

IN THE COURT OF SHRI SANDEEP YADAV
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI

SC No. 212/18

FIR No. 208/08

U/s.186/353/333/307/302/34/174A/IPC

& 25 & 27 Arms Act.

PS: Jamia Nagar

State

Versus

Ariz Khan @ Junaid @ Anna @ Salim

S/o. Late Zafar Alam

R/o. Mohalla Bazbahadur

Azamgarh City, PS Kotwali

Azamgarh, U.P.

..... **Accused**

Date of Institution : 01.05.2018

Date of Arguments : 03.03.2021

Date of Judgment : 08.03.2021

Judgment : Convicted.

J U D G M E N T

Factual Matrix

1. Prosecution version emanating from charge sheet and as unfolded during trial is as under :

2. Serial blasts rocked New Delhi on 13.09.2008 resulting in death of

39 persons and injuring 159 persons. Seeing the magnitude of terrorist attacks, Special Cell of Delhi Police was assigned the task of investigation and to trace the culprits. Informers were deployed and technical surveillance was mounted. On 19.09.2008, specific information was received by Inspector Mohan Chand Sharma that one Atif @ Bashir involved in serial blasts is residing at Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi alongwith his associates. This information was lodged in daily diary and was discussed with senior officers. Information was shared with Inspector Rahul Kumar (PW13). A team comprising of SI Rahul Kumar, Inspector Sanjay Dutt, Inspector Mohan Chand Sharma, SI Dharmender, SI Ravinder Tyagi, SI Devender, SI Dalip Kumar and other police officials was constituted. SI Rahul Kumar (PW13) alongwith available staff in the office i.e. SI Ravinder Tyagi, HC Balwant, HC Satinder, Ct. Sandeep, SI Rakesh Malik, HC Manish, HC Vinod Gautam and Ct. Birender Tyagi left the office of Special Cell at 9:30 AM in one private car belonging to SI Ravinder Tyagi and 2 two wheelers. Team led by Inspector Mohan Chand Sharma also left for the place of occurrence. Inspector Mohan Chand Sharma briefed members of both raiding teams. Both the teams reached the building L-18, Batla House, New Delhi and surrounded it. No specific nakabandi was done nor the area was cordoned off at the time of raid. After reaching there, an advance team comprising of SI Rahul Kumar, Inspector Mohan Chand Sharma, SI Dharmender, SI Ravinder Tyagi, HC Satinder, HC Udaiveer and HC Balwant was formed to go upstairs and conduct raid at Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi. Inspector Mohan Chand Sharma directed SI

Dharmender to go upstairs posing as vodaphone executive to find out presence of suspect terrorists in the flat. SI Dharmender went there and returned within few minutes and informed remaining members of raiding team regarding presence of some persons in the flat. At about 11 AM, SI Rahul Kumar alongwith Inspector Mohan Chand Sharma and other members of advance team entered into the building and reached at the gate of Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi. Inspector Mohan Chand Sharma knocked at the main door of the flat by disclosing his identity as police officials. Occupants of the flat did not respond. Thereafter, raiding team tried to enter the flat. Main door was found bolted from inside. Advance team first tried to open the main door but it was found bolted from inside. There were two doors in the flat in question. Other door was on left side of main door which was knocked by Inspector Mohan Chand Sharma. Since main door was found bolted from inside, advance team members checked other door on left side of main door. It was found shut but not bolted from inside. Members of advance team immediately entered the flat from other door. As soon as the advance team members entered into the flat to apprehend suspects, inmates opened fire on police party. Police party members also retaliated in their self defence. During cross firing Inspector Mohan Chand Sharma and HC Balwant sustained bullet injuries. Two militants also sustained bullet injuries in cross firing while two other militants managed to escape from the flat while firing on police party. In the meantime, ACP Sanjeev Kumar Yadav (PW-95) of Special Cell, Investigating Officer of bomb blast cases alongwith his team members also reached the spot. Injured police officials

and militants were immediately removed to hospital. One of militants namely Md. Saif surrendered before the police party and told the name of escaped militants as Junaid and Pappu. During cursory search of flat one AK series rifle alongwith two magazines containing 30 live rounds each were recovered from right side room of the flat. Two pistols of .30 bore were found lying near two injured militants. Inspector J.S. Joon, Inspector/Investigation PS Jamia Nagar also reached the spot. SI Rahul gave written complaint on 19.09.2008 to Inspector J.S. Joon who made endorsement upon complaint and got the case registered u/s. 186/353/307/332/34 IPC and 25/27 Arms Act and took up further investigation. Both injured militants namely Md. Atif Ameen and Md. Sajid were declared brought dead at Trauma Centre, AIIMS Hospital. Injured Inspector Mohan Chand Sharma was also taken to hospital but he succumbed to bullet injuries and Section 302 IPC was added in the FIR. Investigation conducted by ACP Sanjeev Kumar Yadav in FIR No. 166/08 dated 13.09.2008 PS Karol Bagh revealed that Shahzad Ahmad @ Pappu, Md. Atif Ameen, Md. Sajid @ Pankaj, Ariz Khan (accused in the present case) and Md. Saif were active members of Indian mujahiddin and residing at Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi and were present there on 19.09.2008 when team of Special Cell led by Inspector Mohan Chand Sharma conducted raid at that flat. During investigation of blast cases, ACP Sanjeev Kumar Yadav arrested Md. Saif in FIR No. 166/08 PS Karol Bagh and at his instance recovered following articles related to accused Ariz Khan on 19.09.2008 from Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi.

(i) One light brown colour purse containing cash Rs.160/- and two photographs of Ariz @ Junaid.

(ii) Two original marks sheet of UPT University, Lucknow of B. Tech 1st year (2005-06) and 2nd year (2006-07) having roll numbers as 0508313007 of Ariz Khan S/o. Zafar Alam Khan.

(iii) Character certificate dated 20.06.2003 issued from Jyoti Niketan School, Atlas Tank, Azamgarh-276001 in the name of Ariz Khan S/o. Zafar Alam Khan.

(iv) 10th class pass certificate no. TV 6491745 in the name of Ariz Khan of Jyoti Niketan School, Azamgarh.

(v) 12th class pass certificate No. BG 2326382 in the name of Ariz Khan of Jyoti Niketan School, Azamgarh.

(vi) 12th pass statement of marks No. BG 1339469 in the name of Ariz Khan of Jyoti Niketan School, Azamgarh.

3. On 01.10.2010 Investigation of this case was transferred to Crime Branch, Delhi and was entrusted to Inspector Satish Sharma, ISC/CB Chanakyapuri, New Delhi. During investigation, efforts were made to apprehend the escaped terrorists namely Ariz Khan @ Junaid and Shahzad Ahmad @ Pappu. Despite issuance of proclamation u/s. 82/83 Cr.PC, none of accused persons came forward to join investigation. Both Ariz Khan @ Junaid and Shahzad Ahmad @ Pappu were declared proclaimed offender by the Court the then Id. ACMM on 03.07.2009. On 01.02.2010, an information was received that Shahzad Ahmad @ Pappu has been

arrested by Anti Terrorist Squad of Lucknow, U.P. On 02.02.2010, Shahzad Ahmad @ Pappu was arrested in the present case from Lucknow U.P. Detailed disclosure statement of Shahzad Ahmad @ Pappu was recorded. Shahzad Ahmad @ Pappu was also arrested in one of serial blasts cases reported vide case FIR No. 293/08 dated 13.09.2008 PS Tilak Marg by IO of case ACP Bhisham Singh. During investigation, it was found that Shahzad Ahmad @ Pappu was using mobile phone no. 9811004309 of Md. Atif Ameen from Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi for making calls to his associates and family members. As per one of the intercepted voice calls, accused Shahzad Ahmad @ Pappu was also found talking to his mother from phone no. 9811004309 to mobile no. 9793066723 on 19.09.2008 at about 4:29:12 hrs (morning). Scrutiny of call detail record of phone no. 9811004309 also confirmed location of this phone at the said time on 19.09.2008 at Batla House. During investigation, Investigating Officer of Special Cell took voice sample of Shahzad Ahmad @ Pappu to get the same matched with voice sample obtained during monitoring and surveillance of mobile phone no. 9811004309. Investigating Officer seized copies of call detail record/customer application form/ownership details., etc. of mobile phone no. 9811004309 through seizure memo from ACP Bhisham Singh, Investigating Officer of serial blast case. After completion of investigation qua Shahzad Ahmad @ Pappu, charge sheet was filed against him in the Court of Id. CMM, Tis Hazari Courts for the offences punishable u/s. 186/353/333/307/302/34/201/174A IPC & 25/27 Arms Act. Present accused Ariz Khan @ Junaid was kept in column no. 12 of the charge

sheet for further investigation. After completion of trial Shahzad Ahmad was awarded life imprisonment and fine of Rs. 50,000/- vide order on sentence dated 30.07.2013.

4. On 23.02.2018, an information was received from Special Cell/NDR that accused Ariz Khan @ Junaid has been arrested in case FIR No. 50/14 dated 21.10.2014 u/s. 18 UA (P) Act & 120-B IPC PS Special Cell, Lodhi Colony and will be produced before the Court of Id. Addl. Sessions Judge, Patiala House Court for judicial remand. Further investigation of this case was assigned to Inspector R. Srinivasan. On 23.02.2018, accused Ariz Khan @ Junaid was produced by Special Cell before Id. Addl. Sessions Judge in case FIR No. 50/14 PS Special Cell in muffled face. Investigating Officer Inspector R. Srinivasan (PW-88) moved an application seeking direction of Court to produce the accused before concerned Court of Id. Chief Metropolitan Magistrate (South-East), Saket Courts. Pursuant to that application, Id. Addl. Sessions Judge, Patiala House Court passed the order Ex. PW-88/B directing the police of Special Cell to produce accused before the Court of Id. Chief Metropolitan Magistrate (South-East), Saket Courts in muffled face.

5. Consequently, accused Ariz Khan @ Junaid was produced before the court of Id. Chief Metropolitan Magistrate (South-East), Saket Courts in muffled face and permission for his interrogation was obtained. During interrogation, accused admitted his role and corroborated the sequence of events that happened on 19.09.2008. Accused was arrested in the present

case after following all legal formalities. Thereafter, an application was moved before Id. Chief Metropolitan Magistrate (South-East), Saket Courts for conducting test identification parade of accused as he was yet to be judicially identified. The application was marked to Sh. Harun Pratap, the then Id. Link Metropolitan Magistrate (South-East), Saket Courts. Accused was produced before Sh. Harun Pratap, the then Id. Link Metropolitan Magistrate (South-East), Saket Courts on the same day. However, accused refused to participate in test identification parade. Subsequently, 10 days police custody remand of accused was obtained by Investigating Officer for further investigation of case. Detailed disclosure statement of accused Ariz Khan @ Junaid was recorded wherein he *inter-alia* told the police as to how he got radicalized and agreed to participate in terrorist activities leading to his association with Indian Mujahiddin.

6. During police custody remand on 28.02.2018, accused Ariz Khan @ Junaid led the police party to Nehar Bridge of upper Ganga canal, Barotta Village situated at Aligarh to Ramghat Road approximately 10-15 kms from Aligarh and from there further led the police party to right side of kacha passage before Nehar and after crossing 100-150 meters pointed out the place where he had thrown weapon of offence in the canal. The weapon used by accused Ariz Khan @ Junaid during the incident could not be recovered despite best efforts. On 04.03.2018, accused Ariz Khan @ Junaid while being in police custody remand pointed out the place of occurrence from outside i.e. Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi.

7. As mentioned above, after his arrest in the present case accused Ariz Khan @ Junaid refused to participate in test identification parade. However, later on members of raiding party namely Inspector Rahul Kumar, Inspector Ravinder Tyagi, Inspector Dharmender, ASI Balwant Singh, ASI Satinder Kumar, ASI Udai Veer identified him in the present case in the office of STF, Crime Branch and their supplementary statements u/s. 161 Cr.PC were recorded.

8. It was also revealed during investigation that accused Ariz Khan @ Junaid alongwith his other associates was using mobile phone no. 9811004309 belonging to Md. Atif Ameen till 19.09.2008 while they were staying at Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi. On 05.03.2018, an application for obtaining voice sample of accused Ariz Khan @ Junaid was moved before Id. Chief Metropolitan Magistrate (South-East), Saket Court and same was marked to Sh. Harun Pratap, the then Id. Link Metropolitan Magistrate (South-East), Saket Courts for necessary action but accused refused to give his voice sample before Sh. Harun Pratap, the then Id. Link Metropolitan Magistrate (South-East), Saket Courts. During investigation of connected cases of bomb blasts, Govind Sharma, ACP/IO/Spl. Cell/NDR, Lodhi Colony took voice sample of accused Ariz Khan @ Junaid in case FIR No. 130/08 PS Greater Kailash, New Delhi for obtaining expert opinion from forensic laboratory for intercepted calls of mobile phone no. 9811004309. Copies of relevant documents and transcriptions of intercepted calls of mobile phone no.

9811004309 having voice of accused Ariz Khan @ Junaid with others from 02.09.2008 onwards, call detail record, cell ID chart were obtained from ACP Govind Sharma through notice u/s. 91 Cr.PC. Analysis of transcriptions of mobile phone no. 9811004309 revealed that this number remained on interception from September 02-10.2008 and was disconnected as regular order of interception of this number was not received from Govt. of NCT of Delhi. Again this number remained on interception on receipt of regular orders from Govt. of NCT of Delhi from 15.09.2008 onwards and there are continuous calls of accused Ariz Khan @ Junaid from this number. During investigation on 13.09.2008 of Delhi serial blasts, it was revealed that Md. Hakim @ Bagga had brought cycle ball bearings from Lucknow U.P by bus and as per intercepted calls on 7-8/09.2008 accused Ariz Khan @ Junaid had picked Md. Hakim @ Bagga from Anand Vihar Bus Stand and brought him to Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi and these cycle ball bearings were used in blasts.

9. Analysis of transcript of intercepted called of accused Ariz Khan @ Junaid from mobile phone no. 9811004309 further revealed that he made last outgoing call on 18.09.2008 at 17:42:56 hrs. Details of intercepted voice calls of accused Ariz Khan @ Junaid with mobile phone no. 9811004309 of accused Md. Atif Ameen having opposite number i.e. called number, date, time, duration, call time and locations were obtained during investigation and delineated in the charge sheet in the form of chart.

10. Criminal involvement of accused Ariz Khan @ Junaid in other cases were also received from PS Special Cell during investigation. As per record, accused was found involved in six other criminal cases.

11. After conclusion of investigation, supplementary charge sheet was filed (in continuation of main charge sheet that was filed against Shehzad @ Pappu) and accused Ariz Khan was charge sheeted u/s. 186/353/333/307/302/34/201/174A IPC & 25/27 Arms Act.

Charge

12. After filing of supplementary chargesheet committal proceeding followed and arguments on charge were heard on 19.05.2018. Accused Ariz Khan @ Junaid was charged u/s. 186/34, 353/34, 333/34, 302/34, 307/34, 174A IPC & 27 Arms Act. Accused pleaded not guilty to the charge which necessitated the trial. Prosecution examined 100 witnesses to substantiate the charges against the accused. Accused was examined u/s. 313 Cr.PC wherein all incriminatory circumstances and evidences were put to him and his response was sought. Accused denied all incriminatory evidence and circumstances and stated that witnesses in this case are interested witnesses and they have deposed falsely. Accused further stated that he is innocent and he has been falsely implicated in the present case. One defence witness DW 1 Dr. Mirza Azam Beg was

examined on behalf of accused.

13. Lengthy arguments addressed at bar by Mr. A.T. Ansari, Id. Addl. Public Prosecutor for State and Mr. M.S. Khan, learned counsel for accused have been heard and considered. Written arguments/submissions/synopsis filed by Mr. A.T. Ansari, Id. Addl. Public Prosecutor for State and Mr. M.S. Khan, Id. counsel for accused have also been perused.

Points for Consideration.

14. In view of plea taken by accused to the charge, points for consideration in this case is as to whether charges framed against accused on 23.05.2018 have been proved by prosecution or not.

Evidence adduced on record by prosecution and accused (Oral and Documentary)

15. Members of advance team constituted by Inspector Mohan Chand Sharma to enter the flat in question are most relevant witnesses and their depositions will be discussed in first instance.

16. PW 13 SI Rahul Kumar (now promoted as Inspector) who was the most important member of advance team, *inter alia*, deposed that in the

month of September 2008, he was posted as Sub-Inspector at Special Cell, NDR, Lodhi Colony, New Delhi; on 13.09.2008 serial blasts rocked National Capital resulting in causality and injuries to several persons; bomb blasts were reported from the areas of Connaught Place, Greater Kailash, Karol Bagh and Tilak Marg; seeing the magnitude of terrorist attacks, services of Special Cell were also roped in to help the investigation; later investigation of said cases were transferred to Special Cell; a team under the supervision of Inspector Mohan Chand Sharma was formed to investigate the matter; an information was received that one Bashir @ Atif resident of Azamgarh U.P. was involved in serial blasts and was residing in the area of Batla House, Jamia Nagar, New Delhi; informers were deployed in that area to further develop the said information.

17. PW 13 SI Rahul Kumar further deposed that on 19.09.2008 at about 8 AM while he was present in his office at Special Cell, Inspector Mohan Chand Sharma telephoned him and informed him that he (Inspector Mohan Chand Sharma) had received an information through an informer that said Bashir @ Atif alongwith his associates was staying at Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi; Inspector Mohan Chand Sharma asked PW 13 to reduce the said information into writing by lodging relevant DD entry and also to constitute a team of police officials to conduct raid at the said place; accordingly PW 13 SI Rahul Kumar lodged DD no. 3 Ex.PW-8/A and a team comprising of PW 13 SI Rahul Kumar, Inspector Sanjay Dutt, Inspector Mohan Chand Sharma, SI

Dharmender, SI Ravinder Tyagi, SI Davinder, SI Dalip Kumar and other police officials was constituted. PW 13 SI Rahul Kumar further deposed that he alongwith available staff in office i.e. SI Ravinder Tyagi, HC Balwant, HC Satinder, Ct. Sandeep, SI Rakesh Malik, HC Manish, HC Vinod Gautam and Ct. Birender Negi left the office at 9:30 AM in one private car belonging to SI Ravinder Tyagi and 2 two wheelers; PW 13 SI Rahul Kumar and other police officials mentioned above were carrying weapons and ammunition and bullet proof jackets issued as per register maintained in the office; PW 13 SI Rahul Kumar alongwith above mentioned police officials reached Abassi Chowk, Batla House, Jamia Nagar, New Delhi; after reaching there, PW 13 SI Rahul Kumar requested 6-7 passersby to join the raid but they declined to join the raid by giving reasonable and genuine excuses; in between 10:40 – 10:45 AM, the team led by Inspector Mohan Chand Sharma comprising SI Dharmender, SI Dalip, HC Satinder, SI Davinder, HC Rajiv, HC Rajbir, ASI Anil Tyagi and HC Udaiveer also reached Abassi Chowk; Inspector Mohan Chand Sharma briefed members of both raiding teams; all members of teams were in civil dress; from Abassi Chowk police team proceeded to L-18, Batla House, Jamia Nagar, New Delhi; after reaching there, an advance team comprising of PW 13 SI Rahul Kumar, Inspector Mohan Chand Sharma, SI Dharmender, SI Ravinder Tyagi, HC Udaiveer and HC Balwant was formed to go upstairs and conduct raid at Flat No. 108, L-18, Top Floor, Batla House, Jamia Nagar, New Delhi; from remaining members of team SI Rajbir was deployed in lane on the side of Khalilullah Masjid; SI Devinder was deployed at the opposite corner lane, HC Vinod

Gautam was deployed in the back lane at masjid side corner, Ct. Rajiv was deployed at opposite corner of back side lane, SI Dalip and ASI Anil Tyagi were deployed on the road leading to L-18 building and remaining members were deployed at the vehicle where AK rifles and bullet proof jackets were kept; no specific nakabandi was done nor the area was cordoned off at the time of raid.

18. PW 13 SI Rahul Kumar further deposed that thereafter, members of advance team assembled near staircase leading to top floor of the building; Inspector Mohan Chand Sharma directed SI Dharmender to go upstairs posing himself as Vodafone executive to find out presence of suspected terrorists in the flat in question; SI Dharmender went there and returned within few minutes and informed remaining members of advance team regarding presence of some persons in the flat; then members of advance team went upstairs to the said flat; out of seven members of advance team, PW 13 SI Rahul Kumar, Inspector Mohan Chand Sharma, SI Ravinder Tyagi, HC Balwant were carrying official pistols and remaining members were not having any arms with them. PW 13 SI Rahul Kumar further deposed that Inspector Mohan Chand Sharma knocked at the main door of the flat disclosing identity of team and further asked occupants of the flat to open the door stating that “*darwaza kholo police hai*”; none of the occupants responded to the call; then police team tried to open the main door but the door was found bolted from inside; there were two doors in the flat in question; other door was on the left side of main door which was knocked by Inspector Mohan Chand Sharma, the said door was shut

but not bolted from inside; members of advance team immediately entered the flat through that door; as soon as police officials entered the flat, occupants of the flat started firing on police party from two side, one from the side of drawing room and other from left side room of the flat; Inspector Mohan Chand Sharma was first to enter the flat; police officials got trapped in the drawing room and had to resort to fire in self defence. PW 13 SI Rahul Kumar categorically deposed that during shootout, Inspector Mohan Chand Sharma and HC Balwant sustained bullet injuries. PW 13 SI Rahul Kumar further deposed that terrorists present in drawing room were trying to escape by opening main door while continuously firing at police team; one of the terrorists present in drawing room also sustained bullet injuries and two of them managed to escape from the flat through its main door while continuously firing at police party. PW 13 SI Rahul Kumar specifically deposed that accused Ariz Khan @ Juanid @ Anna @ Salim present in the Court was one of the terrorists who managed to escape from the flat in question alongwith his associates. PW 13 SI Rahul Kumar identified accused Ariz Khan @ Junaid @ Anna @ Salim as the same person who had fired on police party from the side of drawing room as soon as police officials entered the flat. PW 13 SI Rahul Kumar further deposed that he asked members of police team to stop firing, since terrorists who had fired on police party from left side room of the flat were still there; HC Satinder who was not carrying any arms took the pistol of HC Balwant and assumed position to confront terrorists present there; SI Dharmender and HC Udaiveer brought Inspector Mohan Chand Sharma downstairs and took him to Holi Family Hospital; SI Ravinder Thyagi

brought injured HC Balwant downstairs and handed him over to HC Gurmail for taking him to hospital; thereafter, SI Ravinder Tyagi returned to the place of incident.

19. PW 13 SI Rahul Kumar further deposed that he tried to find out and locate two escaped terrorists and made search for them on the roof of the building and in the adjoining flat; 4-5 boys were present in said adjoining flat but terrorists who managed to escape were not found present in that flat; PW 13 SI Rahul Kumar asked the said boys to shut the door of the flat and not to come out of the flat.

20. PW 13 SI Rahul Kumar further deposed that SI Ravinder Tyagi informed the police on telephone no.100 regarding the incident; in the meantime, Sanjeev Kumar Yadav, ACP Special Cell alongwith police officials namely SI Dalip Kumar, HC Rajbir, HC Vinod Gautam, Ct. Rajiv and other staff also reached the place of occurrence; PW 13 SI Rahul Kumar informed ACP Sanjeev Kumar Yadav about the incident and further informed him that some terrorists were still hiding themselves in the left side room of the flat; ACP Sanjeev Kumar Yadav, PW 13 SI Rahul Kumar, HC Rajbir tried to enter left side room to apprehend the terrorists present there and during this course one of the terrorists fired on them while moving from left side of the room towards the room leading to balcony; in order to save themselves, ACP Sanjeev Kumar Yadav also fired in self defence on the said terrorist; the terrorist fell down; police officials again tried to enter the room but the terrorist who had fallen down

fired on police officials; two bullets hit HC Rajbir but he did not sustain any injury as he was wearing bullet proof jacket; police officials fired in their self defence; the said terrorist sustained bullet injury. PW 13 SI Rahul Kumar further deposed that the flat was searched and during the course of search, one Md. Saif was found present in toilet attached with the left side of the room of the flat; Md. Saif came out of the toilet raising his hands and surrendered before the police; Md. Saif was taken into custody by ACP Sanjeev Kumar Yadav and was arrested in case FIR No. 166/08; interrogation of accused Md. Saif revealed name of two escaped terrorists as Ariz @ Junaid and Shahzad @ Pappu; both injured terrorists were removed to hospital by PCR van; PW 13 SI Rahul Kumar prepared written complaint (Ex. PW8/C) which was written by SI Dharmender (PW20) on the narration of PW 13; PW 13 SI Rahul Kumar handed over the said complaint to Inspector J.S. Joon for necessary action.

21. In response to a specific question, PW 13 SI Rahul Kumar deposed that there were three persons in drawing room who had resorted to firing on police party; one of them was Atif @ Bashir who had sustained bullet injury and two other occupants were Shahzad @ Pappu and present accused Ariz @ Junaid; name of person on the left side room was revealed to be Chhota Sajid who also received bullet injury. PW 13 SI Rahul Kumar further deposed that during cursory search of the flat after shoot out, one AK-47 assault rifle with two loaded magazines having total 60 rounds were found in the right side room of the flat; one .30 bore mouser of star mark having stuck one live round in its chamber was found lying in the

drawing room near injured Atif @ Bashir; it was the same pistol which was used by Atif @ Bashir to fire on police party; one .30 bore pistol having word 'A1 International A1' engraved on its body was also found lying on the left side room where other terrorist had sustained injuries and same was used by him for firing on police party; said arms and ammunition were taken into possession by Inspector J.S. Joon. PW 13 SI Rahul Kumar further deposed that total 30 empty cartridges including 19 cartridges of 9 mm, eight cartridges of .30 bore and three cartridges of AK-47 assault rifle and 13 led of fired cartridges were also found scattered in the flat and same were seized by Inspector J.S. Joon. PW 13 SI Rahul Kumar further deposed that SI Rabjir Singh produced his bullet proof jacket having two bullet marks and led inside the jacket to Inspector J.S. Joon stating that it was the same jacket which he was wearing at the time of shoot out.

22. PW 13 SI Rahul Kumar further deposed that on the date of incident after shoot out, accused Md. Saif was arrested by ACP Sanjeev Kumar Yadav Kumar in case FIR no. 166/08 PS Karol Bagh and during investigation of that case intensive search was also made by ACP Sanjeev Kumar Yadav who was the Investigating Officer of that case at the instance of accused Md. Saif and during the aforesaid search one light brown colour purse containing Rs. 160/-, two photographs of accused Ariz @ Junaid, his two original mark sheets of UTP University Lucknow of B.Tech first year (2005-06) and of second year (2006-07) having roll no. 05083133007, his original character certificate dated 02.06.2003 issued

from Jyoti Niketan School, Azam Garh, U.P., his original 10th class passed certificate from Jyoti Niketan School Azam Garh, U.P. and his original 12th class passed certificate from Jyoti Niketan School Azam Garh, U.P. and his 12th class statement of marks from Jyoti Niketan School Azam Garh, U.P. were recovered from place of occurrence which were seized by ACP Sanjeev Kumar Yadav in case FIR No. 166/08 PS Karol Bagh vide seizure memo and same copy of seizure memo was proved as Ex PW-23/C. Original seizure memo was seen and returned.

23. PW 13 SI Rahul Kumar further deposed that he joined investigation of this case again on 18.10.2018 and on that day Inspector Satish Sharma, the then Investigating Officer of the case seized his official Glock 9 MM pistol bearing no. LBZ-149 and its magazine which he was carrying and used at the time of shoot out in question; PW 13 Rahul Kumar had fired five rounds from that pistol during shoot out in his self defence. PW 13 SI Rahul Kumar further deposed that he again joined investigation sometime in the month of July 2009 and was called by board comprising experts from CFLS and doctors of AIIMS Hospital constituted to give subsequent opinion qua injuries sustained by two deceased terrorists and deceased Inspector Mohan Chand Sharma; PW 13 SI Rahul Kumar attended said proceedings and explained the circumstance of events witnessed by him; a CD was also prepared containing animated reconstruction of sequence of events pertaining to this case. PW 13 SI Rahul Kumar further deposed that on 26.02.2008, he was called by Investigating Officer at the office of STF Crime Branch Sun Light Colony where he identified accused Ariz @

Junaid as the same person who fired on police party on 19.09.2008 and managed to escape from the place of occurrence. PW 13 SI Rahul Kumar identified various documents and exhibits referred to in his examination in chief.

24. In cross examination, PW 13 SI Rahul Kumar deposed that none of senior police officials including PW 13 tried to ascertain number of occupied or unoccupied flats, if any, of those flats or if any occupant of any flat was missing in his presence. PW 13 SI Rahul Kumar specifically deposed in cross examination that he had referred the name of escaped terrorists as Junaid and Pappu as revealed by apprehended terrorist Md. Saif in his initial interrogation at the spot and had not mentioned name of Ariz and Shahzad at that time. PW 13 SI Rahul Kumar further deposed that in his statement recorded on dated 19.09.2008 by Inspector J.S. Joon there is no mention of recovery of purse containing Rs.160/- and two passport size photographs and educational documents Ex. PW13/A (colly) relating to accused Ariz @ Junaid. PW 13 SI Rahul Kumar volunteered to depose that said facts were not mentioned in his statement for reason that said recovery was effected in case FIR No. 166/08 PS Karol Bagh and the said facts are mentioned in his statement recorded by ACP Sanjeev Kumar Yadav in that case. PW 13 SI Rahul Kumar further deposed in his cross examination that once police officials entered the flat from the side door, it remained opened through out the operation. PW 13 SI Rahul Kumar further deposed in cross examination that approximately within two minutes from the time when firing started two terrorists including accused

present in the Court managed to escape. Question was put to PW 13 SI Rahul Kumar in cross examination as to whether he raised alarm to the team deployed in the lane of the building or tried to chase the escaped terrorists to which PW 13 answered in negative saying that he alongwith advance team members were on top floor (4th floor) of the building and team members were deployed in the lane outside the building and it was not possible to alert them regarding escaped terrorists. PW 13 SI Rahul Kumar further deposed that other situation was that Inspector Mohan Chand Sharma and HC Balwant had sustained bullet injuries and priority was to remove them to hospital. PW 13 SI Rahul Kumar specifically deposed in cross examination that he gave his complaint Ex. PW8/C at about 3:45 PM to Investigating Officer Inspector J.S. Joon. PW 13 SI Rahul Kumar further deposed in cross examination that he has not given description of terrorists in his complaint Ex. PW8/C as well as in his all subsequent statements recorded u/s. 161 Cr.PC. PW 13 SI Rahul Kumar volunteered to clarify that there was no question of mentioning description of terrorists in his complaint as well as in his subsequent statements recorded u/s. 161 Cr.PC as by that time passport of Shahzad and a wallet containing two passport size photographs of present accused Ariz @ Junaid had already been recovered. PW 13 SI Rahul Kumar further deposed that he has not mentioned the fact regarding recovery of photographs of accused in his statement Ex. PW8/C. PW 13 SI Rahul Kumar volunteered to explain that in-fact recovery of said documents and photographs was effected in case FIR No. 166/08 PS Karol Bagh and for that reason he has not mentioned the said fact in his complaint. PW 13 SI

Rahul Kumar denied the suggestion that recovered passport or documents of accused was not available with police till 05.01.2019 and due to this reason these photographs were not published and circulated to establish the identity of accused. PW 13 SI Rahul Kumar also denied the suggestion that he had seen present accused Ariz @ Junaid in Special Cell before 26.02.2018. PW 13 SI Rahul Kumar lastly denied the suggestion that sequence of events as deposed to by him in his examination in chief are false and same are based on story concocted by police officials to cover up accidental firing by police causing injuries to Inspector Mohan Chand Sharma and HC Balwant.

25. SI Dharmender (PW20)/(now promoted as Inspector) who was member of raiding party and was part of advance team is another important witness in the present case. PW 20 SI Dharmender *inter alia* deposed that during the month of September 2008 he was posted as Sub-Inspector at Special Cell, NDR, Lodhi Colony, New Delhi; on 13.09.2008, serial blasts rocked the National Capital resulting in casualties and injuries to several persons; in view of the magnitude of terrorist attacks, services of special cell were also roped in to help the investigation; later, the investigation of aforesaid serial blast cases was transferred to special cell; a team under the supervision of Inspector Mohan Chand Sharma (now deceased) was formed to investigate the matter; Inspector Mohan Chand Sharma received an information that one Bashir @ Atif alongwith his associates involved in the said serial blasts was residing in the area of Batla House, Jamia Nagar, New Delhi; informers were developed in that

area to further develop the said information.

26. PW 20 SI Dharmender further deposed on 19.09.2008 at about 8 AM while PW 20 was present in his office, SI Rahul Kumar had briefed the police officials including PW 20 that Inspector Mohan Chand Sharma had received specific information that Atif @ Bashir and his associates who was hiding at Flat no. 108, L-18, Batla House, Jamia Nagar, New Delhi and that a raid was to be conducted to apprehend the said suspected terrorist; PW 20 SI Dharmender also had telephonic conversation with Inspector Mohan Chand Sharma who shared information and confirmed the said information with PW 20; the said information was reduced into writing by SI Rahul Kumar vide DD No. 3A, Ex PW-8/A; thereafter, a raiding party comprising of PW 20, Inspector Sanjay Dutt, SI Rahul Kumar and other police officials was constituted on the direction of Inspector Mohan Chand Sharma, a team headed by SI Rahul Kumar comprising SI Ravinder Tyagi, HC Balwant, HC Satender, Ct. Sandeep, SI Rakesh Malik, HC Manish, HC Vinod Gautam and Ct. Virender Negi left the office at about 9:30 AM in a private car belonging to SI Ravinder Tyagi and 02 two wheelers; before leaving the office to conduct raid, Inspector Mohan Chand Sharma had recorded departure entry vide DD No. 6 Ex. PW-20/A in the presence of PW 20; they were carrying arms, ammunition and bullet proof jackets with them issued to them as per malkhana register; thereafter, at about 10 AM, the team led by Inspector Mohan Chand Sharma comprising PW 20, SI Dalip, SI Devender, HC Satender, HC Rajiv, HC Rajbir, ASI Anil Tyagi and HC Udaiveer, etc.

also proceeded to the said place in two private cars; all the members of team were in plain clothes; PW 20 SI Dharmender and his team members went to Abassi Chowk, Jamia Nagar and met the team led by SI Rahul Kumar which was already present there; Inspector Mohan Chand Sharma again briefed members of both teams; both teams proceeded to building no. L-18, Batla House, Jamia Nagar, New Delhi; after reaching there the advance team comprising Inspector Mohan Chand Sharma, SI Rahul, SI Dharmender, SI Ravinder Tyagi, HC Satender, HC Balwant and HC Udaiveer was constituted to conduct the raid at the flat in question; the flat was situated on top floor (4th floor) of the building; out of remaining members of raiding team, HC Rajbir was deployed on the lane on the side of Khalilullah Masjid; SI Devender was deployed on the opposite corner of that lane; HC Vinod Gautam was deployed on the back lane on the side corner of the masjid and HC Rajiv was deployed on the opposite corner of the back side lane; SI Dalip and ASI Anil Tyagi were deployed on the road facing towards L-18, building and remaining members of team were deployed on the vehicles in which AK-47 rifles and bullet proof jackets were kept. PW 20 SI Dharmender specifically deposed that no specific nakabandi (blockade) was made in the vicinity nor the area was cordoned off at the time of raid. PW 20 SI Dharmender further deposed that thereafter members of advance team assembled in the parking area of the building near the staircase leading to top floor of the building; Inspector Mohan Chand Sharma directed PW 20 SI Dharmender to pose as decoy vodafone executive and asked him to go upstairs of the building and ascertain the presence of terrorists in the flat in question; on the direction

of Inspector Mohan Chand Sharma, PW 20 SI Dharmender went upstairs on the top floor/4th floor of the building posing himself as vodafone executive to find the presence of suspected terrorist inside the flat; there were two doors in the said flat and both of them were closed and unbolted from outside; while PW 20 SI Dharmender was standing outside the flat, he heard some voice of occupants of the flat, establishing their presence in the flat; PW 20 SI Dharmender came downstairs and apprised the said fact to Inspector Mohan Chand Sharma; thereafter, without wasting time, PW 20 SI Dharmender alongwith Inspector Mohan Chand Sharma, SI Rahul Kumar Singh, HC Udaiveer, SI Ravinder Tyagi, HC Balwant and Ct. Satender went to flat no. 108, L-18 Building Batla House, Jamia Nagar; Inspector Mohan Chand Sharma knocked the main door of the flat while disclosing his identity stating “*darwaja khola police hai*” but none of them responded; Inspector Mohan Chand Sharma tried to open the main gate of the flat; however, it was found bolted from inside; thereafter, Inspector Mohan Chand Sharma checked the second door on the left side of flat, it was found unbolted from inside, though the door was shut; police party entered the flat from left side door; as soon as they entered the flat, occupants of the flat started firing on police party from two sides, one from the side of drawing room and other from the left side room of the flat; police party got trapped in the flat; Inspector Mohan Chand Sharma was the first who entered the flat and rest of team members followed him; there were three persons in the drawing room who started firing on police party and two persons were in the left side room of the said flat; police officials took position in the flat to confront the occupants of the flat and

also fired gun shots in their self defence.

27. PW 20 SI Dharmender further deposed that accused Ariz @ Junaid (who was correctly identified by witness) was one of the persons who fired on police party alongwith two other occupants of flat namely Atif @ Bashir and Shahzad @ Pappu who were present in drawing room; Inspector Mohan Chand Sharma and other police officials fired in self defence; during this course, Inspector Mohan Chand Sharma and HC Balwant sustained bullet injuries from the firing resorted to by said occupants of the flat; Inspector Mohan Chand Sharma fell down after sustaining bullet injuries and his pistol fell down on the ground from his hand; PW 20 SI Dharmender picked up his pistol and fired two rounds from it; police officials kept on changing their positions in order to save themselves while resorting to fire in their self defence; in the melee, Shahzad @ Pappu and accused Ariz @ Junaid managed to escape from the drawing room through the main gate of the flat; Arif @ Bashir also sustained injury and fell down near the main gate. PW 20 SI Dharmender further deposed that in order to save the life of Inspector Mohan Chand Sharma, he with the help of HC Udaiveer brought him downstairs and further asked ASI Anil Tyagi (present in the lane) to bring a vehicle to take Inspector Mohan Chand Sharma to hospital and during this course, PW 20 simultaneously conveyed the incident happened on the top floor of the flat to other members of team deployed downstairs; PW 20 SI Dharmender also conveyed to other police officials that two militants have managed to escape from the flat; in the meanwhile, SI Devender brought

one Santro car and PW 20 SI Dharmender alongwith ASI Anil Tyagi and SI Devender took Inspector Mohan Chand Sharma to the nearest hospital Holy Family in the said car and got him admitted there at about 11:15 AM; while PW 20 SI Dharmender was present at Holy Family Hospital, Inspector Sanjay Dutt also reached there and PW 20 SI Dharmender returned to the place of occurrence leaving behind him at Holy Family Hospital; PW 20 SI Dharmender wrote down the complaint, Ex. PW8/C, on the direction of SI Rahul Kumar; from the spot, PW 20 SI Dharmender returned to his office and deposited the service pistol of Inspector Mohan Chand Sharma in the malkhana; later on that day, PW 20 SI Dharmender came to know that Inspector Mohan Chand Sharma has succumbed to injuries.

28. As per the deposition of PW 20 SI Dharmender, on 18.10.2018, on the direction of Investigating Officer, he got issued the service pistol bearing GLU 600 of Inspector Mohan Chand Sharma to himself and handed over the same to Inspector Satish Sharma (Investigating Officer of the case) who seized the same vide seizure memo Ex. PW22/A. PW 20 SI Dharmender further deposed that he came to know names of accused persons when their names were revealed by apprehended accused Md. Saif during his interrogation by ACP Sanjeev Kumar Yadav at the place of occurrence. PW 20 SI Dharmender deposed that on 02.03.2018, accused Ariz was present in the office of Inspector R. Srinivasan during his police custody and he identified the accused as the same person who alongwith Shahzad @ Pappu fired on police party in the drawing room of

flat on 19.09.2008 and managed to escape from main gate of said flat.

29. In cross examination, PW 20 SI Dharmender deposed that he has stated in his statement recorded u/s. 161 Cr.PC Ex. PW-20/DA that other members of team were deployed to cover the building. PW 20 SI Dharmender volunteered to depose that remaining members of team were not sufficient in number to make seal proof cover of the building. PW 20 SI Dharmender further deposed that he has not mentioned the physical description/appearance and wearing clothes of the escaped suspected terrorists. PW 20 SI Dharmender volunteered to depose that by the time when his statement was recorded, the name of escaped persons were already revealed by Md. Saif and that their passport and photographs had also been recovered and for that reason, PW 20 had mentioned in his said statement that “*main unhe samne aane per pahchan sakta hun*” (I can identify them if they are shown to him). Thus, PW 20 SI Dharmender has given valid justification for not giving physical description/appearance of accused as photographs of accused has already been recovered by the time statement of PW 20 was recorded u/s. 161 Cr.PC.

30. During cross examination, PW 20 SI Dharmender was confronted with his statement dated 29.09.2008 recorded u/s. 161 Cr.PC where neither names of escaped persons nor the fact of recovery of passport and photographs is mentioned. PW 20 SI Dharmender volunteered to clarify that aforesaid recovery was effected in a different case bearing FIR No. 166/08 PS Karol Bagh. PW 20 SI Dharmender also deposed in cross

examination that name of present accused was mentioned in the complaint given by SI Rahul Kumar on the basis of name revealed by Md. Saif as Junaid. It has also come in cross examination of PW 20 SI Dharmender that Inspector Mohan Chand Sharma was closest to accused persons. PW 20 SI Dharmender denied the suggestion that he has seen accused Ariz in Special Cell after his arrest on 14.02.2018 by officials of Special Cell. PW 20 SI Dharmender further denied the suggestion that sequence of events deposed to by him in examination in chief are false and same are based on the story concocted by police to cover up accidental firing by police causing injuries to Inspector Mohan Chand Sharma and HC Balwant.

31. PW 36 HC Balwant (now promoted as ASI) is another material witness in this case as he was part of advance team and is stated to have been injured in the incident. PW 36 HC Balwant *inter alia* deposed that on 19.09.2008, he was posted as Head Constable in Special Cell, Lodhi Colony and on that day at about 8 AM when PW 36 HC Balwant was present in the office, SI Rahul Kumar (PW 13) received information from Inspector Mohan Chand Sharma and briefed officials present in the office that he has received an information regarding presence of one Bashir @ Atif alongwith his associates at Flat No. 108, L-18, Batla House, Jamia Nagar, New Delhi; Bashir @ Atif was involved in serial blasts that happened in New Delhi on 13.09.2008; SI Rahul Kumar recorded the said information in daily diary register vide DD No. 3 and constituted a team consisting himself, Inspector Sanjay Dutt, Inspector Mohan Chand Sharma, SI Dharmender, SI Ravinder Tyagi, SI Dalip Kumar and other

police officials; SI Rahul Kumar also briefed police officials present in Special Cell regarding the information and thereafter, a raiding team consisting of PW 36 HC Balwant, SI Rahul Kumar, SI Ravinder Tyagi and other police officials was constituted to conduct the raid at the aforesaid address; PW 36 HC Balwant and other members of raiding team left the office at 9:30 AM; officials of raiding party were carrying arms and ammunition and bullet proof jackets issued to them as per register maintained in the office; PW 36 HC Balwant Kumar was carrying service pistol; before leaving the office of Special Cell, SI Rahul Kumar also recorded DD entry in this regard.

32. PW 36 HC Balwant further deposed that firstly they (members of raiding team) reached Abassi Chowk at about 10:15 AM where SI Rahul Kumar requested 6-7 passersby to join the raid but all of them declined to join the raid giving reasonable and genuine excuses; in the meanwhile, another raiding team consisting of Inspector Mohan Chand Sharma alongwith other police officials of his team also reached Abassi Chowk; Inspector Mohan Chand Sharma briefed police officials of both team members; all members of raiding team were in civil dress; all members of raiding team proceeded to L-18 building Batla House, Jamia Nagar, New Delhi; when they reached the said building, advance team comprising HC Balwant, Inspector Mohan Chand Sharma, SI Dharmender, SI Rahul Kumar, SI Ravinder Tyagi, HC Satinder and HC Udaiveer was formed to conduct raid at the aforesaid flat; remaining members of team were deployed outside the building on its back and front lane; some members

of the raiding team were also deployed on the vehicle parked on the main road alongwith masjid Khalilullah.

33. PW 36 HC Balwant further deposed that Inspector Mohan Chand Sharma asked SI Dharmender to go upstairs posing himself as Vodafone executive to find out presence of terrorists in the flat; SI Dharmenner went there and returned within 2-3 months and informed members of advance team regarding presence of some persons in the flat; thereafter, all members of advance team went upstairs to the said flat; Inspector Mohan Chand Sharma was leading the team; he knocked at the main door of flat no. 108, Top Floor, L-18, Batla House, Jamia Nagar disclosing the identity of police officials; Inspector Mohan Chand Sharma further asked occupants of the flat to open the door stating that “*darwaza kholo police hai*” but none of them responded to the said call; members of advance team tried to open main door of the flat but it was bolted from inside; there were two doors in the flat; members of advance team checked second door on the left side of the flat; it was found shut but not bolted from inside; members of advance team entered through second door; Inspector Mohan Chand Sharma was ahead of police officials.

34. PW 36 HC Balwant specifically deposed that as soon as they entered the flat, occupants of the flat started firing on police party from both sides; there were three persons in the drawing room who started firing on police party; members of advance team got trapped in drawing room and had to resort to firing in their self defence; from said firing of occupant

of the flat, PW 36 HC Balwant and Inspector Mohan Chand Sharma sustained bullet injuries; one of the occupants present in drawing room of the flat also sustained bullet injury and fell on the floor of drawing room and remaining two occupants present in drawing room of the flat started trying to escape from there by opening the main gate of the flat while continuously firing on police party and they somehow managed to escape from main gate of the flat; after sustaining injuries Inspector Mohan Chand Sharma had fell down on the ground and his service pistol had also fallen down on the ground and SI Dharmender had picked it up from there; since PW 36 HC Balwant had sustained bullet injury on his right hand, his service pistol had also fallen down on the ground but PW 36 HC Balwant somehow picked it up by his left hand and thereafter, PW 36 handed over his pistol to HC Satender.

35. Accused Ariz @ Junaid was clearly identified by PW 36 HC Balwant in the Court deposing that accused Ariz @ Junaid was one of the three persons present in drawing room who alongwith his two more associates including Shahzad @ Pappu had fired on police party including PW 36 and Inspector Mohan Chand Sharma and both PW 36 HC Balwant & Inspector Mohan Chand Sharma sustained bullet injuries and thereafter, he alongwith Shahzad @ Pappu managed to flee from there; SI Dharmender with the help of HC Udaiveer brought Inspector Mohan Chand Sharma downstairs; SI Ravinder Tyagi brought PW 36 HC Balwant downstairs; PW 36 HC Balwant was taken to Trauma Centre AIIMS in a vehicle where he came to know that Inspector Mohan Chand

Sharma has been taken to Holy Family Hospital; PW 36 HC Balwant was operated upon in AIIMS Trauma Centre and remained admitted there for a period of 15-20 days.

36. PW 36 HC Balwant further deposed that on 01.03.2018, he again joined investigation of this case and identified accused Ariz @ Junaid in the Court as the same person who alongwith Shahzad @ Pappu and their associates had fired on police party on 19.09.2008 during the shoot out at Flat no. 108, L-18, Batla House, Jamia Nagar, New Delhi and managed to flee from the spot.

37. In answer to a specific question put to PW 36 HC Balwant during cross examination, he deposed that no member of raiding team was carrying AK 47 assault rifle. PW 36 HC Balwant further deposed in cross examination that he cannot say by whose firing he sustained injuries. However, in the next line, PW 36 HC Balwant deposed that as soon as they entered the room he sustained injuries from the firing made by three occupants present in the drawing room of the flat including accused present in the Court. PW 36 HC Balwant denied the suggestion that on 14.02.2018 accused Ariz was in the custody of Special Cell in some other case and since he was posted at Special Cell, he had seen accused and identified the accused on that basis.

38. PW 95 Sanjeev Kumar Yadav, DCP Special Cell was Investigating Officer of various blast cases. Sequence of events given by PW 95

Sanjeev Kumar Yadav, DCP Special Cell in his deposition is that in the month of September 2008, he was posted as ACP at Special Cell, NDR, Lodhi Colony, New Delhi; investigation of blast cases was transferred to Special Cell and investigation of all cases was entrusted to PW 95; a team under the direct supervision of Inspector Mohan Chand Sharma was formed by PW 95 Sanjeev Kumar Yadav to investigate the matter; informers were deployed and technical surveillance was mounted; during the course of investigation, on 19.09.2008 specific information was received by Inspector Mohan Chand Sharma that one Bashir @ Atif involved in serial blasts was staying at flat no. 108, L-18 Building, Batla House, Jamia Nagar; accordingly, Inspector Mohan Chand Sharma deployed some informers in that area to further develop the said information; on the same day i.e. 19.09.2008 at about 8-8:15 AM, Inspector Mohan Chand Sharma informed PW 95 Sanjeev Kumar Yadav, about said information received by him; PW 95 Sanjeev Kumar Yadav, was at his home when the information was received by him; PW 95 Sanjeev Kumar Yadav, directed Inspector Mohan Chand Sharma to constitute raiding team and conduct raid at the place where said person was staying and further told that PW 95 will be following them; PW 95 Sanjeev Kumar Yadav, also briefed senior officers regarding the said information. PW 95 Sanjeev Kumar Yadav further deposed that he proceeded to the said place and when he reached Jamia Nagar at about 11:15 AM, he received call from SI Dalip that shoot out had happened between police officials of raiding team and suspected terrorists/occupants of said flat; when PW 95 Sanjeev Kumar Yadav, reached the said place,

SI Dalip, HC Rajbir, HC Vinod Gautam, Ct.Rajiv and other staff met them outside building no. L-18; they pointed out the place of occurrence; PW 95 Sanjeev Kumar Yadav, alongwith staff immediately rushed to flat no. 108, 4th floor, L-18, Batla House, Jamia Nagar; SI Rahul Kumar met PW 95 outside the said flat and briefed him about the incident and situation in the flat; SI Rahul Kumar also informed PW 95 that some suspected terrorists were still hiding in the left side room of the said flat; PW 95 Sanjeev Kumar Yadav, also saw one of the terrorists lying on the floor of the flat in injured condition; thereafter, PW 95 Sanjeev Kumar Yadav, SI Rahul Kumar and HC Rajbir tried to enter the left side room of the flat to apprehend the suspected terrorist present there; during that course one of the terrorists fired on police while moving from the said room towards the door leading to balcony of that flat; in order to save themselves, police officials also resorted to fire in their self defence; following the firing by police officials, suspected terrorist fell down; then police officials again tried to enter the room but the said suspected terrorist who had fallen down on the floor of the flat again fired on police and during that course two bullets hit HC Rajbir and since, he was wearing bullet proof jacket, he did not sustain any injury; police officials again fired in their self defence; after one of the occupants sustained injuries, police officials were able to enter left side room; when they entered the room, they saw that another occupant of the room has confined himself inside the bathroom attached with that room after bolting the door from inside; PW 95 Sanjeev Kumar Yadav warned him to come out of the bathroom; he came out of the bathroom and surrendered before the police; he revealed his name as Md.

Saif; PW 95 Sanjeev Kumar Yadav apprehended him and on initial interrogation, he disclosed his involvement in serial blast cases that happened in Delhi and other parts of India; he further revealed the name of another occupant of that room who had sustained injury as Md. Sajid; he further revealed the name of other injured/occupant lying in the other portion of the flat as Md. Atif.

39. PW 95 Sanjeev Kumar Yadav further deposed that SI Ravinder Tyagi has informed the police and PCR van also reached the place of occurrence and they removed the said two injured to the hospital; in the meantime Inspector J.S. Joon from Police Station Jamia Nagar also reached there and Inspector J.S. Joon conducted cursory search of the flat and recovered one AK 47 rifle with two magazines having 30 live round cartridges in each magazine from under a mattress lying in the right side room of the flat; one .30 pistol was also recovered from near the injured persons; proceedings regarding the said recovery was conducted and completed by Inspector J.S.Joon; when the said proceedings was being conducted by Inspector J.S. Joon, PW 95 also started conducting relevant proceedings at the same time; firstly PW 95 arrested Md. Saif in FIR No. 166/08 PS Karol Bagh related to the blast occurred in the area of PS Karol Bagh; thereafter, on his sustained interrogation, Md. Saif apart from other things also disclosed the name of escaped terrorist as Ariz @ Junaid and Shahzad @ Pappu; in the meantime SI Rahul Kumar also handed over a written complaint to Inspector J.S. Joon for registration of FIR in the present case.

40. PW 95 Sanjeev Kumar Yadav further deposed that following the disclosure made by Md. Saif in case FIR No. 166/08 PS Karol Bagh, PW 95 at his instance recovered one passport of Shahzad @ Pappu from the place of occurrence and seized the same vide a separate seizure memo; PW 95 Sanjeev Kumar Yadav at the instance of Md. Saif also recovered one light brown colour purse containing Rs. 160/-, two photographs of accused Ariz @ Junaid, his two original marks sheets of UTP University, Lucknow of B-Tech 1st year (2005-06) and of second year (2006-07) having role no. 05083133007, his original character certificate dated 02.06.2003 issued from Jyoti Niketan School, Azam Garh, U.P., his original 10th class passed certificate issued from Jyoti Niketan School, Azam Garh, U.P., his original 12th class passed certificate issued from Jyoti Niketan School, Azam Garh, U.P. and his original 12th class statement of marks issued from Jyoti Niketan School, Azam Garh, U.P. from the place of occurrence and seized the same vide seizure memo Ex. PW23/C. PW 95 Sanjeev Kumar Yadav further deposed that documents pertaining to deceased and two escaped terrorists and a Nokia mobile phone were also recovered at the instance of Md. Saif vide seizure memo Ex. PW-23/A.

41. PW 95 Sanjeev Kumar Yadav further deposed that pursuant to his letter dated 30.10.2008 written to Vodafone in one of the cases pertaining to serial blasts, they provided to PW 95 details regarding subscribership of mobile no. 9811004309 alongwith CDR of relevant period; reply

received from Vodafone in this regard was proved as Ex. PW-23/F; documents belonging to accused Ariz @ Junaid recovered at the instance of Md. Saif were proved as Ex. PW-13/ A (colly); these documents were identified by PW 95 in the Court; mobile phone, SIM card and the battery which were recovered from the place of incident at the instance of Md. Saif were also identified by PW 95 in the Court as Ex. PW-23/A.

42. PW 95 Sanjeev Kumar Yadav further deposed that on 19.08.2009 on the asking of PW 95, SI Manjeet Singh, Incharge Interception Cell, Special Cell, Lodhi Colony provided to PW 95 intercepted calls pertaining to mobile no. 9811004309 which were already on interception; SI Manjeet Singh provided the said record/data to PW 95 in two separate DVD's make writex regular media 4.7 GB/120 minutes; both DVD's were having same contents; one of the said DVD was also identified by PW 95 in the Court.

43. In cross examination, PW 95 Sanjeev Kumar Yadav deposed that he conducted proceedings in respect of FIR No. 166/08 PS Karol Bagh in the drawing room and Inspector J.S. Joon was also conducting proceedings in the flat simultaneously. PW 95 Sanjeev Kumar Yadav further deposed that he left the spot after 9 PM on that day and his statement was recorded before he left the spot. PW 95 Sanjeev Kumar Yadav further deposed that his proceedings in respect of FIR No. 166/08 continued even after recording of his statement by Inspector J.S. Joon. PW 95 Sanjeev Kumar Yadav further deposed that he had not shared the information with Inspector J.S. Joon regarding recovery of said

photographs and said photographs were not published to facilitate apprehension of accused by PW 95. PW 95 Sanjeev Kumar Yadav volunteered to depose that later on when several other documents and photographs of accused were recovered during the course of investigation, they were shared with intelligence agencies. PW 95 Sanjeev Kumar Yadav deposed that he has not mentioned description of accused in any of the serial blast cases as they had several other photographs of accused with them which were found during the course of investigation.

44. PW 95 Sanjeev Kumar Yadav further deposed in cross examination that statement of Md. Saif was recorded by him before his statement u/s. 161 Cr.PC was recorded by Investigating Officer of the present case. PW 95 Sanjeev Kumar Yadav further deposed that he does not remember whether he has stated in his statement u/s. 161 Cr.PC that he interrogated Md. Saif and recorded his disclosure statement wherein he has stated names of two accused persons who had managed to escape from the flat in question. Attention of PW 95 was drawn to the statement dated 19.09.2008 recorded u/s. 161 Cr.PC wherein the said facts are not mentioned.

45. The fact that certain facts which came to the notice of PW 95 were not stated by him in his statement u/s. 161 Cr.PC will amount to omission but certainly will not amount to contradiction within the meaning of Section 145 of Indian Evidence Act and u/s. 162 of Cr.PC.

46. PW 95 Sanjeev Kumar Yadav further deposed that he does not remember whether he has mentioned name of escaped terrorists in his remand application dated 20.09.2008 moved in the Court of Id. Chief Metropolitan Magistrate for remand of Md. Saif and Jeeshan Ahmad in case FIR No.166/08. Photocopy of remand application dated 20.09.2008 was shown to witness and after going through the application witness admitted that it is the same application which he had filed and the said application was taken on record as Ex. PW95/DA. In the said application, name of two escaped terrorist are not mentioned.

47. PW 95 Sanjeev Kumar Yadav is the Investigating Officer of case FIR No. 166/08 PS Karol Bagh. Not mentioning names of two escaped terrorists in the remand application filed before Id. Chief Metropolitan Magistrate is not breach of law or procedure and accused cannot take advantage of same.

48. PW 81 Inspector J.S. Joon is the first Investigating Officer of this case. On 19.09.2008, PW 81 Inspector J.S. Joon was posted at PS Jamia Nagar; on that day, an information about firing going on near Khalilullah Masjid, Batla House, Jamia Nagar was received in PS Jamia Nagar; the said information was diarized as DD No. 10/A Ex. PW-50/B and was brought to the notice of PW 81 who immediately recorded DD No. 14/A Ex. PW-3/A and reached the place of incident alongwith other police officials and found that police officials from Special Cell including SI Rahul Kumar were present there; SI Rahul Kumar informed PW 81

Inspector J.S. Joon that a team of Special Cell led by Inspector Mohan Chand Sharma has come there pursuant to specific information about presence of suspected militants in top floor i.e. flat no. 108, L-18 Building, Batla House, Jamia Nagar and that when they reached there, police encounter had happened in which Inspector Mohan Chand Sharma and HC Balwant and two suspected terrorists had sustained injuries and they had already been sent to different hospitals.

49. PW 81 Inspector J.S. Joon *inter alia* deposed that during cursory inspection of place of incident, blood was found lying on the floor of flat in the drawing room near front door and .30 bore pistol was found lying on the floor of drawing room; another .30 bore pistol was found lying on the floor in left side of the room and one AK serial assault rifle and two loaded magazines containing 30 live cartridges each were also found lying beneath the folded mattress in the right side of the flat; empty/spent cartridges of .9 mm bore and .30 bore and AK series rifle were also found lying in the flat.

50. PW 81 Inspector J.S. Joon further deposed that SI Rahul Kumar gave a complaint Ex. PW-8/C at about 3:30 PM; PW 81 Inspector J.S. Joon made endorsement Ex. PW-66/A and gave the ruqqa to Ct. Ramphal for getting the FIR registered; Ct. Ramphal left the scene of crime at about 4 PM for PS Jamia Nagar. PW 81 Inspector J.S. Joon further deposed that he took into possession arms and ammunition found lying at the scene of crime; pistol found lying in drawing room was seized vide seizure memo

Ex. PW-8/H; PW 81 Inspector J.S. Joon also took into possession AK serial rifle two magazines loaded with 30 round each from underneath the folded mattress kept in the right side room of the flat and seized the same vide seizure memo Ex. PW-8/D. PW 81 Inspector J.S. Joon also seized pistol and magazine found lying in the left side room of the flat in question vide seizure memo Ex. PW-8/I. PW 81 Inspector J.S. Joon also took into possession used cartridges 30 in number found lying on the scene of crime. PW 81 Inspector J.S. Joon also took into possession 13 fired bullets and put them in a small vial (shishi) and seized the same vide seizure memo Ex. PW-8/K. In the meantime, Ct. Ramphal returned to the spot and handed over copy of FIR and ruqqa to PW 81.

51. PW 81 Inspector J.S. Joon further deposed that when he was conducting the proceeding at the spot, HC Rajbir also returned from Holy Family Hospital and handed over bullet proof jacket which he was wearing at the time of shoot out to PW 81; upon cursory look at the jacket, PW 81 noticed that it was having two bullet marks in which two fired bullets were entangled; ASI Sant Pal also came back at the spot and handed over one sealed parcel sealed with the seal of Holy Family Hospital to PW 81 stated to have contained the wearing clothes of Inspector Mohan Chand Sharma. PW 81 Inspector J.S. Joon further deposed that on the same day, he received an information that Inspector Mohan Chand Sharma has succumbed to injuries and accordingly, he added Section 302 IPC in the matter.

52. PW 81 Inspector J.S. Joon further deposed that on 20.09.2008, he alongwith SI Praveen Vats went to the mortuary of AIIMS, Trauma Centre and pursuant to his application Ex PW-66/D, postmortem on the body of deceased Inspector Mohan Chand Sharma was conducted; postmortem report Ex. PW-19/C was prepared; on 22.09.2008, PW 81 Inspector J.S. Joon alongwith SI Praveen Vats again visited Trauma Centre, AIIMS and got postmortem on the bodies of suspected militants namely Md. Sajid and Md. Atif conducted. PW 81 Inspector J.S. Joon further deposed that a board was constituted for conducting aforesaid postmortem pursuant to his application Ex. PW-66/G moved by PW 81.

53. PW 81 Inspector J.S. Joon lastly deposed that after aforesaid proceedings were conducted by him, investigation was transferred to Crime Branch and he handed over the case file alongwith complete documents to MHC (R) PS Jamia Nagar.

54. During cross examination, PW 81 Inspector J.S. Joon deposed that till the time, he remained at the spot physical description of suspected terrorists did not come to his knowledge. PW 81 Inspector J.S. Joon further deposed in cross examination that ACP Sanjeev Kumar Yadav did not tell him that one purse containing two photographs were recovered from the flat in question. PW 81 Inspector J.S. Joon further deposed that no-one including police officials have stated to him that personal belongings of accused Ariz Khan were recovered. PW 81 Inspector J.S. Joon further deposed that he also did not recover any such article.

55. PW 86 Inspector Satish Sharma is the second Investigating Officer to whom investigation of this case was assigned on 01.10.2008. PW 86 Inspector Satish Sharma *inter alia* deposed that on 01.10.2008, he alongwith SI Naresh Solanki and other staff went to the office of Special Cell, Lodhi Colony and met members of team who had conducted raid at the scene of crime and members of team handed over the weapons they carried and used during the course of raid and shoot out to PW 86 in the presence of SI Naresh Solanki. PW 86 Inspector Satish Sharma further deposed that on 05.01.2009, he has seized photocopy of seizure memos Ex. PW-23/A, Ex. PW-23/B, Ex. PW-23/C, Ex PW-23/D, Ex. PW-23/E and Ex. PW-8/U regarding seizure of documents belonging to accused, deceased (Atif and Sajid) and Md. Saif & Jeeshan Ahmad, mobile phones including Nokia 1209 mobile phone of Navy Blue and Grey Colour having vodafone SIM card belonging to Atif Ameen which was used by him and his associates. PW 86 Inspector Satish Sharma further deposed that he came to know that said mobile phone was being used by accused Ariz Khan during his stay in the flat in question. PW 86 Inspector Satish Sharma further deposed that he seized the aforesaid documents from ACP Sanjeev Kumar Yadav.

56. PW 86 Inspector Satish Sharma further deposed that during the course of investigation he has also sent request letter 28.04.2009 written by Sh. Bhairon Singh Gujjar, the then Addl. DCP, requests dated 01.07.2009 and 17.07.2009 both written by Sh. Rajender Bakshi, the then

ACP/ISC Crime Branch, Delhi for obtaining subsequent opinion as well as opinion with regard to the queries raised vide aforesaid application from the Head of Department Forensic Medicine, AIIMS, New Delhi; pursuant to said requests, the opinion Ex. PW-27/A, reply of the questionnaires dated 10.06.2009, reply of questionnaires pursuant to letter dated 17.07.2009 Ex. PW-47/C and subsequent opinion dated 27.04.2010 Ex. PW-27/D were prepared by Department of Forensic Medicine, AIIMS, New Delhi and given to PW 86. PW 86 Inspector Satish Sharma further deposed that team of experts from Department of Forensic Medicine, AIIMS, New Delhi reconstructed sequence of events pertaining to present case on the basis of versions given by eye witnesses and prepared a CD in this regard. PW 86 Inspector Satish Sharma collected the said CD Ex. PW-68/Y alongwith forwarding letter Ex. PW-27/E.

57. Depositing about the steps taken for arrest of accused Ariz Khan and coercive process issued against him, PW 86 Inspector Satish Sharma deposed that on 06.02.2009 he got NBW's against Shahzad Ahmad and accused Ariz Khan @ Junaid vide his application Ex. PW-86/D; NBW's were assigned to SI Naresh Solanki for execution and report on warrants Ex. PW-15/B and Ex. PW-15/C were filed by PW 86.

58. PW 86 Inspector Satish Sharma further deposed that pursuant to his application dated 20.10.2009 Ex. PW-86/E process u/s. 82 Cr.PC was also issued against Shahzad and Ariz Khan; process u/s. 82 Cr.PC was assigned to SI Naresh Solanki who filed his report Ex. PW-15/D and Ex.

PW15/E. PW 86 Inspector Satish Sharma also got the process u/s. 82 Cr.PC issued against Shahzad and Ariz Khan published vide publication Ex. PW-51/F.

59. PW 86 Inspector Satish Sharma further deposed that pursuant to his application Ex. PW-86/G process of attachment u/s. 83 Cr.PC was issued against Shahzad and Ariz Khan vide order on his application Ex. PW-86/G. The said process was assigned to SI Naresh Solanki who executed the same and filed his report Ex. PW-51/G and Ex. PW-51/H. PW 86 Inspector Satish Sharma further deposed that both Shahzad and Ariz Khan were declared proclaimed offenders.

60. PW 86 Inspector Satish Sharma further deposed that he has also collected complaint u/s. 195 Cr.PC Ex.PW60/A given by Sh. Alok Kumar, the then DCP, Special Cell.

61. PW 86 Inspector Satish Sharma was cross examined at length by Mr. M.S. Khan, ld. counsel for accused. In cross examination, PW 86 deposed that he had not recorded statement of any occupant or any other person to the effect that as to how many persons were residing in the building, how many persons were missing and how many flats were occupied. PW 86 Inspector Satish Sharma volunteered to depose that no-one was willing to give any such statement. PW 86 Inspector Satish Sharma further deposed in cross examination that there is only one entrance and exit in the building in question. PW 86 Inspector Satish

Sharma further deposed in cross examination that when case file was handed over to him on 01.10.2008 for further investigation, it did not contain any statement or document showing recovery of purse containing photograph of Ariz Khan. PW 86 Inspector Satish Sharma denied the suggestion that at the instance of ACP Sanjeev Kumar Yadav, he recorded his statement u/s. 161 Cr.PC on 05.01.2009 in order to plant the purse and photographs of Ariz Khan. PW 86 Inspector Satish Sharma deposed in cross examination that he had also recorded statement of ACP Sanjeev Kumar Yadav on 18.10.2008 wherein there is no such mention of recovery of purse of Ariz Khan. PW 86 Inspector Satish Sharma volunteered to depose that said statement is in regard to different fact. PW 86 Inspector Satish Sharma finally deposed that in none of the statements found on record in the case file which was handed over to him, the description of escaped terrorists were not there.

62. Case was assigned to PW 88 Inspector R. Srinivasan for further investigation. PW 88 Inspector R. Srinivasan *inter alia* deposed that on 23.02.2018 a call vide DD No. 8 Ex. PW-71/C was received in the office of STF Crime Branch regarding arrest of accused Ariz Khan @ Junaid @ Salim by the police officials of Special Cell staff in case FIR No. 50/14 PS Special Cell, New Delhi; PW 88 talked to Inspector Ravinder Joshi and came to know from Inspector Ravinder Joshi that accused was to be produced before the designated court of Sh. Sidharth Sharma, the then Id. ASJ, Patiala House Court, New Delhi on the same day; thereafter, PW 88 alongwith other police officials reached the said court at Patiala House;

when they reached there, Sh. Govind Sharma, ACP Special Cell, NDR produced the accused in muffled face; PW 88 Inspector R. Srinivasan collected copy of FIR No. 50/14 and moved an application Ex. PW-88/A seeking direction of the Court to produce the accused before the concerned Court of CMM, South-East, Saket, New Delhi; pursuant to the said application Ex. PW-88/A, Sh. Sidharth Sharma, the then Id. ASJ, Patiala House Court, New Delhi passed the order Ex. PW-88/B directing the police officials of Special Cell to produce the accused before the Court of CMM, South-East, Saket Courts; thereafter, accused was produced before the Court of Id. CMM, South-East, Saket Courts and PW 88 Inspector R. Srinivasan moved an application Ex. PW-88/C seeking permission to interrogate accused and the said application was allowed; PW 88 Inspector R. Srinivasan interrogated the accused and arrested him vide arrest memo Ex. PW-76/A; PW 88 Inspector R. Srinivasan moved an application Ex. PW-47/A for conducting TIP of accused; the said application was marked to Id. Link M.M. Sh. Harun Pratap; however, accused refused to participate in TIP; PW 88 Inspector R. Srinivasan obtained copy of TIP proceedings Ex. PW-47/B vide his application Ex. PW-47/C; thereafter, PW 88 Inspector R. Srinivasan moved an application and obtained 10 days police custody remand of accused.

63. PW 88 Inspector R. Srinivasan further deposed that on 28.02.2018 during the course of police custody remand, accused pursuant to his disclosure statement, led the police team comprising PW 88, Inspector Kailash Chand, HC Dharamvir and other police officials to a pulia of a

canal little before Braoatha Village on Ramgarh Road, Aligarh, U.P. and from there he further led the police party to a passage on the right side of the said pulia at a distance of 150/200 meters and pointed out a place on the left side of the said canal disclosing that it was the same place where he had thrown the revolver used by him after the commission of crime; PW 88 Inspector R. Srinivasan prepared pointing out memo Ex. PW-76/D.

64. PW 88 Inspector R. Srinivasan further deposed that on 05.03.2008, he produced the accused before the Court of Id. CMM, South-East, Saket Courts, New Delhi after completion of police custody remand and also moved an application Ex. PW-47/D for taking voice sample of accused; the said application was marked to Id. Link M.M Sh. Harun Pratap; however, accused refused to give his voice sample and proceedings in this regard Ex. PW-47/E in this regard were conducted.

65. PW 88 Inspector R. Srinivasan further deposed that on 16.04.2018, he alongwith HC Dharamvir went to the office of Special Cell, NDR, Lodhi Colony, New Delhi where Sh. Govind Sharma, ACP Special Cell, NDR had produced the photocopies of relevant documents which were seized vide seizure memo Ex.PW-71/D. PW 88 Inspector R. Srinivasan further deposed that on 20.04.2018 he has collected list of previous involvement of accused Ex.PW-88/E from MCH (R), Special Cell, NDR, New Delhi. PW 88 Inspector R. Srinivasan lastly deposed that he prepared supplementary charge sheet qua accused Ariz Khan and submitted the same in the Court.

66. PW 71 Govind Sharma, ACP Special Cell, New Delhi was the Investigating Officer of case FIR No. 50/14 u/s. 18 UA(P)A and 120-B IPC, *inter alia* deposed that on 14.02.2018, he arrested accused Ariz Khan @ Junaid @ Salim vide arrest memo Ex. PW-71/A; PW 71 Govind Sharma interrogated accused Aria Khan @ Junaid @ Salim and he disclosed his involvement in the present case vide disclosure statement Ex. PW-71/B; on 31.03.2018, PW 71 had prepared transcription of intercepted calls made by accused Ariz Khan @ Junaid @ Salim running into 41 pages in case FIR No. 130/08 PS Greater Kailash from copy of DVD prepared from the original DVD containing intercepted conversation of the said accused; on 06.04.2018, PW 71 moved an application Ex. PW-59/D in the Court of Sh. Sidharth Sharma, the then Id. ASJ, Patiala House Court for providing original DVD containing intercepted conversation of accused Ariz Khan @ Junaid @ Salim and same was attached with the judicial file of FIR No. 166/08.

67. PW 71 Govind Sharma further deposed that on his direction SI Manoj had obtained the original DVD marked as DVD-II containing intercepted calls made by accused Ariz Khan @ Junaid @ Salim from the Court of Sh. Sidharth Sharma, the then Id. ASJ. PW 71 Govind Sharma handed over various documents including order dated 15.03.2018 Ex. PW-59/A passed by Id. ASJ Patiala House Court whereby accused gave his consent for giving his voice sample to Inspector R. Srinivasan who seized the same vide seizure memo Ex. PW-71/D. Copy of cell ID chart

running into 85 pages produced by PW 71 Govind Sharma to Inspector R. Srinivasan was seized vide seizure memo Ex. PW -71/D to Ex. PW-71/E.

68. Other members of raiding party viz. PW 33 ASI Satender, PW 37 HC Udaiveer, PW 85 SI Ravinder Tyagi, PW 97 SI Davinder deposed on similar lines and hence, their depositions need not to be discussed in detail.

69. PW 46 Inspector Sanjay Dutt was informed by Inspector Mohan Chand Sharma on 19.09.2008 that Atif involved in Delhi blasts was staying at Batla House. PW 46 Inspector Sanjay Dutt immediately reached Special Cell office and by that time two raiding teams had already left the office. PW 46 Inspector Sanjay Dutt was informed on phone about the shoot out. PW 46 Inspector Sanjay Dutt reached Holy Family Hospital and signed the consent form at the time of admission of Inspector Mohan Chand Sharma at the hospital.

70. PW 47 Sh. Harun Pratap, the then Id. Metropolitan Magistrate proved TIP proceedings as Ex. PW-47/B and deposed that accused was produced before him for TIP and on inquiry accused refused to join TIP proceedings. PW 47 Sh. Harun Pratap further deposed that an application Ex. PW47/D was also filed before him seeking direction to accused to give his voice sample and on inquiry accused refused to give his consent. PW 47 Sh. Harun Pratap disposed of the application vide order dated 05.03.2018 Ex. PW-47/E.

71. PW 3 ASI Saroj Bala was posted as Duty Officer at PS Jamia Nagar on 19.09.2008. PW 3 ASI Saroj Bala registered the FIR on the basis of ruqqa Ex. PW8/C brought by Ct. Ramphan sent by Inspector J.S. Joon. Copy of FIR was proved as Ex. PW-50/A. PW 3 ASI Saroj Bala also proved DD No. 10A regarding the information received from PCR call at 11:13 AM.

72. PW 8 ASI Chhaju Ram was Incharge of PCR van Eagle-25 and reached the spot on receiving the call and shifted one of the militants to Trauma Centre.

73. PW 9 ASI Nathi Ram was Duty Officer at PCR van Eagle -25 and reached the spot after receiving the call and shifted one of the injured militants to Trauma Centre.

74. PW 15 Dr. Ovais Malik informed PCR at 100 number about firing at the spot.

75. PW 51 SI Naresh Sangwan executed process u/s. 82 & 83 Cr.PC against accused Ariz Khan and pursuant thereto accused was declared proclaimed offender on 03.07.2009.

76. PW 54 HC Satpal produced list of cases Ex. PW-54/A of cases in which accused is previously involved.

77. PW 60 Mukesh Kumar, Junior Judicial Assistant in the office of Id. Chief Metropolitan Magistrate, Patiala House Courts came in witness box and submitted that complaint u/s. 195 Cr.PC filed in case FIR No. 208/08 u/s. 186/353/332/307/302/34 PS Jamia Nagar is not traceable as per record.

78. PW 62 Satish Kumar, Judicial Assistant in the office of Id. Chief Metropolitan Magistrate, Central District deposed about entry in daily register regarding receipt of original complaint u/s. 195 Cr.PC.

79. PW 65 Sh. Alok Kumar, DCP (Central) deposed about filing of complaint u/s. 195 Cr.PC in the office of Id. Chief Metropolitan Magistrate (Central) and proved copy of complaint as Ex. PW-60/A.

80. PW 64 Deepak, Nodal Officer, Vodafone Mobile Service Ltd. deposed that he has seen documents Ex. PW23/F, call detail record of mobile no. 9811004309 bearing signatures of Jyotish Chander Mohrana. PW 64 identified his signatures on the said documents as he has seen him right and signing during his duty at Vodafone Mobile Service Limited. PW 64 Deepak further deposed that on 11.05.2012 during the course of his deposition in this case, he has also produced call detail record of mobile no. 9811004309 subscribed in the name of Md. Atif Ameen as Ex. PW-25/A for a period of 01.08.2008 to 29.09.2008, customer application form of said subscriber as Ex.PW-25/B. Copy of ID and address proof of

said subscriber i.e. driving licence was proved as Ex. PW25/C. PW 64 also proved other documents relating to mobile no. 9811004309. PW 64 Deepak also proved his certificate u/s. 65B of Indian Evidence Act as Ex. PW-25/I. PW 64 Deepak further deposed that he has seen cell ID chart Mark 71/E (running into 85 pages) bearing signatures of Jyotish Chander Mohrana, the then Nodal Officer and seal of company i.e. Vodafone Essar Mobile Service Ltd. PW 64 Deepak deposed that he identified signatures of Jyotish Chander Mohrana as he has seen him right and signing during the course of his official duty as Nodal Officer. PW 64 Deepak further deposed that as per covering/forwarding letter dated 07.11.2008 Ex. PW-23/F, Jyotish Chander Mohrana has also proved certified copy of call ID chart to the ACP.

81. PW 66 Vishal Gaurav, Nodal Officer proved customer application form pertaining to mobile no. 9793066723 subscribed in the name of Shiraj Ahmad as Ex. PW24-A. PW 66 Vishal Gaurav also proved customer application form in respect of same mobile number as Ex. PW-24/H.

82. PW 75 Inspector Naresh Solanki joined investigation with Investigating Officer and in his presence weapons were seized by Investigating Officer form members of raiding teams.

83. PW 78 Fr. Prakash Dass, Principal Jyoti Niketal School, Atlas Tank, Azamgarh, U.P. deposed that letter Ex. PW-17/A sent by Govind Sharma,

ACP Special Cell addressed to the Principal Jyoti Niketal School, Atlas Tank, Azamgarh, U.P. was received in the office of his school for verification of documents mentioned therein. Original of documents were also provided to the school for ready reference. PW 78 Fr. Prakash Dass verified the aforesaid documents on the basis of record available with the school and found them to be genuine. The documents verified by PW 78 Fr. Prakash Dass are originals of 10th class pass, 12th class certificates, statement of marks issued by ICSE and original character original issued by Jyoti Niketan School. PW 78 Fr. Prakash Dass proved the reply qua verification of aforesaid documents as Ex. PW-78/E bearing his signatures and seal of the school at point A.

84. PW 78 Fr. Prakash Dass further deposed that accused Ariz had taken admission in Jyoti Niketal School, Atlas Tank, Azamgarh, U.P. in class 2nd on 07.04.1992 and studied in the school upto class 12th. Copy of admission form qua admission of accused and transfer certificate filed at the time of admission were taken on record as Ex. 78/F (originals were seen and returned).

85. PW 79 Dr.A.K. Gautam, Principal SD College of Engineering and Technology, Muzaffar Nagar, U.P. deposed that on 24.05.2018 letter Ex. PW-71/I addressed to Principal of SD College of Engineering and Technology, Muzaffar Nagar, U.P. was received in the office of said college for verification of two documents described therein. Originals of documents were also provided to the college for verification. PW 79 Dr.

A.K. Gautam verified aforesaid documents i.e. statement of marks of B.Tech 1st year examination and statement of marks of B.Tech 2nd year examination of the student namely Ariz Khan and found them to be genuine.

86. PW 79 Dr. A.K. Gautam submitted reply Ex. PW-79/C qua verification of documents to the police. PW 79 Dr. A.K. Gautam also proved copy of admission form Ex. PW-79/D with regard to admission of student Ariz Khan. PW 79 Dr. A.K. Gautam deposed that aforesaid student had taken admission in the college in B.Tech (IT) Course in the year 2005.

Scientific Evidence

87. PW 93 Mr. Karnail Singh, the then Joint Commissioner of Police, Special Cell, New Delhi received request duly forwarded by DCP Special Cell for granting an urgent necessary permission for interception of mobile no. 9811004309 and IMEI no. 353541021762780 as he was the designated nodal officer to deal with the issue of interception of mobile numbers required for investigation. PW 93 Mr. Karnail Singh after receiving aforesaid request from DCP Special Cell sought the approval of Commissioner of Police and issued order Ex. PW93/A dated 01.09.2008 to the nodal officers of Vodafone, Idea, MTNL, Airtel Delhi for

monitoring the aforesaid mobile number and IMEI number. PW 93 Mr. Karnail Singh after receiving formal written approval from Commissioner of Police, moved a proposal alongwith requisite performa and sent the same to competent authority i.e. Sh. G.S. Patnaik, Principal Secretary (Home), Govt. of NCT of Delhi for necessary post regular approval for interception of said mobile number and IMEI number.

88. PW 53 Sh. G.S. Patnaik, who was then posted as Principal Secretary (Home), Govt. of NCT of Delhi, received a request from Joint Commissioner of Police, Special Cell dated 03.09.2008 and passed order Ex. PW67/A permitting interception of messages and calls of mobile no. 9811004309.

89. PW 80 SI Manjit Sharma was serving as Incharge, Interception Exchange on 19.08.2009 and his duty was to feed/put the landline telephone/mobile numbers on computer server meant for interception pursuant to an order issued by competent authority received from PHQ, Delhi. PW 80 SI Manjit Sharma deposed that on 19.08.2009, ACP Sanjeev Kumar Yadav came to him and asked him to provide intercepted calls record pertaining to mobile no. 9811004309 belonging to vodafone company for the period from 01.09.2008 to 19.09.2008. As per the deposition of PW 80 SI Manjit Sharma the said mobile phone number was already on interception pursuant to an order received from competent authority in this regard. PW 80 SI Manjeet Sharma further deposed that pursuant to said request made by ACP Sanjeev Kumar Yadav, he directly

transferred the data of intercepted calls pertaining to said mobile number from computer server in two DVDs and handed over the same to ACP Sanjeev Kumar Yadav. The contents/data of both DVDs were same. PW 80 SI Manjit Sharma further deposed that he provided the said data in two DVDs for the reason that if one DVD fails to play, the other may be played for analysis of its contents. PW 80 SI Manjit Sharma further deposed that said DVDs were taken into possession by ACP Sanjeev Kumar Yadav in FIR No. 166/08. Deposition of PW 80 SI Manjit Sharma was corroborated by PW 95 ACP Sanjeev Kumar Yadav.

90. SI Manoj Kumar (PW 59) deposed that on 27.03.2008 ACP Govind Sharma (PW71) Investigating Officer of case FIR No. 130/08, PS Greater Kailash handed over to him an order dated 15.03.2018 Ex. PW-59/A containing direction to CFSL, Lodhi Road for making necessary arrangement for recording voice sample of accused Ariz Khan @ Junaid, photocopy of transcript running into 41 pages Ex. PW-59/B, one brand new 4 GB micro SDHC card make Senses alongwith an application addressed to CFSL, Lodhi Road for taking voice sample of accused pursuant to said order. On the direction of ACP Govind Sharma (PW 71), PW 59 SI Manoj Kumar alongwith SI Alok and other police officials took the accused to CFSL, Lodhi Road and produced him before Sh. Arun Kumar Gupta, Senior Scientific Assistant (Phys.) PW 59 SI Manoj Kumar handed over the photocopy of transcript running into 41 pages and said micro SD card to Sh. Arun Kumar Gupta. After obtaining consent of accused, Sh. Arun Kumar Gupta recorded his voice sample in the said 4

GB micro SDHC card make Senses. Sh. Arun Kumar Gupta handed over the same card to PW 59 SI Manoj Kumar who kept the same in a white envelop and seized the same vide seizure memo Ex. PW 59/C. On 06.04.2018, PW 59 SI Manoj Kumar accompanied ACP Govind Sharma (PW 71) to the Court of Sh. Sidharth Sharma, the then Id. ASJ, Patiala House Courts, where ACP Govind Sharma (PW 71) filed an application seeking direction to make available one DVD containing interception calls pertaining to mobile no. 9811004309. The said application was allowed and PW 59 SI Manoj Kumar received the DVD containing intercepted calls pertaining to mobile no. 9811004309 which was marked as PW-162/B. PW 59 SI Manoj Kumar further deposed that he deposited the said DVD in the malkhana of Special Cell. PW 59 SI Manoj Kumar further deposed that on 16.04.2018, on the direction of ACP Govind Sharma (PW 71), he collected the said DVD and said SD card containing the recording of intercepted calls and voice sample of accused from MHC (M) Special Cell and carried the same to CFSL, Lodhi Road.

91. Arun Kumar Gupta, Sr. Scientific Assistant (Phys.), CFSL, CBI, New Delhi (PW 70) deposed that on 27.03.2018, SI Manoj Kumar and SI Alok Kumar alongwith some constables from PS Special Cell NDR, New Delhi had brought accused Ariz @ Junaid for taking specimen of his voice pursuant to an order passed by Id. ASJ, Patiala House Court. A written request for taking specimen voice of the accused was also filed in the office of Director CFSL by said police officials on behalf of ACP Govind Sharma. PW 70 Arun Kumar Gupta obtained written consent from

accused Ariz Khan for giving his specimen of voice and accused consented for the same. Thereafter, PW 70 recorded voice of accused Ariz @ Junaid in micro SD card brought by SI Manoj Kumar. PW 70 Arun Kumar Gupta again checked the micro card by playing the same on IC DVR to find out whether the voice sample of accused was recorded properly or not and it was found that voice sample of accused was recorded properly in the said micro SD card. PW 70 Arun Kumar Gupta handed over said micro SD card containing specimen voice of accused to SI Manoj Kumar who seized the same vide seizure memo Ex. PW-59/C.

92. Amitosh Kumar, Sr. Scientific Officer (Phys.), CFSL, CBI, New Delhi (PW 74) was assigned the task of voice examination. PW 74 Amitosh Kumar deposed that on 16.04.2018, two parcels containing DVD which was marked as Q1 and micro SD card which was marked as S1 were received in FSL. As per deposition of PW 74, DVD Ex. Q1 was found to have contained 5144 audio files and out of which 48 audio files were found to be relevant as per aforesaid transcription and queries raised by forwarding authority. PW 74 Amitosh Kumar deposed that after comparing and identifying the questioned voice with specimen voice, it was found that the question voice marked as Ex. Q-1 (1)(A) to Ex. Q-1(1)(A) and the specimen voice marked as Ex. S-1(1)(A) were of same person namely Ariz Khan @ Junaid @ Anna @ Salim on the basis of auditory and spectrographic examination. PW 74 Amitosh Kumar prepared his report Ex. PW71/G.

93. PW 39 Dr. Mala Saini, Sr. CMO Holy Family Hospital proved MLC as Ex. PW-63/B of Inspector Mohan Chand Sharma prepared by Dr. Ashok Kumar. PW 39 Dr. Mala Saini also proved medical certificate of death Ex. PW-63/C with regard to death of Inspector Mohan Chand Sharma.

94. PW 40 Dr. Rajive Sethi, Sr. Consultant Surgeon, Holy Family Hospital was part of team which conducted operation on Inspector Mohan Chand Sharma and prepared death summary of Inspector Mohan Chand Sharma as Ex. PW-18/A.

95. PW 41 Dr. T.D.Dogra, Rtd. Professor, Head of Department Forensic Medicines AIIMS constituted board of experts consisting of himself, Dr. Tabin Millo, Dr. Adarsh, Dr. S.Lalwani, Dr. Anupam Raina, Mr. N.B. Vardhan, Dr. D.N. Bhardwaj and Sh. D.K. Tanwar. PW 41 Dr. T.D. Dogra deposed that on 17.07.2009 the board met and gave detailed opinion Ex. PW-27/A, reply to questionnaires asked by Investigating Officer was proved as Ex. PW-27/B. PW 41 Dr. T.D.Dogra further deposed that another questionnaire which was received by the board from Sh. Rajender Bakshi/ACP Crime Branch, and answers to the questionnaire were proved as Ex. PW-27/C duly signed by experts. PW 41 Dr. T.D.Dogra proved letter received from Sh. Bhairo Singh Gujjar dated 28.04.2009 regarding subsequent opinion on postmortem reports of Inspector Mohan Chand Sharma, Md. Atif Ameen and Md. Sajid as Ex. PW-47/A. PW 41 Dr. T.D.Dogra in cross examination denied the

suggestion that injuries to Inspector Mohan Chand Sharma were caused by official pistol of 9 mm of police officials accompanied him.

96. PW 42 Dr. Arvind Kumar, Professor Forensic Medicine Lady Harding Medical College, New Delhi, was posted as Sr. Resident in the department of Forensic Medicine JPNATC AIIMS on 22.09.2008; on that day, he conducted postmortem on the body of Md. Atif Ameen with Dr. Adarsh Kumar and Dr. Bharat Verma; PW 42 proved postmortem report as Ex PW-19/A; on the same day, PW 42 alongwith Dr. Bharat Verma and Dr. Adarsh conducted postmortem on the body of Md. Sajid ; PW 42 proved the postmortem report as Ex. PW-19/B.

97. On 20.09.2008, PW 42 Dr. Arvind Kumar alongwith Dr. Sanjay Lalwani and Dr. Susheel Sharma conducted postmortem on the body of deceased Inspector Mohan Chand Sharma and prepared postmortem report Ex. PW-19/C. Cause of death in the postmortem of Inspector Mohan Chand Sharma was opined as hemorrhage shock due to firearm ammunition injury in abdomen as mentioned in postmortem report which is sufficient to cause death in ordinary course of nature. PW 42 Dr. Arvind Kumar described co-relation of postmortem findings as under :

(i) Injury no. 1 as mentioned in PM report could be entry wound of firearm and injury no. 2 could be exit of wound of injury no.1.

(ii) Injury no. 5 as mentioned in PM report could be entry wound of firearm and injury no. 6 could be exit wound related to injury no. 5.

(iii) Injury no. 4 could be due to surgical intervention (abdominal drainage tube).

98. As per postmortem report, time since death was about 16 hours. PW 42 Dr. Arvind Kumar further deposed that he alongwith other doctors also prepared sketch diagram of injuries present over the body of deceased Inspector Mohan Chand Sharma and same was proved as Ex. PW-19/D. PW 42 Dr. Arvind Kumar further deposed that on 15.05.2009, he gave his subsequent opinion Ex. PW-19/E on the MLC of injured Balwant on the request of IO Inspector Satish Sharma. PW 42 Dr. Arvind Kumar further deposed that after perusing the copy of MLC, discharge summary and OPD treatment report of injured Balwant, PW 42 was of the considered opinion that nature of injuries in this case was grievous and could have been caused by gun shots. In cross examination, PW 42 Dr. Arvind Kumar denied the suggestion that size of entry wound is always smaller as compare to exit wound in case of gun shot injury.

99. PW 43 A. Dey, Principal Scientific Officer cum Assistant Chemical Examiner, CFSL, CBI, New Delhi alongwith other team members of experts from CFSL, CBI, New Delhi visited the scene of crime, carried out inspection of scene of crime from 10:30 AM to 3:30 PM and detailed report qua the said inspection was prepared by PW 43. The said report was not on record. At the request of Id. Addl. Public Prosecutor, duplicate/office report of CFSL record was taken on record as Ex. PW-43/A.

100. PW 43 A. Dey further deposed that on 27.10.2008, 56 parcels containing arms and ammunition including parcels to biology division were received in sealed condition and the parcel containing arms and ammunition were marked to PW 43 for examination. PW 43 A. Dey examined those arms and ammunition and gave his report Ex. PW-36/B. PW 43 A. Dey deposed that after examination of aforesaid arms and ammunition, he found all of them to be in working condition, fired cartridges cases examined by PW 43 were found matching with respective arms, similarly fired bullets and fragmented pieces examined by PW 43 were also found matching with the respective firearms examined by PW 43.

101. PW 45 Dr. Sanjeev Lalwani, Professor, Forensic Medicine, JPN Apex Trauma Centre, AIIMs, New Delhi examined clothings of Inspector Mohan Chand Sharma and HC Balwant and gave his report as Ex. PW-27/D.

102. After conclusion of prosecution evidence, entire evidence and incriminatory circumstances were put to accused Ariz Khan as he was examined u/s. 313 Cr.PC wherein accused denied all evidence and incriminatory circumstances submitting that he has been falsely implicated in the present case.

103. One defence witness namely Dr. Mirza Azam Beg was examined

on behalf of accused as DW 1. DW 1 Dr. Mirza Azam Beg *inter alia* deposed that since 2000, he has been residing in Delhi and during this period, Ariz who is his Bhanza (sister's son) also used to come and stay with him during his studies; Ariz lastly resided with DW 1 in the year 2008; earlier Ariz was pursuing Engineering course in Mujjafarnagar, U.P. and after he left the said course, he returned to Delhi and started staying with DW 1 for further studies. DW 1 Dr. Mirza Azam Beg further deposed that in the morning of 19th September 2008, when he was leaving for his hospital, he saw Ariz brushing his teeth; when DW 1 reached hospital, he came to know about the encounter at Batla House through TV news; there was also headline in TV regarding involvement of people from Azamgarh, U.P.; after knowing this, DW 1 left his hospital in the afternoon and came back home; when DW 1 came back, it came to his notice that police officials were enquiring and visiting all persons belonging to Azamgarh and staying in the vicinity of Okhla; in the evening hours on the same day, 10-15 police officials came to his house and enquired about DW 1, his family and persons residing with DW 1 including accused Ariz; first they inquired about occupants; they also demanded the photographs of accused; DW 1 told that he did not have any such photographs and DW 1 further told them they may check his belongings which were lying in his house; police officials took away all belongings of Ariz and no documents were prepared in this regard.

104. In cross examination, DW 1 deposed that distance between the place of incident and his house must be about one and half kilometer. DW 1

also deposed in cross examination that he does not know what articles/items were there in the alleged bag which was taken away by police from his house.

Consideration of rival submissions and appreciation of evidence.

105. Arguments addressed and submissions made by Mr. A.T. Ansari, Id. Addl. Public Prosecutor may be noted down as under :

106. 39 persons died and approximately 159 were injured in Delhi blasts. Militants/occupiers of the flat in question fired first and police officials fired in their self defence. Intention of police was not to kill them but to arrest them. Since, Md. Saif had hidden himself in the toilet so he did not see the incident and hence, was not cited as witness. In both seizure memo's Ex. PW-23/C and Ex. PW-23/A name of Ariz Khan and other escaped persons are mentioned. Their names are also mentioned in the complaint given by SI Rahul Kumar. Part of information provided by Md.Saif to the police about names of escaped militants is not hit by Section 24, 25 and 26 of Indian Evidence Act. When earlier statement was made by Md. Saif during initial interrogation revealing name of present accused, FIR has yet not been registered and investigation has not yet been commenced. Since, names of escaped militants came to the notice of police, there was no need to give their description. Reliance in this regard was placed on *Sajeevan & Ors. Vs. State of Kerala 1994 CrLJ 1316*.

107. As per the ballistic opinion Ex. PW 36/B all bullets/empty cartridges recovered from the place of incident were found matching with the arms used by militants and police officials. All the injuries received by Inspector Mohan Chand Sharma were corresponding with tear in his clothes. Incriminating articles belonging to accused Ariz at the instance of Mohd. Saif viz. his educational documents, were verified by PW 78 Fr. Prakash Dass and PW 79 Dr. A.K. Gautam. Purpose of taking voice sample of accused was to prove his presence in the flat in question at the relevant time. Heavy reliance was placed on the voice sample report Ex. PW 71/G. Total 48 audio files containing voice of accused from 02.09.2008 to 18.09.2008 were sent to FSL and out of these 48 files, location of 30 audio files were found at Batla House.

108. Accused alongwith his accomplices developed common intention at the spot to fire at police officials in order to kill them and to injure them. The court can presume that accused escaped through the stair case. It is probable because the person who escaped was not an ordinary person, he was a trained criminal and he could have easily managed anyone who might have encountered him in the staircase. The issue that there is no evidence that Junaid was also known as Ariz was not raised during trial. No one referred to accused Ariz in the telephonic conversation. Documents of accused Ariz were recovered in the main case i.e. FIR No. 166/08, PS Karol Bagh. These cases were being investigated simultaneously. Investigating Officer of this case i.e. FIR No. 208/08 was giving shape to the case when recovery of these documents came to his

notice and he seized the same from PW 95 ACP Sanjeev Kumar Yadav on 05.01.2009 and this process continued till submission of charge sheet in the Court.

109. Recorded conversation is not the primary evidence, it is one of the corroborative evidence. Last call in the recorded conversation proved the presence of accused at Batla House, therefore, it is most likely that accused would have been there at the time of occurrence. No nakabandi was done in the area. Police officials who were deployed outside the building were moving to conceal their identity. Hence, there was possibility to escape. Accused was not an ordinary person. He was a trained criminal. Police officials had every chance to clearly see the accused during the shoot out. Police officials were trained and expert officials to deal with such cases. Inspector Rahul Kumar (PW 13) gave complaint at 3:00 PM wherein he has given the names of escaped persons as Junaid and Pappu. Md. Saif was arrested in FIR No. 166/08 PS Karol Bagh at 4:00 PM and his disclosure statement was recorded subsequently wherein he disclosed the name of escaped terrorist as Ariz @ Junaid. Therefore, Inspector Rahul Kumar came to know about the name Junaid before disclosure statement of Md. Saif. It is not the case of accused that he was having any special identification mark. The persons/police officials who identified the accused are expert police officials. Plea of alibi was not taken by accused while being examined U/s. 313 CrPC, hence the same is liable to be rejected. Accused sought to built up the plea of alibi while examining DW 1 Dr. Mirza Azam Beg. No such plea was taken by

accused while giving answers to questions put to him u/s. 313 Cr.PC. When accused failed to take the plea of alibi at the stage of recording his statement u/s. 313 Cr.PC, such plea taken at the stage of defence is liable to be rejected. Reliance in this regard was placed on ***Kalu @ Laxminarayan Vs. State of Madhya Pradesh – (2020) 1 SCC (Cri) 142.***

110. Mr. M.S. Khan, learned counsel for accused submitted that serious doubt has arisen about identity of accused as the same person who was present in the building in question at the relevant time and who fired on police party. Mr. M.S. Khan in this regard referred to complaint Ex. PW-8/C given by SI Rahul Kumar wherein names of escaped terrorists are given as Junaid @ Pappu. It was submitted that there is no evidence to show that Junaid @ Pappu was also known as Ariz Khan. Reference was also made to the cross examination of PW 13 SI Rahul Kumar in this regard. Mr. M.S. Khan referred to the disclosure statement of Md. Saif Ex. PW-95/C wherein name of escaped terrorist is given as Ariz @ Junaid. It being contended that Ariz is the first name and there is no evidence on record to show that Ariz was also known as Junaid. Mr. M.S. Khan further submitted that even in the recorded conversation there is no reference to Junaid.

111. The fact that person with the name of Junaid is not the same person who is also known by the name as Ariz was not raised by accused during trial. Mr. A.T. Ansari, Id. Addl. Public Prosecutor was right in submitting that prosecution at the stage of arguments cannot be surprised by raising

a new plea which was never taken during trial.

112. PW 33 HC Satender in his examination in chief identified accused present in the Court as Junaid. No objection was raised by defence that accused present in the Court is Ariz and not Junaid. PW 33 HC Satender in his examination in chief further deposed that Md. Saif disclosed names of two persons who had escaped as Shahzad @ Pappu and Junaid. No suggestion was given by accused to PW 33 HC Satender that accused Ariz is not known or that other name of accused Ariz is not Junaid.

113. Similarly, PW 36 HC Balwant identified the accused in the Court as Ariz @ Junaid. No suggestion was given to PW 36 that accused is not known by the name Junaid. Thus, a futile attempt made at the stage of arguments that accused was not known as Junaid will not advance the case of accused. It has been the case of prosecution throughout the trial that accused Ariz Khan was also known as Junaid @ Salim @ Anna. No objection was raised by accused at any point of time during trial that accused Ariz Khan is not known as Junaid or by any other name. (Ref. ***Harijan Keshubhai Badhabhai & Anr. Vs. State of Gujarat – 2009 Cri. LJ 2696***)

114. Next point raised by Mr. M.S. Khan, learned counsel for accused regarding identity of accused, was that none of the witnesses had given physical description of accused in their statements u/s. 161 Cr.PC and hence, identification of accused by witnesses in the Court after a gap of

almost 10 years is of no consequence. Reference in this regard was made to cross examination of PW 85 SI Ravinder Tyagi who deposed that he has not given description of escaped terrorists who had fled away. PW 85 Ravinder Tyagi further deposed that it is nowhere stated in his statement u/s. 161 Cr.PC given to Inspector J.S. Joon that on interrogation Md. Saif revealed the name of two escaped terrorists as Ariz @ Junaid and Shahzad @ Pappu. This is an omission and not contradiction. It would have amounted to contradiction if PW 85 SI Ravinder Tyagi had deposed in the Court that name of escaped terrorist was disclosed as Ariz @ Junaid and in his statement u/s. 161 Cr.PC he had stated that no such name of escaped terrorist was disclosed by Md. Saif. Thus, accused cannot take any benefit from the cross examination of PW 85.

115. It is not the case of accused that he has special feature or mark of identification expected to be observed by eye witnesses to identify him.

116. Reference was also made by learned defence counsel to the cross examination of PW 81 Inspector J.S. Joon wherein he has deposed that ACP Sanjeev Kumar Yadav did not tell him that one purse containing two photographs were recovered from the flat in question. PW 81 Inspector J.S.Joon further deposed that no one including police officials have stated to him that some personal belongings of accused Ariz Khan were recovered. It is pertinent to mention here that other witnesses have clarified that purse and other belongings of accused Ariz Khan were recovered in a different case i.e. FIR No. 166/08 PS Karol Bagh and that

is why same was not stated by these witnesses while giving their statement U/s. 161 CrPC in the present case. The court finds the explanation given by those witnesses for not disclosing about the recovery of belonging of accused Ariz Khan in the present case as reasonable and satisfactory. So far as non-mentioning of physical description of accused by witnesses is concerned, it was clarified that physical descriptions of accused were not given as photographs of accused had already been recovered from the place of occurrence.

117. Mr. M.S.Khan, Ld. counsel for accused submitted that recovery of purse and educational documents from accused were not stated to first IO Inspector J.S.Joon (PW 81) by SI Rahul Kumar and other witnesses and hence, an inference is liable to be drawn that they are planted witnesses. Reference in this regard was made to the cross examination of PW 86 Inspector Satish Sharma who deposed that when the case file was handed over to him on 01.10.2008 for further investigation, it did not contain any statement or document showing recovery of purse containing photograph of Ariz Khan.

118. It has also come in the cross examination of PW 86 Inspector Satish Sharma that he recorded the statement of ACP Sanjeev Kumar Yadav on 05.01.2009 U/s. 161 CrPC wherein reference was made to purse and photographs of accused Ariz Khan. Mr. M.S. Khan in this regard referred to the cross examination of PW 95 ACP Sanjeev Kumar Yadav wherein he deposed that he had not shown passport size photographs of accused

Ariz Khan to Inspector J.S. Joon and had not shared information with Inspector J.S. Joon regarding recovery of said photographs. First of all it is not clear whether statement of ACP Sanjeev Kumar Yadav was recorded after recovery of documents of accused. PW 95 ACP Sanjeev Kumar Yadav deposed in cross examination that proceedings in FIR No. 166/08 PS Karol Bagh continued even after recording of his statement by Inspector J.S. Joon. Therefore, it is possible that recovery of articles of accused was effected by ACP Sanjeev Kumar Yadav after his statement was recorded u/s. 161 Cr.PC. Secondly, PW 95 ACP Sanjeev Kumar Yadav was not confronted with his statement u/s. 161 Cr.PC with regard to omission to state about recovery of documents of accused and hence, accused cannot draw any assistance from the fact that PW 95 ACP Sanjeev Kumar Yadav did not inform Inspector J.S.Joon about recovery of documents of accused in his statement U/s. 161 CrPC.

119. It is obvious that PW 86 Inspector Satish Sharma, being investigating officer of the case, was developing the case on the basis of facts emerging during investigation. There might have been delay on the part of ACP Sanjeev Kumar Yadav in stating before the Investigating Officer that he had recovered photographs and other documents of accused Ariz Khan but that delay will not amount to contradiction within the meaning of Section 162 CrPC and 145 of Indian Evidence Act. Thus, submission of Mr. M.S.Khan, ld. counsel for accused, that prosecution has failed to prove beyond reasonable doubt that the purse containing photographs and educational certificate of accused Ariz Khan were

recovered on 19.08.2008 is liable to be rejected.

120. Adverting to voice identification of accused, Mr. M.S.Khan submitted that the person with whom accused is talking in the transcript of recorded conversation has not been examined so as to get primary evidence about voice of accused Ariz. The persons with whom accused is talking must be his known person and acquaintance and they were not likely to depose in the case against accused Ariz Khan. Hence, no fault can be found with the prosecution in not examining the person with whom accused Ariz Khan is talking in the transcript of recorded conversation.

121. The next submission of Mr. M.S.Khan, ld. counsel for accused, regarding recorded conversation of transcript is that there is no continuity in the transcript and as per the prosecution, the last call was made by accused on 18.09.2008 at 05:48 PM i.e. 16-17 hours before the incident. This argument does not hold water as court can safely presume with the aid of Section 114 of Indian Evidence Act that accused who was present in the building 16-17 hours before the incident would have also remained present there at the time of incident.

122. It was next submitted that there is a gap of almost 10 years between the voice of accused Ariz Khan and his sample voice and hence, same could not have been compared scientifically.

123. In cross examination, PW 74 Amitosh Kumar deposed that voice of

a person may also get affected due to age, emotions, illness, stress or situations. However, in the present case, specific voice of accused matched with his recorded voice and there was no change in the voice due to age. In any case, accused absconded and was declared proclaimed offender and trial was delayed because of this reason and accused cannot take advantage of his own wrong.

124. On being further cross examined, PW 74 Amitosh Kumar deposed that as course of official duty and procedure, his opinion was circulated for approval amongst his senior officers and his report does not bear signature in the form of approval. PW 74 Amitosh Kumar volunteered to clarify that approval is given on the official file and is thereafter sent to concerned authority. In cross examination PW 74 Amitosh Kumar further deposed that sample voice in present case was in reading form and it is correct that there has to be very slight variation if the voice is recorded through telephone as compared to direct capture of voice.

125. Mr. M.S. Khan, learned counsel for accused submitted that as per the opinion given by board Ex. PW-27/B, Inspector Mohan Chand Sharma was hit by 9mm pistol and not by .30 bore pistol. It will be appropriate to produce herein under the relevant question and answer as given in Ex. PW-27/A :

Q.1. Whether the injuries are caused by pistol, revolver or assault rifle or otherwise ?

Answer – The bullet entry wounds as mentioned in postmortem

reports no. TC-586/08 pertaining to deceased Mohan Chand Sharma, dated 20.09.2008, TC-590/08 dated 22.09.2008 pertaining to deceased Mohd. Atif Amin (unknown-I) and TC-591/08 dated 22.09.2008 pertaining to deceased Mohd. Sajid (unknown-II) could have been caused due to passage of bullets fired from 9mm pistol/.30 pistol/7.62 mm assault rifle.

126. Conclusion of learned defence counsel that Inspector Mohan Chand Sharma was hit by 9mm pistol is based on the reading of opinion on the basis of sequence of order mentioned in report.

127. Slash (/) does not imply sequence of order. As per dictionary meaning, the word slash (/) is somewhat specialized use of the slash is in the term and/or, meaning 'one or the other or both'. Slash separates letters, words or numbers. It is used to indicate alternatives, ratio and ranges. Therefore, when slash is used between word 9mm pistol/.30 bore pistol/7.0 mm assault rifle, it only amounts that bullet entry wound pertaining to Inspector Mohan Chand Sharma would have been caused by either of them. Hence, the contention of ld. defence counsel that as per the answer given by board opinion to question no. 1 in the opinion Ex. PW27/B, Inspector Mohan Chand Sharma was hit by 9 mm pistol and not by .30 bore pistol cannot be accepted.

128. Three witnesses were examined to prove subsequent opinion Ex. PW 27/B namely PW 41 Dr. T.D.Dogra, PW 43 A.Dey and PW 45 Dr.

Sanjeev Lalwani. No question was put by accused to these witnesses to clarify the meaning of slash (/). In ***Gangabhavani Vs. Rayapati Venkat Reddy & Ors.*** decided by Hon'ble Supreme Court of India on 04.09.2013, it was held in para 17 that ***thereafter the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.***

129. Mr. M.S. Khan then submitted that it has come on record that no person could have escaped from the building as there was one common entry and exit in the building L-18, Batla House, Jamia Nagar, New Delhi. Mr. M.S. Khan in this regard referred to the cross examination of PW 85. It should be kept in mind that accused is not an ordinary individual. Accused has been involved in so many criminal cases. Therefore, accused was trained to escape in the given situation. In any case, all members of raiding party have deposed that no nakabandi was done in the area. In fact, PW 20 SI Dharmender in cross examination has deposed that remaining members of the raiding team were not sufficient in number to make seal proof cover of the building. Since there was an exit through

staircase in the building, the Court can safely presume that accused might have escaped through the staircase. This is a strong probability as the person who escaped was not an ordinary person. He was a trained criminal and he could have easily managed anyone whom he might have encountered in the staircase.

130. In *State of West Bengal Vs. Mir Mohammad Omar & Ors.* - AIR 2000 SC 2988, it was held in para 33 as under :

“ Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule of law in evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reach a logical conclusion as the most probably position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.” Hence, it cannot be held that no person could have escaped from the building in the given circumstances.

131. Another contention of Mr. M.S. Khan, ld. defence counsel was that Abdul Rehman through whom the flat in question was let out by PW 52

Mohsin Nisar was not examined and therefore, no evidence was collected to find out as to who were the occupants of the flat. So far as the occupants of the flat in question are concerned, prosecution had adduced sufficient ocular and scientific evidence and hence, there was no need to examine the said Abdul Rehman. Even otherwise one cannot say with certainty whether Abdul Rehman through whom the flat in question was let out by PW 52 would have given correct position about exact number of occupants of the flat.

132. Similarly, it was argued that there is no testimony of any neighbour of the flat to the effect that accused Ariz Khan was the occupant of the flat in question. In the present social condition prevailing in Delhi, neighbours would not even be knowing as to whether accused Ariz Khan was the occupant of flat in question or not.

133. A question was repeatedly put to almost all material witnesses by accused in cross examination as to whether any police official tried to ascertain number of occupied or unoccupied flats in the building or if any occupant of any flat was missing. One fails to understand what purpose would have been served by undertaking this exercise. The information with police was with respect to a specific flat where militants were staying. In the shoot out, two militants managed to escape, two militants were injured (who subsequently died) while one surrendered. Thus, there was no point to ascertain the number of occupied or unoccupied flat in the building.

134. It is mentioned in the main charge sheet that all sincere and best efforts were made to join independent witness in investigation. However, despite all efforts no person came forward nor was any person in the locality or neighbourhood ready to throw light on the incident.

135. Mr. M.S.Khan, ld. counsel for accused then submitted that accused was in custody of Special Cell before being produced for TIP and all the six witnesses through whom he was to be identified were posted in Special Cell and they could have easily seen the accused in the custody and hence, there was valid justification for accused to refuse to participate in TIP. For deciding this question one has to look into the TIP proceedings to find out as to on what ground accused refused to participate in the TIP. As per TIP proceeding Ex. PW 47/B, accused refused to participate on the ground that complainant will identify him. Accused no-where, while refusing to participate in the TIP, stated that he has been seen by the witnesses while being in the custody of the Special Cell. Thus, accused cannot raise the plea that his refusal to participate in the TIP was justified as all the witnesses who were to identify him had seen him in the custody of Special Cell.

136. Mr. M.S.Khan, ld. counsel for accused next argued that TIP of photographs of accused Ariz Khan allegedly recovered from the place of occurrence was not conducted. This is a fallacious argument as

photographs were seen by almost all the police officials who were present at the spot. Therefore, there was no point in conducting the TIP of photographs of the accused.

137. The next contention of Mr. M.S.Khan, ld. counsel for accused, was that accused was identified after long time from the date of incident, none of the witnesses have given physical description of accused and therefore, the identity of accused in court has no value. First of all accused absconded and was declared as proclaimed offender. Therefore, delay in identification of accused in the court was occasioned by the conduct of accused himself and thus, accused cannot take advantage of his own wrong. Secondly prosecution witnesses particularly PW 13 SI Rahul Kumar, PW 20 SI Dharmender, PW 33 HC Satender and PW 36 HC Balwant have clarified in their examination that they have not given physical description of accused as photographs of accused were already seized. Thus, valid justification was given by prosecution witnesses for not giving the physical description of accused.

138. So far as the omission on the part of prosecution witnesses to give physical description of accused Ariz Khan is concerned reliance was rightly placed by Mr. A.T.Ansari, ld. Addl.Public Prosecutor for State on *Sanjeevan & Etc. Vs. State of Kerala – 1994 Crl. L.J. 1316*, it was held in para 15 as under :

“ It is true that PW 1 or 2 could not point out any special

identification mark of the accused. Nobody has a case that any of the accused has any special feature to be observed. Persons possessing special identification features are far and few between – one is able to remember another man's face not always because of any special mark or features. The image of an assailant or a thief or a burglar can leave the impression in the mind of the viewer or the victim which can remain in the mind without fading out for a reasonable period. There are untranslatable factors by which such retention is possible. The viewer need not count or notice any special mark or feature for retaining the image of the assailant in his mind. Hence, we are not disposed to reject the testimony of PW 1 and PW 2 merely because they did not enumerate the features or marks of the accused.”

139. In *1986 Criminal Law Journal 622 Himanshu Pahari Vs. State*, it was held that *when accused remained proclaimed offender, prosecution cannot be blamed for delayed TIP.*

140. Another connected submission of ld. defence counsel was that entire incident as per prosecution lasted for 2 to 3 minutes and it was not possible for police officials to remember the face of accused and hence, identification of accused by police officials in court is in serious doubt. In *Daya Singh Vs. State of Haryana – 2001 CrL. L.J 1268*, it was held as under :

“ Further the evidence of the two injured eye witnesses, who were attacked by terrorists and have lost their son, daughter-in-law and son

of brother-in-law was cogent and consistent with regard to identification of accused. The evidence and the cross examination of the said two witnesses, showing that they gained enduring impression of the identity of the accused during the incident.

It was further held that the delay in trial by Designated Judge for one reason or the other and thereafter identification of the accused in the Court after seven or eight years would not affect the evidence of these two witnesses.”

141. In the present case also one of the witnesses who identified the accused in the Court is injured himself i.e. PW 36 HC Balwant and injured witness in that matter who was present at the spot at the time of firing will not wrongly identify the accused knowing fully well that by doing so he being responsible police official will be protecting real culprits. Accused has not given any reason or justification as to why police officials will wrongly or falsely identify him if he was not involved in the incident.

142. Mr. M.S.Khan, ld. counsel for accused, then argued that Md. Saif is neither an accused nor a witness in the present case and therefore, whatever was stated by him while being interrogated by ACP Sanjeev Kumar Yadav will not be admissible u/s. 6 of Indian Evidence Act. According to Section 6 of Indian Evidence Act, *facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.* Illustration (a) to Section 6 is being

reproduced as under :

“ A is accused of the murder of B by beating him. Whatever was said or done by A or B or by by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.”

143. Depositions of PW 13 SI Rahul Kumar, PW 20 SI Dharmender, PW 33 HC Satender and PW 36 HC Balwant to the effect that name of present accused was revealed as Junaid by Md. Saif during his initial interrogation conducted by PW 95 ACP Sanjeev Kumar Yadav immediately after he surrendered before them is admissible u/s. 6 of Indian Evidence Act. Therefore, even an utterance of accused becomes relevant fact u/s. 6 of Indian Evidence Act. Thus, whatever was stated or told by Md. Saif to ACP Sanjeev Kumar Yadav will be relevant fact for the purpose of present accused irrespective of the fact that Md. Saif was neither an accused nor a witness in the present case. (Ref. *Shyam Nandan Singh Vs. State of Bihar – 1991 CrLJ 3350*).

144. Next submission of Mr. M.S.Khan, Id. counsel for accused, was that when Md. Saif disclosed name of accused as Ariz @ Junaid, he was in custody and hence, his statement is hit by Section 25 of Indian Evidence Act. It is provided u/s. 25 of Indian Evidence Act that ***no confession made to a police officer, shall be proved as against a person accused of any offence***. Part of disclosure statement whereby Md. Saif told the name of present accused as Ariz @ Junaid will not tantamount to his confession and hence, part of information provided by Md.Saif to the police about

names of escaped militants is not hit by Section 24, 25 and 26 of Indian Evidence Act. Secondly, as was rightly submitted by Mr. A.T. Ansari, Id. Addl. Public Prosecutor that the disclosure statement of Md. Saif recorded by PW 95 Sanjeev Kumar Yadav at the spot itself, in the main case bearing FIR No. 166/2008, PS Karol Bagh following his arrest at 4:30 PM, wherein he again disclosed the name of present accused but this time both his actual name as well as his nickname as Ariz @ Junaid and subsequent recovery of photographs of the accused and his educational certificates and marksheet at the instance of Md. Saif, then accused in FIR No. 166/2008, PS Karol Bagh from the place of occurrence is also a crucial evidence admissible u/s. 27 of Indian Evidence Act to establish the identity of accused.

145. Mr. A.T. Ansari, Id. Addl. Public Prosecutor, further submitted that the basic idea embedded in Section 27 of Indian Evidence Act is the doctrine of confirmation by subsequent events and recovery. The theory of confirmation by subsequent facts/events implies that the statement made by a person in custody of police is true and as such, admissible to the extent they can be proved by the subsequent discovery of facts or material object.

146. In the present case the real name of accused i.e. Ariz was not known to the police officials investigating the case before the disclosure statement made by Md. Saif. They came to know only his nickname as Junaid, as stated above that too prior to investigation.

147. The information qua real name of accused disclosed by Md. Saif gets confirmed firstly, from the recovery of photographs of accused and recovery of his educational certificates, etc. from the place of occurrence at the instance of Md. Saif, secondly, from the identification of accused by the eye witnesses during the course of investigation, after his refusal to join TIP, thirdly, from the voice examination report Ex. PW-71/G of the accused showing his presence highly probable at the place of incident at the relevant time, as such admissible u/s. 27 of Indian Evidence Act.

148. Mr. A.T. Ansari, ld. Addl. Public Prosecutor, relied upon *State (NCT) of Delhi Vs. Navjot Sandhu – (2005) 11 SCC 600* and *Mehboob Ali & Anr. Vs. State of Rajasthan- 2015 AIR SCW 6123*, para 18 to buttress his said contention.

149. One of the contentions of Mr. M.S.Khan, ld. counsel for accused, was that expert opinion given by PW 74 Amitosh Kumar, Sr. Scientific Officer is not binding on the Court. It is true that expert opinion is not binding on the Court. However, Section 45 of Indian Evidence Act lays down as under :

“ When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting [for finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identity of handwriting) [or finger impressions] are relevant facts.” Thus, the

opinion given by PW 74 Amitosh Kumar is relevant fact which cannot be brushed aside.

150. This case is based on version/evidence of many eye witnesses supported by scientific evidence. The common thread of sequence of events running through the deposition of PW 13 SI Rahul Kumar, PW 20 SI Dharmender, PW 36 HC Balwant, PW 85 SI Ravinder Tyagi and other members of raiding team is that serial blasts occurred in Delhi on 13.09.2008 and investigation of the said case was assigned to Special Cell; a team under the supervision of Inspector Mohan Chand Sharma was constituted to investigate the matter; on 19.09.2008 at about 08.00 AM, Inspector Mohan Chand Sharma informed PW 13 SI Rahul Kumar telephonically that he had received an information that one Bashir @ Atif alongwith his associates was staying at flat No. 108 L-18, Batla House, Jamia Nagar, New Delhi; thereafter a team comprising SI Rahul Kumar and other police officials was constituted; PW 13 SI Rahul Kumar alongwith available staff in the office left the office at 09.30 AM with arms and ammunitions and bullet proof jackets and reached Abassi Chowk; in between at about 10:40 – 10: 45 AM, a team led by Inspector Mohan Chand Sharma also reached Abassi Chowk; Inspector Mohan Chand Sharma briefed members of both teams; all the members of teams were in civil dress; both teams proceeded to the flat where person responsible for Delhi blasts was reported to be hiding; after reaching there, the advance team comprising of SI Rahul Kumar, Inspector Mohan Chand Sharma, SI Dharmender, SI Ravinder Tyagi, HC Satinder, HC Udaiveer

and HC Balwant was constituted; remaining members of the team were deployed outside the building in question at different locations; no specific nakabandi was done nor the area was cordoned off; members of advance team assembled near the staircase leading to the top floor of the building; Inspector Mohan Chand Sharma directed SI Dharmender to go upstairs posing himself as Vodafone executive to find out presence of suspected terrorists in the flat in question; SI Dharmender went there and returned within few minutes and informed remaining members of advance team regarding presence of some persons in the flat; then members of advance team went upstairs to the said flat at the top floor; Inspector Mohan Chand Sharma knocked at the main door of the flat disclosing identity of team and further asked occupants of the flat to open the door stating that “*darwaza kholo police hai*”; but none of the occupants responded to the call; then police team tried to open the main door but the door was found bolted from inside; there were two doors in the flat in question; other door was on the left side of main door which was knocked by Inspector Mohan Chand Sharma, the said door was shut but not bolted from inside; members of advance team immediately entered the flat through that door; as soon as police officials entered the flat, occupants of the flat started firing on police party from two side, one from the side of drawing room and other from left side room of the flat; Inspector Mohan Chand Sharma was first to enter the flat; police officials got trapped in the drawing room and had to resort to fire in self defence; during shootout, Inspector Mohan Chand Sharma and HC Balwant sustained bullet injuries; one of the terrorists present in drawing room also sustained bullet injuries; during

shoot out and taking advantage of the melee, two of the terrorists including accused Ariz managed to escape from the flat in question through main door; Inspector Mohan Chand Sharma and HC Balwant received injuries and were brought down and were taken to the hospital; in the meanwhile ACP Sanjeev Kumar Yadav also reached at the spot and he was briefed about the situation by SI Rahul Kumar; ACP Sanjeev Kumar Yadav alongwith other police officials tried to enter from left side room of the flat to apprehend terrorists present there but could not enter due to persistent firing by occupants of flat; ultimately ACP Sanjeev Kumar Yadav and other police officials managed to enter the left side room after one of terrorists in the room was injured and had fallen down; the flat was searched and during that course, one Md. Saif who was present in the toilet came out of toilet raising his hands and surrendered before police; he was taken into custody by ACP Sanjeev Kumar Yadav and was arrested in case FIR No. 166/08 PS Karol Bagh; on interrogation, Md. Saif revealed names of two escaped terrorists as Ariz @ Junaid and Shahzad @ Pappu; PW 13 SI Rahul Kumar prepared written complaint and handed over same the same to Inspector J.S. Joon for necessary action; Inspector Mohan Chand Sharma succumbed to injuries in the hospital.

151. It is observed that all police officials who were part of raiding team and who deposed in the Court have fully and completely corroborated each other in material particulars and therefore, it is an open and shut case.

152. Mr. M.S. Khan, learned defence counsel could not point out any

contradiction in the depositions of police officials as regards the time of occurrence, place of occurrence, number of police officials involved and injured in the incident, number of persons involved from the side of accused and other material particulars. All these witnesses were cross examined at length by learned defence counsel. However, defence has not been able to create any dent in otherwise most reliable, credible and trustworthy testimony of said witnesses by way of their lengthy cross examination. Therefore, depositions of PW 13 SI Rahul Kumar, PW 20 SI Dharmender, PW 36 HC Balwant, PW 81 Inspector J.S. Joon and PW 95 ACP Sanjeev Kumar Yadav have become vital piece of evidence to prove charge against accused.

153. It clearly emerged from the depositions of aforesaid witnesses that accused Ariz Khan alongwith his associates fired on police party as soon as police team entered the flat and in the process fatally injured Inspector Mohan Chand Sharma and HC Balwant. Inspector Mohan Chand Sharma succumbed to injuries in the hospital. As per postmortem report, Inspector Mohan Chand Sharma received two injuries, one in abdomen and one in shoulder. Accused Ariz Khan @ Junaid alongwith his associates is responsible for fatally injuring HC Balwant and for killing Inspector Mohan Chand Sharma.

154. The plea raised on behalf of accused that it is not clear as to which particular bullet hit Inspector Mohan Chand Sharma and hence, charge of murder has not been proved. Highly mutilated bullet mentioned in ballistic

report Ex. PW-36/B could not be matched with any of the weapons and therefore, it is possible that the bullet was fired by accused Ariz Khan. In any case, it has been proved on record that accused Ariz Khan alongwith his associates resorted to fire on police party in furtherance of their common intention and in the process Inspector Mohan Chand Sharma and HC Balwant were injured. Therefore, accused can be said to have entertained common intention of killing and injuring police officials with the said of Section 34 IPC.

155. In Surender Chauhan Vs. State of M.P. 2000 - AIR 2000 SC 1436 it was held in para 11 as under :

“The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. (Ramaswami Ayhangar Vs. State of Tamil Nadu MANU/SC/0163/1976 : 1976 Cri LJ 1563. The existence of common intention can be inferred from the attending circumstances of the case and the conduct of parties. No direct evidence of common intention is necessary. For the purpose of common intention even the participation in the commission of offence need not be proved in all cases.”

156. Therefore, the plea of accused that in the absence of clarity about particular bullet which hit Inspector Mohan Chand Sharma, charge u/s. 302 IPC could not be sustained is liable to be rejected.

157. One of the consistent suggestions given by accused to all police officials who were part of raiding team is that sequence of events as deposed by them in their examination in chief were false and same are based on story concocted by police officials to cover up accidental firing by police causing injury to Inspector Mohan Chand Sharma and HC Balwant. Therefore, the defence of accused is that Inspector Mohan Chand Sharma and HC Balwant received bullet injuries due to accidental firing by police officials. This defence/theory is liable to be rejected on account of two reasons (i) it has come in the depositions of all police officials who were part of raiding team that Inspector Mohan Chand Sharma was first to enter the flat in question and as soon as police officials entered the flat, occupants of the flat resorted to firing. In other words, when firing took place other members of raiding team were behind Inspector Mohan Chand Sharma. As per postmortem report, Inspector Mohan Chand Sharma received two injuries, one on the shoulder and another in abdomen. None of these injuries could have been caused by police officials who were behind Inspector Mohan Chand Sharma as these injuries were found on front portion of body of Inspector Mohan Chand Sharma and they were caused by militants occupying the flat. Secondly, in reply to the questionnaire of Sh. Rajender Bakshi, the then ACP/ISC Crime Branch, Delhi, the board gave its opinion Ex. PW-27/C that firearm wounds received by Inspector Mohan Chand Sharma are unlikely to be caused by the accidental firing of colleague police officer of raiding party in the given circumstances.

158. Postmortem on the body of deceased Inspector Mohan Chand Sharma was conducted on 20.09.2008 by PW 42 Dr. Arvind Kumar alongwith Dr. Sanjeev Lalwani and Dr. Susheel Sharma. As per the opinion given in the postmortem report Ex. PW-19/C cause of death in this case is hemorrhage shock due to firearm injury in abdomen as mentioned in postmortem report which is sufficient to cause death in ordinary course of nature. Thus, death of Inspector Mohan Chand Sharma by firearm injury is proved by scientific evidence i.e. postmortem report Ex. PW-19/C.

159. HC Balwant was examined by PW 50 Dr. Sarang and his MLC Ex PW-62/C was prepared. PW 42 Dr. Arvind Kumar gave subsequent opinion Ex. PW-19/E on the request of Inspector Satish Sharma on the MLC of injured HC Balwant. As per subsequent opinion, nature of injuries suffered by HC Balwant are grievous and could have been caused by gun shots. Therefore, scientific evidence proved that HC Balwant was hit by bullet and received grievous injuries.

160. The issue raised by accused as regards identification of accused has already been dealt with in preceding paragraphs of this judgment.

161. There is dock identification of accused as all the members of raiding party have clearly identified the accused in the Court. The plea that none of the police officials have given description of accused has also been

dealt with in the preceding paragraphs of this judgment.

162. Accused immediately after his arrest in the present case refused to participate in TIP. The reasons given by accused for refusal to participate in TIP do not match with the submissions raised during the course of arguments that accused was seen by police officials while being in custody of Special Cell. Accused has already been identified through his photographs and educational documents recovered from the place of occurrence. Educational documents of accused found from the place of occurrence were duly verified by PW 78 Fr. Prakash Dass and PW 79 Dr. A.K. Gautam.

163. Presence of accused at the place of occurrence just before the shoot out has also been proved by voice examination report Ex. PW-71/G. Presence of accused at the spot at the relevant time finds corroboration from telephonic conversation held by accused through mobile no. 9811004309 being used by Atif Ameen while staying together with accused at the flat in question.

164. Accused has also been identified through revelation of his name by Md. Saif to police officials/eye witnesses/members of raiding party immediately after occurrence. Identification of accused in this manner is relevant u/s. 6 of Indian Evidence Act. Secondly, accused was identified through disclosure statement of Md. Saif wherein he disclosed name of present accused which gets confirmed from his arrest, his identification

by eye witnesses during the course of investigation, after his refusal to participate in TIP and recovery of his photographs and educational documents.

165. Pursuant to disclosure name of accused as Ariz @ Junaid in the disclosure statement of Md. Saif, present accused was arrested, he was duly identified by police officials and his documents including photographs were recovered which only goes to show that disclosure statement of Md. Saif disclosing name of accused as Ariz @ Junaid is not hit by Section 25 of Indian Evidence Act and same is admissible u/s. 27 of Indian Evidence Act.

166. If accused is arrested on the basis of disclosure statement of another accused wherein admissible evidence is found showing his involvement in the commission of offence, that part of disclosure statement is admissible u/s. 27 of Indian Evidence Act.

167. In *Mehboob Ali & Anr. Vs. State of Rajasthan – AIR 2015 SC (Criminal) 1954*, it was held as under :

“ Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by accused Mehboob and Firoz. He was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid

accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the police, hence the statement of accused persons leading to discovery of fact are clearly admissible as per the provisions contained in Section 27 of the Evidence Act which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in Section 25 and 26 of the Evidence Act.”

168. The aforesaid dictum of law is squarely applicable to the facts of present case. In the present case, accused was arrested pursuant to disclosure of his name by Md. Saif in case FIR No. 166/08 PS Karol Bagh and his disclosure gets confirmed making it admissible u/s. 27 of Indian Evidence Act.

169. PW 13 SI Rahul Kumar in his deposition has admitted that he has not mentioned that fact with regard to recovery of photographs and educational documents belonging to accused from the place of occurrence in his statement recorded u/s. 161 Cr.PC. PW 13 SI Rahul Kumar has clarified that these recoveries were effected at the instance of Md. Saif in case FIR No. 166/08 PS Karol Bagh.

170. The Court can draw an inference from the proved facts viz. oral testimonies of police witnesses, voice sample report Ex.Ex. PW 71/G, call detail record of mobile no. 9811004309, location chart of mobile no.

9811004309, etc. that accused was present at the place of occurrence at the time of incident. As per rightly submitted by Mr. A.T. Ansari, Id. Addl. Public Prosecutor that all bullets/empty cartridges recovered from the place of occurrence were found matching with weapons used by militants and police officials. Therefore, no lacunae could be found in the scientific evidence led by prosecution. Even the injuries received by Inspector Mohan Chand Sharma were corresponding with tear in his clothes

171. Accused through the deposition of DW 1 Dr. Mirza Azam Beg has taken the plea of alibi as DW 1 deposed that accused was in his house till 10 AM. Even if deposition of DW 1 is to be believed, it was not impossible for accused to reach Batla House by the time shoot out occurred. As per cross examination of DW 1, distance between the place of incident and his house must be about 1 ½ kms. In any case, DW 1 is not a reliable witness as he has not explained as to where accused was for 10 years. DW 1 has deposed that he did not know as to what was in the bag of accused.

172. In these case, there was contemporaneous recovery of incriminating articles viz. photographs, educational certificate pertaining to accused from the place of occurrence. If these articles were falsely planted, accused has to tell where from police got those articles.

173. As was deposed to by members of raiding team that accused Ariz Khan @ Junaid alongwith his associate Md. Shahzad @ Pappu (already subjected to trial and convicted) managed to escape from the place of

occurrence during shoot out. Thereafter, non-bailable warrants were issued against accused Ariz Khan from the court of Id. CMM, Patiala House Court which were assigned to PW 51 SI Naresh Sangwan for execution. PW 51 SI Naresh Sangwan deposed that he conducted raids at the given address for execution of non-bailable warrants, but accused was not found present there. PW 51 SI Naresh Sangwan gave his report Ex. PW-51/A. Thereafter, process u/s. 82 Cr.PC was issued against accused which was again assigned to PW 51 SI Naresh Sangwan. Process u/s. 82 Cr.PC was executed by PW 51 SI Naresn Sangwan and he prepared his report Ex. PW-51/D. Despite execution of process u/s. 82 Cr.PC, accused failed to appear at the specified place and specified time as required by proclamation u/s. 82 Cr.PC. Subsequently, process u/s. 83 Cr.PC was also issued against accused and PW 51 SI Naresh Sangwan filed his report Ex. PW-51/G. Since, accused failed to appear despite execution of process u/s. 82, 83 Cr.PC, he was declared as proclaimed offender vide order dated 03.07.2009 passed by Id. ACMM, Patiala House Court. Therefore, all the ingredients of Section 174A IPC have been proved against accused Ariz Khan and it is concluded that charge u/s. 174 A IPC has been proved against accused.

Decision on the points of consideration.

174. The evidence adduced on record by prosecution including ocular evidence, documentary evidence and scientific evidence leaves no manner of doubt that prosecution in the instance case has successfully proved the

charges framed against accused beyond any reasonable doubt. Hence, accused is liable to be convicted as under :

175. It has been proved on record that on 19.09.2008 at about 11 AM at flat no. 108, L-18, Batla House, Jamia Nagar, New Delhi, accused Ariz Khan @ Junaid alongwith his associates Md.Atif Ameen & Md. Sajid (both died in the shoot out with members of raiding team) and Md. Shahzad @ Pappu (already subjected to trial and convicted) in furtherance of their common intention of all of them voluntarily obstructed deceased Inspector Mohan Chand Sharma and his team in discharge of their public functions.

176. It has also been proved on record that on the aforesaid date, time and place, accused Ariz Khan @ Junaid alongwith his associates Md.Atif Ameen & Md. Sajid (both died in the shoot out with members of raiding team) and Md. Shahzad @ Pappu (already subjected to trial and convicted) in furtherance of their common intention of all of them assaulted and used criminal force to deceased Inspector Mohan Chand Sharma and his team, they all being public servants, in exercise of their duty as such public servant with intent to prevent or deter them from discharging their duty as such public servant to investigate FIR No. 166/08 PS Karol Bagh.

177. It has also been proved on record that on the aforesaid date, time and place accused Ariz Khan @ Junaid alongwith his associates Md.Atif

Ameen & Md. Sajid (both died in the shoot out with members of raiding team) and Md. Shahzad @ Pappu (already subjected to trial and convicted) in furtherance of common intention of all of them voluntarily caused grievous hurt to HC Balwant, a public servant while discharging his duty as such public servant by a .30 bore pistol, an instrument of shooting.

178. It has also been proved on record that on the aforesaid date, time and place accused Ariz Khan @ Junaid alongwith his associates Md.Atif Ameen & Md. Sajid (both died in the shoot out with members of raiding team) and Md. Shahzad @ Pappu (already subjected to trial and convicted) in furtherance of common intention of all of them intentionally and knowingly committed murder by causing death of Inspector Mohan Chand Sharma by firearm.

179. It has also been proved on record that on the aforesaid date, time and place accused Ariz Khan @ Junaid committed the offence u/s. 307 rw section 34 IPC whereby accused Ariz Khan @ Junaid alongwith associates Md.Atif Ameen & Md. Sajid (both died in the shoot out with members of raiding team) in furtherance of common intention of all of them fired gun shot by firearm on HC Balwant with .30 bore pistol and HC Rajbir who was wearing a bullet proof jacket and left unhurt and caused grievous injury to HC Balwant with such intention or knowledge and under such circumstances that if by that act, they had caused death of HC Balwant and HC Rajbir, they all would have been liable for their

murder.

180. It has also been proved on record that on the aforesaid date, time and place accused Ariz Khan @ Junaid alongwith his associates Md. Atif Ameen & Md. Sajid (both died in the shoot out with members of raiding team) and Md. Shahzad @ Pappu (already subjected to trial and convicted) in furtherance of common intention of all of them fired gun shot on deceased Mohan Chand Sharma and his team, they all being public servant and as such you used firearm in contravention of Section 5 of Arms Act.

181. It has also been proved on record that on the aforesaid date, time and place accused Ariz Khan @ Junaid alongwith his associate Md. Shahzad @ Pappu (already subjected to trial and convicted) managed to escape from the place of occurrence during shoot out and failed to appear before the Court despite proclamation on 20.04.2009 issued against him u/s. 82 Cr.PC for his appearance before the said court on 20.04.2009 and he was finally declared proclaimed offender on 03.07.2009.

Conclusion

182. Accordingly, accused Ariz Khan @ Junaid @ Salim @ Anna is held guilty and convicted u/s. 186/333/353/302/307/34 IPC and u/s. 27 Arms Act and u/s. 174 A IPC.

Let the convict be heard on the point of sentence on **15.03.2021 at**

12 O'clock.

Announced in open Court.
On 08.03.2021

(Sandeep Yadav)
ASJ-02/South East District
Saket Courts/New Delhi