# Beyond Reasonable Doubt?

## The Conviction of Shahzad Ahmad

Jamia Teachers' Solidarity Association

August 2013

Also by Jamia Teachers' Solidarity Association

'Encounter' at Batla House: *Unanswered Questions* (2009)
The Case that Never Was: *The 'SIMI' Trial of Jaipur* (2012)
Framed, Damned, Acquitted: *Dossiers of a Very Special Cell (2012)*

Illustrations by ANPU

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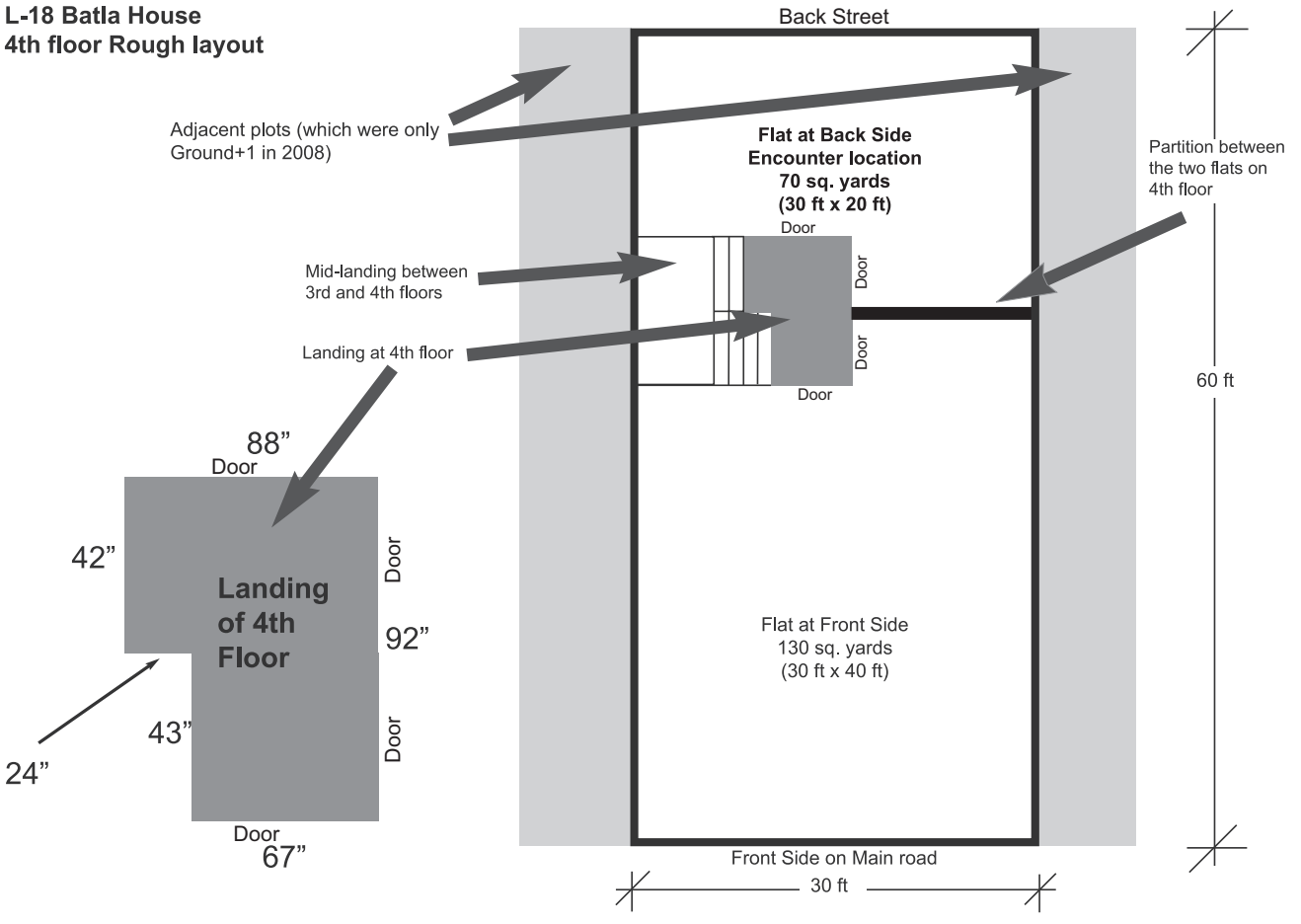
The site map of L 18, Batla House, where an 'encounter' resulted in the death of Inspector M.C. Sharma and two young men, Atif Ameen and Md. Sajid. Flat Number 108, where the seven-member police party entered to apprehend its occupants is in the rear. The plot on which the flats are built is 200 sq yards. The front flat is the larger one, measuring 130 sq yards, the rear flat being 70 sq yards. Into this 70 sq yards, two bedroom flat entered the police team. According to the police version, they entered through the left door, which was not locked. The front door was locked from inside. Two 'terrorists', one of whom is the accused Shahzad Ahmad, escaped from the front, unlocking the double iron and wooden doors whilst firing at the police. All appeals to the Court to visit the building to take a first hand look of the site of the 'encounter' failed.



In the afternoon of 20th July 2013, the final arguments in the trial into the death of Inspector Mohan Chand Sharma were brought to a conclusion . Over seventy witnesses had been examined in a trial that lasted close to three years. Four days later, on 25th July, the Additional Sessions Judge in Saket court pronounced Shahzad Ahmad guilty on all counts but a minor one. The 45-page judgment held Shahzad guilty of the murder of Inspector M.C. Sharma, of attempt to murder, assaulting police officers and destruction of evidence among others. The Court upheld the police story of Shahzad being present in L 18, Batla House on 19th September 2008, and that he had fled, while firing upon the police.

A case where an accused has to be proved guilty of firing on the police is a criminal one where the nature of the evidence has to be "beyond reasonable doubt". That is, the evidence of the presence of the accused at the alleged place and time of firing and his involvement in the act of firing would have to be proved by 1) eye witnesses 2) recovery of a weapon wherein it is proved that it was used by the said accused at the time and place; where it is proved that the bullets of the said weapon were those found on the victims/police. 3) Any other kind of evidence that directly proves the presence and act of the accused.

In State vs Shahzad the prosecution, by its own admission, has only provided "circumstantial evidence" and used this to indict the accused of crimes of the highest order and therefore demanded the highest penalty of death. However even the "circumstantial evidence" provided by the prosecution is so ridden with contradictions and inconsistency so as to make it collapse upon even the slightest scrutiny.

Let us examine the prosecution's case which has been accepted by the court as the evidence with which to convict the accused Shahzad.

## I. Who is Pappu?

It is the prosecution's case that Shahzad @ Pappu was among those who fired at the police party on 19th September 2008 in the L 18 building. SI Rahul Kumar, who was a member of the Special Cell raiding party on 19th September wrote in his complaint to the I.O.:

"The names of the escaped militants were revealed by Mohd. Saif as Junaid and Pappu."

No "Shahzad" however is mentioned either in this complaint or the FIR lodged in Jamia Nagar Police Station. Furthermore, the Delhi Police's report submitted to the NHRC by R.P. Upadhyaya, Additional Commissioner of Police, Vigilance (dated 23rd October 2008) reproduced in the NHRC report does not mention

Shahzad.

"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 ..."

The same report states: "...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."

Another letter – written by Karnail Singh, then Joint Commissioner of Police, Special Cell, Delhi –reproduced in the NHRC report says:

"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."

Shahnawaj, Shahbaz and Shahzad are all different names. Unless of course the court thinks that all Muslim names are the same. The court does not seem troubled by the fact that there has been no attempt to prove that Shahzad and Pappu are one and the same, because the verdict rests on the assumption that the prosecution story is true and need not to be proved or established through material evidence.

The prosecution has absolutely failed to prove that Shahzad was indeed Pappu. His family has consistently denied that Shahzad was ever referred to as Pappu. The prosecution brought absolutely no evidence on record and no witness in court who could testify to Shahzad being the same as Pappu.

## II. Did 'eyewitnesses' even see the accused?

"All of eye witnesses mentioned above stated to have seen accused Shahzad Ahmad fleeing from said flat, while firing at police party."

According to the police version, HC Satender and ASI Udaiveer entered the room on the right through the kitchen. This has been reiterated by both in their cross examination. During his cross examination, HC Satender conceded that activities in the other portion of the flat were not visible from the room into which he had entered with HC Udaivir.

Neither of them described the appearance of the escapees in their statements. Yet, both were able to identify the accused as one of the escapees later during the trial. The court took no notice of the above discrepancy wherein an 'eye witness' who is unable to describe the escapee, is later able to identify him.

## III. The Great Escape:

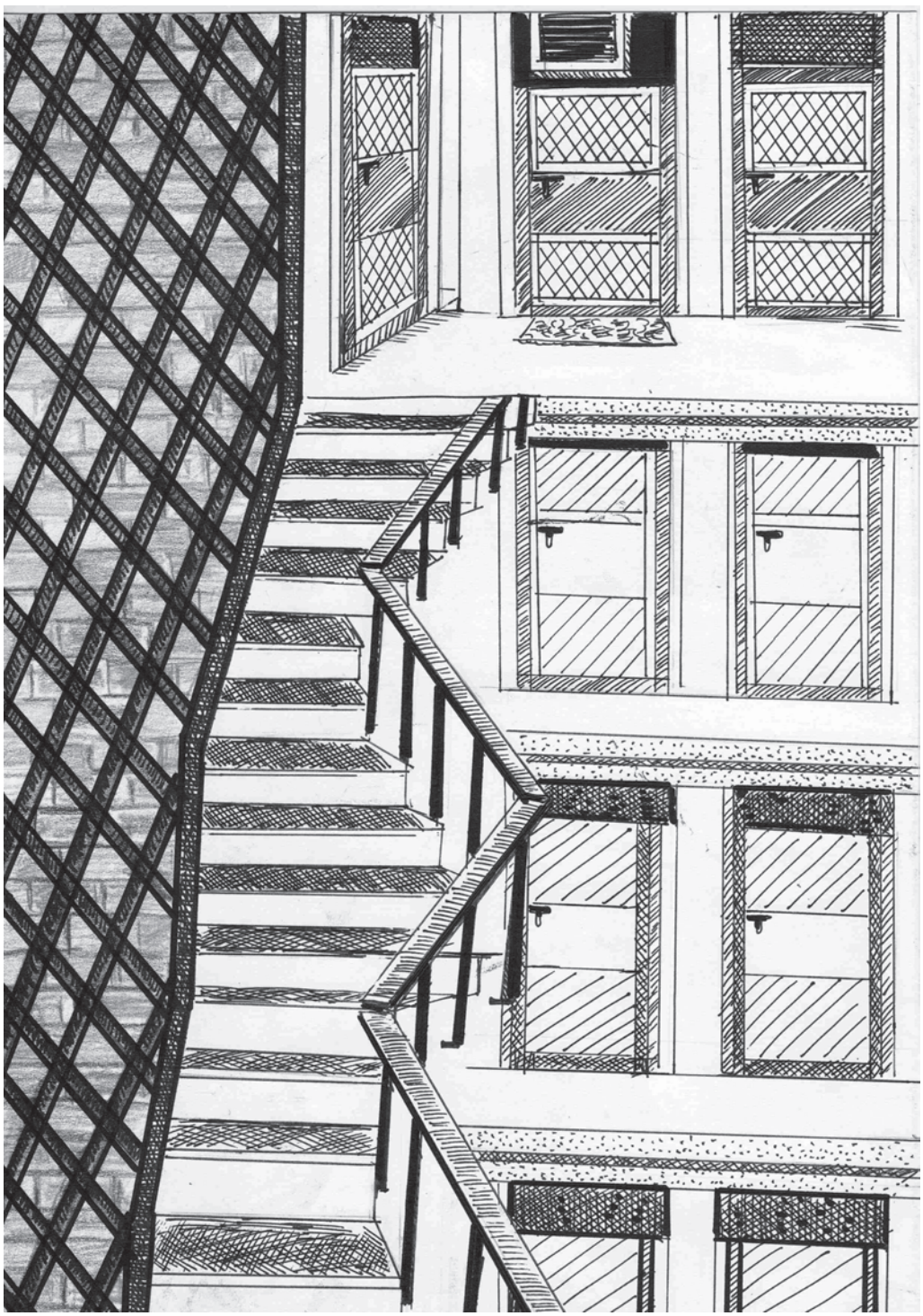
"So far as the fact that there was no scope of escape by any person from flat No. 108 at the time of incident is concerned, it is not in dispute that L18, Batla House is a four storied building, having two flats (in front of each other) on each floor. Flat No. 108, in which incident in question took place, is situated on the 4th floor, which is on the top floor of the building. In this way, there are seven other flats apart from flat No. 108. Inspector Rahul Kumar (PW8) stated to have checked flat No. 107 i.e. flat adjoining flat No. 108. Even if it is presumed that Shahzad Ahmad did not take shelter in that flat, there remained six other flats, where shelter could be taken by any fugitive. A minutia of deposition given by PW8 makes it clear that when he started tracing two offenders who fled away, ACP Sanjeev Kumar Yadav came at spot and he i.e. PW8 joined ACP Sanjeev Kumar Yadav in further operation. All this makes it clear that Inspector Rahul Kumar (PW8) did not search said building thoroughly. Needless to say that as per case of prosecution, said two offenders skipped using the stairs, posing themselves as local residents before the police persons deployed there. Although there is no evidence in that regard, it is case of none that said two offenders were known to the police persons, who were deployed at stairs or on the ground floor of the building to secure it. **It was not improbable for a person to have safe exit, posing himself as local resident.** Cogitating all this, I do not agree with Ld. Defence Counsel, stating that there was no scope for anyone to escape from said flat."

Here is SI Rahul Kumar's account of the incident:

"The terrorists present in the drawing room were trying to escape from the flat by opening the main door of the flat while firing on the police party. One terrorist present in the drawing room also sustained bullet injuries and two terrorists managed to escape from the flat while opening fire on the police party. Out of those two terrorists, one is Shahzad."

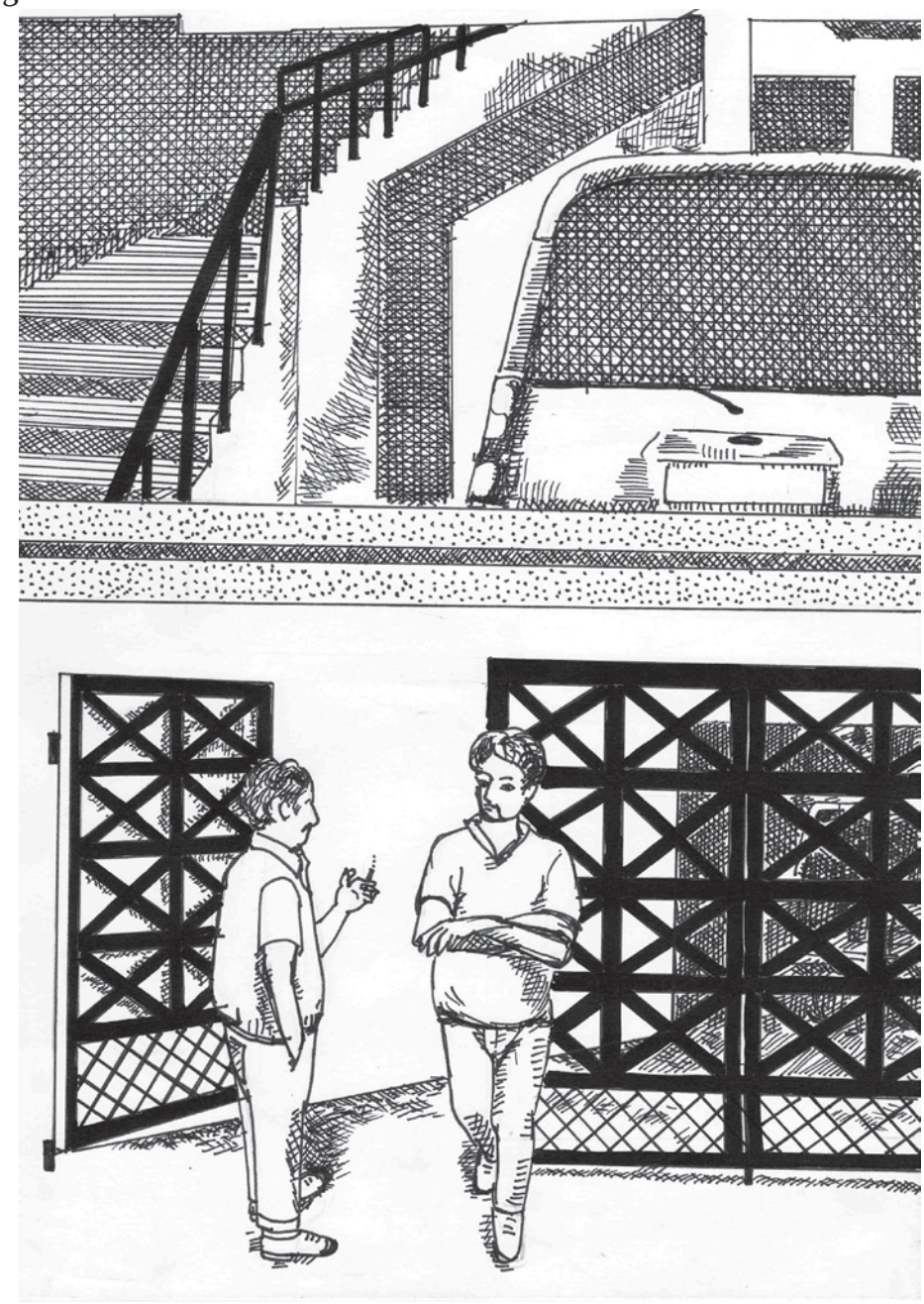
So clearly, Shahzad and another 'terrorist' escaped in the middle of a raging cross-fire according to the police version.

Neither the police nor the Prosecution attempt to explain how the two 'terrorists', including Shahzad, escaped in such circumstances. This is an 'explanation' that the Court offers on its own (see above citation). However is it even remotely plausible that Shahzad and another terrorist escaped in the middle of raging cross fire, changed appearance into that of a 'local resident', sought refuge and was then granted refuge by a neighbor?



In its rush to uphold the prosecution's story, the court invents the possibility of Shahzad hiding or taking shelter in other flats of the building, forgetting even the legal maxim that the prosecution is obliged to prove the case in the manner it has been alleged.

The court has come up with its own explanations, which exceed even the prosecution story, merely in order to uphold the case of the prosecution. It is not the case of anyone, as the judgment seems to suggest, that the two alleged offenders were known to the police persons deployed at the main gate. However, imagine the scenario: gun shots are being fired in the building, people are hit by bullets, noise, screams of those hit, and footsteps of those rushing down the stairwell in their attempt to flee. In such a scenario, would the policemen deployed at the gate have let anyone leave the building merely because they did not recognize them?



The conclusions of the Court in this case seem to be blighted by either a fertile imagination, or an absolute lack of imagination. In either case, the conclusions are wish fulfillments rather than based on any realistic assessment of the sequence of events.

## IV. Police Deployment in the gali and the main street

From the statements and cross examinations of police witnesses, the following facts emerge as undisputed:

a) Two teams comprising a total of 18 members were formed.

b) 7 police personnel proceeded toward L-18; the remaining police men were deployed in the street to cover the building.

> "Without wasting further time, Inspector Mohan Chand Sharma briefed the entire team and the team reached at L18, Batla House, Delhi and surrounded the building. At about 11.00 am, Inspector Mohan Chand Sharma alongwith SI Dharmender Kumar, SI Ravinder Kumar Tyagi, HC Balwant Singh, HC Udaivir Singh, HC Satyender (No. 397/SB) and myself entered into the building to conduct raid at flat No. 108, L18, Batla House, Delhi, whereas other team members were deployed at ground floor to cover the building."
>
> (From SI Rahul Kumar's complaint about the incident [Ex. PW8/C] cited in the judgment)

c) Following were the placements of policemen in the gali:

SI Dalip Kr. and ASI Anil Tyagi: in the gali near the main gate

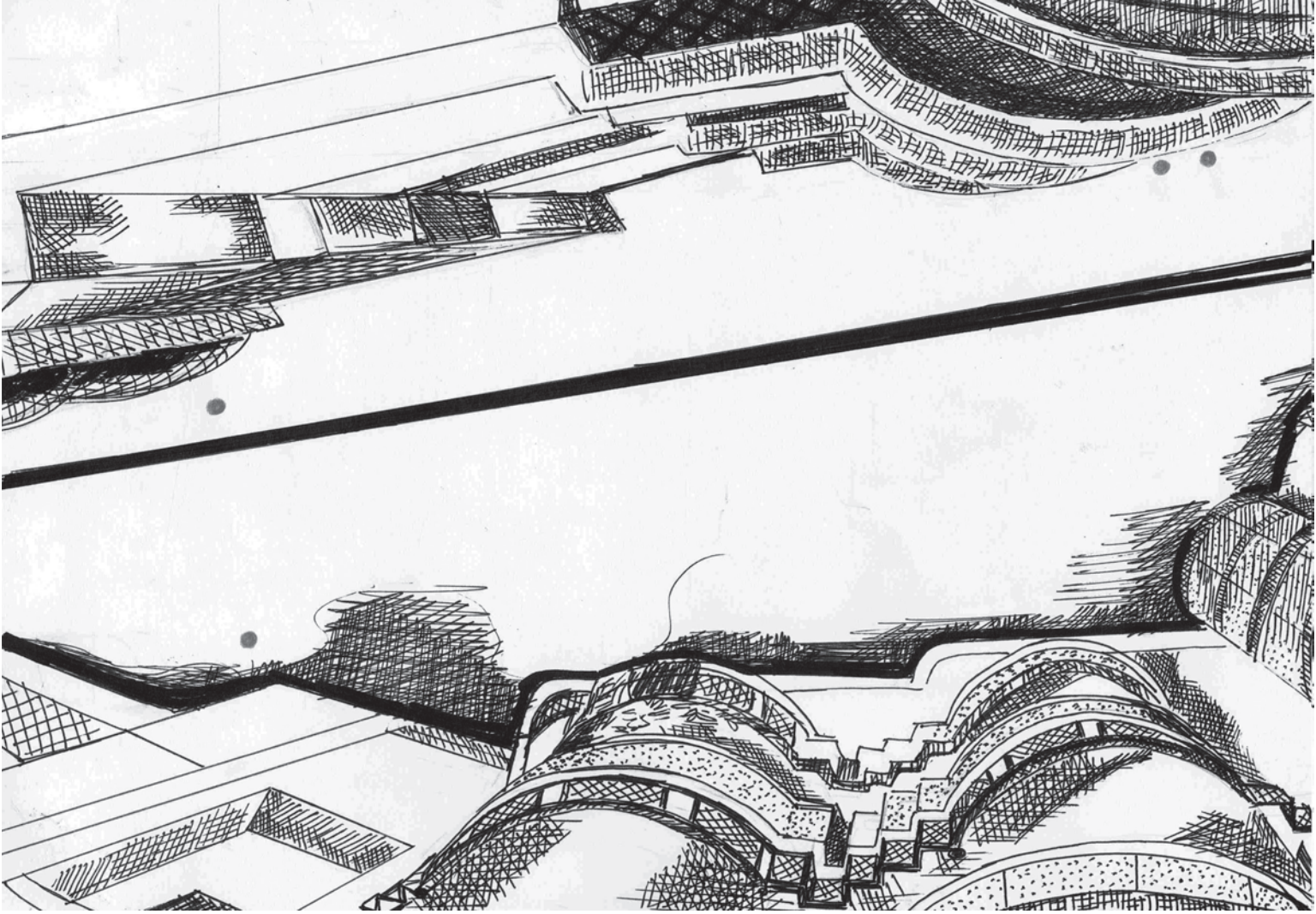
SI Devender Malik: On corner of right side in the gali

Ct. Rajiv: Opp. SI Devender (Right end)

HC Rajbir: To the corner left, towards the Masjid end.

Vinod Gautam: Opposite to HC Rajbir (Masjid end)

HC Satender, Ct. Sandeep, Ct. Virender Negi: Near the police vehicles on the main street, just outside the gali (towards the Masjid end).



*Aerial View of the gali with the placement of policemen*

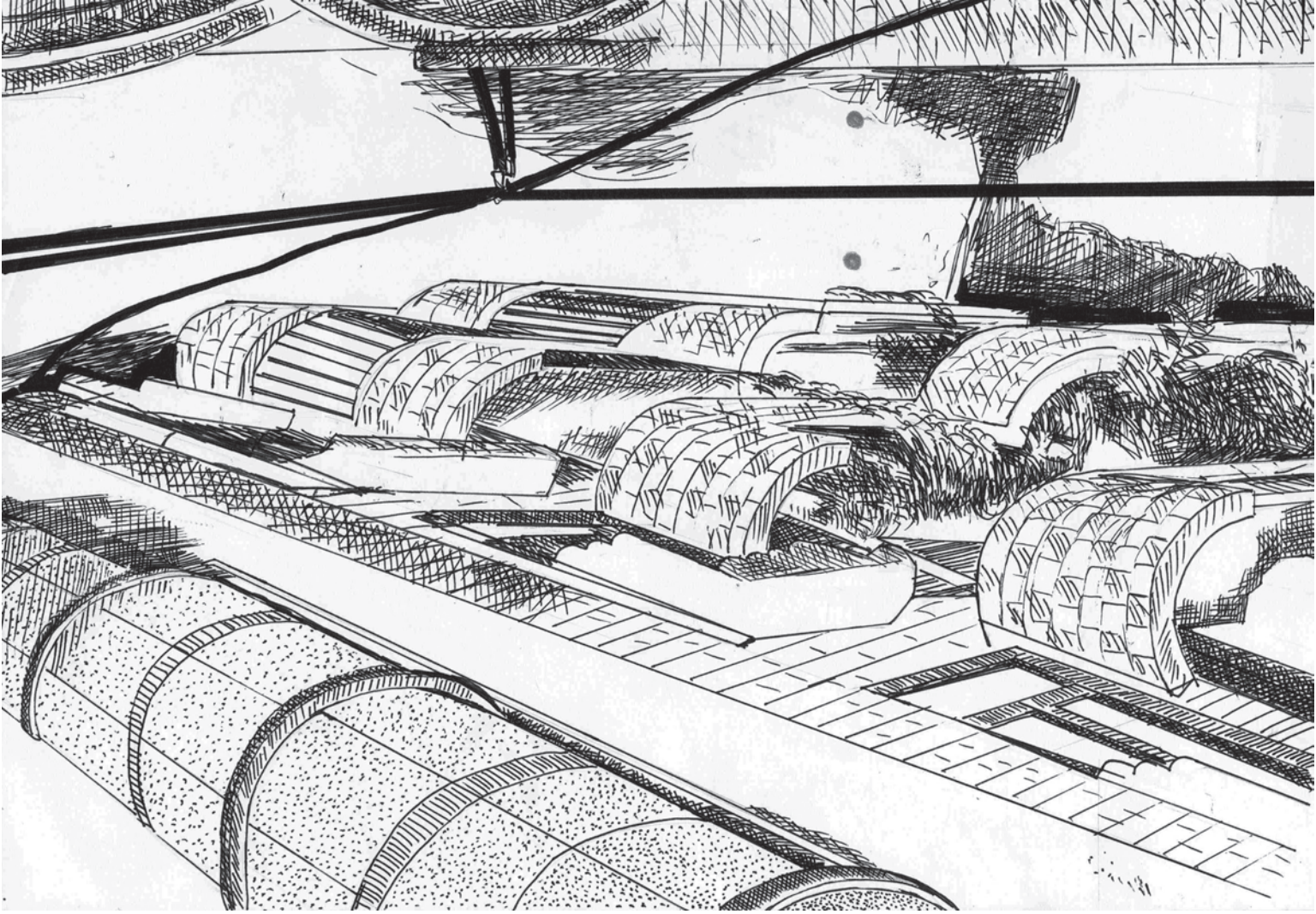
This clearly shows that anybody attempting to flee the site of the encounter would have had no choice but to have entered into a gali which was well covered by the deployed policemen. This fact is totally ignored by the court when it pronounced that anybody could have made good their escape. This can only be seen as a conjecture.

## V. The Flimsy Evidence:

The entire verdict rests on three weak pegs:

### A) Telephone Call Records between Atif Ameen's phone and Shahzad's father's phone:

The details or nature of this conversation was not presented by the prosecution before the Court. Moreover, the relevance of this information is not clear as it in no way establishes or even indicates the presence of the accused in Building L-18 **at the time of the encounter**, or his involvement in the said encounter since the telephone calls are not made at the time of the said encounter.



Further, the court says:

"IO took voice sample of accused Shahzad Ahmad @ Pappu to get the same matched with voice already obtained by him during monitoring of mobile phone No. 9811004309 stated to be belonging to Atif Ameen."

On what basis does the court conclude that the voice was matched in the absence of any report of the sampling test placed in records or before the Court? In fact, the Defence had drawn the court's attention towards the missing evidence in court in its concluding arguments. Hence it is puzzling that a judgment delivered a week after this was stated in court, fails to mention this fact. It is a well-established legal principle that when the prosecution withholds evidence, a negative inference is drawn against it; it is held that the production of that piece of evidence would have corroded the prosecution's case, and is therefore withheld. How then does the court, instead of drawing a negative inference against the prosecution, speak as though evidence was presented?

**B) Railway Ticket:**

"The IO came to know that accused Shahzad Ahmad @ Pappu had got railway reservation done for 24.09.2010 from Delhi to Ajamgarh by Kafiyat Express."

And again:

"**The accused had well planned to leave Delhi after that operation**. Same had reserved his seat in Kafiyat Express. He was scheduled to leave Delhi on 24.09.2008 and this reservation has been well established from the statement of PW28."

Planned to leave Delhi after which operation? Does the court refer to the Delhi serial blasts? The serial blasts took place on 13th September 2008. Why would a terrorist bomber spend 11 days in the city in which he had carried out blasts? Or does the court refer to the killing of Inspector Sharma? How could Shahzad have advance knowledge of the raid on Batla House and book his tickets accordingly. The ticket was not seized from the house.

The fact that the accused booked a train ticket for himself for 24th September does not in any way prove that he was present in the said house on 19th September.

**C) Recovery of an invalid, expired passport of the accused:**

"... it is also well proved that a passport belonging to accused Shahzad Ahmad was recovered from that flat after operation was over. It is clear that accused Shahzad Ahmad while leaving said flat, forgot his passport."

The presence of the passport proves nothing and could be explained in an infinite number of ways. The accused does not deny knowing the occupants of the flat and so there are any number of circumstances through which the said passport could have been left in the flat. However, the presence of the passport does not in any way establish that the accused was living in the flat as per the case of the prosecution.

**No other articles of the accused were found in the flat.**

"In his cross examination done by Ld. Defence Counsel, this witness [ACP SANJEEV YADAV] admitted that no article belonging to accused Shahzad Ahmad like wearing clothes etc. was found at spot, except his passport."

It is noteworthy that no fingerprints belonging to the accused were found in the house. It is inconceivable that a person living in the flat would leave no other articles other than a passport in light of the fact that that even the prosecution's case is that the accused were not prepared for the coming of the police and the resultant encounter. So no effort to hide traces could have been undertaken.

Or is the court assuming that Shahzad collected all his personal belongings, escaped with them in hand, in the middle of the gun battle, through the various police cordons, but only was absent minded about his long expired passport.

## VI. Independent Witnesses:

The court recognizes that the prosecution case is not corroborated by any independent witness; a clear sign of its weakness. This is all the more exceptional if it is remembered that this was not an operation conducted in the dark of night, in an outlying uninhabited zone, where lack of witnesses is easily explained away, but in mid morning, in a densely populated residential locality. The Court thus feels obliged to admit the lack of independent witnesses.

### A) Difficult to get Muslims to be witnesses in anti-terror operations:

"Ld. Addl. PP explained that the raiding party was in hurry to nab the suspects of serial blast. Moreover, majority of residents of that area are followers of the religion, as was of those suspects. If the police officers tried to involve any such local resident, it would have created social unrest in that area, causing fear to the life of those police persons even. ...

No religion professes crimes as its tradition, then why the police fostered a belief that it will stir communal violence if they invited local residents to join a raid, to arrest an offender, who was belonging to their religion. It is equally true that having witnessed incidents of clashes between different religions, way as apprehended by Ld. Addl. PP, the fear of police being targeted, cannot be abnegated outrightly."

Indeed such a blatantly communal plea by the Addl PP while explaining the lack of independent local witnesses ought to have been "abnegated outrightly" and swiftly. It reflects the institutional bias afflicting the investigating agencies and police forces which tend to stereotype 'followers of the religion of the accused' as terrorists or sympathizers of terrorists. Many a terror investigation has fallen victim to this kind of pernicious bias. However, by accepting it and putting a judicial stamp on it, the court has set a very dangerous precedent, and in fact lowered the prestige of the judiciary which has been trusted by the people of this country to deliver justice without bias and favour.

### B) Public Apathy:

"Even otherwise, public apathy in joining investigation of heinous offences even of general concern as a witness, have been highlighted by the media as well as by the higher courts, time and again. Keeping in mind all this trend of general public, in my opinion, if the police could not join any public person on the way to spot, same is not fatal to the case of prosecution. Although Inspector Rahul Kumar (PW8) told to court that he asked 67 passerby persons to join the raiding party, after apprising them about the raid, but all of them left away after telling their genuine excuses and without disclosing their names and addresses."

Whether or not witnesses were asked to join the raiding party has hardly been settled as all police witnesses have given contradictory statements on this issue. SI Anil Tyagi (PW 13) said that no one from his team asked any public persons to join the raid, either at Abassi Chowk, where the police team had initially apparently assembled before embarking on the raid. Furthermore, on no occasion did the police party follow the required procedure of taking down the names and addresses of those who refused to participate in the raid.

In fact what the courts have noted time and again is the reluctance and apathy of the Special Cell to enlist independent witnesses for their operations:

Courts on Lack of independent witnesses in Special Cell Operations

Excerpted from Framed, Damned Acquitted

**State vs. Irshad Ahmed Malik**

The Trial Court emphasized that as a rule of prudence when police officials proceed to apprehend a person on information [that someone was to commit a serious crime] efforts should be made to enlist the presence of some independent public person(s) so as to support the prosecution theory and give credibility to police witnesses who deposition in court. . In the absence of such public witnesses, the testimony of police/official witnesses lack credibility and fail to inspire confidence.

The court noted that between the information received and the actual raid "there was sufficient time opportunity for the police to call some independent public witness to join that team before accused was captured."

The court wondered, why it should not remark that such required enquiries and such efforts to enlist independent witness "was omitted by the police deliberately".

**State versus Salman Khurshid Kori and others**

The prosecution failed to produce a single independent public witness relying only on police or formal witnesses. The prosecution stated that though the police asked about 10-12 people to join the raiding police team no one agreed to do so. However, the court did not find it convincing and noted the admittance by Inspector S.K Giri – during cross-examination – that in just about 15 minutes, after the apprehension of the accused, a large crowd had gathered at the spot, which included media persons. Why then did the police effect recoveries before the gathering of public at the spot? The court observed that between the information received and actual raid there was sufficient time and opportunity for the police to call some independent public witness to join that team before the accused were captured.

**State versus Imran Ahmed and Another**

The fact that the Special Cell made no effort to ensure the presence of public witnesses in their operation, despite there being three hours between the supposed receiving of secret information at 3.30 pm and the alleged apprehension of the accused at 6.30 pm, is "indicative of the fact that the team was not keen at all in joining any public witness."

**State versus Mohd. Iqbal @Abdur Rehman and others**

The court also noted that at the time of apprehending the accused at around 9.00 p.m., the police had failed to enlist any independent member of the public as witness, not even railway employees; though the alleged apprehension took place near a railway station.

**C) Police are reliable witnesses:**

"I find force in my opinion from a case titled as Aher Raja Khima Vs. State of Saurashtra AIR 1956 SC 217 where it was held by the Apex Court that the presumption that a person acts honestly applies as much in favour of a Police Officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefore. Such an attitude could do neither credit to the Magistrates nor good to the public."

The court does not explain why it chooses to rely on the testimony of some police witnesses while ignoring the testimonies of other police witnesses. It is of course striking that whenever the testimony provided by a police witness contradicts or confounds the prosecution version, it simply fails to find a mention in the judgment, or remains unexplained. For example, SI Anil Tyagi, in his cross-examination admitted that he did not see any public person going in or coming out of the building. This would however not square with the court's own theory that Shahzad may have escaped because the policemen deployed at the gate failed to recognize him, so this isn't explained in the verdict at all. ACP Sanjeev Yadav too admitted in the course of his cross-examination that he did not meet anyone on the staircase when he was climbing up to the 4th floor, after the initial round of firing. While Sanjeev Yadav is amply quoted in the judgment, this admission though mentioned passingly, is not sought to be explained, weighed or even properly dismissed based on other material facts. It is simply mentioned as one of the points put forth by the Defence and the matter ends there.

**So, it is not simply reliance on police witnesses. It is reliance on those police witnesses whose testimonies fitted the prosecution story perfectly. The rest were simply ignored.**

## VII. Why were Defence Witnesses Disregarded?

It is settled law that the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. Judicial scrutiny cannot be different for different categories of witnesses.

See for example:

a) State of UP vs. Babu Ram (2000) 4 SCC 515

b) Banti vs. State of MP (2004) 1 SCC 414

c) State of Haryana vs. Ram Singh (2002) 2 SCC

**However, when the accused sets up a defence or offers an explanation, he is not required to prove his defence beyond reasonable doubt but only by preponderance of probabilities.** (M. Abbas vs. State of Kerala 2001 (3) Crimes 110 (SC). In other words, a doubt would be enough for defence evidence to raise a question on the prosecution's story.

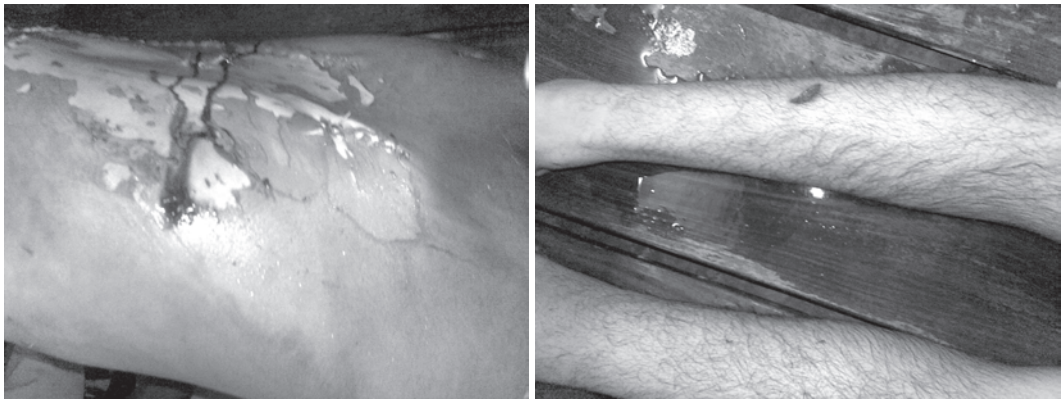
In Shahzad's case, the judge merely mentions the testimony of defence witnesses and does not consider, weigh or analyse their evidence. Md. Saif, the only person taken into custody from L-18 on the day of the incident testified in court that Shahzad was not present in the house on the said day. This was reiterated by Zeeshan, who confirmed that when he left for his examination in the morning of 19th September, the only occupants of the flat were Atif Ameen, Mohd. Sajid and Mohd. Saif. The judgment ought to have mentioned the reasons why defence witnesses were not relied upon. The defence testimony including their cross examinations by the prosecution – of which one finds no discussion – should have been weighed against the testimony of the police witnesses, according to standard jurisprudential principles. The fact that Md. Saif was not examined by the prosecution but as a defence witness is an important fact which was completely ignored by the judge. Even otherwise, if we assume that Zeeshan and Saif were 'interested witnesses', this suggestion in addition to questions/ suggestions as to why they were interested witnesses, should have been put forth by the prosecution.

The judge simply gives no reason as to why the defence witnesses could not be relied upon. The job of defence evidence is to raise sufficient doubt in prosecution's theory, and not to prove the defence version beyond any reasonable doubt. This jurisprudential principle should have guided the judgment since there were no independent witnesses to support the theory of the prosecution.

## VIII. Postmortem:

### A) Non-Firearm injuries on the bodies of Atif and Sajid:

**Atif Ameen** sustained injuries on right knee cap (injury number 7); grazing effects in the interscapular region or back region in layperson's terms (injury number 11), multiple abrasions on right buttock (injury number 21).



It is further explicitly stated that injury number 7 was "produced by blunt force impact by object or surface."

17-year-old Md Sajid also displayed at least two injuries (numbers 13 and 14, interscapular region and right leg), which had been caused by blunt force impact by object or surface."

The court held that:

"It is explained by Ld. Addl. PP that it has come on record from the statements of eyewitnesses mentioned above that both of said Atif Ameen and Mohd. Sajid fell down on the ground after being hit by bullets, fired by police in self defence. In this way these injuries were caused, when said persons fell down on the floor. I find weight in the explanation given by Ld. Addl. PP."

In the expert opinion of Dr. Arvind Kumar of Lady Harding Medical College (PW 19), injury no. 7 on Atif and injuries no. 13 and 14 on Sajid were caused by "blunt force impact by object or any surface". The court itself rules out the possibility of use of object thereby uncritically embracing the prosecution story that it was caused by falling down on the floor.

If indeed Atif Ameen fell down, how is it that he sustained injuries on both his right knee-cap and his right buttock simultaneously? How does one account for the sloughing of the skin off his back?

## B) No explanation for Atif and Sajid's Gunshot Wounds:

While the NHRC, the media and the sessions courts goes to great lengths to constantly highlight that Inspector Sharma was shot in the front, no explanation has been forthcoming on the gun shot wounds on the bodies of Atif and Sajid, the entry and exit wounds clearly suggesting foul play.

Gun shot Wounds (Entry) on the Body of Atif Ameen

| **Gun shot Wound No. (as In the report)** | **Size** | **Area** |
|---|---|---|
| 14 | 1 cm diameter, cavity deep | left side back |
| 9 | 2X1 cm, cavity deep having 1 cm abrasion collar | Left side back of chest |
| 13 | 3x1 cm cavity deep with abrasion collar of 9.2 cm | Over midline at back, 30 cm below the nape of neck |
| 8 | 1.5 x1 cm x cavity deep | Right scapular region, 10 cm from midline and 7 cm below tip of right shoulder |
| 15 | 0.5 cm diameter Xcavity deep | Lower back midline, 44 cm below nape of neck |
| 6 | 1.5 X1 cm oval in shape | Inner aspect of left thigh (track going upward), communicating with gsw injury no. 20 at left buttock region from where a metallic object is recovered. The GSW 20 is cited as of unusually large size of 5x2.2 cm |
| 10 | 1x0.5 cm | 5 cm below right shoulder tip & 14cm below midline |
| 11 | 1x0.5 cm | Inter scapular region, 4cm right to midline |
| 12 | 2x1.5 cm | Right side back, 15 cm from midline, 29 cm below tip of the right shoulder |
| 16 | 1 cm diameter | Outer and back aspect of right forearm |

Almost (8 out of 10) all the entry wounds on the body of Atif Ameen are on the back side, in the region below the shoulders and at the back of the chest, which point to the fact that he was repeatedly shot from behind.

Another one (no.6 on the table) is on the inner side of the left thigh but suspiciously, the trajectory of the shot is in the upward direction, thus suggesting that in this case the shot was fired from below. What caused the unusually large wound of 5 x 2.2 cm??

The gunshot injuries received by Sajid

| | |
|---|---|
| Gun shot Wound no. 1 | Right frontal region of the scalp (forehead) |
| Gun shot Wound no. 2 | Right forehead |
| Gun shot Wound no. 5 | Tip of right shoulder (going vertically downwards) |
| Gun shot Wound no. 8 | Back of left side chest (12 cm from root of neck) |
| Gun shot Wound no. 10 | Left side of occiput (in layperson's term, back portion of the head) |

The entry points of each of these gunshot wounds—and the fact that all but one bullet is travelling in a downward direction —strongly suggests that he was held down by force (which also explain the injuries on the back and leg region), while bullets were pumped down his forehead, back and head.

In which genuine cross fire do people receive injuries only in the back and head region?

The argument by the Defence that the prosecution also ought to explain the deaths and injuries of the accused, and not just that Inspector Sharma, was brushed aside by the conjecture that injuries must have been received during the fall.

The manner in which Atif Ameen and Md. Sajid were shot is central to the establishing of the theory of self-defence being put forth by the police. Should we not then draw the conclusion that reluctance to engage with an analysis of their gunshot wounds is based on the fear that the self-defence theory could suffer?

No one wants to explain the deaths of Atif and Sajid

NHRC's deliberations on the post-mortem reports of Inspector M.C. Sharma, Atif Ameen and Md.Sajid tells it own tale.

In the NHRC's proceedings on the Batla House 'encounter', the Commission expends 630 words (pp.14-16, 20). While the actual autopsy report of Inspector

Sharma is roughly about a page and a half.

On Atif Ameen's autopsy findings the Commission expends only 73 words (pp.16-17); whereas the actual autopsy report runs approximately into four 4 pages.

Similarly, the Commission very conveniently spends a mere 17 words (p. 17) while deliberating on the post-mortem report of Md. Sajid; again the actual autopsy report runs approximately into four 4 pages.

Why was the Commission so verbose with Sharma's autopsy while cryptic with the autopsy of the slain boys, especially with that of Sajid, who was shot in the head several times, is only too apparent.

## IX. Could Shahzad have Fired?

"Again, it is proved from the deposition of witnesses discussed above that HC Rajbir was fired at by the same occupants **including accused** at least twice."

Nothing of this sort is actually proved. This categorical statement, in the complete absence of any discussion of ballistic reports, is baffling. Why does the court shy away from discussing ballistics? And that too in a murder case where the deceased is said to have been killed by firing. There is not one reference to any ballistic report, to weapons used, bullets recovered; no attempt at all to link the recovered weapons or bullets to the accused. It is again simply assumed that the accused fired on the policemen.

Is it to avoid confronting the fundamental issue raised by the Defence about the non- recovery of any bullets that Shahzad may have fired while fleeing? According to the CSFL's fire arms examination report:

The non-licensed weapons recovered from the site were two .30 mm pistols (W 2 and W 3). Bullets and fired cartridge cases which matched these two pistols were recovered from the spot. Furthermore, all other bullets and cartridge cases recovered from the building matched with the police weapons.

According to A. Dey, Principal Scientific Officer (PW 36), "Fired cartridges cases forwarded to us were matching with respective fire arms. Similarly, fired bullets and fragmented piece forwarded to us, were also matching with respective firearm."

Now recollect the police story that Shahzad fled the building while firing at the policemen. The weapon, they urge was thrown by him in a canal in Bulandshahar, never to be recovered. But surely, if he was firing, the bullets should have been recovered from the building. However, no extra ammunition apart from those that

corresponded with weapons accounted for was found.

**Where did the bullets that Shahzad fired disappear? But perhaps it is a question too complex and difficult for the court to even to begin pondering on, and thus there is a studious silence maintained on this aspect while confidently concluding that Shahzad fired at the policemen.**

## X. Delay in Filing FIR:

The Defence had argued that though the information about the incident had been received by the Jamia Nagar police station, which is a mere one kilometer away from the said building, was received at 11.15 am but the FIR was only lodged at about 4.30 pm in the evening, a delay of several hours, time which allowed the police to concoct a story.

The court's response was cryptic:

"Coming to case in hands, even if police station Jamia Nagar was at a distance of about 1 km from the spot, it is explained by the IO that he went to Holy Family Hospital, where Inspector M.C. Sharma was admitted and to AIIMS Hospital, where other injured/ deceased were taken. In my opinion, it was not unreasonable if IO opted to visit the injured in the hospital before registration of FIR, particularly when the injured is none but his own colleague."

The Court is not exercised by the fact that even though the FIR was filed over five hours after the incident, the FIR remained very sketchy, omitting any details about the rounds fired, or the number and type of firearms used by the police party. In fact, this FIR follows the template favoured by the Special Cell in its numerous 'encounters', all of which remain equally sketchy, lacking description of bodies, bullets and firearms.

## XI. A Judgement riddled with Tautology and Obfuscations:

A) "Whatsoever it may be, it did not give any licence to the occupants of a flat to fire at police persons who came there to investigate a case, merely because they were unarmed or not wearing any bullet proof jacket".

It is surely nobody's case that because Inspector Sharma did not wear a bullet proof jacket, it gave anyone the "license" to shoot him. The question rather to be asked is that if indeed the police did receive prior information that those responsible for the blasts were in L 18 why did they not take the requisite precautions (bullet proof jacket). This is connected with the unexplained and inordinate delay in reaching Batla House. What is needed to be proved is in fact taken as a given, an assumption.

B) "...that accused Shahzad was sharing common intention with coaccused. If

accused Shahzad joined coaccused...in attacking the police party, it was not of much significance that he fled away in between and his accomplices continued the act, designed by them together. It is not plea of anyone that co-offenders did act which was not intended by them".

There is no evidence of conspiracy in relation to Shahzad. There is furthermore nothing in the history of the accused that was presented by the prosecution to suggest that he was involved in any kind of terrorist activity. Yet the judgment re-describes the account of the police and this re-description is taken as evidence for conviction. It also obfuscates since it is indeed of not much significance that he "fled" away. However 1) neither the fact that he was there, 2) nor that he fled away has been proved with any evidence.

C) "...Supreme Court of India that evidence of a Police Officer laying trap if found reliable can be accepted without corroboration".

This is a tautology if any. "If found reliable" means "it can be accepted without corroboration". However it is precisely the reliability of the Police account that is in question.

All that is proved, beyond inconsistent police testimony, is that it is possible that the accused knew the deceased. And this possible association becomes the ground for conviction in the judgment.

In sum, the judgment has merely accepted the case put forward by the prosecution. The prosecution merely gives the version provided by the police that are inconsistent. These inconsistencies are ignored. The judgment merely argues for the possibility of the police account and in a strange and twisted logic such possibility, accepted on the most flimsy grounds, provides the basis on which a conviction for the most heinous crimes is carried through. The police, prosecution and judge thereby become interchangeable terms.

The irony of this judgment is that it gives a blanket benefit of doubt to the police account, which is one that implicates another in a heinous crime, who is the one who should be considered "innocent until proven guilty". Such a perversion of an axiom of justice is hard to imagine.

*Excerpts from some Supreme Court judgements:*

The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

**Gambhir vs State Of Maharashtra on 15 April, 1982**
**Equivalent citations: AIR 1982 SC 1157, 1982 CriLJ 1243, 1982 (1) SCALE 388**

It is well settled that where the inference of guilt of an accused person is to be drawn from circumstantial evidence only, those circumstances must, in the first place, be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused, and in their totality, must unerringly lead to the conclusion that within all human probability, the offence was committed by the accused and none else.

**Rama Nand And Ors vs State Of Himachal Pradesh on 6 January, 1981**
**Equivalent citations: 1981 AIR 738, 1981 SCR (2) 444**

In a case which depends wholly upon circumstantial evidence, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. That is to say, the circumstances relied upon as establishing the involvement of the accused in the crime must clinch the issue of Guilt. Very often, circumstances which establish the commission of an offence in the abstract are identified as circumstances which prove that the prisoner before the Court is guilty of a crime imputed to him. An a priori suspicion that the accused has committed the crime transforms itself into a facile belief that it is he who has committed the crime. Human mind plays that trick on proof of the commission of a crime by resisting the frustrating feeling that no one can be identified as the author of that crime.

**Prem Thakur vs State Of Punjab on 17 November, 1982**
**Equivalent citations: 1983 AIR 61, 1983 SCR (1) 822**

Jamia Teachers' Solidarity Association (originally Jamia Teachers' Solidarity Group) is a collective of university teachers, formed in the aftermath of the Batla House 'encounter' in 2008. Though initially focusing on the demand for a judicial probe into the Batla House 'encounter', JTSA has emerged as an important voice arguing for rule of law, and against illegal detentions, encounter killings, and communal witch hunts by anti-terror agencies.

JTSA conducts fact-findings, investigations, publishes reports, engages in legal aid work as well as collaborates with a range of civil society groups on issues of democracy, justice and civil rights. For more on the activities of JTSA, visit www.teacherssolidarity.org

JTSA is a non-funded organization which depends on the goodwill, support of all democratic and progressive forces and individuals who would like to see our work to go on. We welcome contributions to sustain our campaigns and legal aid work. Please write to info.jtsa@gmail.com if you would like to support us.

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