(2008) 2 ACR 1840

Allahabad High Court

Case No: Criminal A. No. 1393 of 2006, Criminal Ref. No. 3 of 2006 and Criminal A. No"s. 1427 and 1428 of 2006

Rajan alias Kalia Rajan and Others		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Sept. 21, 2007

Acts Referred:

- Arms Act, 1959 - Section 19, 25, 25(1B), 27, 27(1)
- Criminal Law (Amendment) Act, 1932 - Section 7
- Criminal Procedure Code, 1973 (CrPC) - Section 127, 128, 129, 130, 131
- Evidence Act, 1872 - Section 9
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

Citation: (2008) 2 ACR 1840

Hon'ble Judges: Vijay Kumar Verma, J; Imtiyaz Murtaza, J

Bench: Division Bench

Advocate: P.N. Misra, G.S. Chaturvedi, Apul Misra, S.K. Mishra, Umesh Chandra Mishra, Sushil Kumar Dubey and Akhil Kumar Shukla, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

Vijay Kumar Verma, J.
These appeals have been preferred against separate judgments and orders dated 25.2.2006, passed by Sri O.P. Dixit, the then Additional Sessions Judge/Special Judge (E.C. Act) Etawah in S.T. Nos. 51 of 2003, 72 of 2003 and 73 of 2003. All these appeals and reference were connected vide order dated 7.8.2006 and have been heard together. Hence, the same are being decided by this common judgment.

2. By the impugned judgment passed in S. T. No. 51 of 2003, the Appellants-accused Rajan alias Kalia Rajan, Firoz Taiyyab Tanashah, Chandrakant Sitaram Gurav, Datta Sripati Pandare and Sunil alias Amol (correct name Sushil Suresh Karkhanis) have been

convicted and sentenced to death u/s 302 read with Section 149, I.P.C., two years'' rigorous imprisonment u/s 148, I.P.C., imprisonment for life u/s 307 read with Section 149, I.P.C. and two years'' rigorous imprisonment u/s 332, I.P.C. in Case Crime No. 596/2002 of P. S. Civil Lines, Etawah. Offence u/s 7 Criminal Law Amendment Act was found not made out.

3. All the aforesaid Appellants-accused vide impugned judgment of S.T. No. 72 of 2003 have been convicted and sentenced to undergo rigorous imprisonment for two years u/s 148, I.P.C. and ten years'' rigorous imprisonment and to pay a fine of Rs. 5,000 each with additional imprisonment for one year in default of payment of fine u/s 307 read with Section 149, I.P.C. in Case Crime No. 970/2002 of P. S. Kotwali, Etawah. By the same judgment, the Appellants-accused Chandrakant Sitaram Gurav, Firoz Taiyyab Tanashah and Rajan alias Kalia Rajan have been further convicted and sentenced to undergo rigorous imprisonment for two years u/s 25(1B)(a) Arms Act and four years'' rigorous imprisonment and to pay a fine of Rs. 3,000 each with additional imprisonment for six months in default of payment of fine u/s 27(1) Arms Act in Case Crime No. 971/2002, 972/2002 and 973/2002 respectively. The Appellants-accused Datta Sripati Pandare and Sushil Suresh Karkhanis also have been further convicted and sentenced to undergo rigorous imprisonment for two years u/s 25(1B)(a) of Arms Act in Case Crime No. 974/2002 and 975/2002 respectively.

4. In S. T. No. 73 of 2003 vide impugned judgment, the Appellant-accused Sushil Suresh Karkhanis has been convicted and sentenced to undergo rigorous imprisonment for two years u/s 25(1B)(a) of Arms Act and four years'' rigorous imprisonment and to pay a fine of Rs. 3,000 with additional imprisonment for six months in default of payment of fine u/s 27(1) of Arms Act in Case Crime No. 1088/2002 of P. S. Kotwali, Etawah.

5. All the sentences have been ordered to run concurrently.

6. Reference u/s 366 of the Code of Criminal Procedure for confirmation of death sentence has also been sent by the learned trial court, which has been registered as Criminal Reference No. 3 of 2006.

7. Before proceeding further, it is clarified that according to the case of the prosecution, at the time of arrest on 23.10.2002, one accused told his name and address as Sushil Suresh Karkhanis S/o Suresh Basudev Karkhanis R/o Pandit Wadi Kirtan Chal, Room No. 203, 2nd Mala, Bhawani Shankar, P. S. Dadar, Mumbai. Name of this accused in the F.I.R. of Case Crime No. 970/2002 and 974/2002 at P. S. Kotwali, Etawah was shown as Sushil Suresh Karkhanis. He was taken into custody by this name in Case Crime No. 596 of 2002 of P. S. Civil Lines, Etawah also. In the case diary of Crime No. 596 of 2002, this name of the accused was continued to be mentioned till parcha No. 3 dated 25.10.2002. After receipt of criminal history, the name of this accused was started to be mentioned as Sushil alias Amol S/o Suresh Karkhanis in subsequent parchas of case diary of Crime No. 596/2002, but due to some mistake in parcha No. 23 dated 14.1.2003, his name was

scribed as Sunil alias Amol in the charge-sheet also, his name was mentioned as Sunil alias Amol. On the case being committed to the Court of Session, charge against this accused was framed showing his name as Sunil alias Amol and his trial was continued in Session Trial No. 51 of 2003 by this name. Although at the time of examination u/s 313, Cr. P.C., he told his correct name as Sushil Suresh Karkhanis, but the mistake of name could not be detected in trial court. Consequently in the impugned judgment of S. T. No. 51 of 2003, name of this accused has been mentioned as Sunil alias Amol and he has been convicted and sentenced by this name in that session trial, although his correct name is Sushil Suresh Karkhanis. On the basis of certified copy of the impugned judgment of Session Trial No. 51 of 2003, in the petition of Criminal Appeal No. 1393 of 2006, name of Appellant No. 5 has been scribed as Sunil alias Amol whereas his full and correct name is Sushil Suresh Karkhanis. As such, in the impugned judgment of Session Trial No. 51 of 2003, the accused Sushil Suresh Karkhanis will be deemed to have been convicted and sentenced and Criminal Appeal No. 1393 of 2006 also will be deemed to have been preferred on his behalf, although his name has been mentioned in the petition of this appeal as Sunil alias Amol in accordance with the impugned judgment of S. T. No. 51 of 2003. This fact is not disputed by his counsel. In the petition of Criminal Appeal No. 1427 of 2006 which has been preferred against the impugned judgment dated 25.2.2006 passed in S. T. No. 72 of 2003, name of Appellant No. 5 has been wrongly mentioned as Sunil alias Amol, because in S. T. No. 72 of 2003, trial of this accused was made with his correct name Sushil Suresh Karkhanis and he has been convicted and sentenced by this name in that session trial, but due to type error in the petition of Criminal Appeal No. 1427 of 2006 also, his name has been typed as Sunil alias Amol. Hence, this appeal also will be deemed to have been preferred on behalf of the accused Sushil Suresh Karkhanis.

8. First incident (pertaining to S. T. No. 51 of 2003) resulting in the death of one under trial prisoner Suresh Pal Singh alias Guddu and causing firearm injuries to another undertrial prisoner Suneel, H.C. (P.) Shiv Baran Singh and Court Peon Ghan Shyam Singh occurred in Court''s premises, Etawah on 23.10.2002 at about 3.45 p.m. In the same transaction, second incident (pertaining to S. T. No. 72 of 2003) occurred on the same day at about 4.30 p.m. in the beehad near Kaliwahan temple, Etawah, in which the Appellants-accused while fleeing away after committing aforesaid incident in Court''s premises, are said to have fired on the police personnel, who were chasing them and on their arrest, illicit arms and cartridges are said to have been recovered from them. Third case, which gave rise to S. T. No. 73 of 2003 and is connected with aforesaid cases, pertains to the recovery of one pistol 32 bore during police custody remand on the pointing out of the Appellant-accused Sushil Suresh Karkhanis on 6.11.2002.

9. The case of the prosecution as emerging from the records, in brief, is that in the year 2000, murder of Sri Ran Veer Singh Sengar, advocate of Etawah, his wife and two daughters was committed. Deceased Suresh Pal Singh alias Guddu and injured Sunil were facing trial in the case of those murders and they both were lodged in Jail as undertrials. Suresh Pal Singh was the husband of one deceased daughter. Rekha

Sengar, the only surviving daughter of Sri Ran Veer Singh Sengar, wanted to take revenge of murders of her family members from Suresh Pal Singh and Suneel. When, being the legal heir, Rekha Sengar instituted the case for succession certificate in civil court, Etawah, Suresh Pal Singh being the husband of deceased daughter of Sri Ran Veer Singh Sengar filed objections in that case. Then, Rekha Sengar determined to eliminate Suresh Pal Singh. She was having intimacy with Bhartiya Sahgal alias Mannu, owner of IVORY Palace Hotel, Karol Bagh, New Delhi. Rekha Sengar approached Bhartiya Sahgal alias Mannu, who had connections with International "Don" Chhota Rajan. Bhartiya Sahgal contracted Chhota Rajan, who on his request sent the Appellants-accused to Etawah to kill Suresh Pal Singh alias Guddu and Suneel. It is alleged that on 23.10.2002, Suresh Pal Singh alias Guddu and Sunil alongwith other undertrial prisoners were brought from the District Jail, Etawah to attend the Courts. At about 12.30 p.m. C. P. 953 Shiv Das, H.C. (P) 14 A.P. Shiv Baran Singh, Constable 21 A.P. Angrez Singh, Constable 131 A.P., Chandresh Singh, Constable 168 A.P. Hari Prasad and Constable 310 C.P. Gangadhar Singh had carried sixteen undertrial prisoners including Suresh Pal Singh and Sunil from the Court"s lock-up to produce them in the Court of Additional Sessions Judge (1st) Etawah. After producing them in Court, when they were being brought to the lock-up and reached on the tiraha near the corner of the rooms of Civil Lawyers at about 3.45 p.m., 6-7 miscreants having firearms came from ahead and with intention to commit murder, they began to fire on Suresh Pal Singh and Sunil, due to which they both sustained injuries and fell down there. When C. P. Shiv Das and H.C. (P) Shiv Baran Singh moved ahead for apprehending the miscreants, they with a view to cause their death fired on them, due to which Shiv Baran Singh sustained fire arm injury in left thigh, but Shiv Das escaped narrowly. Court Peon Ghan Shyam Singh, who was passing from there, was also injured by a shot. This incident caused commotion in Court premises. The lawyers and other people began to rush to save their lives. Law and order was totally collapsed. Constable Bhola Singh, Satya Pal Singh and Ajai Kumar, who were posted in Special Operation Group (S.O.G.), were performing their duty in Court premises. On hearing the sounds of fires, they rushed towards the place of incident and saw that the miscreants making fires fled away towards Idgah, Etawah, sitting in Maruti Car No. DL-2CM-9066, which was standing duly started near Kadam tree. After going away of the miscreants, the injured Suresh Pal Singh, Sunil, Shiv Baran Singh and Ghan Shyam Singh were carried to District Hospital, Etawah, where injured Suresh Pal Singh was declared dead. Constables Bhola Singh, Satya Pal Singh and Ajai Kumar Singh chased the miscreants to some distance on feet, but they fled away. Thereafter, these S.O.G. Constables alongwith Om Singh Chandel, brother of the deceased Suresh Pal Singh, rushed to the residence of S.S.P., Etawah and informed S.O.G. Incharge S.I. Chhatrapati Singh about the incident, who immediately gave information to District Control Room and informed S.S.P., Etawah, Dr. G. K. Goswami. At the same time, a secret information was received on telephone by S.S.P., Etawah that the miscreants of Chhota Rajan gang after making indiscriminate firing in Court premises are making efforts to flee away towards Gwalior through Maruti Car No. DL-2CM-9066. On this information, S.S.P., Etawah informed the Station Officers of all the Police Stations and Circle Officers

on R.T. Set to surround the miscreants. S.S.P., Etawah himself alongwith S.O.G. Incharge S.I. Chhatrapati Singh, S.I. Rakesh Kumar Srivastava, S.H.O. P. S. Kotwali, Etawah, Sri Som Dutt Sharma and other police force sitting in police vehicles began to chase the miscreants. S.O.G. Constables Bhola Singh, Satya Pal Singh and Ajai Kumar also sat in the vehicle of S.O.G. Incharge Chhatrapati Singh. When the vehicle of miscreants was going towards Gwalior side, the then C.O., Jaswant Nagar, Ashok Kumar Verma and S.O. P.S. Badhpura S.I., M. S. Chauhan alongwith police force came from opposite direction in their vehicles. Seeing those vehicles, the miscreants turned their Maruti vehicle quickly towards Kaliwahan temple, due to which the vehicle turned down. Thereafter, all the miscreants came out from their vehicle and with the intention to cause the death of police personnel, they began to fire indiscriminately and tried to flee away in jungle (beehad), but at a distance of about fifteen paces from Mahisasur temple, three miscreants were apprehended at about 4.30 p.m. S.O.G. Constables Bhola Singh, Satya Pal and Ajai Kumar as well as Om Singh, brother of deceased Suresh Pal Singh, seeing those miscreants immediately recognized them and told that they have injured Suresh Pal Singh etc. by making indiscriminate firing in Court premises. C.O., Jaswant Nagar, Sri Ashok Kumar Verma and S.O. P.S. Badhpura Sri M. S. Chauhan with other police personnel chased other miscreants and apprehended two out of them. On personal search of the apprehended miscreants, one pistol 455 bore having two cartridges in magazine and one cartridge in barrel from Appellant-accused Rajan alias Kalia Rajan, one pistol 32 bore bearing No. 117749 having two cartridges in magazine and one cartridge in barrel from the accused-Appellant Firoz Taiyyab Tanashah and one revolver 38 bore (smith and basin mark) bearing No. V-305949 having one live and five empty cartridges 38 bore in chamber from Chandrakant Sitaram Gurav were recovery. Datta Sripati Pandare and Sushil Suresh Karkhanis, who were apprehended by C.O., Jaswant Nagar and S.O. P. S. Badhpura also were brought at the place of aforesaid recovery. On their personal search, four live cartridges 38 bore from the pocket of pant of the Appellant-accused Datta Sripati Pandare and six live cartridges of 32 bore from the pocket of pant of the accused-Appellant Sushil Suresh Karkhanis were recovered. Recovery memo of the recovery articles was got scribed by S.S.P., Etawah from S.I. Chhatrapati Singh. Thereafter, the recovered articles were sealed on the spot and after effecting the arrest of the Appellants-accused, they were brought to P. S. Kotwali, Etawah. Further case of the prosecution is that when police custody remand of the Appellants-accused Sushil Suresh Karkhanis and Datta Sripati Pandare was granted by Chief Judicial Magistrate, Etawah, they were carried to the beehad on 6.11.2002 by S.I. K. N. Pandey and other police personnel for making recovery of arms, which were told to have been thrown away by these accused at the time of fleeing away and on the pointing out of the Appellant-accused Sushil Suresh Karkhanis, one pistol 32 bore bearing No. 33032402 with one cartridge in the barrel was recovered at about 4.30 p.m. vide recovery memo Ext. Ka-1 of S.T. No. 73 of 2003. Photostat copies of the registration certificate and insurance of Maruti Vehicle No. DL-2CM-9066 are also said to have been recovered on the pointing out of Appellant-accused Datta Sripati Pandare at about 4.45 p.m.

10. After the aforesaid incident, which happened in the Court premises, C.P. Shiv Das went to P.S. Civil Lines, Etawah and lodged F.I.R. there. P.W. 5 Mohd. Abid Khan was posted as Head Moharrir in P.S. Civil Lines, Etawah. On the basis of oral information of C.P. Shiv Das, he prepared chik F.I.R. Ext. Ka-1 of S.T. No. 51 of 2003 at 4.15 p.m. on 23.10.2002 and registered a case under Sections 147, 148, 149 and 307, I.P.C. and Section 7 Criminal Law Amendment Act at Crime No. 506/2002 against 6-7 unknown miscreants and made entry in G.D. No. 33 vide Ext. Ka-2. When information regarding death of Suresh Pal Singh was received at P.S. Civil Lines, Etawah, Section 302, I.P.C. was also added in the case, entry of which was made in G.D. No. 38 at 4.40 p.m. on 23.10.2002 vide Ext. Ka-3 of S.T. No. 51 of 2003.

11. S.I. Om Vir Singh Rana, on the direction of the then City Magistrate Sri Bal Krishna Tripathi during inquest proceeding on the dead body of deceased Suresh Pal Singh alias Guddu prepared inquest report Ext. Ka-11 and connected papers Ext. Ka-12 to Ext. Ka-16 of S.T. No. 51 of 2003 on 23.10.2002. Thereafter, the dead body was sent in sealed condition through the Constables Ram Vishal and Sudhir Kumar for post mortem examination, which was conducted on 24.10.2002 at 1.45 p.m. by Dr. Shailendra Tiwari (P.W. 7). The following ante-mortem injuries were found on the person of deceased as per post mortem report (Ext. Ka-4 in S.T. No. 51 of 2003) :

(1) Fire arm wound of entry 1 x 1/2 cm. x Abd cavity deep over left axillary line of left lumber area of Abdominal at 3 O''clock position, 19 cm. away from umblicus. Margins inverted. Blackening/ Scortching present.

(2) Fire arm wound on exit of injury No. 1 of size 1 x .75 x Abd. cavity deep, over right illiac fossa of Abd 12 cm. away at 8 O''clock position from umblicus. Margin everted surrounding skin normal.

(3) Fire arm wound of entry in axilla at level of anterior axillary line and 18 cm. away from nipple (Rt.) at 2 O''Clock position. Blackening/ scortching present.

(4) Abraded contusion 4 x 1 cm. over left post. Chest wall scapular area. Black coloured.

In internal examination, membranes and brain were pale, Left and right 5th ribs were fractured, Pleura and both lungs were lacerated. Bloody fluid about 2 litres was present in thoracic cavity. Peritoneum was lacerated. Small and large intestines were also lacerated at places and about one litre blood was filled in cavity. Digested food was present in small intestine. About one litre blood was filled in cavity. Liver, spleen and both kidneys were pale. One metallic bullet was recovered from the body.

According to Dr. Tiwari, death was caused due to shock and haemorrhage as a result of ante-mortem fire arm injuries.

12. Dr. D. P. Singh examined H.C. (P) Shiv Baran Singh in District Hospital, Etawah on 23.10.2002 at 4.20 p.m. Following injuries were found on his person as per injury report

(Ext. Ka-17 in S.T. No. 51 of 2002) :

(1) Fire arm wound of entry 0.5 cm. x 0.5 cm. x depth u.o. on anterior medial aspect of (Lt.) thigh, 16 cm. above (Lt.) knee, Margins inverted.

The injury was kept under observation and X-ray was advised. It was caused by fire-arm. Duration was fresh.

On the same day, at 4.35 p.m., injured Ghan Shyam Singh was examined and as per injury report (Ext. Ka-18 in S.T. No. 51 of 2003), following injuries were found on his person :

(1) Fire arm wound of entry 0.4 cm. x 0.4 cm. x depth u.o. on outer aspect of (Lt.) leg. 14 cm. above (Lt.) ankle. Fresh bleeding present. Margins inverted.

The injury was caused by fire arm and it was kept under observation advising X-ray. Duration was fresh.

On the same day, at 7.50 p.m., injured Sunil Kumar was examined and as per injury report (Ext. Ka-19 in S.T. No. 51 of 2003), the following injuries were found on his person :

(1) Fire arm wound of entry 1 cm. x 0.7 cm. x through and through to injury No. (2) on right side front of neck, just above medial end of right collar bone. Direction of wound forwards laterally. Margins inverted. Fresh bleeding present.

(2) Fire arm wound of exit 1.5 cm. x 1 cm. x through and through to inj. No. (1) on right side neck, just above right clavicle 4 cm. lateral to injury No. 1. Margins reverted.

(3) Fire arm wound of entry 1 cm. x 0.7 cm. x through and through to injury No. (4) on outer aspect of right knee. Margins inverted. Fresh bleeding present. Wound is directed towards medially.

(4) Fire arm wound of exit 1.5 cm. x 1 cm. x through and through to injury No. (3) on medial aspect of right leg, 3 cm. below right knee. Margins everted. Fresh bleeding present.

All the injuries were kept under observation, which were caused by fire arm. Duration was fresh.

13. S.I. K. N. Pandey the then Station Officer of P.S. Civil Lines, Etawah took up the investigation of the case of Crime No. 596 of 2002 in his hands and after collecting blood stained and simple earth from the place of incident in Court''s premises, Etawah and taking into possession two empty cartridges, which were found lying there, memo Ext. Ka-5 of S.T. No. 51 of 2003 was prepared. Thereafter, at the instance of Constable Shiv Das, spot inspection was made by him and site plan Ext. Ka-6 of S.T. No. 51 of 2003 was

prepared. When he came to know about the arrest of Appellants-accused, he went to P.S. Kotwali, Etawah and recorded their statements. Investigation of this case remained with S.I. K. N. Pandey upto 7.11.2002 during which, he recorded the statements of some witnesses, and after seeking police custody remand from Chief Judicial Magistrate, Etawah, recovered 32 bore pistol bearing No. 330132402 with one live cartridge in barrel at the instance of Appellant-accused Sushil Suresh Karkhanis on 6.11.2002 from beehad near Kaliwahan temple and on the same day at the instance of Appellants-accused Datta Sripati Pandare photostat copies of the registration certificate and insurance of Maruti Vehicle No. DL-2CM-9066 were also recovered from the same beehad and joint memo Ext. Ka-9 of S.T. No. 51 of 2003 was prepared. From IVORY Palace Hotel, New Delhi, extracts of room service register and food bills were also taken into possession vide memo Ext. Ka-8 of S.T. No. 51 of 2003.

14. After transfer of S.I. K. N. Pandey, rest investigation was carried out by S.I. Krishan Chandra Tiwari, who started the investigation on 3.12.2002 and after completion of the investigation, submitted charge-sheet Ext. Ka-10 of S.T. No. 51 of 2003 against all the Appellants-accused under Sections 147, 148, 149, 302, 307, 353, 332, I.P.C. and Section 7, Criminal Law Amendment Act on 14.1.2003 showing the name of Sushil Suresh Karkhanis as Sunil alias Amol by mistake.

15. On the basis of recovery memo, Ext. Ka-1 of S.T. No. 72 of 2003, the Head Moharrir Rakesh Kumar Pandey prepared chik F.I.R. Ext. Ka-8 of aforesaid Session Trial and registered a case under Sections 147, 148, 149, 307, I.P.C. and Section 7, Criminal Law Amendment Act at P.S. Kotwali, Etawah on 23.10.2002 at 7.30 p.m. at Crime No. 970/2002 against all the Appellants-accused of Criminal Appeal No. 1427 of 2006. Separate cases u/s 25/27 of Arms Act at Crime No. 971/2002, 972/2002 and 973/2002 against Rajan alias Kalia Rajan, Feroz Taiyyab Tanashah and Chandrakant Sitaram Gurav respectively and case u/s 25 of Arms Act at Crime Nos. 974/2002 and 975/2002 against Datta Sripati Pandare and Sushil Suresh Karkhanis respectively were also registered by him, entry of which was made in G.D. No. 52 vide Ext. Ka-9 of said session trial. Investigation of the aforesaid cases was entrusted to S.I. Nannu Mal Nigam, who started investigation on 24.10.2002. After recording the statement of Sri Som Dutt Sharma, the then S.H.O. P.S. Kotwali, Etawah, he made spot inspection at his instance on 25.10.2002 and prepared site plans Exts. Ka-2 to Ka-7 of S.T. No. 72 of 2003. Thereafter, statements of other witnesses were also recorded. On 20.11.2002, investigation of aforesaid cases was taken from S.I. Nannu Mal Nigam and handed over to the then C.O., Bharthana (Etawah), Sri Mohan Singh, who after completion of the investigation, submitted charge-sheet Ext. Ka-10 to Ext. Ka-15 of S.T. No. 72 of 2003.

16. The then Constable-Clerk Sushil Kumar Singh prepared chik F.I.R. Ext. Ka-2 of S.T. No. 73 of 2003 on 6.11.2002 at 6.10 p.m. and registered a case u/s 25/27 of Arms Act at Crime No. 1088/2002 against the Appellant-accused Sushil Suresh Karkhanis on the basis of recovery memo (Ext. Ka-1) and made entry in G.D. No. 53 vide Ext. Ka-3. Investigation of this case also was entrusted to S.I. Nannu Mal Nigam, who during

investigation recorded the statements of the witnesses, prepared site plan Ext. Ka-4 of S.T. No. 73 of 2003 at the instance of S.I. Mangat Singh Chauhan, the then S.O. P.S. Badhpura on 9.11.2002 and after completion of the investigation, submitted charge-sheet Ext. Ka-5 of S.T. No. 73 of 2003 on 21.11.2002 against the Appellant-accused Sushil Suresh Karkhanis.

17. On the cases being committed to the Court of Session for Trial, S.T. No. 51 of 2003 giving rise to Criminal Appeal No. 1393 of 2006 was registered against all the Appellants-accused in respect of the case of Crime No. 596/2002. In that Session Trial, charge under Sections 147, 148, 302 and 307 read with Sections 149, 332 and 353, I.P.C. was framed against all the Appellants-accused. Separate charge u/s 7 of Criminal Law Amendment Act against all the Appellants-accused was also framed.

18. In respect of the cases of Crime Nos. 970/2002 to 975/2002 of P.S. Kotwali, Etawah, S. T. No. 72 of 2003 giving rise to Criminal Appeal No. 1427 of 2006 was registered, in which charge under Sections 148 and 307 read with Section 149, I.P.C. was framed against all the Appellants-accused. Separate charge under Sections 25(1B)(a) and 27(1) of Arms Act against the Appellants-accused Rajan alias Kalia Rajan, Chandrakant Sitaram Gurav and Firoz Taiyyab Tanashah and charge u/s 25(1B)(a) against the Appellants-accused Sushil Suresh Karkhanis and Datta Sripati Pandare were also framed.

19. S.T. No. 73 of 2003 giving rise to Criminal Appeal No. 1428 of 2006 was registered in respect of the Case of Crime No. 1088/2002 of P.S. Kotwali, Etawah, in which charge under Sections 25(1B)(a) and 27(1) of Arms Act was framed against the Appellant-accused Sushil Suresh Karkhanis.

20. Since the Appellants-accused pleaded not guilty to the charges framed against them, the prosecution in order to prove its case examined sixteen witnesses in all in Session Trial No. 51 of 2003. P.W. 1 Bhola Singh, P.W. 2, Satya Pal Singh and P.W. 4 Ajai Kumar are S.O.G. Constables, who are said to have chased the Appellants upto their arrest in beehad. P.W. 3, Constable Shiv Das, P.W. 6 H.C. (P) Shiv Baran Singh, P.W. 8 Constable Hari Prasad and P.W. 12 Constable Gangadhar Singh had carried the undertrial prisoners including the deceased Suresh Pal Singh and injured Sunil from Court lock-up to the Court of Additional Sessions Judge, 1st, Etawah and were bringing them back to the lock-up at the time of alleged incident. H.C. (P) Shiv Baran Singh is injured also. P.W. 9 Sunil Kumar and P.W. 10 Ghan Shyam Singh are also injured witnesses, who sustained injuries in the alleged incident. Amongst other witnesses. P.W. 5 Mohd. Abid Khan is the scribe of chik F.I.R. and G.D. of registration of Case Crime No. 596 of 2002 of P.S. Civil Lines, Etawah. P.W. 7, Dr. Shailendra Tiwari had conducted post-mortem examination on the dead body of deceased Suresh Pal Singh on 24.10.2002. He has proved post-mortem report Ext. Ka-4. P.W. 11 Bal Krishan Tripathi was posted as City Magistrate, Etawah on 23.10.2002. He had conducted inquest proceeding on the dead body of deceased Suresh Pal Singh alias Guddu and on his

direction inquest report and other papers were prepared by P.W. 15 S.I. Om Veer Singh Rana. P.W. 13, S.I. K. N. Pandey and P.W. 14, S.I. Krishna Chandra Tiwari are Investigating Officers. P.W. 16 Dr. D. P. Singh had medically examined the injured Shiv Baran Singh, Ghan Shyam Singh and Sunil Kumar vide injury reports Ext. Ka-17 to Ext. Ka-19.

21. In S.T. No. 72 of 2003, the prosecution examined nine witnesses in all. P.W. 1 Dr. G. K. Goswami was posted as S.S.P., Etawah on 23.10.2002. He is said to have chased and arrested the Appellants-accused with the help of other police force in the beehad near Kaliwahan Temple on 23.10.2002 at about 4.30 p.m. P.W. 2 Som Dutt Sharma was posted as S.H.O., P.S. Kotwali, Etawah on the fateful day. He is said to have accompanied S.S.P., Etawah and arrested the Appellants-accused. P.W. 3, Ratan Singh and P.W. 5 Pappu Yadav alias Anil are said to be the witnesses of arrest of the Appellants-accused, but they have not supported the case of the prosecution. P.W. 4, Ashok Kumar Verma, the then Circle Officer, Jaswant Nagar and P.W. 6 M. S. Chauhan, the then S.O. P.S. Badhpura are also said to have joined police force at the time of arrest of the Appellants-accused in the beehad. They with the help of other police personnel are said to have apprehended the Appellants-accused Datta Sripati Pandare and Sushil Suresh Karkhanis in the same transaction. P.W. 7, S.I. Nannu Mal Nigam and P.W. 9, C.O. Mohan Singh are Investigating Officers of the cases of Crime Nos. 970/2002 to 975/2002 of P.S. Kotwali, Etawah. P.W. 8 Rakesh Kumar Pandey was posted as Head Moharrir at P. S. Kotwali, Etawah on 23.10.2002. He is the scribe of chik F.I.R. Ext. Ka-8 and G. D. of registration Ext. Ka-9 of Case Crime Nos. 970/2002 to 975/2002.

22. In S.T. No. 73 of 2003, four witnesses have been examined by the prosecution. P.W. 1, S.I. K. N. Pandey was investigating the Case of Crime No. 596 of 2002 under Sections 147, 148, 149, 307, 302, I.P.C. and Section 7, Criminal Law Amendment Act of P. S. Civil Lines, Etawah. He is said to have recovered one pistol 32 bore and one live cartridge in the barrel vide recovery memo Ext. Ka-1 on the pointing out of Appellant-accused Sushil Suresh Karkhanis on 6.11.2002 from the beehad at about 4.30 p.m. during police custody remand. The papers of Maruti Car No. DL-2CM-9066 are also alleged to have been recovered by him on the pointing out of Datta Sripati Pandare at about 4.45 p.m. P.W. 2 Sushil Kumar Singh was posted as Constable-Clerk in P. S. Kotwali, Etawah on 6.11.2002. He is the scribe of chik F.I.R. Ext. Ka-2 and copy of G. D. Ext. Ka-3 of Case Crime No. 1088 of 2002 of P.S. Kotwali, Etawah. P.W. 3, S.I. Om Veer Singh Rana alongwith other personnel is said to have accompanied S.I. K. N. Pandey to make recovery at the instance of Appellants-accused Sushil Suresh Karkhanis and Datta Sripati Pandare during police custody remand on 6.11.2002. P.W. 4, S. I. Nannu Mal Nigam is the Investigating Officer of the Case of Crime No. 1088 of 2002. He has proved site plan Ext. Ka-4, charge-sheet Ex. Ka-5 and prosecution sanction Ext. Ka-6 in S.T. No. 73 of 2003.

23. In their statements recorded u/s 313, Cr. P.C. in S.T. No. 51 of 2003, the Appellants-accused have denied their participation in the alleged incident of firing in the

Court premises, Etawah on the alleged date, time and place and they have stated that they have been falsely implicated by the police to show its karguzari. It is further stated by the Appellants-accused in their statements that in the capacity of tourists, they had come to Etawah on the date of incident and when they were waiting for bus or taxi to go to Gwalior at Wah Stand near Tixi Temple Chauraha, being non-Hindi speaking belonging to other States, the police with a view to get false appreciation and show its karguzari apprehended them from Wah Stand and after carrying them to P.S. Ikdil, their photos were taken by the press and private photographers, which were published in newspapers. It is also stated by Appellants-accused that after making arrangement of illicit arms through S.O., P.S. Ikdil, they were brought to P.S. Kotwali, Etawah and later on false F.I.R. was got lodged against them making it ante-timed and thereafter, they were got identified by the police personnel and other persons in P.S. Civil Lines and Police Line, Etawah.

24. Similar statements have been made by the Appellants-accused in S.T. No. 72 of 2003 and it is stated that they were apprehended by the police to show its karguzari from near Tixi Temple Chauraha at the time when they were waiting for Jeep or Bus to go to Gwalior. They have denied the recovery of alleged arms and cartridges from their possession.

25. In his statement recorded u/s 313, Cr. P.C. in S.T. No. 73 of 2003, the Appellant-accused Sushil Suresh Karkhanis has denied the recovery of pistol and cartridge on his pointing out on the alleged date, time and place and it is further stated that entire proceeding of the alleged recovery is forged.

26. The Appellants-accused in their defence have neither examined any witness nor filed any documentary evidence.

27. The learned trial court after taking entire evidence into consideration convicted and sentenced the Appellants-accused as aforesaid. Hence, these appeals.

28. We have heard Sri P. N. Mishra, Sri G. S. Chaturvedi and Sri Umesh Chandra Mishra, learned Counsel appearing for the Appellants-accused and learned A.G.A. for the State-Respondent and also perused the entire evidence including impugned judgments carefully.

29. Happening of the incident of firing in Court premises, Etawah on the alleged date, time and place is not in dispute. The only dispute is about the complicity of the Appellants-accused in the said incident. The defence version is that the alleged incident was committed by some unknown persons, who fled away in Santro car towards Agra and the Appellants-accused, who had come to Etawah as tourists, being non-Hindi speaking and belonging to other States were apprehended by the police from Wah stand near Tixi temple chauraha, where they were waiting for any bus or taxi. The learned trial court after taking entire evidence into consideration has drawn conclusion that the alleged

incident in Court premises, Etawah was committed by the Appellants-accused alongwith their two other companions and when after committing the incident, they alongwith their companions were fleeing away sitting in Maruti Car No. DL-2CM-9066, on turning down their vehicle on the road going towards Kaliwahan temple, they after coming out from vehicle fired on the police force and at about 4.30 p.m., they were apprehended by the police in beehad and on their personal search illicit arms and cartridges as mentioned in the recovery memo Ext. Ka-1 of S.T. No. 72 of 2003 were recovered from them. We have carefully gone through the evidence led by the prosecution in all the session trials. In our view, the finding recorded by the learned trial court regarding the complicity of the Appellants-accused in the alleged incident of firing and recovery of illicit arms and cartridges on their arrest by the police in the same transaction does not suffer from any infirmity.

30. First we take up the statement of injured witness Head Constable Shiv Baran Singh, who has been examined as P.W. 6 in S. T. No. 51 of 2003. He was doing the duty of carrying the undertrial prisoners from lock-up to the Courts with other police personnel on the fateful day. In his statement, it is stated by this witness that on 23.10.2002, he alongwith Constables Angrez Singh, Chandresh Singh, Hari Prasad and Gangadhar had carried sixteen undertrial prisoners from Court''s lock-up to produce them in Court of 1st Additional Sessions Judge, Etawah and when after producing them in the Court, they were going back to the Court lock-up and at about 3.45 p.m. reached on the tiraha near the chambers of Civil Lawyers, 6-7 miscreants came from ahead and began to fire on the undertrial prisoners Suresh Pal Singh alias Guddu and Sunil with the intention to cause their death. It is further stated by him that at that time he was going in left side of prisoners and when he made attempt to catch hold of the assailants, they fired on him and his companions, due to which he sustained firearm injury in his left thigh. It is also stated by him that undertrial prisoners Suresh Pal Singh alias Guddu and Sunil after sustaining injuries fell down there and Court Peon Ghan Shyam also was injured in the firing. Seeing the Appellants-accused in Court, the witness Shiv Baran Singh has stated that all these five miscreants had committed the incident in Court premises. It is further stated by this witness that after committing the incident, the miscreants rushed towards Maruti Vehicle No. DL-2CM-9066 standing under Kadam tree and sitting in that vehicle, they fled away towards western-southern side. It is also stated by him that in the meantime S.O.G. Constables Bhola Singh, Satya Pal and one more Constable came there, who began to chase the miscreants. Although the witness Shiv Baran Singh did not name the accused in his statement recorded in trial court on 16.2.2004, but from his statement this fact is borne out that the alleged incident of firing in Court premises, Etawah was committed by the Appellants-accused, who after committing the incident fled away sitting in Maruti Vehicle No. DL-2CM-9066. From the statement of this witness, this fact is also borne out that the miscreants were chased by S.O.G. Constables Bhola Singh, Satya Pal and one more Constable. Presence of this witness at the time of incident cannot be doubted, because he had sustained injury in the alleged incident. He was medically examined on the same day by Dr. D. P. Singh at 4.20 p.m. vide injury

report Ext. Ka-17 in S. T. No. 51 of 2003, which shows that firearm injury was found on his left thigh. Lengthy cross-examination from this witness has been made by the learned Counsel for the accused-Appellants, but nothing material adversely affecting his testimony has been elicited. The testimony of this witness is worth-relying and there is no reason to disbelieve his testimony.

31. The testimony of the injured witness H.C. (P) Shiv Baran Singh finds corroboration from the testimony of Constables Shiv Das, Hari Prasad and Gangadhar in addition to the testimony of S.O.G. Constables Bhola Singh, Satyapal Singh and Ajai Kumar, who all have been examined in S. T. No. 51 of 2003. Constables Shiv Das (P.W. 3), Hari Prasad (P.W. 8) Gangadhar Singh (P.W. 12) were also performing duty in Court lock-up, Etawah on 23.10.2002 for carrying the undertrials to Courts. These three constables also had gone with H.C. (P) Shiv Baran Singh to produce sixteen undertrial prisoners in the Courts of Additional Sessions Judge (1st) Etawah on that day and when they were coming back, alleged incident of firing occurred. Supporting the case of prosecution in his statement recorded in trial court on 2.8.2004 in S. T. No. 51 of 2003, P.W. 3 Constable Shiv Das has identified the Appellants-accused in Court and he has stated that these very accused had committed the alleged incident on 23.10.2002 in Court premises, Etawah. From the testimony of this witness, this fact is also established that Maruti Vehicle No. DL-2CM-9066 was standing under Kadam tree in start condition and after committing the incident, the assailants had fled away towards Idgah sitting in that Maruti vehicle. First information report at P. S. Civil Lines, Etawah regarding that incident was lodged by this witness on the same day at about 4.15 p.m. Nothing material to discredit the testimony of this witness has been elicited from him in cross-examination and there is no reason to disbelieve his testimony.

32. The testimony of the injured H.C. (P) Shiv Baran Singh and Constable Shiv Das, who identified the Appellants-accused in Court at the time of their examination, has been assailed by the learned Counsel for the Appellants-accused on the ground that evidence of identification of the Appellants by these witnesses carries no weight, because the Appellants were not got identified by these witnesses during investigation in test identification parade. The submission of the learned Counsel for the Appellants was that if any accused is not known to any witness by name and if the accused is not apprehended on the spot, then in such case identification of the accused by the witness in test identification parade during investigation is essential and since, in instant case, no test identification parade was conducted by the Investigating Officer to get the Appellants identified by the witnesses Shiv Baran Singh and Constable Shiv Das, hence, identification of the Appellants by these witnesses in Court is worthless. We find ourselves unable to agree with the aforesaid submission made by learned Counsel for the Appellants. The reason for not agreeing with the aforesaid submission of the learned Counsel for the Appellants is that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, aforesaid position of law is well-settled by a catena of decisions of the Hon''ble Apex

Court. The facts, which establish the identity of the accused persons are relevant u/s 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. Although, it is considered a safe rule of prudence generally to look for corroboration of the sworn testimony of the witnesses in Court as to the identity of the accused, who are strangers to them, in the form of earlier identification proceedings, but this rule of prudence however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. The Hon''ble Apex Court in the case of Amit Singh Bhikam Singh Thakur v. State of Maharashtra (LIIV)2007 ACC 595: 2007 (1) ACR 543 (SC), has observed that "the identification parades belong to the stage of investigation, and there is no provision in the Code, which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration." In Jadunath Singh and Anr. v. State of Uttar Pradesh (VIII)1971 ACC 290 (SC) the submission that absence of test identification parade in all cases is fatal, was repelled by the Hon''ble Apex Court after exhaustive consideration of the authorities on the subject. In Harbajan Singh Vs. State of Jammu and Kashmir, though a test identification parade was not held, the Hon''ble Apex Court upheld the conviction on the basis of the identification in Court corroborated by other circumstantial evidence. Although the facts of aforesaid cases are different from instant case, but having regard to the law laid down and the observations made by Hon''ble Apex Court in these cases, in our considered view, the testimony of H.C. (P) Shiv Baran Singh (an injured witness) and C. P. Shiv Das, who had seen the Appellants-accused in Court premises while they were making fires and who identified them subsequently in Court at the time of their examination, cannot be brushed aside on the ground of non-holding of test identification parade during investigation, because the incident of firing in Court premises had occurred in day light and these witnesses had ample opportunity to see the faces of Appellants-accused at the time of incident. In our view, the learned trial court has not committed any illegality in holding that it was the Appellants-accused, who had fired in the Court premises, Etawah on the alleged date, time and place.

33. Constables Bhola Singh, Satpal Singh and Ajai Kumar, who have been examined as P.W. 1, P.W. 3 and P.W. 4 respectively in S. T. No. 51 of 2003, were posted in Special Operation Group of S.S.P., Etawah. These witnesses have stated that on 23.10.2002 prior to the alleged incident, they were performing duty in Etawah Court and when on hearing the sound of firing, they rushed to the place of incident, they saw that the Appellants-accused making fires fled away sitting in Maruti Vehicle No. DL-2CM-9066. It is further stated by these witnesses that they chased the assailants to some distance on feet and when they fled away, they rushed to the residence of S.S.P., Etawah and informed Incharge S.O.G. S.I. Chhatrapati Singh, who immediately gave information to

District Control Room and also informed Dr. G. K. Goswami, the then S.S.P., Etawah. It is also stated by these witnesses that they also had chased the assailants with S.S.P., Etawah and other police force and when the vehicle of miscreants turned down on turning the vehicle towards Kaliwahan temple, and the assailants were trying to flee away making fires on the police personnel after coming out from the vehicle, they were chased and the Appellants-accused present in Court were apprehended in beehad. Seeing the Appellants-accused in Court at the time of their examination, the witnesses have stated that these accused had fled away in the Maruti vehicle after committing the incident of firing in Court premises, Etawah on 23.10.2002 and they were arrested in beehad after chasing them and on their search illicit arms and cartridges were recovered from them. Lengthy cross-examination has been made from these witnesses on behalf of the Appellants-accused, but nothing material to discredit their testimony has been elicited from them. Drawing our attention towards the statements of P.W. 8 Hari Prasad and P.W. 12 Gangadhar Singh, it was vehemently contended by learned Counsel for the Appellants that there was no occasion for the Constables Bhola Singh, Satpal and Ajai Kumar to see the faces of Appellants-accused in Court premises, Etawah, at the time of incident of firing, because according to the witnesses Hari Prasad and Gangadhar Singh, these S.O.G. Constables had reached the place of occurrence after going away of the assailants from there and on this ground the testimony of these S.O.G. Constables does not render any help to the prosecution in establishing the complicity of the Appellants-accused in the alleged incident. We are not impressed with this submission of the learned Counsel for the Appellants-accused. Although the witness Hari Prasad and Gangadhar Singh have stated in their statements that S.O.G. vehicle had reached the place of incident in Court premises after the incident, but from their statements also, this fact is borne out that S.O.G. Constables Bhola Singh, Satyapal Singh and Ajai Kumar had chased the miscreants while they were fleeing away sitting in Maruti vehicle. On the basis of the reliable testimony of these S.O.G. Constables, it is fully proved beyond reasonable doubt that they had chased the Appellants-accused with other police force and on turning down of Maruti vehicle, the Appellants-accused were apprehended by the police and when in their presence, personal search of the Appellants was made, illicit arms and cartridges were recovered from them.

34. Other injured namely Sunil and Ghan Shyam also have been examined in S. T. No. 51 of 2003 as P. Ws. 9 and 10 respectively, but they have declined to identify the Appellants-accused in Court at the time of their examination. Hence, the testimony of these witnesses is not helpful to the prosecution in establishing the complicity of the Appellants in the incident.

35. Constables Hari Prasad (P.W. 8) and Gangadhar Singh (P.W. 12) were also on duty at Court lock-up, Etawah on 23.10.2002. Although the Appellants-accused were not got identified by these witnesses in Court at the time of their examination, but from their testimony also, this fact is established that after committing the alleged incident of firing in Court premises, Etawah, the assailants had fled away sitting in Maruti Vehicle No.

DL-2CM-9066, which was standing under Kadam tree.

36. Now we come to the second incident, which relates to the arrest of Appellants-accused and recovery of illicit arms and cartridges on their personal search. We have already discussed the testimony of S.O.G. Constables Bhola Singh, Satyapal Singh and Ajai Kumar Singh, who have been examined in S.T. No. 51 of 2003. The testimony of these S.O.G. Constables finds corroboration from the testimony of the then S.S.P., Etawah, Dr. G. K. Goswami, the then S.H.O. P. S. Kotwali, Etawah, Som Dutt Sharma, the then C. O. Jaswant Nagar, Ashok Kumar Verma and the then S.O. P. S. Badhpura, S.I. M. S. Chauhan, who have been examined as P.W. 1, P.W. 2, P.W. 4 and P.W. 6 respectively in S. T. No. 72 of 2003. We have carefully gone through the statements of these witnesses. In our view, the testimony of these witnesses also inspire confidence and on the basis of their testimony, this fact is established beyond reasonable doubt that while fleeing away after committing the incident in Court premises, Etawah on the alleged date, time and place, the Appellants-accused were apprehended in the beehad and on their personal search, illicit arms and cartridges were recovered. The then S.S.P., Etawah, Dr. G. K. Goswami had lodged F.I.R. on 23.10.2002 at 7.30 p.m. at P. S. Kotwali, Etawah regarding the incident of arrest of the Appellants-accused and recovery of illicit arms and cartridges from them. It is stated by Dr. G. K. Goswami (P.W. 1 in S. T. No. 72 of 2003) that on 23.10.2002 at about 3.50 p.m. S.O.G. Constables Bhola Singh, Ajai Kumar and Satyapal came to his camp office at residence alongwith Om Singh Chandel and informed that some miscreants had caused firearm injuries to two undertrial prisoners Suresh Pal Singh alias Guddu and Sunil by firing indiscriminately in Court premises, Etawah. On this information, S.O.G. Incharge S.I. Chhatrapal Singh informed Control Room. It is further stated by Dr. Goswami that on getting secret information on telephone that after committing the incident in Court premises, the members of Chhota Rajan Gang are trying to flee away sitting in Maruti Vehicle No. DL-2CM-9066, he immediately informed all the Station Officers of Police Stations and Circle Officers to surround the miscreants and he himself alongwith other police force began to chase the vehicle of miscreants. It is further stated by Dr. G. K. Goswami that when the miscreants turned their vehicle hurriedly towards Kaliwahan temple, their vehicle turned down and when after coming out of the vehicle, the miscreants were fleeing away making fires on the police party, they were chased by police force and at about 4.30 p.m., three miscreants were apprehended and rest miscreants were chased by C.O. Jaswant Nagar and S.O. P. S. Badhpura with other police force and they also apprehended two miscreants. Dr. Goswami has further stated that seeing the miscreants, S.O.G. Constables Bhola Singh, Satyapal Singh and Ajai Kumar as well as Om Singh Chandel told that these very miscreants have caused firearm injuries to undertrial prisoners in Court premises. Regarding search of the Appellants-accused, it is stated by Dr. G. K. Goswami that on personal search of the accused Rajan alias Kalia Rajan, one pistol 455 bore with two live cartridges in magazine and one live cartridge in barrel, one pistol 32 bore with two live cartridges in the magazine and one live cartridge in barrel from the accused-Feroz Taiyyab Tanashah and one revolver 38 bore with five empty cartridges

and one live cartridge in chamber from the accused Chandrakant Sitaram Gurav were recovered. It is further stated by Dr. G. K. Goswami that when search of the miscreants, who were apprehended by C.O., Jaswant Nagar with the help of other police personnel was made, four live cartridges from the pocket of pant of accused Datta Sripati Pandare and six live cartridges of 32 bore from the pocket of pant of accused Sushil Suresh Karkhanis were recovered. Recovery memo Ext. Ka-1 of S.T. No. 72 of 2003 has been proved by Dr. Goswami in his statement. He has also proved recovered illicit arms and cartridges (Material Ext. 1 to 25). The testimony of Dr. G. K. Goswami finds corroboration from the statement of the witnesses Som Dutt Sharma, Ashok Kumar Verma and M. S. Chauhan. Lengthy cross-examination from all these four witnesses has been made by the learned Counsel for the Appellants-accused, but nothing material adversely affecting their testimony has been elicited from them. There is no serious infirmity or material contradiction in the testimony of these witnesses and their testimony cannot be discarded due to some contradictions. In our opinion, the testimony of these witnesses has been rightly believed by the learned trial court.

37. It was vehemently contended by learned Counsel for the Appellants-accused that there are material contradictions in the testimony of the witnesses regarding the manner of chasing the miscreants after the alleged incident of firing in Court premises and turning their vehicle towards Kaliwahan temple and hence, on this ground the arrest of the Appellants-accused becomes doubtful. In this regard, it was submitted that according to S.O.G. Constables Bhola Singh, Satyapal Singh and Ajai Kumar Singh, the S.S.P., Etawah alongwith other police personnel had chased the miscreants upto Tixi temple through Etawah city, whereas according to the F.I.R. lodged by the then S.S.P., Etawah at P. S. Kotwali, Etawah, chasing of the miscreants was made through Bhind bypass road. In this context, it was further submitted that statement of Dr. G. K. Goswami recorded in trial court in S. T. No. 72 of 2003 as P.W. 1, is contradictory to the F.I.R. lodged by him at P. S. Kotwali at Case Crime No. 970 of 2002, because according to that F.I.R. chasing of the miscreants" vehicle was made through Bhind bypass road, whereas Dr. G. K. Goswami has stated in his statement that he and other police personnel had chased the miscreants through Etawah city. It was further submitted by learned Counsel for the Appellants-accused that there is material contradiction on the point of turning of Maruti vehicle, because according to the then C.O., Jaswant Nagar, Ashok Kumar Verma P.W. 4 in S. T. No. 72 of 2003, the vehicle of the miscreants was coming towards Yamuna Bridge and seeing their vehicles in opposite direction, the miscreants turned their vehicle back towards Etawah city and seeing the vehicle of S.S.P., Etawah coming from ahead, when the miscreants turned their vehicle towards Kaliwahan temple, it turned down, whereas according to the statement made by the then S.S.P., Etawah, Dr. G. K. Goswami, the miscreants turned their vehicle towards Kaliwahan temple when they were fleeing away from Etawah towards Gwalior. In this regard, our attention was drawn by the learned Counsel for the Appellants-accused towards the statements of the witnesses Som Dutt Sharma and M. S. Chauhan also, who have been examined as P.W. 2 and P.W. 6 respectively in S.T. No. 72 of 2003. According to the statements of these

witnesses also, the miscreants had turned their vehicle towards Kaliwahan temple when the vehicle was going towards Gwalior on Etawah Bhind road. Drawing our attention towards these contradictions, it was submitted by learned Counsel for the Appellants that entire case of the prosecution regarding arrest of the Appellants-accused in the alleged manner becomes false. We are not impressed by this submission of the learned Counsel for the Appellants-accused. On the basis of testimony of Senior Police Officer Dr. G. K. Goswami, the then S.S.P., Etawah, Ashok Kumar Verma, the then C.O., Jaswant Nagar and other witnesses, it is proved beyond reasonable doubt that after the incident of firing in Court premises, Etawah on 23.10.2002 at about 3.45 p.m. the Appellants-accused were chased by Dr. G. K. Goswami and other police personnel and when on turning down of their Maruti vehicle, they started to flee away making fires on the police party, they were chased and apprehended in beehad and on their personal search, illicit arms and cartridges as mentioned above were recovered from them. Therefore, the testimony of aforesaid witnesses cannot be discarded merely due to some discrepancy in the manner of chasing the Appellants and turning their vehicle. When a number of witnesses are examined and lengthy cross-examination is made in Court by the legal experts, certain contradictions are bound to come in the testimony of the witnesses. There will hardly be any case without contradiction in the testimony of witnesses. Moreover, there is tendency in this country to back-up a good case by false or exaggerated evidence. The Privy Council has observed in the case of Bankim Chandra v. Matagini AIR 1919 PC 157, "That in Indian litigation it is not safe to assume that case must be false if some of the evidence in support of it appears to be doubtful or it is clearly untrue, since there is, on some occasions a tendency amongst litigants to back-up a good case by false or exaggerated evidence.

38. In Abdul Gani and Others Vs. State of Madhya Pradesh, the Hon"ble Apex Court has deprecated the tendency of Courts to take an easy course of holding the evidence discrepant and discarding the whole case as untrue. The Hon"ble Judges said that the Courts should make an effort to disengage the truth from falsehood and to sift the grain from the chaff.

39. In the case of State of U.P. Vs. Anil Singh, , the Hon"ble Apex Court has made following observations :

It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that it is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

40. In the case of Narotam Singh Vs. State of Punjab and Another, the Hon"ble Apex Court has observed thus :

Discrepancies do not necessarily demolish testimony ; delay does not necessarily spell unveracity and tortured technicalities do not necessarily upset conviction when the Court has had a perspicacious, sensitive and correctly oriented view of the evidence and probabilities to reach the conclusion it did. Proof of guilt is sustained despite little infirmities, tossing peccadilloes and peripheral probative shortfalls. The "sacred cow" of shadowy doubts and marginal mistakes, processual or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought home.

41. In the case of State of U. P. Vs. Shanker, the Hon"ble Apex Court has held that, Time and again, this Court has pointed out that in this country it is rare to come across the testimony of a witness which does not have a fringe or an embroidery of untruth although his evidence may be true in the main. It is the function of the Court to separate the grain from the chaff and accept what appears to be true and reject the rest. It is only where the testimony of a witness is fainted to the core, the falsehood and the truth being inextricably intertwined, that the Court should discard his evidence in toto.

42. Having regard to aforesaid observations, in instant case also, the testimony of the witnesses cannot be discarded due to some contradictions regarding the manner of chasing the Appellants-accused and turning their vehicle. The learned trial court has properly appreciated the evidence led by the prosecution in Session Trial No. 51 of 2003 and 72 of 2003. There is no scope for making any interference by this Court in the findings recorded by learned trial court regarding complicity of the Appellants-accused in the alleged incident and recovery from them of illicit arms and cartridges on their arrest in the same transaction.

43. Regarding the time of arrest of the Appellants-accused in the beehad after the incident of firing in the Court premises, Etawah, it was submitted by learned Counsel for the Appellants that the incident of firing in Court premises is said to have occurred at about 3.45 p.m. and after chasing the Appellants-accused, they are said to have been arrested at about 4.30 p.m., which is not possible, because if S.S.P., Etawah after getting information from S.O.G. Constables had chased the Appellants through Etawah city, then it is not possible to apprehend the Appellants-accused at about 4.30 p.m. in beehad near Kaliwahan temple. If this argument of the learned Counsel for the Appellants-accused is accepted, even then the entire case of the prosecution cannot be thrown out and neither the complicity of the Appellants-accused in the incident of firing in Court premises nor their arrest and recovery from them of illicit arms and cartridges becomes doubtful, because as stated above, there is tendency in this country to back-up a good case by false or exaggerated evidence.

44. Much thrust was laid by the learned Counsel for the Appellants-accused that there was no motive for the accused-Appellants to commit the murder of undertrial prisoners

Suresh Pal Singh alias Guddu and Sunil and since no reliable substantive evidence has been led by the prosecution to prove the motive, hence, on this ground, the complicity of the Appellants-accused in the alleged incident of firing in Court premises, Etawah becomes doubtful. On this point, it was submitted by learned A.G.A. that the Appellants-accused are members of the gang of International "Don" Chhota Rajan and they were hired to eliminate the deceased Suresh Pal Singh alias Guddu and Sunil by Rekha Sengar to take revenge of the murders of her family members. It was further submitted by learned A.G.A. that Rekha Sengar was having intimacy with one Bhartiya Sahgal alias Mannu, owner of IVORY Palace Hotel, Karol Bagh, New Delhi, who had connections with Chhotta Rajan, who on the request of Bhartiya Sahgal had sent the Appellants-accused to Etawah to kill Suresh Pal Singh and Sunil. It was also submitted by learned A.G.A. that the Appellants-accused, who have long criminal history are active members of Chhota Rajan Gang and they came to Etawah to eliminate Suresh Pal Singh alias Guddu and Sunil on contract. In this context, it was also submitted that Rekha Sengar had connections with white-dressed influential netas also, due to which, she and other persons were exonerated, although in the beginning, the Investigating Officer had made efforts to rope them in the conspiracy of killing Suresh Pal Singh alias Guddu and Sunil. It is true that no reliable substantive evidence has been produced by the prosecution to substantiate the submissions made by learned A.G.A., but in our view, no benefit can be extended on this ground to the Appellants-accused in this case, because it is well-settled principle of law by a catena of decisions of Hon''ble Apex Court that if reliable evidence has been produced by the prosecution to show the complicity of the accused in the crime, then weakness or absence of motive looses significance. In the case of Nathuni Yadav and Ors. v. State of Bihar and Anr. (34)1997 ACC 576, the Hon''ble Apex Court has made following observations regarding motive :

''Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in Reg v. Palmer thusm : but if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives ; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.

45. The Hon''ble Apex Court in the case of Molu and Others Vs. State of Haryana, has held as under in para 11 of the report at page 2505 :

It is well-settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is

shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is creditworthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.

46. In the case of Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh, the Hon"ble Apex Court has observed as under regarding motive in para 21 of the report at page 2429 :

Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime.

47. Having regard to the observations made by Hon"ble Apex Court in aforesaid cases, interference by this Court in the impugned judgment cannot be made merely due to absence or weakness of motive, as the complicity of the Appellants-accused in the alleged incident has been proved beyond reasonable doubt on the basis of the evidence led by the prosecution.

48. Certain lapses on the part of Investigating Officers were also brought to our notice by the learned Counsel for the Appellants. The main submission made in this regard was that the damaged Maruti vehicle was not got technically examined by the Investigating Officers during investigation, which is serious lapse on their part and it makes the entire case doubtful. In this regard, it was further submitted by learned Counsel for the Appellants that the damaged Maruti vehicle was not taken into possession by the Investigating Officer and no recovery memo was prepared in this regard, which is also fatal to the case of prosecution. Although the Investigating Officers were negligent in not taking the damaged Maruti vehicle into possession and getting it technically examined but due to these lapse on the part of Investigating Officers, case of prosecution cannot be thrown out, because it is well-settled principle of law that due to any laches or lapses on the part of Investigating Officer, reliable evidence of the prosecution witnesses cannot be brushed aside. As stated earlier also, the complicity of the Appellants-accused in the alleged incident of firing in Court premises, Etawah on the alleged date, time and place and in the same transaction their arrest and recovery from them of illicit arms and cartridges has been proved beyond reasonable doubt on the basis of the evidence led by the prosecution. Hence, benefit of any lapses or laches on the part of Investigating Officer

cannot be extended to the Appellants-accused.

49. It was further submitted by learned Counsel for the Appellants-accused that independent public witnesses injured Sunil and Ghan Shyam Singh as well as Rattan Singh and Pappu have not supported the case of the prosecution regarding complicity of the Appellant-accused in the incident of firing in Court premises, Etawah and their arrest in the manner alleged by the prosecution and recovery from them of illicit arms and cartridges and hence, it is not safe to convict the Appellants-accused merely on the basis of the testimony of police witnesses. We find no force in this argument. The Hon''ble Apex Court in the case of Karamjit Singh v. State (Delhi Administration), (XLIV)2003 ACC 876: 2003 (2) ACR 1460 (SC), has held that the evidence of police personnel should be treated in the same manner as testimony of any other witness. It is further held by Hon''ble Apex Court in para 8 of the report at page 880 that the ground realities cannot be lost sight of that even in normal circumstances members of public are very reluctant to accompany a police party, which is going to arrest a criminal or is embarking upon search of some premises. As mentioned above, the Appellants-accused are hardened criminals belonging to the gang of International ''Don'' Chhota Rajan. No witness of public can dare to depose against such criminals even if the incident has been witnessed by him. The following observations made by Hon''ble Apex Court in the case of Krishna Mochi v. State of Bihar 2002 SCC 1220, are also relevant regarding the effect of non-examination of independent witnesses :

It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by Courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power.

Keeping in view, aforesaid observations, the learned trial court has not committed any illegality in placing reliance on the testimony of police witnesses in the impugned judgments of S. T. Nos. 51 of 2003 and 72 of 2003.

50. The defence version as emerging from the statements of the Appellants-accused recorded u/s 313, Cr. P.C. is that the Appellants had come to Etawah as tourists and when they were waiting for any bus or taxi at Wah stand near Tixi temple, Etawah to go to Gwalior, the Appellants with a view to get false appreciation (wah-wahi lutne) and to show its karguzari apprehended the Appellants from there and after carrying them to P. S. Ikdil and managing illicit arms and cartridges, falsely implicated them in these cases. The learned trial court has considered this aspect and disbelieved the defence theory as mentioned above. We too are not inclined to accept this defence theory. From the impugned judgment, it is borne out that there is no picnic spot in Etawah. Although

Kaliwahan temple of Etawah is a Siddhpeeth as borne out from the evidence, but it is not the case of the Appellants-accused that they had come to offer worship in this Siddhpeeth. Even a person of ordinary prudence will not believe the defence theory as mentioned by the Appellants-accused in their statements u/s 313, Cr. P.C.

51. In view of the foregoing discussion, we come to the conclusion that on the basis of the evidence led by the prosecution in Session Trial No. 51 of 2003 and 72 of 2003, it is fully proved beyond reasonable doubt that with a view to commit the murder of undertrial prisoners, Suresh Pal Singh alias Guddu and Sunil, the Appellants-accused had made indiscriminate firing in Court premises, Etawah on 23.10.2002 at about 3.45 p.m. and when they wanted to flee away through Maruti Vehicle No. DL-2CM-9066, they were chased and apprehended by the S.S.P., Etawah and other police force and when their personal search was made, one 455 bore pistol (Material Ext. 1) with three live cartridges (Material Ext. 4 to 6) from the Appellant-Rajan alias Kalia Rajan, one 32 bore pistol (Material Ext. 2) with three live cartridges (Material Ext. 7 to 9) from the Appellant-Firoz Taiyyab Tanashah, one 38 bore revolver (Material Ext. 3) with one live cartridge and five empty cartridges (Material Ext. 10 to 15) from the Appellant-Chandrakant Sitaram Gurav, four live cartridges 38 bore (Material Ext. 16 to 19) from the Appellant-Datta Sripati Pandare and six live cartridges 32 bore (Material Ext. 20 to 25) from the Appellant-Sushil Suresh Karkhanis were recovered vide recovery memo Ext. Ka-1 of S.T. No. 72 of 2003.

52. The third case giving rise to Criminal Appeal No. 1428 of 2006 relates to the recovery of 32 bore pistol with one live cartridge in barrel on 6.11.2002 from beehad on the pointing out of the Appellant-accused Sushil Suresh Karkhanis during police custody remand. In order to prove the recovery of the pistol and cartridge on the pointing out of the Appellant-Sushil Suresh Karkhanis, the prosecution has examined S.I. K. N. Pandey and S.I. Om Veer Singh Rana as P.W. 2 and P.W. 3 respectively in S.T. No. 73 of 2003. Although, the learned trial court placing reliance on the testimony of these witnesses has convicted the Appellant-accused Sushil Suresh Karkhanis u/s 25(1B)(a) and Section 27(1) of Arms Act vide impugned judgment of aforesaid session trial, but after careful scrutiny of entire evidence and keeping in view all the facts and circumstances, conviction of the Appellant-accused Sushil Suresh Karkhanis in this session trial is not justified, because the testimony of aforesaid witnesses does not inspire confidence. According to the case of the prosecution, the Appellants-accused Sushil Suresh Karkhanis and co-accused Datta Sripati Pandare were taken into police custody by the order of Chief Judicial Magistrate, Etawah on 25.10.2002 and they remained in custody of S.I. K. N. Pandey till 6.11.2002. S.I. K. N. Pandey was investigating the case of Crime No. 596 of 2002 of P.S. Civil Lines, Etawah and during investigation of that case, he is alleged to have recovered pistol 32 bore with one live cartridge on 6.11.2002 on the pointing out of the Appellants Sushil Suresh Karkhanis. Photostat copy of the registration certificate and insurance of Maruti Vehicle No. DL-2CM-9066 are also said to have been recovered on aforesaid date on the pointing out of the co-accused-Datta Sripati Pandare. It has come in the statement of S.I. K. N. Pandey, P.W. 13 in S.T. No. 51 of 2003 that the accused

Sushil Suresh Karkhanis and Datta Sripati Pandare remained in custody during police custody remand between 25.10.2002 to 6.11.2002. Prior to 6.11.2002, no recovery of any weapon was made on the pointing out of these accused. S.I. K. N. Pandey has stated in his statement as P.W. 13 in S.T. No. 51 of 2003 that he had carried both the accused to beehad on 25.10.2002 for making recovery and search was made behind Mahisasur temple in beehad. Admittedly, no recovery was made on 25.10.2002. Thereafter S.I. K. N. Pandey did not carry the accused for making recovery till 5.11.2002 and after a gap of about 12 days, the accused Sushil Suresh Karkhanis and Datta Sripati Pandare are said to have been carried again to beehad on 6.11.2002 and at that time recovery of 32 bore pistol and one live cartridge on the pointing out of the Appellant Sushil Suresh Karkhanis is said to have been made, although no recovery was made in the beehad on 25.10.2002 at the time of making search in presence of both the accused. When arrest of the Appellants-accused was made on 23.10.2002 in the beehad, then also search was made to recover the weapons in the beehad, but in vain. In this regard, reference may be made to the statement of S.I. M. S. Chauhan, the then S.O. P. S. Badhpura, who has been examined as P.W. 6 in S. T. No. 72 of 2003. It is stated by S. I. M. S. Chauhan in his statement as P.W. 6 in S. T. No. 72 of 2003 that at the time of arrest, the accused Datta Sripati Pandare and Sushil Suresh Karkhanis had told that they have thrown away their weapons in the bushes. It is further stated by this witness that search was made to recover the weapons, but no recovery could be made. When search to recover the weapons in the beehad on 23.10.2002 just after arrest of the Appellants-accused-Datta Sripati Pandare and Sushil Suresh Karkhanis was made and thereafter on 25.10.2002 also S.I. K. N. Pandey in presence of these accused made search in beehad, but no recovery of any weapon was made on both these days, then it is very difficult to believe that after a gap of about twelve days, 32 bore pistol and papers of Maruti Vehicle were recovered from the same place on the pointing out of the Appellants-accused Sushil Suresh Karkhanis and Datta Sripati Pandare. Therefore, having regard to all these facts, it is not safe to place reliance on the statements of S.I. K. N. Pandey and S.I. Om Veer Singh Rana recorded in S. T. No. 73 of 2003 regarding the recovery of pistol and papers of Maruti Vehicle of 6.11.2002 on the pointing out of the aforesaid Appellants-accused. It is worthwhile to mention that according to the statement of S.I. K. N. Pandey recorded as P.W. 13 in S. T. No. 51 of 2003, no fresh disclosure statement was made by the accused Sushil Suresh Karkhanis and Datta Sripati Pandare on 6.11.2002 for the recovery of any weapon etc. It is also worth mentioning that no particular place of throwing away the weapons was told by these accused to the Investigating Officer S.I. K. N. Pandey. The accused Datta Sripati Pandare is not the owner of the aforesaid Maruti Vehicle. Hence, it is very difficult to believe the story of throwing away the papers of Maruti Vehicle and their recovery from beehad on the pointing out of the accused Datta Sripati Pandare. Consequently, the conviction and sentence of the Appellant-accused Sushil Suresh Karkhanis under Sections 25(1B)(a) and 27(1) of Arms Act in S.T. No. 73 of 2003 is liable to be set aside.

53. All the Appellants-accused vide impugned judgment of S.T. No. 72 of 2003 have been convicted and sentenced u/s 25(1B)(a) and Section 27(1) of Arms Act also in addition to other offences punishable under Indian Penal Code. In our opinion, the conviction of the Appellants-accused u/s 25(1B)(a) of Arms Act is illegal for want of prosecution sanctions at the time of submitting the charge-sheets in Case Crime Nos. 971/2002 to 975/2002 of P. S. Kotwali, Etawah. From the record of S. T. No. 72 of 2003, it is seen that the charge-sheets of Case Crime Nos. 971/2002 to 975/2002 were submitted on 24.12.2002, on which cognizance was taken by the Chief Judicial Magistrate, Etawah on the same day. Admittedly, no sanction as required u/s 39 of Arms Act, 1959 was obtained by that time and the charge-sheets were submitted without sanctions of the District Magistrate, Etawah, which were obtained subsequently in the month of March, 2003. The learned trial court in the impugned judgment of S. T. No. 72 of 2003 has held that since the prosecution sanctions were obtained prior to framing the charge against the accused, hence, their trial u/s 25(1B)(a) of Arms Act is not vitiated. This view of the learned trial court is wholly erroneous. Section 39 of Arms Act, 1959 reads thus :

39. Previous sanction of the District Magistrate necessary in certain cases.-No prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate.

Language used by Legislature in Section 39 of Arms Act leaves no room for doubt that requisite sanction under this Section is a condition precedent for the institution of the prosecution against any person in respect of any offence u/s 3 of this Act. In our considered view, the defect of want of sanction at the time of submitting the charge-sheet in respect of the offences u/s 3 of Arms Act cannot be cured by obtaining sanction subsequently. The language of Section 39 of Arms Act, 1959 is almost similar to the language of Section 132(1) of the Code of Criminal Procedure. Section 132(1) of the Code reads as follows :

132. Protection against prosecution for acts done under preceding sections.-(1) No prosecution against any person for any act purporting to be done u/s 129, Section 130 or Section 131 shall be instituted in any criminal court except-

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces ;

(b) with the sanction of the State Government in any other case.

There is decision of Hon''ble Apex Court u/s 132 of the Code of Criminal Procedure in Nagraj v. State of Mysore AIR 1964 SC 269, in which it is held that :

When a complaint is made to a criminal court against any police officer and makes allegations indicating that the police officer had acted or purported to act under Sections 127 and 128 of the Code and in so doing committed some offence complained of, the Court will not entertain the complaint unless it appears that the State Government had

sanctioned the prosecution of that police officer.

What would be the effect when such a complaint is filed without a requisite sanction, was also considered by the Hon''ble Apex Court and it has held as under :

If the Court comes at any stage to the conclusion that the prosecution could not have been instituted without the sanction of the Government, it is not essential that the Court must pass a formal order discharging or acquitting the accused. In fact no such order can be passed. If Section 132 applied, the complaint could not have been instituted without the sanction of the Government and the proceedings on a complaint so instituted would be void, the Court having no jurisdiction to take those proceedings. When the proceedings be void, the Court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected.

54. The Delhi High Court in the case of Smt. Javitri Devi Vs. State, , has held that sanction of District Magistrate must be obtained before filing charge-sheet for the offence u/s 25 of Arms Act. It is further held that sanction obtained at subsequent stage will not cure the defect and the entire proceedings are vitiated.

55. Under the Arms Act, 1878 (old Act), Section 19(f) was similar to Section 25 of Arms Act, 1959. In the old Act, requirement of sanction for the institution of the proceeding in respect of an offence u/s 19(f) was provided in Section 29. In context of the provisions of Section 29 and Section 19(f) of Arms Act, 1878 Assam High Court in the case of Ganesh Bahadur v. State AIR 1952 (39) Gau 73, has held that requisite sanction u/s 29 is a condition precedent for the institution of a proceeding in respect of an offence u/s 19(f) of Arms Act and the proceeding instituted without such sanction is null and void. It is further held that sanction obtained after the institution of the proceedings u/s 19(f) cannot, therefore, validate the proceedings with retrospective effect. Reliance in that case was placed on the cases in AIR 1945 (32) 16 and AIR (33) 1946 Pat 160.

56. Having regard to the law laid down in abovementioned cases, the trial of the Appellants-accused u/s 25(1B)(a) of Arms Act of Case Crime Nos. 971/2002 to 975/2002 in S.T. No. 72 of 2003 is vitiated for want of sanction at the time of filing charge-sheets. Therefore, the conviction and sentence of the Appellants-accused u/s 25(1B)(a) of Arms Act has to be set aside. It is worthwhile to mention that sanction u/s 39 of Arms Act is not required to institute the prosecution against any person in respect of the offence punishable u/s 27 of Arms Act and hence, interference in the conviction and sentence of the Appellants-accused u/s 27(1) of Arms Act in S.T. No. 72 of 2003 is not required.

57. On the quantum of sentence, it was submitted by learned Counsel for the Appellants-accused that instant case does not fall in the category of rarest of rare cases and hence, the sentence of death is not justified. The learned A.G.A. on the other hand submitted that keeping in view the nature and gravity of the offences committed by the Appellants-accused in daring manner, interference in any sentence should not be made

by this Court.

58. Having given our thoughtful consideration to the matter of sentence, we agree with the submission made by learned Counsel for the Appellants-accused that this case does not fall in the category of rarest of rare cases. The Hon''ble Apex Court in the case of Bablu alias Mubarak Hussain v. State of Rajasthan (LVII) 2007 ACC 1071: 2007 (1) ACR 338 (SC), has held that the changes which the Code of Criminal Procedure has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and moment and it is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed "for special reasons" as provided in Section 354(3), Cr. P.C., which marks a significant shift in the legislative policy underlying the old Code as in force immediately before 1.4.1974, according to which, both the alternative sentences of death or imprisonment for life provide for murder were normal sentences. Now u/s 354(3) of the Code, the normal imprisonment for murder is imprisonment for life and death penalty is an exception. The Court is required to state the reasons for the sentence awarded and in the case of death sentence, "special reasons" are required to be stated, that is to say only special facts and circumstances will warrant the passing of death sentence. In the impugned judgment of S.T. No. 51 of 2003, the learned trial court after making reference of certain judgments on the point of death sentence has held that in its opinion, instant case falls in the category of rarest of rare cases, but the learned trial court has not recorded any "special reasons" for coming to this conclusion. Seven assailants including the Appellants-accused are said to have made indiscriminate firing in the Court premises, Etawah, thereby causing firearm injuries to the deceased Suresh Pal Singh alias Guddu and three other persons. It is not clear as to which assailant was the author of causing fatal injuries to the deceased Suresh Pal Singh alias Guddu. Two assailants, who also actively participated in the alleged firing managed to escape. Although the Appellants-accused by making indiscriminate firing in Court premises, Etawah have committed very grave and heinous crime, but every heinous crime does not fall in the category of rarest of rare cases. The Appellants-accused have been convicted u/s 302 read with Section 149, I.P.C. in S. T. No. 51 of 2003. Therefore, having regard to all these facts, in our opinion, instant case does not fall under the category of rarest of rare cases warranting death sentence.

59. Consequently, Criminal Appeal No. 1393 of 2006 is hereby partly allowed. Upholding the conviction of the Appellants-accused Rajan alias Kalia Rajan, Firoz Taiyyab Tanashah, Chandrakant Sitaram Gurav, Datta Sripati Pandare and Sushil Suresh Karkhanis on all counts in S. T. No. 51 of 2003, the sentence of death awarded by trial court u/s 302 read with Section 149, I.P.C. is reduced to imprisonment for life and fine of Rs. 10,000 each with additional imprisonment for one year in default of payment of fine. The sentence on other counts as awarded by trial court is affirmed.

Criminal reference for confirmation of death sentence is hereby rejected.

Criminal Appeal No. 1427 is also partly allowed. While conviction and sentence of the Appellants-accused under Sections 148 and 307 read with Section 149, I.P.C. as well as Section 27(1) of Arms Act as awarded by trial court in S. T. No. 72 of 2003 are affirmed, their conviction and sentence u/s 25(1B)(a) of Arms Act are set aside for want of requisite sanction u/s 39 of the Act at the time of institution of prosecution.

Criminal Appeal No. 1428 of 2006 is allowed. The conviction and sentence of Appellants-accused Sunil Suresh Karkhanis in S. T. No. 73 of 2003 are set aside and he is acquitted of the offences punishable under Sections 25(1B)(a) and 27(1) of Arms Act.

The Appellants-accused are undergoing sentence in jail. They shall be kept there to serve out the remaining sentence awarded by trial court, as modified by this Court. Fresh conviction warrants in the light of this judgment will be sent to jail by the trial court concerned.

The office is directed to return trial court records alongwith a copy of this judgment expeditiously for further necessary action.