

**NATIONAL HUMAN RIGHTS COMMISSION
NEW DELHI**

Name of the complainant : Shri Kamran Siddique
Gen.Secretary, Real Cause,
New Delhi

Case No. : 2811/30/8/08-09-FE

Date : 20th July, 2009

PROCEEDINGS

Two persons namely Md.Atif Ameen and Md.Sajid were killed in a shootout at L-18, Batla House, Jamia Nagar, Delhi on 19th September, 2008. The police claims that the slain persons were involved in serial bomb blasts which had occurred in different parts of Delhi on 13th September, 2008 killing 26 persons and causing injury to 133 others. Participation in terrorist activities is not, however, the issue before the Commission. That is a question to be decided by the Court in a criminal trial. The Commission will not, therefore, dwell on the issue whether the two persons were engaged in terrorist activities or not.

The scope of enquiry before the Commission is very limited. The only question which we propose to consider is whether the police had opened fire without any justification or it had acted in the exercise of the Right of self defence. If the police had a reasonable cause to apprehend danger to the life of any member of the police team, it had the legal right to

act in self defence and the Right of self defence extended to causing death. Section 100 of IPC enumerates the circumstances in which a person can voluntarily cause the death of a person in exercise of the Right of Private Defence.

Enquiries are conducted by the Commission in accordance with the provisions of Section 17 of the Protection of Human Rights Act, 1993. Section 17 does not contemplate an adversarial proceeding. It empowers the Commission to call for information or report from the Central Government or any State Government or any other authority. If on the material placed before it, the Commission is satisfied that no further enquiry is required, it may not proceed with the complaint.

In this case Shri Kamran Siddiqui, General Secretary, Real Cause made a complaint on 19th September, 2008 alleging that *“today at around 10.30 a.m. morning the team of Special Cell of Delhi Police came at L-18, Batla House, Okhla, New Delhi and surrounded the said place/area and after one hour encounter, two dead bodies was recovered by the Special Cell from the top/fourth floor of the L-18, Batla House, Okhla, New Delhi. Some witnesses said that the Special Cell came with 2/3 persons covered their faces from black cloth. When the Special Cell came, the said persons are not with them and then came 2/3 bodies (dead bodies)”*. The complainant urged the Commission to order CBI enquiry and also *“to enquire about the statement of the Special Cell of Delhi Police that two persons run away from the said place i.e. L-18, Batla House, Okhla. When*

the police already covered the said area then how the said two persons were gone away from the said place.”

The Commission took cognizance of the complaint on 23rd September, 2008 and directed, as follows:- *“Commissioner of Police, Delhi is directed to take appropriate action with regard to the investigation of the case as per guidelines laid down by the Commission in the letter dated 2nd December, 2003 of the Chairperson, NHRC to the Chief Ministers of all States.”*

Pursuant to the direction of the Commission, Shri R.P. Upadhyay, Additional Commissioner of Police, Vigilance, Delhi submitted a report dated 23rd October, 2008, which is reproduced below:-

“With reference to your Office Notice No. 2811/30/8/08-09-FE/UC/M-1, I am to state that the facts of the case, in brief, are that on 13.9.2008, serial blast incidents were reported at Gaffar Market, Karol Bagh, Central Park and Barakhamba Road, Connaught Place and Greater Kailash, New Delhi resulting in 25 deaths and injuries to 133 innocent persons apart from damage to properties. Three bombs were diffused at Regal, Central Park, Children’s Park India Gate, New Delhi. The team of Special Cell deployed informers and mounted technical surveillance to trace the culprits. The intelligence inputs were exchanged with the Central Intelligence Agencies and various states targeted by Indian Mujahideen. The technical surveillance/analysis revealed that one Atif @ Bashir r/o Azamgarh, UP, involved in the serial blast incidents in Delhi was, at present, residing somewhere at Batla House, Jamia Nagar, Delhi.

On 19.09.2008, specific information was received that Atif @ Bashir was residing on top floor flat No. 108 of building L-18, Batla House, Delhi. On the basis of this information, Inspector Mohan Chand Sharma of Special Cell, Delhi along with few staff entered into the building to conduct raid at the said flat whereas remaining team members remained at ground floor to cover the building. The team knocked at the main door of the flat and disclosed identity but the occupants of the flat did not respond. Then the team, in order to enter the flat, pushed the main door but was found bolted from inside. Thereafter, the team went to another door of the flat and found it unbolted. The team members entered the flat through the side door to apprehend the suspects. The occupants of the flat opened fire on the police team to evade arrest. The team members also fired in self-defence and in order to apprehend the inmates. During the cross firing, Inspr. Mohan Chand Sharma and HC Balwant Singh and two militants sustained bullet injuries while two other militants managed to escape from the flat by firing on the police party. The injured police officers and the militants were removed to Hospitals. Two pistols of .30 calibre were found lying near the injured militants. During the cursory search of flat, one AK series rifle along with, two magazines containing 30 live rounds each was recovered from the far end right side room of the flat. One militant namely Mohd. Saif s/o Sadaab Ahmad r/o V & PO Snjarpur, P.S. Sarai Meer, Tehsil Nizamabad, Distt. Azamgarh, UP surrendered before the police party inside the flat. Names of the escaped militants were revealed by Moh. Saif as Junaid @ Ariz and Shahnawaj @ Pappu. Both the injured militants were declared brought dead at the hospital. Inspector Mohan Chand Sharma also succumbed to his injuries at the hospital. HC Balwant Singh is still admitted in Trauma Centre, AIIMS, Delhi. A report was accordingly sent to Secy. General, NHRC, New Delhi vide DCP/Spl. Cell's Office letter No. 2445/SO/DCP/Spl. Cell dated 20.09.2008, copy of which was duly endorsed to MHA, L.G. and DCsP/South Distt. & Vigilance.

The complainant has raised doubts about the statement of police pertaining to escape of two persons when the entire area was cordoned off which is baseless. It is true that there is only one entry/exit from the stairs but there are 8 flats on four floors through these stairs and each of these 8 flats is having 2 entry/exit gates. Flat No. 108 of L-18, Batla House is also having two gates. While firing was going on between inmates and police, two of the militants later identified as Ariz @ Junaid and Shahbaz @ Pappu managed to escape from the flat from one of the gates. Many of the inmates of the flats in the said building came out on hearing the gun shots and the militants took advantage of the situation and managed to escape.

During investigation, accused Mohd. Saif admitted that he is the member of terrorist module "Indian Mujahideen" responsible for the serial blast incidents dated 13.09.2008 of Delhi. He also disclosed his involvements in other blasts incidents in Uttar Pradesh, Jaipur (Rajasthan), Ahmedabad etc. and further disclosed the names of his associates involved in serial blast incidents in various states of India. The information about involvements of these outfit members were shared with Central Intelligence Agencies and other State Police like Rajasthan, Mumbai, Gujarat and Uttar Pradesh. The members of Indian Mujahideen have since been arrested in Mumbai, Uttar Pradesh and other states also. Five members of this terrorist outfit have also been arrested in Delhi serial blasts dated 13.9.2008. The investigation of the bomb blast cases is still in progress.

The allegations levelled by the complainant against police are strongly denied. Proper investigation into the encounter vide FIR No. 208 dated 19.9.2008 u/s 186/353/307/332/34 IPC and 25/27 Arms Act, P.S. Jamia Nagar, South Distt., Delhi, was initially carried out by the local police of South District which is an independent Unit from Special Cell, Delhi. The case has since then been transferred to the Crime Branch of Delhi Police by C.P., Delhi, which is a specialized agency. In view of the

overall facts and circumstances of the case, no CBI enquiry is required in the matter.”

On receiving another communication dated 14th October, 2008 from Shri Kamran Siddiqui, the Commission made further query from the Commissioner of Police vide proceedings dated 17th October, 2008. Shri Satish Chandra, Special Commissioner of Police (Vigilance), Delhi responded to the query vide communication dated 19th November, 2008. He reported as follows:-

“The investigation of the case relating to incident of shootout at L-18, Batla House, Jamia Nagar, Delhi was earlier being conducted by the officers of P.S. Jamia Nagar and on 1.10.2008, in order to conduct an in depth, scientific and impartial investigation into the matter, the case was transferred to Crime Branch. A report of the Crime Branch which is investigating case FIR No.208, P.S. Jamia Nagar pertaining to the incident on 19th September, 2008 is enclosed at Annexure-I. During the investigation of this case, the investigating agency has got the spot examined by a team of experts of CFSL, CBI, CGO Complex, New Delhi. The post mortem examination of the deceased was conducted at All India Institute of Medical Sciences by a panel of three doctors (copies of the post mortem reports of Insp. Mohan Chand Sharma, Atif and Sajid are enclosed at Annexures-II, III and IV). The exhibits have been sent to CFSL, CBI, CGO Complex, New Delhi who would besides other ballistic and biological tests also conduct dermal nitrate tests from the swabs taken from the hands of deceased militants. The investigating agency has also examined the residents of the immediate neighbourhood of L-18, Batla House, Jamia Nagar, New Delhi. Efforts have been made to associate the next of kin of the deceased militants in the investigation of the case.”

On the specific queries made by the Commission, Shri Satish Chandra, Special Commissioner of Police (Vigilance), Delhi further informed as follows:-

- “1. Issue regarding the magisterial probe into the events relating to the incident dated 19.9.2008 has been referred to Lt. Governor, Delhi vide C.P., Delhi reference No.3875/CP/Delhi dated 6.11.2008.*
- 2. A case vide FIR No.208/08 dated 19.9.2008 u/s 186/353/332/307/302/34 IPC and 25/27 Arms Act has been registered at PS Jamia Nagar, Delhi and an in-depth scientific and impartial investigation into the matter is being carried out by Interstate Cell of Crime Branch, which is a specialized and an independent unit.*
- 3. On the request of Crime Branch, Director CFSL, CBI, CGO Complex accompanied with other officials of ballistic, biological and other staff inspected the scene of crime on 13.10.2008 that lifted exhibits from the spot. Only one official of the Special Cell SI Rahul Kumar who is the complainant of the case FIR No.208 dated 19.9.2008 P.S Jamia Nagar, Delhi had accompanied the Crime Branch team on their request.”*

He also annexed with his communication an interim report of Crime Branch as Annexure-I and another report of Joint Commissioner of Police, Special Cell as Annexure-V.

The interim report of Shri Neeraj Thakur, DCP (Crime & Rly.), Delhi, which was annexed as Annexure-I with the communication dated 19th November, 2008 mentioned that *“I.O. examined the witnesses, got the*

scene inspected, prepared the site plan, got the scene photographed and also got the scene inspected by a draftsman for preparation of scale site plan. He seized 02 pistols along with 01 live cartridge which was found loaded in one of the pistol and one AK series Rifle with 02 magazines having 30 live cartridges each. A bullet proof jacket having two bullet marks have also been seized in this case along with 19 empty cases of 9 mm, 08 empty cases of 30mm and 3 empty cases of AK 47 and 13 lead bullets from the scene of crime. He also lifted blood samples from various places of scene of crime i.e. Flat No.108, L-18, Batla House. I.O. also got the post mortem conducted of the deceased namely Mohd. Sajid and Mohd. Atif and Police Officer Inspr. Mohan Chand Sharma. He also produced the post mortem report of all the above three persons. He also seized the clothes of the dead, blood samples, swab from hands and injuries and metallic objects from dead bodies.”

The sequence of events was narrated by Shri Karnail Singh, Joint Commissioner of Police, Special Cell, Delhi in his note which was annexed by Special Commissioner of Police (Vigilance) with his communication dated 19th November, 2008 as Annexure-V. The relevant extract of the note is reproduced below:-

“A team headed by Inspector Mohan Chand Sharma, first went to the place to apprehend the accused, who were all without bullet proof jackets for the reason explained above. A backup team in bullet proofs and AK-47 assault rifle was stationed at a distance. Inspector Mohan Chand Sharma who was heading the first team, directed SI Dharmender to go into

Flat No.108 in the garb of an executive of one of the mobile service providers with the express purpose of fixing the identity of the user of mobile number 9811004309.

SI Dharmender first went upstairs on the top floor of Flat No.108 of L-18, Batla House. He heard couple of voices in the apartment and decided to come back to inform Inspector Mohan Chand Sharma who then decided to go together to check the inmates in the apartment. A seven member team including Inspector Mohan Chand Sharma went to the top floor of this building, where this Flat No.108 was located. The building was such that it had four floors and each floor had two apartments. Flat No.108 also had two entry points in L-shape.

Inspector Mohan Chand Sharma knocked the front door and asked them to open the door informing them of their being police personnel. Nobody opened the door. He then tried to push the door but it was found bolted from inside. He then pushed the other door which was not found bolted from inside and the team led by Inspector Mohan Chand Sharma entered the flat through this door. Immediately, a volley of fire came on the police team from the right side of the drawing room as well as the left side room of the apartment. The police team also fired back in self defence and with a view to apprehend the militant. In this shootout, Inspector Mohan Chand Sharma and HC Balwant got bullet injuries. One of the militants later identified as Mohd Atif Ameen @ Bashir sustained bullet injuries while two militants later identified as Ariz @ Junaid and Shahbaz @ Pappu managed to escape from the spot while firing at the police party. Inspector Mohan Chand Sharma and HC Balwant Singh were brought downstairs by the other team members, however, three members of the team stayed back in the flat. The back-up team, headed by ACP Sanjeev Kumar Yadav which was in bullet proof jackets immediately rushed to the flat in order to rescue the team members and apprehend the militants holed inside the flat. Again a shoot out by militant later identified as Mohd Sajid @ Pankaj started on which the back-up team also fired and in the

cross-firing that took place Head Constable Rajbir Singh was hit on the bullet proof jacket by bullets fired by the militant Mohd Sajid @ Pankaj. In the cross fire by the back up team, militant Mohd Sajid @ Pankaj sustained injuries whereas another militant identified as Mohd Saif @ Rahul Sharma surrendered before the police party. Both the injured militants Mohd Atif Ameen and Mohd Sajid were removed to hospital and they were declared brought dead at AIIMS Hospital. Inspector Mohan Chand Sharma later succumbed to his injuries at the hospital the same day.”

The report dated 19th November, 2008 which was received from Shri Satish Chandra, Special Commissioner of Police (Vigilance), Delhi was considered along with its annexures by the Commission on 22nd December, 2008. The following observations and direction were made:-

“The Commission had formulated guidelines to be followed in cases of deaths in police encounters and circulated the same to the Chief Ministers/Administrators of all States/Union Territories vide letter dated 2nd December, 2003. One of the guidelines is that a magisterial enquiry must invariably be held in all cases of death which occur in the course of police action. Addl. Commissioner of Police (Vigilance) has communicated that “the issue regarding the magisterial probe in the events relating to the incident dated 19.9.2008 has been referred to Lt. Governor, Delhi.

Let the Commission be apprised of the decision taken by the Lt. Governor regarding the magisterial probe. Response within six weeks.”

A communication dated 21st January, 2009 was then received from Shri Ashish Kumar, Deputy Secretary (Home) and he informed the

Commission that the Lt. Governor of Delhi had declined to order a magisterial enquiry in the case. Relevant part of the communication is reproduced below:-

“NHRC had asked whether a magisterial enquiry has been ordered pertaining to the incident of September 19, 2008. This issue has been examined at length and the Hon’ble Lt. Governor, Delhi has not found any ground for the issuance of orders for magisterial enquiry due to the following reasons.

- i. The Indian Mujahideen group had been found to be involved in terrorist activities in different parts of the country for the last several years.*
- ii. The interrogation of the accused also indicates that Atif and Sajid who died during the encounter were not only involved in Delhi blasts of 13 September, 2008 but were involved in other terrorist activities committed by Indian Mujahideen.*
- iii. The died militant Mohd Atif Ameen was found to be a member of SIMI. He was also found heading the North Indian module of Indian Mujahideen from Delhi. He was found to be Pak trained militant and responsible for serial blast incidents in Delhi on 13.9.2008, Ahmedabad blasts of 26.7.2008, Jaipur blasts of 13.05.2008, UP Court blasts of 23.11.2007 and others.*
- iv. Mohd. Atif Ameen was also found studying in M.A. (Human Rights) in Jamia University Delhi on fake Graduation Degree documents of University of Allahabad, U.P.*

- v. *Lot of data related to Delhi and Ahmedabad blasts was recovered from the laptops and mobile phones of Mohd Atif Ameen.*
- vi. *Another died militant Mohd Sajid was also found to be an active member of the Indian Mujjahideen and responsible for various blast incidents including blasts in Delhi, Jaipur, Ahmedabad and Uttar Pradesh in 2007-08.*
- vii. *The bodies of the deceased militants and the deceased officer Inspector Mohan Chand Sharma were examined by a Board of 3 Doctors at All India Institute of Medical Sciences, Delhi.*
- viii. *The investigation of the case related to Batla House shootout is being investigated by a different agency i.e. Crime Branch which is conducting an impartial and scientific investigation.*
- ix. *That one of the militants Mohd Saif who had holed himself in the bathroom of the flat was apprehended unharmed, who also stated in his statement to the Crime Branch about the militants being armed with weapons and firing by them.*

He has further observed that in these circumstances, when the police went to apprehend the accused and they were fired upon, there was no option with them but to open fire in self defence and to arrest the accused. The modules of the Indian Mujahideen have conducted bomb explosions in various parts of the country including Delhi, Uttar Pradesh, Rajasthan, Gujarat, Karnataka, Andhra Pradesh etc. subjecting police officers, who have worked out this case at the cost of loosing a gallant colleague and nearly loosing another would be highly demoralizing and would weaken the resolve of the police

officers to fight against terrorists. A police officer confronted by armed terrorists should not have to start thinking whether to die of the firing from the militants or if the militant dies to face the magisterial enquiries which are to follow. The Crime Branch is already conducting investigation of the shootout. Two accused persons are yet to be arrested. Crime Branch is expected to file its charge sheet in the Court shortly where after the case will be subjected to due judicial scrutiny.

In view of the above facts and circumstances of the case, the Hon'ble Lt. Governor, Delhi did not find the police action in Batla House a fit case for initiation of any Magisterial Enquiry at this stage."

In the meantime ANHAD, an NGO filed a Writ Petition No.WP(C) 7368/2008 in the High Court of Delhi and National Human Rights Commission (NHRC) was impleaded as a Respondent in the said case by the Hon'ble High Court vide order dated 22nd January, 2009. The Hon'ble High Court also directed the Standing Counsel for the State to produce a copy of the decision taken by the Lt. Governor. Since the propriety of the order passed by the Lt. Governor was to be considered by the High Court, the Commission noted in its proceedings dated 9th February, 2009 that it would not be proper for it to hold parallel proceedings. The enquiry was accordingly suspended by the Commission. On 20th May, 2009, the Hon'ble High Court requested the Commission to complete the enquiry and file the enquiry report before 22nd July, 2009. Thereafter, the Commission resumed the enquiry in accordance with the provisions of Section 17 of the Protection of Human Rights Act, 1993.

Although the benefit of magisterial enquiry report is not available, the post mortem reports of Inspector Mohan Chand Sharma, Mohd. Atif Ameen and Mohd. Sajid, the injury report of H.C. Balwant Singh, the biological examination report, the serological examination report and the fire arms examination report have been received in the Commission.

The post mortem report of Inspector Mohan Chand Sharma shows the following ante mortem injuries:-

- “1. Surgical therapeutic incised wound on lt. shoulder and lt. Upper arm of size 12 x 1.5 cm x muscle deep with extravasation of blood in underlying muscular layers. A small area of size 3 x 2 cm of contusion was seen on both sides of wound margin 3 cm lateral to medial end of wound on lt. shoulder. [ENTRY WOUND – EXPLORED & DEBRIDED].*
- 2. Surgical therapeutic incised wound vertically placed in middle 1/3rd of lt. arm laterally of size 9 x 2 cm x muscle deep with extravastion of blood in muscular layers underneath. The wound was situated 18 cm below lt. shoulder top & 8 cm above lt. elbow joint. [EXIT WOUND – EXPLORED & DEBRIDED].*

On dissection injury no.(1) & (2) were found communicating with each other through muscular layers. There was extensive extravastion of blood in muscular layers of left upper arm & lt. shoulder region. No bony injury seen.

- 3. Stitched wound with staples in midline on ant. abdominal wall, 31 cm in length. On opening the wound through all layers of ant. abdominal wall, small intestine, mesentery and*

omentum was found surgically repaired at multiple places with extravasation of blood in peritoneal cavity. Mesenteric contusions were also seen at multiple places. There was retroperitoneal blood collection in right side lower flank of abdominal cavity, extravasation of blood in right pelvic region with fracture of right hip bone (upper iliac region).

- 4. Surgical therapeutic incised wound on right side anterior abdominal wall of size 2.5 x 1 cm x peritoneal cavity deep situated 10 cm lateral to midline, 30 cm below right nipple and 14 cm above midinguinal point. [DRAIN TUBE WOUND].*
- 5. Surgical therapeutic incised wound on left hypochondriac region of ant. abdominal wall of size 4 x 2 cm x peritoneal cavity deep with small area of blackish abrasion collar (1.2 cm). The wound is situated 14 cm below lt. nipple, 117 cm above lt. heel of foot, 55 cm below top of head and 10 cm lateral to midline. [ENTRY WOUND – EXPLORED & DEBRIDED].*
- 6. Lacerated wound with outward protrusion of tissue through hole of wound of size 1.5 x 1 cm x pelvic bone deep with underneath extravasation of blood, situated on Rt. upper thigh posterolateral aspect. [EXIT WOUND].*

The Autopsy Surgeon also noted the co-relation of post mortem findings, medico legal report and findings mentioned in death summary of Inspector Mohan Chand Sharma as follows:-

“A. INJURY NO.1 as mentioned in PM Report could be entry wound of firearm and INJURY NO.2 could be exit wound of injury No.1.

B. INJURY NO.5 as mentioned in PM Report could be entry wound and INJURY NO.6 could be exit wound related to injury No.5.

C. INJURY NO.4 could be due to abdominal drain tube put after surgery.”

It may be mentioned that the terminology like “entry wound” and “exit wound” is used only in relation to gun shot wound. The point at which the bullet enters the human body is called entry wound and the point at which it exits after piercing the body is known as exit wound. After consideration of the post mortem findings of Inspector Mohan Chand Sharma, the Autopsy Surgeon opined that the cause of death *“in this case is haemorrhagic shock due to fire arm injury to abdomen as mentioned which was sufficient to cause death in ordinary course of nature.”*

The post mortem report of Mohd Atif Ameen mentions several ante mortem injuries including firearm wounds. The Autopsy Surgeon has opined that all the injuries are produced by firearm ammunition except

injury No.7 which is produced by blunt force impact by object or surface. Injury No.7 is described in the post mortem report as follows *“reddish brown abrasion of size 1.5 x 1 cm over outer and anterior aspect of right knee cap”*

The post mortem report of Mohd Atif Ameen also mentions that swabs from both hands were taken in two bottles in AIIMS, sealed and handed over to the I.O. along with parcels containing clothes, blood in gauze piece, swabs from injuries and metallic objects recovered from injuries.

Similarly, the post mortem report of Mohd Sajid shows several ante mortem injuries including firearm entry wounds. It is also mentioned in the post mortem report of Mohd Sajid that swabs from both hands of the deceased were taken in two bottles, sealed and handed over to the I.O. along with sealed parcels containing cloths, blood in gauze piece and metallic objects recovered from injuries.

The medico legal certificate of H.C. Balwant Singh shows that he was taken by Constable Gurdeep to All India Institute of Medical Sciences, New Delhi on 19th September, 2008 at 11.49 A.M. The certificate records *“alleged history of gun shot injury half hour ago at 11.15 A.M. on 19th September, 2009 during a police encounter with terrorists with one entry wound (?) of approximately .7 cm on right forearm dorsal aspect and one exit wound (?) of approximately 0.5 cm on right arm palmer aspect”*

The opinion regarding the nature of injury is also given on the MLC of HC Balwant Singh in these words. *“In reference to application submitted by I.O. Satish Sharma, Inspector, Crime Branch, Chanakyapuri on 14th May, 2009, along with copy of MLC, discharge summary, OPD treatment papers of Balwant. After going through above said documents (initialed by me), I am of the considered opinion that the nature of injury is grievous and could have been caused by gun shot injury”*

The biological examination report and serological examination report of CFSL show that the blood stained clothes and blood samples of Mohd Atif Ameen and Mohd Sajid duly sealed with seal of “MSL Forensic Medicine JPNATC AIIMS, New Delhi”, the blood stained clothes of Inspector Mohan Chand Sharma duly sealed with the seal of “Holy Family Hospital, New Delhi”, the blood samples of Inspector Mohan Chand Sharma duly sealed with the seal of “MSL Forensic Medicine, JPNATC, AIIMS, New Delhi”, the blood samples of HC Balwant Singh duly sealed with seal of “CMO, JPNATC AIIMS, New Delhi” and samples of blood stained clothes taken from various places in Flat No.108, L-18, Batla House and duly sealed with the seal of “J.S” were received in the laboratory. On serological examination it was found that the blood group of Mohd Atif Ameen and Mohd Sajid both was “AB” and blood stains of the same group were found on the floor, gate, walls and furniture of Flat No.108, L-18, Batla House. The serological examination also established that the blood of HC

Balwant Singh was of "A" group and blood stains of the same group were found from the lobby and drawing room of Flat No.108, L-18, Batla House.

The firearms examination report of CFSL shows that the cotton swab taken from the right hand of Mohd Sajid was contained in parcel No.8. The cotton swab taken from the right hand of Mohd Atif Ameen was in parcel No.17. Two .30 / 7.62 mm pistols which were recovered from Flat No.108 were sent to the expert in parcels No.36 to 37 and were marked W/2 and W/3 in the laboratory. The bullet proof jacket of HC Rajbir Singh was sent in parcel No.40. The bullet proof jacket has two bullet piercing marks on its front side. On probing the piercing marks two .30/7.62 mm fired bullets (marked BC/17 & BC/18 by the ballistic expert) were recovered in mutilated condition. Eight .30/7.62 mm fired cartridge cases (marked C/62 to C/69 in the laboratory) were sent in parcel No.38(b). After chemical analysis, test firing and microscopic examination in the laboratory, it was found that the two .30/7.62mm mutilated fired bullets BC/17 and BC/18 which were recovered from the front portion of bullet proof jacket contained in parcel No.40 had been fired from the .30mm pistol (W/3). Gun shot residue was detected in the contents of parcel No.8 and 17. Four fired cartridge cases (C/62 to C/65) contained in parcel No.38(b) had been fired from .30mm pistol (W/2) contained in parcel No.36. Four .30mm fired cartridge cases C/66 to C/69 contained in parcel No.39(b) had been fired from .30mm pistol (W/3) contained in parcel No.37.

It is noteworthy that Inspector Mohan Chand Sharma received injuries on the front portion of the body. According to post mortem report of Inspector Mohan Chand Sharma injury no. 1 is “an entry wound on the left shoulder and left upper arm” and injury no. 5 is also “an entry wound which is on left hypochondriac region of anterior abdominal wall 14 cm below left nipple”. The locus of firearm injuries found on the body of Inspector Mohand Chand Sharma corroborate the police version that a volley of bullets was fired on the police team as soon as it entered Flat No.108, L-18, Batla House through the side gate. HC Balwant Singh was also with Inspector Mohand Chand Sharma. He sustained fire arm entry wound on the dorsal aspect of right arm and the bullet exited through his palm. His blood was also found in the room and lobby of Flat No.108.

According to the police version, HC Rajbir Singh and other police personnel rushed to Flat No.108, L-18, Batla House as soon as Inspector Mohan Chand Sharma was injured. Bullets were fired on this team also. This is established by the fire arm examination report. The bullet proof jacket which HC Rajbir Singh was wearing was seized and was sent to the laboratory in sealed packet. As noted above, the expert observed that the jacket was having two bullet piercing marks on its front side and on probing the piercing marks two .30 mm fired bullets were recovered in mutilated condition. According to the expert, these bullets had been fired from the pistol W/3 which was found lying in the room of Flat No.108, L-18, Batla House. It may be mentioned that .30mm pistol W-3 did not belong to anyone in the police party. It is, therefore, obvious that it was used by one

of the occupants of the flat. It would also be significant to note that the bullet piercing marks were found on the front side of the jacket. The jacket covers the chest portion of the person who wears it. This means that the person who had fired at HC Rajbir Singh had aimed at his chest, which is a vital part of the body.

As has been stated above, eight fired cartridge cases marked C/62 to C/69 were recovered from the flat. According to the ballistic expert, these cartridge cases had been fired from pistols W/2 and W/3. The two bullets BC/17 and BC/18 which were found embedded in the bullet proof jacket of HC Rajbir were also fired from the pistol W/3 according to the ballistic expert. The pistols exhibits W/2 and W/3 which were recovered from the flat did not belong to the police party. Who then had used these pistols? The answer is provided by the fire arms examination report. The swabs which were taken from the right hands of Mohd Atif Ameen and Modh Sajid by the doctors at the time of post mortem in AIIMS were sent in sealed bottles to CFSL for dermal nitrate tests in the laboratory. The same were found to contain gun shot residue. This conclusively establishes that Mohd Atif Ameen and Mohd Sajid had both used fire arms at the time of incident. It may be mentioned that the police had no role what-so-ever either in the taking of swabs from the hands of the two deceased or in the dermal nitrate tests of the same. The swabs were taken by the doctors in the AIIMS and the tests were conducted in the laboratory of CFSL, CBI.

Shri Kamran Siddiqui had filed Criminal Writ Petition No.114/2008 in the Supreme Court raising questions about the genuineness of the encounter. The petition was dismissed by the Hon'ble Supreme Court on 8th December, 2008. The verbatim copy of the writ petition was, however, filed by Shri Kamran Siddiqui before the Commission. The issues raised by him in the Writ Petition and also the averments made by him in the complaint have been carefully considered by the Commission and we find absolutely no merit in the same.

The complainant sees "*something fishy*" about the injuries sustained by Inspector Mohan Chand Sharma. He has mentioned some photographs published in the print media which show blood on the left shoulder only. He has also referred to a report published in "Mail Today" on 24th September, 2008. According to which three shots were fired at Inspector Mohan Chand Sharma on the back. He has also alleged that serious differences had cropped up between the "martyr" Mohan Chand Sharma and another police officer namely Rajbir Singh implying thereby that the death of Inspector Mohan Chand Sharma might be the result of intra departmental rivalry. All these doubts of the complainant have absolutely no basis. The post mortem report of Inspector Mohan Chand Sharma is conclusive proof of the fact that he had received a gun shot wound on the "hypochondriac region of the abdomen" which completely rules out an attack on him from the backside.

The complainant has posed a question as to why Inspector Mohan Chand Sharma went to Flat No.108 in plain clothes when he was fully aware that there were terrorists inside and why he did not use the bullet proof jacket? It is quite likely that Inspector Mohan Chand Sharma did not consider it prudent to wear a bullet proof jacket lest it may arouse suspicion and alert the alleged terrorists. It is also likely that he did not apprehend that the occupants of the flat would be having weapons and they will immediately resort to firing. There can be various reasons and it will not be proper to speculate as to why Inspector Mohan Chand Sharma did not wear a bullet proof jacket.

The complainant also wants us to reject the theory of encounter because according to him the police version regarding escape of two terrorists from the scene is totally unbelievable. He points out that the whole area was cordoned off and premises No.L-18, Batla House was heavily guarded by the police force and there being only one staircase in the building it was not possible for any suspect to escape from the building. We are not inclined to examine this aspect in minute detail. As mentioned above, the enquiry is limited to the effect of encounter. There are two doors in the flat in question and there are two flats in each of the four floors. According to the police version a number of persons had got collected at the time of incident. In the melee it was possible for some persons to escape. At any rate, the alleged escape of two persons can have no bearing on the main incident in which Inspector Mohan Chand Sharma received fatal gun shot injuries and HC Balwant Singh also received

grievous injuries and the action taken by the police party in self-defence which resulted in death of Mohd. Atif Ameen and Mohd. Sajid.

There can be no manner of doubt that firing was first resorted to by the occupants of the room on the police party. If the police party had first resorted to firing, the occupants of the room namely Mohd. Atif Ameen and Mohd. Sajid after receiving injuries from service weapons would have immediately fallen down and would not at all have been in any position to fire upon the police party. The fact that Inspector Mohan Chand Sharma and HC Balwant Singh received gun shot injuries leads to the only inference that firing was first resorted to by occupants of the room.

The police team had gone to L-18, Batla House on receipt of specific information. They had legal right to verify the information. The occupants of Flat No.108 were legally bound to cooperate with the police team and respond to their query. They had no cause or occasion to open fire at the police party. Since they resorted to firing causing serious injuries, the police party was fully entitled to defend itself by taking appropriate measures.

There is ample and sufficient material before us which leads to the irresistible conclusion that there was imminent danger to the life of members of the police party. In fact, Inspector Mohan Chand Sharma received serious gun shot injuries which proved fatal and HC Balwant Singh also received grievous gun shot injuries. The injuries were caused by persons who were armed with fire arms and had resorted to firing.

Section 100 IPC lays down that the right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right, may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. The police party clearly acted in right of self-defence. In such circumstances, the action taken by the police party in which Mohd. Atif Ameen and Mohd. Sajid received fatal injuries and died is fully protected by law. We are clearly of the opinion that having regard to the material placed before us, it cannot be said that there has been any violation of human rights by the action of the police party. Since there was no violation of human rights, nothing further is required to be done by this Commission and the case is closed.
