal Singh fired the fatal shot from his SLR targeting the head of deceased from a very close range inside the bullet proof gypsy, while the vehicle was coming back from Surankote bazar towards TCP late in the evening of 13.10.1998, resulting in instant death of the deceased. We agree with the conclusions drawn by learned Sessions Judge on marshalling of the entire evidence brought on record during trial and find no hesitation in concurring with the impugned judgment regarding authorship of crime of murder of deceased at the hands of accused Satpal Singh.

17. Now adverting to the crucial issue of complicity of accused Sewak Singh on account of alleged criminal conspiracy, we find that the genesis of crime in the instant case can be traced to the scuffle that ensued between accused Sewak Singh and deceased Ajay Gupta on 13th August, 1998 in which accused Sewak Singh demanded explanation from the deceased for not joining the operation leading to exchange of abuses. This incident was witnessed by PWs-Chander Prakash,

Abdul Razaq, Zulfiqar Ahmed – PSO and ASI-Habibullah. Accused Sewak Singh and the deceased slapped each other and the turban of accused fell down. The testimony of aforesaid eye witnesses to the incident demonstrates that accused Sewak Singh and the deceased cocked their weapons to eliminate each other but timely intervention by the SHO-Jagjit Singh and Inspector Parveen Sharma saved the situation. It is in evidence of these witnesses that accused Sewak Singh, in reply to the threats given by deceased, openly declared that **“time will tell who will kill whom?”**. It appears that the accused Sewak Singh who was not only slapped but also pushed by deceased resulting in felling down of his turban, did not retaliate immediately despite grave provocation to react. Apart from being humiliated and insulted in presence of his subordinates, his turban fell down which must have acted as the greatest indignation faced by him professing Sikh Faith which holds the turban in high esteem attaching great importance to it and treating it as sacred. This incident appears to have led the accused Sewak Singh to avenge the insult and humiliation heaped upon him by deceased. Though he pocketed the insult for the time being and did not react, he harbored enmity against deceased deep in his bosom with resolve to respond at an opportune time.

That can be the only plausible explanation for hatching of conspiracy with accused Satpal Singh, a Constable serving under the command of accused Sewak Singh and also sharing Faith with him. In absence of a motive for crime, accused Satpal Singh became instrumental in carrying out the object of criminal conspiracy hatched *inter se* the accused to eliminate the deceased. This conclusion is reinforced by the events following the incident of 13th August, 1998, the sequence of events from 13.10.1998 when the deceased along with the bodyguards and accused Satpal Singh went to Hardi Mohallah to drop Contractor-Abdul Khaliq till the deceased was shot dead by accused Satpal Singh and the events that followed.

18. The testimony of PW-Raghubir Singh reveals the existence of conspiracy when he claims that he overheard a conversation between accused Sewak Singh and Satpal Singh before the occurrence in which accused Sewak Singh was telling the accused Satpal Singh to enact an encounter of deceased – Ajay Gupta. This has been the consistent version of PW-Raghubir Singh which also finds reflection in his statement recorded before IO-Shikha Goel who got his statement recorded under Section 164 Cr.PC. we are conscious of the fact that the statement recorded under Section 164 Cr.PC is not substantive evidence but such statement

has to be considered if the witness resiles from the same. Though the witness has admitted recording of such statement before the Magistrate voluntarily, the statement exhibited as EXPW-RS is said to have been made under fear of being subjected to violence by the Crime Branch. Learned Sessions Judge appears to have addressed this aspect bearing in mind the gap of four months when the witness was allegedly thrashed and the time when he made the statement before Magistrate which he claimed to be voluntary and truthful. In the given circumstances, the resiling from the version appears to have been on account of succumbing to influences which are at work during a criminal trial. Considering the effect of his admission in examination in chief regarding voluntary character of his deposition before Magistrate regarding overhearing of conversation *inter se* the accused for elimination of deceased in an encounter, we are satisfied that the statement of witness before the Magistrate was voluntary notwithstanding the argument advanced by learned counsel for appellants that the requirements of Section 164 Cr.PC had not been complied with by the Magistrate. We say so because the Magistrate was not recording confession of an accused but statement of a person proposed to be examined as a witness at the trial and the

requirements of Section 364 Cr.PC could not be read into while adhering to terms of provisions of Section 164 Cr.PC.

19. Yet another circumstance is the arranging of a party by accused Sewak Singh immediately before occurrence in which liquor was served. PWs-Colonel Sarvjeet Singh, his 2-IC Purshottam Singh and a local Contractor-Abdul Khalik attended the party at the residence of accused Sewak Singh who also called the deceased and Inspector Parveen Sharma to his residence. In this party, accused Sewak Singh asked Colonel Sarvjeet Singh to provide liquor from his canteen to the deceased who was going to arrange a party to celebrate his confirmation. This factual position emanates from the testimony of PWs referred and is even admitted by Contractor-Abdul Khaliq appearing as defence witness. It is also established that Contractor-Abdul Khaliq, even after leaving with the Army Officers returned with a bottle of liquor consuming the same with deceased-Ajay Gupta for a long time at the residence of accused Sewak Singh. Perhaps this was the opportune time for accused Sewak Singh to execute his hidden plan as the deceased was drunk. However, complicity of the Contractor in getting the deceased heavily drunk does not appear to be made out as there is no allegation of hatching of conspiracy with contractor-Abdul Khaliq.

20. Prosecution witnesses Abdul Razaq and Mohd. Akram have deposed that before the deceased along with bodyguards and the contractor and his bodyguard boarded the gypsy for dropping the contractor and his PSO at his residence at Hardi Mohallah, accused Sewak Singh had a side talk with accused Satpal Singh. From the sequence of events that followed the facts regarding existence of a criminal conspiracy *inter se* the accused to eliminate the deceased can be presumed. It has been found earlier that these witnesses are reliable and truthful. We are satisfied that the inference available from the side talk was referable to the existence of the evil design of accused to eliminate the deceased. This conclusion is further reinforced by the fact that accused Sewak Singh checked the gypsy from inside to find out whether the patrolling party constituted by him had boarded as per his plan. This could perhaps be also to see the position occupied by accused Satpal Singh in the context of execution of the evil plan of accused.

21. Yet another circumstance to establish existence of criminal conspiracy *inter se* the accused emerges from the testimony of PWs-Arfan Ullah, Mohd. Younus and Kulinder Kumar of CRPF patrolling team that upon jumping from the gypsy when it came to a halt near

TCP, the accused Satpal Singh was nabbed, he implored them to take him to Sewak Singh. Testimony of PW-Kulinder Kumar establishes that as the accused was left, he ran towards the official residence of Sewak Singh. Apart from some minor contradictions here and there, the witnesses are unanimous that the accused Satpal Singh rushed to official residence of Sewak Singh. Insistence of accused Satpal Singh to take him to accused Sewak Singh can be explained on no hypothesis other than the one that the two were collaborators in crime and had hatched a conspiracy to eliminate the deceased. Unless accused Satpal Singh considered Sewak Singh as his savior coming to his rescue and saving him from criminal prosecution on charge of murder, there was no fun for his insistence upon being taken to accused Sewak Singh. This is a circumstance in the chain of events establishing existence of criminal conspiracy *inter se* the accused.

22. Testimony of Abdul Razaq who had snatched the SLR from accused Satpal Singh and handed over the same to cook Rangeel Singh at the bidding of accused Sewak Singh further establishes that while in hospital where body of deceased was taken for postmortem examination, he found the said SLR again being held by accused Satpal Singh. This fact is also corroborated by testimony of PW-Chander Prakash. The evidence on

record, discussed elsewhere, establishes seizure of SLR with ammunition from accused Satpal Singh on 14.10.1998. The contemporary record in the form of seizure memo marked EXPW-KC2 clinches this issue. These established facts are sufficient to raise inference that it was the accused Sewak Singh and none else who gave back SLR to accused Satpal Singh despite being informed by PW-Abdul Razaq that accused Satpal Singh had committed murder of deceased. Was it done under an agreed plan by accused Sewak Singh or under fear that disarming of accused Satpal Singh may render him hostile to Sewak Singh and pave way for spilling the beans thereby establishing the complicity of Sewak Singh, the fact remains that the two accused were working in collaboration is writ large on the face of conduct of accused Sewak Singh.

23. One more circumstance which in itself is sufficient to justify existence of criminal conspiracy *inter se* the accused is the cover up operation emanating from accused Sewak Singh who requested Colonel Sarvjeet Singh to show the death of deceased in a joint operation of SOG and Army against militants. Learned Trial Court is right in observing that accused Sewak Singh made such request to Colonel Sarvjeet Singh by shedding crocodile tears and by pleading that showing death of deceased in joint operation would benefit the

family of deceased. Testimony of Colonel Sarvjeet Singh is emphatic on the point that the request in this regard made by accused Sewak Singh was turned down by him and he advised the accused to contact his SP at Poonch. PW-J.P.Singh, the then SP – Poonch has deposed that accused Sewak Singh informed him on telephone that SOG Gypsy was attacked by militants. However, he did not inform him about death of deceased-Ajay Gupta. It was SHO – Surankote who told the SP that Ajay Gupta had died. Both accused Sewak Singh and SHO Jagjit Singh fed a concocted story to SP-Poonch intermingling the incident of murder of deceased with the incident of bomb blast followed by firing that occurred later at the Police Station. This is further established by the testimony of PW- Mohd. Niaz Manhas, ASI who was duty officer at the Police Station during the night intervening between 13/14 October, 1998. He claimed that he heard the sound of gunshot and on inquiry the sentry at the gate told him that the fire was heard from the side of check post. Meanwhile, patrolling party of CRPF and Police arrived there. PW-Noor Mohd. told him that accused TT had shot at the deceased who had been taken to hospital in injured condition. The witness claims to have informed the SHO who rang up SP Poonch – J.P.Singh informing him that accused TT had shot at Ajay Gupta.

According to witness it was at that time that a blast occurred in the family quarters of Police and around 40 Jawans sustained injuries. The evidence on record is unambiguous on the point that the two incidents were independent of each other and bore no proximity of time. It is here that SHO-Jagjit Singh became a co-conspirator and apart from feeding SP with wrong information lodged a false case of killing of deceased in an ambush at the instance of accused Sewak Singh. Testimony of PW-Colonel Sarvjeet Singh establishes beyond doubt that there was no ambush at the time of alleged occurrence and that accused Sewak Singh had requested him to show the deceased as a martyr who lost life in a joint operation conducted by SOG and army which was turned down by the witness. These established facts are clinching in establishing existence of the alleged criminal conspiracy *inter se* the accused. The operation cover up launched by accused Sewak Singh failed to take off due to the firm stand taken by Colonel Sarvjeet Singh. The pre and post occurrence conduct of accused Sewak Singh is compatible with no conclusion other than the one that he was the master-mind of conspiracy and trying to shape up the things as per his plan and cover up the gruesome murder of deceased by fabricating evidence. Lodging of false FIR on the basis of written report EXPW-PK was a step

taken by accused Sewak Singh in the same direction.

24. Three more circumstances require to be noticed in this regard. First is the washing of gypsy after occurrence at the instance of accused Sewak Singh despite express directions from J.P. Singh, SP-Poonch and Mukesh Singh - SDPO Mendhar to conduct photography and collect forensic evidence from the same. Second circumstance is changing of civil dress of deceased by replacing it with uniform. Facts in this regard are established by the testimony of PWs-Abdul Razaq, Mohd. Akram, Chander Prakash and wife of deceased namely Sunita Gupta. Testimony of PW- Chander Prakash clearly establishes that while at the residence of deceased, accused Sewak Singh sought the uniform of deceased Ajay Gupta through Constable Sarfaraz and he obtained the uniform from wife of deceased. Thereafter he left along with Sarfaraz for hospital where accused Sewak Singh asked him to replace the civil dress of deceased by uniform. The witness, on being slapped by Inspector Parveen, put on the uniform on the dead body of deceased after removing civil dress though his T-shirt could not be removed. This circumstance not only raises inference of criminal conspiracy but also establishes destruction of evidence and a brazen attempt to mislead the investigators.

25. Last but not the least is the circumstance that accused Sewak Singh advised PWs-Abdul Razaq and Mohd. Akram to make similar statements in an inquiry regarding death of deceased-Ajay Gupta. This, as per testimonies of Abdul Razaq and Mohd. Akram, was done in bedroom of accused Sewak Singh in presence of accused Satpal Singh warning them that otherwise they would be in trouble. The suggestion given by him was that they make a statement that a fire had been shot from outside the gypsy. PW-Mohd. Akram has deposed that accused Sewak Singh asked them to state that when the gun shot was fired from outside, the door of gypsy was lying open. This attempt on the part of accused Sewak Singh to persuade these witnesses to come up with a false version despite knowing the truth is only compatible with his guilt of being the master mind of conspiracy. He was aware that these two witnesses are the eye witnesses to the occurrence and their deposition would go a long way in shaping up the destiny of inquiry.
26. The chain of events established by the aforesaid circumstances leads to irresistible conclusion that the murder of deceased was not an independent act of accused Satpal Singh but the result of a well planned conspiracy which was meticulously designed *inter se* the accused Sewak Singh and Satpal Singh and

executed by accused Satpal Singh to achieve the object of conspiracy. We, on a careful reappraisal of evidence brought on record during trial and after scanning through the record and the impugned judgment which elaborately marshaled the evidence and considered the rival contentions, are of the considered opinion that prosecution has succeeded in bringing home guilt of accused. The defense version of killing of deceased in an ambush by militants is a blatant lie and is rejected with the contempt that it deserves. We accordingly uphold the impugned judgment of conviction by virtue whereof accused Sewak Singh and Satpal Singh have been convicted of charge under Section 302/120-B and 201 RPC. We are convinced that the instant case does not fall within the purview of **“rarest of rare cases”** to justify awarding of capital sentence. We accordingly confirm sentence of life imprisonment awarded to appellants-accused for their conviction under Section 302 RPC and also uphold the sentence of fine of Rs.4,000/-. We also uphold the sentence of simple imprisonment for two years and fine of Rs.2, 000/- awarded for commission of offence under Section 201 of RPC against both the accused. Substantive sentences have been directed to run concurrently and in default of payment of fine, further sentence of simple imprisonment is proposed in the judgment formulated

by learned Sessions Judge, we uphold the same.

27. Consequently the appeals preferred by the appellants-accused are dismissed and the Confirmation Reference is upheld. Appellants-accused be taken into custody for serving out the sentence. The result of Confirmation proceedings and the fate of appeals be certified to the Trial Court in terms of provisions of Section 425 Cr.PC. The appeal files be consigned to Records. Record be returned to the Trial Court.

(Bansi Lal Bhat)
Judge

(Virender Singh)
Judge

Jammu
*Varun Bedi**
21.10.2014