

REPORT

OF

JUDICIAL ENQUIRY COMMISSION,

**IN THE MATTER OF INCIDENT OF ENCOUNTER AT
VILLAGES SARKEGUDA OF POLICE STATION
BASAGUDA, DISTRICT BIJAPUR AND VILLAGES SILGER
AND CHIMLIPENTA OF POLICE STATION JAGARGUNDA
OF DISTRICT SUKMA, ON THE NIGHT INTERVENING
BETWEEN 28TH & 29TH JUNE, 2012.**

By

**JUSTICE V.K. AGARWAL
SINGLE MEMBER
ENQUIRY COMMISSION.**

REPORT OF
JUDICIAL ENQUIRY COMMISSION,
 IN THE MATTER OF INCIDENT OF ENCOUNTER AT VILLAGES SARKEGUDA OF POLICE
 STATION BASAGUDA, DISTRICT BIJAPUR AND VILLAGES SILGER AND CHIMLIPENTA OF
 POLICE STATION JAGARGUNDA OF DISTRICT SUKMA, ON THE NIGHT INTERVENING
 BETWEEN 28TH & 29TH JUNE, 2012.

LIST OF CONTENTS

S, No.	Content	File No.	Part		Total No. of pages in the file	Page No. in the Annexure
1	List of Contents Report	1	-		1 76 1	(i) 1 to 76 77
				Appendix (i)		
2	Statements of witnesses	2	A B C	Appendix(ii)	1 to 105 1 to 44 45 to 119	78 to 84
3	Exhibited documents	3	A B	Appendix(iii)	1 to 255 1 to 121	85 to 94
4	Written Submissions	4	A B C	Appendix(iv)	1 to 102 1 to 86 1 to 10	95 to 100
5	Order sheets	5		Appendix(v)	1 to 63	101 to 103
6	Un-Exhibited documents	6	A(1) A(2) A(3) B C D	Appendix(vi)	1 to 301 1 to 121 1 to 77 1 to 18 1 to 414 1 to 33	104 to 114
7	Miscellaneous Documents.	7	A B C D	Appendix(vii)	1 to 454 1 to 212 1 to 285 1 to 14	115 to 119

(i)

REPORT

OF

JUDICIAL ENQUIRY COMMISSION

IN THE MATTER OF INCIDENT OF ENCOUNTER AT VILLAGES SARKEGUDA OF POLICE STATION BASAGUDA, DISTRICT BIJAPUR AND VILLAGES SILGER AND CHIMLIPENTA OF POLICE STATION JAGARGUNDA OF DISTRICT SUKMA, ON THE NIGHT INTERVENING BETWEEN 28TH&29THJUNE, 2012.

- [Set up by Government of Chhattisgarh General Administration Department, Raipur (Vide Notification Dated 11th July, 2012) Under the Section 3 of Judicial Enquiry Commission Act, 1952 (No. 60 of 1952)].

Parties were represented in this enquiry by Counsels (irrespective of their seniority, as the same is not available)

On behalf of Complainants:

Dr. Yug Choudhary, Sushree Shalini Gera, Sushree Parijata Bharadwaj, Smt. Sudha Bharadwaj, Sushree Isha Khandelwal, Shri Arindriya Chakraborty, Shri Podiyamy Bhima, Shri Amarnath Pandey, Sushree Anubha Rastogi, Shri Pratik Soni.

On behalf of Opposite Parties/Security Forces:

CRPF: Shri Sanjay Shukla, Shri S.K. Farhan

Police Administration: Shri Sanjay Shukla, Shri Sanjay Vishwakarma, Smt. Annapurna Yadu.

State Government: Shri Anand Mohan Thakur, Shri Shakil Ahemad, Shri Dinesh Panigrahi.

1. An incident of encounter by the Security Forces took place in the intervening night between 28th and 29th

he

June- 2012 at Silger of Police Station Basaguda, District Bijapur and Villages Sarkeguda and Chimlipenta of Police Station Jagargunda of District Sukma in Chhattisgarh State. As a result the State Government of Chhattisgarh set up a Judicial Enquiry Commission vide Notification dtd. 11/07/2012, which is as below:

छत्तिसगढ़ शासन,
सामान्य प्रशासन विभाग,
मंत्रालय, दाऊ कल्याण सिंह भवन,
रायपुर
रायपुर, दिनांक 11 जुलाई 2012

अधिसूचना

चुंकि दिनांक 28-29 जून, 2012 को जिला बीजापुर के थाना वासागुडा के ग्राम सिलगेर और जिला सुकमा के थाना जगरगुण्डा के ग्राम क्रमशः सारकेगुडा एवं चिमलीपेंटा में सुरक्षा बलों की मुठभेड़, एवं चुंकि राज्य सरकार की यह राय है कि इस घटना से संबंधित सार्वजनिक महत्व के निम्नलिखित विषयों की जांच के प्रयोजन के लिए एक जरंच आयोग नियुक्त करना आवश्यक है, अर्थात् :-

- (1) क्या 28-29 जून 2012 की रात्रि में जिला बीजापुर के थाना वासागुडा के ग्राम सिलगेर और जिला सुकमा के थाना जगरगुण्डा के ग्राम क्रमशः सारकेगुडा एवं चिमलीपेंटा में सुरक्षा बलों की नक्सलियों के साथ मुठभेड़ हुई थी ?
- (2) उक्त घटना कब और कैसे घटित हुई थी ?
- (3) क्या उक्त घटना में सुरक्षा बलों या नक्सलियों अथवा उनके अतिरिक्त अन्य कोई व्यक्ति मृत या घायल हुआ था ?
- (4) वे कौन सी परीस्थितियां थी, जिनके आधार पर सुरक्षा बलों द्वारा उक्त रात्रि में अभियान करना पड़ा ?

- (5) क्या आपनेशन (अभियान) प्रारंभ करने के पूर्व सुरक्षा बलों द्वारा कोई पूर्वोपाय किये गये अथवा सावधानी बरती गई ?
- (6) वे कौन सी परिस्थितियां थी, जिनके कारण सुरक्षा बलों को फायरिंग करनी पड़ी ? क्या फायरिंग से बचा जा सकता था ?
- (7) भविष्य के लिए सुझाव.

English translation in substance, of the said Notification is as below:

Government of Chhattisgarh
General Administration Department
Mantralayla, Dau Kalyan Singh Bhawan, Raipur

Raipur dated: 11 July, 2012

NOTIFICATION

Since confrontation of Security Forces had taken place on 28-29 June, 2012 with Security Forces at Village-Silger, Police Station - Basaguda, District - Bijapur and at Villages - Sarkeguda & Chimli Penta under Police Station Jagargunda of District Sukma and as in the opinion of the State Government, an Enquiry Commission deserve to be appointed for purpose of inquiry on the following points they being of public importance namely:

- (1) Whether in the night in between 28-29 June, 2012 in Village Silger, Police Station Basaguda, District Bijapur and Villages - Sarkeguda and Chimli Penta of Police Station Jagargunda of District Sukma, a encounter had taken place between the Security Force and Naxalites?
- (2) When and how the said incident had occurred?
- (3) Whether in the said incident any other person besides Security Forces and Naxalite was killed or injured?

- (4) What were the circumstances in which the Security Forces had to take up exercise on that night?
 - (5) Whether before undertaking the exercise, the Security Forces had exercised any precaution or taken other steps?
 - (6) What were the circumstances in which the Security Forces had to undertake firing? Could the firing be avoided?
 - (7) Suggestions for future.
2. The said notification dtd. 11/07/2012 was modified by the State Government of Chhattisgarh by Notification dtd. 17/08/2012 as below:

छत्तीसगढ़ शासन,
सामान्य प्रशासन विभाग
दाऊ कल्याण सिंह भवन,
रायपुर

// संशोधित अधिसूचना //

रायपुर, दिनांक 17.08.2012

क्रमांक एफ 3-7/2012/1-7 :: इस विभाग की अधिसूचना दिनांक 11.07.2012 के पैरा-1की कंडिका (1) में जिला बीजापुर के थाना बासागुड़ा के ग्राम सिलगेर और जिला सुकमा के थाना जगरगुड़ा के ग्राम क्रमशः सारकेगुड़ा एवं चिमलीपेटा के स्थान पर "जिला बीजापुर के थाना बासागुड़ा के ग्राम सारकेगुड़ा और जिला सुकमा के थाना जगरगुड़ा के ग्राम सिलगेर एवं चिमली पेटा" पढ़ा जावे ।

English translation of the said Notification in substance is as below:

Government of Chhattisgarh
General Administration Department
Mantralayla, Dau Kalyan Singh Bhawan, Raipur

AMMENDED NOTIFICATION

Raipur dated: 17 August, 2012

In place of Para-1 and Clause (i) of Para (1) of the Notification dtd. 11/07/2012 it shall be read as 'Village Silger of Police Station Basaguda of District Bijapur and instead of Villages Sarkeguda and Chimli Penta of Police Station Jagargunda of District Sukma which shall be read as Village Sarkeguda of Police Station Basaguda of District Bijapur and Village Silger and Chimli Penta of Police Station Jagargunda of District Sukma.'

3. In pursuance of the said Notifications this enquiry was held. After giving opportunity of hearing to all concerned, this report of enquiry is being submitted. In this report, the victims of encounter will be referred as Complainants, while the Security Personnel, comprising of Police and CRPF Personnel, will be referred as Opposite Party - Security Forces. It may further be noted that the witnesses examined on behalf of the Complainants shall be referred as PWs while the witnesses examined by the Opposite Party shall be referred as DWs, with appropriate numbers assigned to the witnesses.
4. Though there are varying versions of the incident, it would be appropriate to detail the version of Opposite Party - Security Forces, which is outlined in the Affidavit dtd. 21/08/2014 of D.I.G. S. Elango who had led the operations of the Security Forces on the relevant day. The relevant Paras Nos. 1 to 21 of the said Affidavit are being reproduced below in order to understand the said stand regarding the incident:-

- 1 That, in 2012, I was working as D.I.G.(Ops), CRPF Bijapur.
- 2 That, the CRPF has been deployed in the State of Chhattisgarh in aid of the State Police, mainly for anti-naxal operations. The

CRPF and the State Police have been conducting a large number of joint anti-naxal operations. Such operations are generally based on specific intelligence regarding the presence or activities of the Naxals in certain areas. The planning for such operations is also a joint one.

3 That, Since quite some time we (i.e the CRPF and the State Police) were getting intelligence about the presence and activities of Naxals in and around Silger, Distt. Sukma. It was learnt that some very senior leaders of the Naxals could be present there. Since this could be major catch or success, we planned an elaborate operation. In this connection two high level meetings were held on June 06 and June 26 which were attended by, amongst others, the IG (Bastar) Chhattisgarh Police, IG (Ops) CRPF Chhattisgarh, myself, various Commandants of CRPF and SPs of various concerned Districts. There were some minor meetings also amongst other Officers of the CRPF and the State Police.

4 That, It was decided that an Operation would be launched in the night of June 28. Such operations are regularly launched in the State of Chhattisgarh and there was nothing extraordinary or unusual about this operation. It has been the custom in Chhattisgarh and also in other States where joint anti-naxal operations are conducted that, for operational convenience, unless a Senior Officer of the State Police happens to be accompanying the joint parties, the operational command

on the ground is developed upon the Officers of the CRPF.

- 5 That, According to the operational plan, it was decided that three parties would be launched simultaneously from Basaguda, Jagargunda and Chintalnar. The party starting from Basaguda was in two parties. The operational command of one of them was with me and operational command of the other part was with Shri Anand Singh, Commandant 2014 CoBRA Bn. The operational command of the Jagargunda party; was with Shri Uday Divyanshu, 2-1/C 204 CoBRA Bn and Shri Brijesh Kumar, 2-1/C 201 Cobra Bn. The operational command of the Chintalnar party was with Shri Dilip Singh Commandant 201 Cobra Bn.
- 6 That, The Senior most Officer of the State Police was Addl. S.P. Shri S.R. Bhagat who was with the Chintalnar party. One ASI Shri Ibrahim Khan accompanied my party. One CT Shri Chandu accompanied the party of Shri Anand Singh. Police Officials of the rank of Constable only accompanied the other parties.
- 7 That, The movements of all the parties are duly logged on the GPS which is carried by the parties. The GPS logs are immutable and are carefully preserved.
- 8 That, Operations are, as a matter of routine, undertaken mainly in the night because night affords greater security to the troops on account of reduced visibility. It is also some what easier than marching in the blistering sun.
- 9 That, The Marching formations are operational secrets and can not be disclosed to everybody. However it can be mentioned that they are decided based on the nature of the terrain and

be.

the ambient light. These factors also dictate the distance which two men would maintain between each other.

- 10 That, On that particular night, the troops in my party were positioned as follows. I and my personal party were in the fore front, followed by the SAT (Special Action Team) of the 170 Bn CRPF, SAR of 85 Bn CRPF, team No. 17 of F/204 Cobra Bn, Team No. 18 of F/2014 Cobra Bn and Team No. 16 of F/2014 Cobra Bn. The other party led by Shri Anand Singh was marching roughly parallel to my party. However, they had marched about half an hour ahead of my party. In the northern direction, their party was at least 160 meters separated from us and the diagonal vector distance (As the crow flies) was about 1.5 KM.
- 11 That, Our target was Silger, which is about 15-16 KM from the starting point at Basaguda. Depending on the terrain and ambient light, we expected to cover this distance in about 6-7 Hrs. Although in naxal affected areas, an attack could take place anywhere, since the intelligence spoke specifically the presence of naxal at Silger, we were not seriously expecting any contact before that.
- 12 That, By about 22:30 Hrs. (exact timings can be shown and proved from the GPS logs) when the guide of my party had reached GR-18°32'41" 6-N, 80°56'12" 4-E, he had doubt from what could possibly be some movements or sounds which betrayed the presence of some people in the vicinity. However because it was dark, he could not clearly see anything. "Since any such doubt in the jungle cannot be dismissed lightly, the guide considered it fit to report the matter to me

personally. He marched back to me and reported the matter. We all listened intently and also tried to see the possible source. However, nothing positive could be ascertained. As a matter of abundant precaution, I decided that we should change the route slightly towards the north.

13 That, About 5-6 minutes later, we were taken by absolute surprise when we were suddenly fired upon. We had no doubt that it was gun fire only. I am an experienced soldier and I can, at any time, distinguish the sound of gun fire from say fire crackers or similar things at any point of the day or night or ambience (such as jungle or Urban area). It is, however, not possible to distinguish correctly the report of one weapon from another. The sound of the gun fire and muzzle flashes in the dark together gave us some idea of from where the fire was coming. It appeared first from the right and then from the left. We found it perfectly in order because that is the way in which insurgents generally ambush the security forces.

14 That, At first a single shot was fired by the hostiles and then many more shots were heard. Almost simultaneously I heard the loud cries of pain of my colleagues. That left me under no doubt that we were under attack by fire Arms and that our colleagues had been injured. Since all fire Arms are potentially capable of causing fatal injuries, we had to take the matter seriously. It was not possible to render the injured personnel any help as the firing was going on. They went down where they were and continued to cry and moan which we could hear.

he

15 That, We took whatever little cover that was available there and returned fire in self defense. Fire is always returned in controlled manner because once the personnel have taken whatever cover they could take, there is no way of finding out where each one is and uncontrolled fire could hit each other. It may also be noted that we are all experience troops and there is no question of any panic firing. Above all, since the ammunition with the troops is necessarily limited, nobody can afford to waste ammunition in some wanton firing. Further, one must conserve ammunition for some unexpected threats also.

16 That, As mentioned above all the personnel took cover that they could find. We did not make any concerted flanking or encircling movement as the hostile fire was coming from more than one direction and there was serious risk of getting trapped in to a heavier ambush if we make unnecessary movement. Hence, after taking their respective covers, the personnel froze and fired from those positions only.

17 That, the firing was from our rifles only. We did not use the 51 mm Mortar, UBGL and The CGRL, because there was no such clearly identified target on which they could be profitably used. It may be noted that the selection of a weapon with which the response is to be made, is dictated by considerations of range, protective cover available to the hostile target and similar other factors. At that movement, rifles were considered to be the most suitable weapon.

18 That the firing lasted for some time. When it appeared reasonably certain to us that the

hostile fire has ceased, we fired 8 Para illuminating bombs in the air to illuminate the area. This serves several purposes. Firstly, it enables us to take stock of our own situation including the condition of the injured. Secondly it also dissuades any hostile form remaining there further.

19 That, we found that one 85 Bn Jawan and 05 204 Bn Cobra Jawans in all six of our personnel have been injured. Some hostiles also found injured. As Cobra Jawans were injured in the mean time I had called and summoned a small party of Shri Anand Singh to come to our held very stealthily and also to see if they could find any fleeing any Naxals en route. Sh. Anand came to us and consoled the men. We rendered first aid to the injured and made arrangements for their evacuation with the help of tractor upto Basaguda and from there through 108 Sanjivini and own vehicle to Bijapur hospital. It was decided to send Sh. Anand's party to continue the operations as they have to give support to the Jagargunda and Chintalnar party near Silger.

20 That, After this we made a preliminary search of the area. We could find that 16 hostiles have been killed and that there was also some weaponry with them. A detailed and methodical search was postponed for the light to break.

21 That, Since the condition of many of them was serious and adequate medical facilities were not available at Bijapur, we made arrangements for them to be evacuated by helicopter to Raipur. The helicopter evacuation took place by first light which the helicopter could use for making it sortie, and it took off from Bijapur by 0630 Hrs,

In the morning a detailed search of the area was made. The bodies were identified with the help of villagers by the SHO ASI Khan and the civil police personnel. Some of them were immediately identified as Naxals by the villagers. Details of the recoveries of Arms, ammunition and explosives and other items are attached separately. The party returned back to camp by 1000 A.M. As the operation was going on other side I came to know parties from Chintalnar and Jagargunda also had encounters. The Chintalnar party could kill two Naxals and recover one 303, one Bharmar weapon, other items. Sh. Anand Singh party returned alongwith Jagargunda party on 29th evening 6 P.M. As men were tired whole party halted in Basaguda & Timapur. Next day i.e. on 30th June all the parties left for their bases.

5. As against the above, version of the Complainants stated in substance, is as below:

On the night of 28th June, 2012, Villagers of three villages namely- Sarkaguda, Kottaguda and Raj Penta had assembled on the ground in between the said three villages, with the object of making preparation for the festival of 'Beej Pandum'. Festival of 'Beej Pandum' is celebrated by way of precursor to sowing season at the onset of monsoon. The said meeting was called by the priests of three Villages to decide the various modalities relating to the celebration of the said function of 'Beej Pandum' in which villagers of the aforesaid three villages were present. While the meeting was in progress, the Police party surrounded them and started firing. The firing lasted for quite some time in which 15 of the villagers were killed and 11 others were injured. The

Complainant's case is that there were also several minors in the meeting who were also killed and injured in the incident. On the morning of next day, one of the Villagers Irpa Ramesh who was in his house was killed by the security personnel. Amongst those who were injured, Irpa Suresh succumbed to his injuries at Beejapur Hospital. Thus, there were total 17 casualties and 10 others were injured. As per the Complainant's version Naxals had not convened nor were they present in the meeting.

6. The names of the deceased with the Exhibit Nos. of Post Mortem Reports and list of Medico-Legal Reports of injured with the Exhibit Nos. thereof are as below:

LIST OF DECEASED WITH EXHIBIT NOS. OF THEIR POST MORTEM REPORTS

S.No.	Exbit No.	Name of Victim/Father's name
1	PM-1	Irpa Suresh/ Irpa Chuchaya
2	PM-2	Madakam Ram Vilas/ Kuchha
3	PM-3	Irpa Munna/ Ramalu
4	PM-4	Irpa Narayan/ Mutta
5	PM-5	Kunjam Mulla/ Bhakhru
6	PM-6	Kaka Anita/ Rama
7	PM-7	Kaka Samayya/ Kaka Dulla
8	PM-8	Korsa Bichhe / Gutta
9	PM-9	Kaka Nagesh
10	PM-10	Sapka Mithu/ Sapka Sukram
11	PM-11	Mandvi Ayatu/ Doga

12	PM-12	Madakam Dilip/ Munna
13	PM-13	Irpa Somlu
14	PM-14	Sarke Ramanna/Potty
15	PM-15	Madakam Nagesh/Malla
16	PM-16	Madakam Suresh/ Malla
17	PM-17	Irpa Dharmaya/ Bhima

Note: Exhibit PM 18 is the Chart of P.M. done on 29/06/2012

(i) Medico Legal Reports of Members of Security Forces:

S.No.	Exbit No. Medico Legal Reports	Name of Victims
1	IC-1	Injured K. Rajan
2	IC-2	Krishna Kumar Khatri
3	IC-3	S.S. Rana
4	IC-4	Wahidul Rehman

(ii) Medico Legal Reports of Non-officials who were Members of the Meeting:

S.No.	Exbit No. Medico Legal Reports	Name of Victims
1	IC-5	Chenti Kaka/Lachhu
2	IC-6	Madakam Soma/ Bhima
3	IC-7	Irpa Suresh/ Irpa Chandrayya

7. At the outset it will be apt to consider the material on record, relating to and throwing light on the venue and time of incident. According to the version of the Opposite Party - Security Forces, as Intelligence was received by the security forces including CRPF and State Police that some very senior leaders of Naxals were present in and around village Silger, Distt. Sukma, they planned and charted elaborate anti Naxal

operation by combined forces of Chhattisgarh Police and CRPF. The operation was scheduled and carried out in the night of 28th June, 2012. As stated by D.I.G. CRPF S. Elango in his affidavit quoted in extenso above, as per plan three parties were to be launched simultaneously from Basagoda, Jagargunda and Chintalnar. The parties starting from Basagoda was divided into two parts. The operational command of one of the said parties was with S. Elango D.I.G. CRPF himself, while the other party was led by Anand Singh Commandant 204 Cobra Bn. As per his Affidavit, the party led by Shri Anand Singh which was marching almost parallel to the party led by S. Elango, had left about half an hour earlier to the party of S. Elango and was marching in Northern direction. As per his statement in Affidavit, S. Elango was in the forefront with his personal party. He has further stated that the guide of his party at about 10:30 pm entertained some doubt about some movements or sounds betraying the presence of some people in the vicinity. He reported the matter to S. Elango. As a matter of precaution; he changed the route slightly towards North. He further states that after about 5-6 minutes, they were taken by surprise and encountered firing with gun. Thus, according to above statement the time when the incident took place was a little after 10:30 pm. In fact, the time of incident as above has not been seriously contested on behalf of the Complainants, and which in their written arguments, has also been admitted on behalf of the Complainants.

8. So far as the venue of the meeting is concerned, the witnesses examined on behalf of the Complainant Rita Kaka PW-4, Surka Pullaiya PW-5, Irpa Baburao PW-7, Mutta Kaka PW-11, Irpa Rambai PW-12 have stated to the effect that the meeting was being held near their house in the clearing in between the villages Sarkaguda and Kottaguda. They are in fact, supported by the statement and admission of S. Elango who initially after some hesitation on his part, admitted during cross-examination, that the troops were in open area. This would be clear from his admission in Para-13 of his cross-

examination, wherein he has stated that they were in open area between two forest patches as could be deciphered from GPS coordinates provided by him. Infact, the Google Map exhibit-M was also admitted to be correct by the witness S. Elango in his cross examination in Para-13. The said Google Map Ex-M establishes that the place of incident was the open space and that there were few houses also.

9. In view of the material as above including the statements of the witnesses produced by the Complainants, as well as the admission of S.Elango DW-6 and Google Map Ex-M, it appears that the incident took place in the clearing between the three villages (Sarkaguda, Kottaguda and Raj Penta) which was adjoining the area covered by forest. Further, it appears that the incident took place somewhere around or after 10:30 pm on 28th June, 2012.
10. The next aspect that requires consideration is as to how and in what manner the incident took place? In this context, it has to be considered as to whether the version of the Complainants that the Security Forces attacked them without provocation, while they were holding a meeting for preparation of "Beej Fandum" festival or whether it was the persons/Naxals present in the meeting who had opened firing at the patrolling party of the security forces, including CRPF and Police Personnel, is correct?
11. On behalf of the Complainant as many as 17 witnesses have been examined. Broadly speaking a set of the Complainant's witnesses deposed about the incident though they were not present in the meeting and claimed to have witnessed the same and/or having heard the sound of firing, while they were in their houses. Most of them are close relatives of the deceased who were killed in the incident. To elaborate the above point, statement of some such witnesses may be briefly referred here.

12. Kamla Kaka PW-1 is resident of Kottaguda and claims to have passed 12th standard. She is also a 'Mitānin' i.e. semi govt. employee and a social worker. She is the aunt of deceased Kaka Rahul. She has admitted that she could not see the incident as her house was at a distance and she could only hear noises and sound of firing. She also claims that she has subsequently gone along with others with the Member of Parliament from Dantewara, to meet the Home Minister. It is also stated by her that thereafter they had also met the Chief Minister of Chhattisgarh.
13. The learned counsel for the Opposite Parties – CRPF, Police and State Administration challenged the above version and statement of witness Kamla Kaka by pointing out that she has not made any complaint in writing or otherwise to the Local/District Officer immediately after the incident, though she had opportunity to do so. It was also pointed out that she is not the eye witness to the incident and is also an aggrieved person against the Security Forces, due to the death of his nephew in the incident. It was thus submitted that her belated and interested version cannot be relied upon.
14. Sarke Bablu PW-2 is the resident of Sarkeguda. He has admitted that he was not present in the meeting and was at his house at the time of the meeting. He came to know about the incident on the next morning when they had gone to Police Station and accordingly he had made his statement. In his Affidavit he has deposed that his brother Sarke Ramanna was killed in the incident. He has further stated that Irpa Ramesh was killed on the next morning by the Police Personnel. Dead body of his brother Sarke Ramanna was handed over to him on the next day.
15. Another witness examined on behalf of the Complainant was Madakam Ratna PW-3. She claims to have passed 12th standard. She has also admitted that she was not present in the meeting. She states that she heard sound of firing from her

house. She states that on the next day she had gone to the spot and found blood stains. She has also deposed in her Affidavit that her brother Ramvilas was also killed in the incident. According to her, age of Ramvilas was around 15-16 years. In support to her statement she has produced a School Certificate Ex.P-2 and copy of his identity card Ex.-4 and also copy of Bank Account Ex. P-3. She has denied the suggestion by Opposite Party – Security Force that the meeting was convened by Naxalites.

16. The aforementioned statements of Madakam Ratna PW-3 as well as Sarke Babloo PW-2 have been challenged by the Opposite Party – Security Forces, on the ground that they are not eye witnesses and that their interested statements also do not throw any light on the nature and origin of the incident.
17. Kaka Rita PW-4 is another witness examined by the Complainant. She, in her statement has also admitted that she was not present at the spot of meeting and that she was asleep in her house and woke up on hearing the sound of firing and noise of people shouting. She has stated that Police Personnel were firing from all the four sides and were collecting dead bodies. However, it may be noted that according to her own statement, her house was about 200 paces (150 meters approximately) from the place of incident and though there was no light at the site of incident, yet she claims to have seen the incident sitting in a cot in her house. Such a statement is certainly unreliable and it does not seem probable and possible for the witness to have seen the incident. In fact she has also admitted that she could not see as to who were the persons present in the meeting from her house. She also states that her brother Senti Kaka and Madkam Soma were injured at the spot during the incident and were taken in custody by Police.
18. Her statement has again been challenged by the Opposite Parties on the ground that she could not be treated as eye

witness of the incident as she was sleeping at the time of incident, and also as she cannot be treated as an independent witness.

19. Another witness examined on behalf of the Complainant is Shashikala Telam PW-6 who states that a meeting was going on at about 8-9 pm on 28th June, 2012 in which Villagers of three Villages – Rajpenta, Sarkeguda and Kottaguda were present. She also admits that she was not present in the meeting, and that she has not given any affidavit or complaint regarding the incident prior to submitting affidavit in this enquiry. She has also stated that on the next morning her brother Irpa Ramesh was beaten by Police. She testifies that her cousin (Bua's Sons) Nagesh and Suresh were also killed. She states that dead bodies of Irpa Ramesh, Nagesh and Suresh were later handed over to them.
20. Her statement has also been challenged on behalf of the Security Forces - Opposite Party on the ground that she is not an eye witness to the incident as she has admitted that she was at her home at the time of incident. It was also submitted on behalf of Opposite Parties - Security Forces, that she also did not complain about the incident prior to filing affidavit, in this enquiry. It was submitted on behalf of the Opposite Parties that belated version given in her affidavit about the incident is not worthy of credence and cannot be relied upon, as she being 'Mitanin' (Social Worker) a semi/quasi-government employee, paid from Government funds, had all the opportunity to make the complaint, had she really noticed what she has deposed in her affidavit.
21. PW-10 Madkam Mutta admits to be in his house at the time of incident. He states that his house is at a distance of about 300 paces (i.e. about 200 meters) from the place of incident, where the meeting was taking place and states that he heard the sound of firing in which several persons were injured. He has stated that the firing was on the persons present in the

meeting which was being held regarding festival of 'Beej Pandum'. He further states that his son Dinesh was killed in the incident. His dead body was given to him at Basaguda Police Station.

22. The above statement has been challenged on several grounds by the Security Forces – Opposite Party. It has also been pointed out on behalf of the Opposite Parties that as the witness does not know Hindi language and thus he could not have dictated and briefed the Notary to draft the Affidavit in Hindi, as the witness only knew 'Dorlee' which is one of the languages of Tribes in Bastar.
23. Irpa laxmi PW-14 is a witness who has admitted that she was not present in the meeting. Her husband Irpa Ramesh one of the deceased has gone to the meeting which was being held in connection with the festival of 'Beej Pandum'. She further states that while her husband Irpa Ramesh was returning home, in the morning he was fired at by the Police Personnel and was killed. She states that Police Personnel had taken away the dead body of her husband Irpa Ramesh. She states that thereafter they went to Police Station where body of Irpa Ramesh was handed over to her. In cross examination by the opposite party, She states that though her husband had gone in the meeting at night but he was killed in the morning. She stated that she does not know where her husband had stayed for the whole night. She has denied the suggestion that her husband Irpa Ramesh was a Naxal.
24. It may be mentioned that the above witnesses namely-Kamla Kaka PW-1, Sarke Bablu PW-2, Madkam Ratna PW-3, Kaka Rita PW-4, Shashi Kala Telam PW-6, Madkam Mutta PW-10 and Irpa Laxmi PW-14 though admit that they were not present in the meeting, but stated that they heard the sound of firing from their houses. It may also be noted that the relatives of all the above witnesses were either killed or injured during the incident. Most of them are educated and some of them

- have cleared Higher Secondary while some of them are 'Mitaniin' or 'Aanganwadi' Workers and are paid salaries/honorarium by Govt. Their statements have been challenged on behalf of Security Forces - Opposite Party, on the ground that they have not come out with the narration of the incident earlier to any of the authorities, while they had all the opportunity to do so and that they have come out with their version belatedly by way of affidavit submitted in this enquiry.
25. There is yet another set of witnesses produced on behalf of the complainants who claim to have been present in the meeting. The statements of such witnesses will now be briefly referred hereafter.
26. Sarke Pullaiya PW-5 is one of such witnesses. He claims that the meeting convened by the Priests regarding the preparation of 'Beej Pandum' Festival on the night of 28th June, 2012 was attended by him. He states that the Police Personnel surrounded the meeting place and started shouting and firing. Sarke Pulliya, further states that they shouted that they were Villagers but the firing continued. Thereafter the Police Personnel dragged out persons from inside the houses and they were also beaten. He also received gunshot injury on the right hand and right leg. He was thereafter admitted to Beejapur Hospital and thereafter to Jagdalpur Hospital where the treatment continued for about 15 days. He has denied the suggestion that he is also a member of Naxal outfit. He has also denied that the meeting was convened by Naxalites.
27. Irpa Baburao PW-7 also claims to be present in the meeting and has stated that the incident took place on 28th June, 2012. He further states that the meeting was convened by the Priest of three Villages namely Sarkeguda, Kottaguda and Rajpenta for making arrangements for the festival of 'Beej Pandum'. He states that while they were discussing matters relating to arrangements of 'Beej Pandum' they heard shouts and immediately thereafter there was firing. He states that his brother Irpa Suresh and Uncle Irpa Dharmaiya were also shot

by the Police Personnel. He was also beaten in the incident. He further stated that Irpa Suresh died in the Hospital. In cross examination on being asked the names of the Priests who had called the meeting, he has disclosed that the same was convened by Madkam Rama, Kaka Mutta and Sarke Bablu, out of whom Kaka Mutta had expired while Madkam Rama and Sarke Bablu are alive. He had also admitted that at the time of Salwa Judum (which was admittedly a project of the State Government to muster the support of Tribal People) they were recruited as Police Personnels.

28. Irpa Chinakka PW-9 also claims to be present in the meeting. She after stating that the meeting was called by the Priests of three villages, states that while they were discussing about arrangements for the festival of 'Beej Pandum', Police Personnel surrounded them and started firing. She also received gunshot injuries on her back, whereafter she fell unconscious. She states that Police Personnel had got her treated at the Hospital.
29. Another witness Muta Kaka PW-11 has also submitted his Affidavit, and has stated that he was present in the meeting, where the firing took place.
30. Irpa Ram Bai PW-12 also claims to be present in the meeting. She has stated that while meeting was in progress, the Police Personnel surrounded them. She states that she lay down near a hay stack. She was struck by stick and butt of the gun due to which she received injuries on her face and back. She was also taken to Police Station along with the deceased. She states that her brother in law (Husband's younger brother) Irpa Dharmaiya and his son Irpa Suresh were also killed, during the incident.
31. Hapka Chinnu PW-13 examined by the Complainants, also claims to have been present in the meeting and has given substantially similar version of the incident. He states that while the meeting was in progress, Police Personnel started

firing. He was apprehended by the Police Personnel and was beaten and was taken to Basaguda Police Station. He has admitted that all the injured persons had come to Beejapur together and had given affidavit, at the same time. He stated that one Madam had recorded his affidavit and the same was handed over to the same Madam and that he himself did not go to the Collectorate to get the formalities by Notary etc. done.

32. Thus, the above referred witnesses namely Hapka Chinnu and Irpa Rambai whose statements have been briefly referred above, have in substance stated that the Police Party had surrounded the Villagers of three Villages Sarkeguda, Kottaguda and Rajpenta while they were holding a meeting for preparation of Festival 'Beeja Padum'. They have stated that the Police Party without any provocation, rhyme and reason, started firing at the Assembly, in which persons received gunshot injuries as also some of them were assaulted and beaten by sticks and butt of guns.
33. Two other witnesses who are Journalists namely-Ashish Gupta PW-15 and Ashutosh Bhardwaj PW-16 have also been examined on behalf of the Complainant. Ashish Gupta has stated that he is a member of 'People's Union for Democratic Rights' (PUDR) which is a part of 'Coordination of Democratic Rights Organization' (CDRO). He claims that coming to know about the incident, he proceeded on fact finding investigation on 30th June, 2012 along with the team of PUDR. He states that they reached Sarkeguda on 06th of July, 2012 via Bhadrachalam. He has submitted a CD containing reports of the visit as Annexure-2 of the Affidavit whiles the report is as per Annexure-1 of the Affidavit.
34. Similarly, Ashutosh Bhardwaj another Journalist states in his Affidavit that he is special correspondent of the English Language Newspaper "Indian Express". He has also claimed that he had visited the three Villages namely - Sarkeguda,

Kottaguda and Rajpenta on 30th June, 2012. Reports regarding the incident published in the Newspaper "Indian Express" are from Annexure-1 to Annexure-4.

35. The contents of the Affidavit of the above two Journalists namely-Ashish Gupta and Ashutosh Bhardwaj have been challenged on behalf of the Security Forces - Opposite Party and it has been submitted that the said witnesses are not eye witnesses. It was also submitted that they are also not independent witnesses, as would be apparent from their cross examination. It was submitted that biased statements based on information of doubtful origin of such witnesses does not deserve credence and cannot be of any material help in coming to any conclusion.
36. It may be noted that above two witnesses have stated on Affidavit that as per information gathered by them, the meeting on the fateful night of 28th June, 2012 was regarding organizing the rituals of 'Beej Pandum'. The assembly of the Villagers was fired at by the CRPF and Police Party without any provocation. It would appear from their cross examination that these two witnesses claimed to have reached affected villages of Kottaguda, Basaduga and Rajpenta without any local assistance by a short route. It was submitted on behalf of the Security Forces - Opposite Party that, it could not have been possible to reach the interior villages lying in a forest area, without local assistance. Therefore, their claim of having independently reached the said villages cannot be accepted on its face value. Necessary corollary, therefore, would be that they had local and interested assistance and therefore their reports and the publication thereof in the News Paper "Indian Express" cannot carry much weight and that the nature of incident has to be ascertained, on the basis of independent material and evidence place on record.
37. The Complainants have also examined one other witness Kaka Reeta PW-17. She is a 12th standard pass and works as

à 'Mitanin'. She has identified the dead bodies of the persons, Videography of which was taken on behalf of the Complainant, and photographs whereof have been placed on record.

38. The above oral evidence led by the Complainant will have be adverted to again, after the oral evidence led on behalf of the Security Forces - Opposite Party is referred, and discussed which will be presently done as follows.
39. In this regard the most important witness is S. Elango DW-6 the D.I.G. of CRPF who was heading the whole operation on the fateful day. Therefore his statement shall now be considered. Giving its version of the incident, D.I.G. CRPF S. Elango DW-6 stated in his affidavit quoted in extenso above that at about 10:30 pm while the Security Forces were marching towards Silger, the guide of their party suspected some movements and sounds in the vicinity. He further states that as a matter of abundant precaution,-they changed the route slightly towards North. He further states that they were taken by absolute surprise when firing from the Gun started. He further states that the sound of the Gun firing and muzzle flashes first appeared from the right side and then appeared from the left side. He has stated that it is in this manner that the insurgents generally ambush the Security Forces. It has further been elaborated by S.Elango DW-6 that first a single shot was fired by the Hostiles and then many more shots were heard. Security Personnel took whatever little cover was available and the Personnel went down on the ground wherever they were. Thereafter, the Security Personnel in turn fired in self defense in a controlled manner. It was stated that Hostile's firing was coming from more than one direction. He has stated in Para-17 that firing by the Security Forces was from rifles only and that Security Forces did not use 51m Mortar, UBGL and CGRL because there was no clearly identified target. After the firing from other side ceased, Para Bombs were used which lighted the area.

40. Another witness examined on behalf of the Opposite Party – Security Forces, is Gyandra Prakash DW-1 a Constable in CRPF who has submitted his affidavit to the effect that on receiving information that some Naxals have assembled in Silger area, teams of Police Force as well as CRPF Force were organized to reach there. He further stated that one of the parties was being led by Commander Anand Singh and the other party was headed by D.I.G. S. Elango (whose statement has been referred above). The sum and substance of further statement of Gyanendra Prakash DW-1 is that in between 10:30 pm to 11:00 pm while their team was passing through Sarkeguda Forest, suddenly there was a shout from the right side that it was the Police Party and that they should be fired upon and after some time, firing started while there after firing from left side also started. According to him, they had taken position. He was hit on the right jaw by gun fire and thereafter he was unconscious and has no knowledge of happenings thereafter. He has further stated that he was taken to Basaguda and then flown to Raipur by Helicopter, for treatment.
41. Gyanendra Prakash DW-1 has stated that Silger is at a distance of 16 Km from Basaguda while Sakeguda is at a distance of 03 Km for Basaguda. He has been questioned in cross examination regarding firing by burst fire or repeat fire from his A.K. 47 rifle. He has elaborated that, in repeat fire there is one round of fire at a time while in burst fire there can be firing of several rounds to the extent of 05 rounds in one second i.e. 300 rounds in 1 minute. He has reiterated that the firing took place at about 10:30 pm to 11:00 pm. His statement has been challenged on several grounds including the fact that he did not earlier disclose about being hit during the incident. The discrepancy regarding the nature of injury on the right jaw i.e. whether it was by bullet or pellets was also brought out during his cross-examination. It was submitted that Gyanendra Prakash DW-1 has not stated in his Affidavit or Police diary statement that injury on his jaw was by pellets. It was pointed

out on behalf of the Complainants that affidavit is silent about many particulars about the injury as has been brought out in detail in his cross examination. There is also discrepancy to the effect that though he earlier stated that the bullet was extracted from his jaw, but according to his statement in enquiry he has stated that he received injury from Gun (Bharmar) which had resulted in injury by pellets.

42. Another witness examined by Security Forces is Wahid-UI-Islam DW-2. He is also a CRPF Constable and was admittedly part of the marching party on the night of the incident on 28th June, 2012. He after stating about the marching of the CRPF and Police Party in two parties, he has stated that he was in the party led by D.I.G. Elango and was in the team of Commander Neeraj Kumar Singh. He states that the Party led by Anand Kumar Singh had proceeded half an hour earlier to their party. He has also given substantially same narration of the incident as has been given by Gyanendra Prasad DW-1 in his affidavit. Wahid-UI-Islam DW-2 has stated that after the firing from their left side had started after taking position he had fired 04 rounds from his Insas Rifle. He has also stated in his Affidavit that he received injury on the left side of his chest and right wrist. He states that thereafter first aid was given to him. He was then taken to Police Station Basaguda and thereafter to Raipur, for treatment of his injuries.
43. During cross examination, the witness Wahid-UI-Islam DW-2 was confronted with his Police Diary Statement marked as Ex. C-1 which was recorded on 19/07/2012. It was pointed out that in that statement he had not disclosed that he received injury on the right side of his chest. He has also not stated therein that he received injury on the right wrist/elbow. The witness has tried to explain that he did not disclose injury on the right hand because it was minor. Though earlier in his Affidavit he had stated that firing started from the left side, however, in cross examination, he admitted that he could not see from

which direction firing had started. Certain other discrepancies in his statement, have been pointed out by the learned counsel for the Complainants and it has been submitted that the version of the witness regarding the incident is not consistent and is not believable.

44. Another witness examined on behalf of Opposite Party-Security Forces is Arnav Ghosh DW-4 who is also a Constable in CRPF CoBRA Battalion. Arnav Ghosh DW-4 was also a part of marching team in which Krishna Kumar Khatri was the guide. His statement in Affidavit is substantially to the same effect, as the statement of Gyandra Prakash DW-1, Wahid-Ul-Islaam DW-2. He has stated that in between 10:30pm and 11:00 pm the guide Krishna Kumar Khatri had alerted them that there was some sound of conversation from the front and that they should be alert. In the meanwhile, there was shout from a distance that there was a Police Party and that they should be fired at. Thereafter the firing started from other side. He states that he had fired 17 rounds from his rifle A.K. 47. He also received gunshot injury on toe of his right leg. He further states that another guide constable K. Rajan received injury on his foot, in the firing.

45. The learned counsel for the Complainants during cross examination confronted Arnav Ghosh DW-4 with his medico legal report, in which injury on the left toe has been mentioned. It was also submitted on behalf of the complainants that, the narration and version of the constable Arnav Ghosh DW-4 that immediately after the firing started he had taken position by lying down, discredits the fact of injury on his toe by firing from a distance. It was submitted that such an injury could not have been caused from firing at a distance, by so called alleged Naxals. Therefore, the version of Constable Arnav Ghosh DW-4, it was submitted, was not credible and his injury, if at all caused to Arnav Ghosh, would be the result of cross firing or 'friendly fire' of the force itself.

46. Krishna Kumar Khatri DW-5 is another witness examined by the Security Forces - Opposite party. He is also a Constable in CRPF in CoBRA Battalion and was a part of the marching party. In his affidavit he has also given substantially the same version as has been given by other witnesses Gyanendra Prakash DW-1, Wahid-Ul-Islam DW-2 Arnav Ghosh DW-4, whose statements have been mentioned above. He claims to have been injured on the left calf near the ankle at the lower side of leg. He also was taken to Raipur Hospital for treatment of his injury. It is rather surprising that he denies to have received any injury on the right jaw as has been recorded in his medical report. Though he claims to be a guide of his team, however this fact was not stated by him in his Affidavit. Learned counsel for Complainants submitted that these important omissions clearly negate the veracity of his statement, and the same stands discredited. It was also submitted that the location and nature of injury also discredits his statement that the injury was caused after he had taken position and he had been hit by gun fire from a distance. It was submitted that such an injury could not be caused to him, if he was hit by gunshot from a distance.

47. The Security Forces - Opposite Party have also examined Manish Bamola DW-3 a Deputy Commander. He has also deposed in his Affidavit and described the incident as has been narrated by Constables of CRPF, as referred and discussed above. He has also stated in his Affidavit that initially firing on Security Forces, started from the left side, upon which the members of the marching party immediately took position and started counter firing. He had stated that six of his Constables were injured during firing. In cross examination he had stated that he was on the front side of the team, along with D.I.G. Elango. Though he admits that their life was in danger and that their team had also started firing in defense; however, strangely he states and admits that he had not fired a single shot himself.

48. It may be mentioned that one Omprakash Chandel DW-13, a witness also examined on behalf of the Opposite Party – Security Forces, stated that at the relevant time he was SDO Police and posted at Aawapalli, District Bijapur. He was not a member of the said party and he has candidly admitted that he has no personal knowledge about the incident. He has stated on the basis of record from which it transpires that D.I.G. S. Elango of CRPF, led the team of the CRPF and Police Personnel. It was also stated by him that as per available information on record, while the said party was proceeding through forest of Sarkeguda at about 10:30 to 11:00 pm. Naxals had fired at the combined party of Police and CRPF. He has stated that 17 persons died and some persons were injured. He has also stated that Scout Constable also received injury in the incident. Injured were thereafter treated at Bijapur and Raipur. Post Mortem was got conducted of the deceased persons. Therefore, his statement as above does not throw any light on the actual occurrence.

49. The learned counsel for the Complainants had challenged the statements as above on several counts. It was submitted by the learned counsel for the Complainants that the above conduct of Manish Bamola is highly unnatural. It was submitted that the Deputy Commander Manish Bamola DW-3 armed with rifle and being one of the leaders of the team along with D.I.G. Elango, would not fire a single fire from his rifle in defense though their life was in danger, is certainly most unnatural conduct and his statement thus worthy of outright rejection. It was submitted that there being imminent danger of life and having all the opportunity to counter-firing by the Complainants, as has been alleged by CRPF Personnel, there was no reason as to why, Deputy Commander Bamola would not have fired in self defense. It was thus submitted on behalf of complainants that his statement and conduct of the witness Manish Bamola DW-3 clearly and unequivocally goes to show that the firing was one sided by the marching team of Security Forces and was not

initiated by the Complainants or alleged Naxals for that matter.

50. Statement of some non-official witnesses examined on behalf of the Opposite Parties – Security Forces, now deserves to be considered.
51. Irpa Ganesh DW-7 is the brother of deceased Irpa Ramesh and Irpa Dinesh, who were killed in the incident on the fateful night. Irpa Ganesh states in his Affidavit that Naxalites were taking a meeting on the night when confrontation with CRPF and Police Personnel took place. He has stated that earlier after studying in class 6th at village Basaguda, he also became part of the Naxal outfit. However, after the incident in which he lost his two brothers – Irpa Ramesh and Irpa Dinesh; he decided to leave the Naxal Organisation and surrendered before the Police. He has also named some of the Naxals who had convened the meeting on the night of 28th June, 2012. He has disclosed in his Affidavit that Korsu Madhu alias Soma, Hapke Soma alias Ramesh, Madham Shankaraiya had convened the said meeting of Villagers of Sarkeguda, Kottaguda and Rajpenta. He has further stated that the meeting was convened for the purpose of taking decision of trespassing and occupying the land of the Villagers who had joined the Police Force as Assistant Constables. He has further stated that the meeting was attended by about 40 Naxals and about 200 Villagers. He has also named some of the Naxals who were present in the said meeting.
52. Irpa Ganesh DW-7 further states that at about 11:00 pm during the meeting they had some suspicion that the Police Force is coming where after they sent the 'Santri' for ascertaining their suspicion. The 'Santri' after returning back informed that the sound was not of Police Force but of some fisherman. After some time some of the Naxals present in the meeting shouted that it is the Police Force and they should be fired at; upon which the Naxals started firing towards the marching party

while the Police also started firing at them. Chaos ensued and people assembled in the meeting started running helter and skelter. He has stated that on the next day morning some of the Naxals had instructed the Villagers present in the meeting that on enquiry being made, they should say that the meeting was convened for organizing 'Beej Pandum' festival, in which Priests of three Villages had participated.

53. The above statement of witness Irpa Ganesh DW-7 on affidavit was challenged on behalf of the Complainants and extensive cross examination was conducted by their learned counsel. It was pointed out on behalf of the Complainants on the basis of the responses given by the witness in his cross examination, that the witness has admitted that he cannot understand the meaning and implication of many recitations in the Affidavit sworn by him. It was therefore, submitted that the contents of the Affidavit sworn by the witness is not his own version, but it has been prepared at somebody else's instance, and the witness has been made to sign the same.
54. It was further submitted that the witness has admitted in his cross examination that he has surrendered as a Naxal and is receiving benefits from the State Government by way of pension, cash and maintenance of his family. Therefore, it was submitted on behalf of the Complainants that his statement in Affidavit is not his own and was given with the object of and due to favours being accorded to him by the State Govt. and Police. Therefore, such an interested version cannot be relied upon. It is interesting to note that sister of above witness Irpa Ganesh DW-7 Shashikala PW-6 has given statement in favour of the Complainants. On being asked about the same, Irpa Ganesh DW-7 states that his sister Shashikala and other Villagers who deposed before the commission, were coerced and forced by the Naxals to give such statement. He has also candidly admitted that the Villagers are being made scape-goat in the tussle between Naxals and Police Force.

55. Several Discrepancies have been pointed out on behalf of the Complainants as brought out during his cross examination of Irpa Ganesh DW-7 and it has been submitted that his statement is not worthy of credence. However, fact cannot be lost sight of, that he is an ex-naxal and was actively associated with their activities. He has also admittedly lost his two brothers in the incident – Irpa Ramesh and Irpa Dinesh. Therefore, maybe he may not be speaking the whole truth but it would appear from his statement that it raises serious doubt that the meeting on the fateful night was not fully innocuous and convened only for the purpose of making arrangements of ritual of 'Beej Pandum' as has been tried to be asserted and stated by the witnesses examined on behalf of the Complainants.
56. Another witness Poonam Mangu alias Malesh DW-9 has been examined by the Opposite Party – Security Forces. He also claims to be an ex-naxal. He states that L.O.S. Commander of the area – Sandesh alias Sannu had inducted him in Naxal activities in the Year 2007. He states that thereafter he executed the duties of Naxal outfit in different capacities and that he was made Platoon Commander Incharge of Pegdapalli Militia in 2010, whereafter he remained actively involved in Naxal activities. He however, further states that he surrendered before the Police in the month of February, 2015.
57. Poonam Mangu DW-9 further states in his Affidavit that the meeting on the fateful night was called by important Naxals such as Korsu Madhu alias Soma - Janmilitia Commander of Basaguda, Hapke Soma alias Ramesh Deputy Commander Sarkeguda, Madkam Shankaraiya D.A.K.M.S. of Kottaguda and others. He states that he was also present in the said meeting along with other Naxals. He has averred in the Affidavit that the main agenda of the meeting was to take forcible possession of the land of the persons, who had joined Police Force. He has further stated that 20 armed Naxals and about 200 Villagers were also present in the meeting. He has

also disclosed the names of the Naxals who were present in the said meeting. He further states that the meeting was not for making arrangements for "Beej Pandum" Festival, which was already celebrated about a month prior to the meeting. However, the Villager present in the meeting were warned that in case any Villager co-operates with the Police, he will be punished. The leaders in the meeting after the incident told the Villagers that they should inform others on being questioned that, the meeting was for celebrating "Beej Pandum" Festival. He has further stated about the incident to the same affect as was stated by Irpa Ganesh in his Affidavit, that the Naxals present in the meeting at about 11:00 pm had shouted that the Police party has come and that they should be fired at. Thereafter, first Madkam Suresh a Naxal started firing and then Police Party also started firing thereafter. On account of the firing there was Mayhem and the Villagers started running here and there.

58. The above statement on Affidavit of Poonam Mangu DW-9 has also been challenged by way of extensive cross examination on behalf of the Complainants. It is submitted on behalf of Complainants that he being a surrendered Naxal, is being provided financial assistance and protection as also livelihood by the State Government and therefore he cannot be treated as independent witness and the version given by him cannot be relied upon.
59. Another witness examined on behalf of Security Forces - Opposite Party, is Irpa Pushpa DW-10. In her Affidavit she has stated that the meeting on the night of 28th June, 2012 was convened by the Naxals. She has also stated that the meeting was called for the purpose of issuing instructions to forcibly occupy the land of those Villagers, who had joined the Police Force. It was stated by her that about 40 Naxals and 200 Villagers were present in the meeting. She has further stated that while the meeting was in progress at about 11:00 pm some Naxals in the meeting shouted that it is the Police Party

and they should be fired at, upon which firing started. She has stated that she ran away from the spot. Thus, according to this witness Irpa Pushpa DW-10 the meeting was convened by the Naxals. She states the Naxals present in the meeting were wearing uniform. She also stated that out of the 17 persons killed in the incident five deceased persons were from her family namely her Uncles-Irpa Ramesh, Irpa Somlu, Irpa Narayan and Irpa Dharmaiya, and her brother Irpa Suresh. She states that out of the above five deceased persons, Irpa Suresh died in the next morning at the hospital. She has admitted that her Uncle Irpa Ganesh, as well as Kaka Parwati were also associated with Naxal activities. Kaka Parwati DW-11 has also been examined on behalf of the opposite party. She has given substantially the same statement as was given by Irpa Pushpa mentioned above.

60. Statement of the above witnesses has been challenged on behalf of complainants on the ground that the Affidavits submitted by them are highly belated and submitted after 04 years of the incident. It was submitted that it is most un-natural that they did not disclose the incident earlier, before furnishing Affidavit after lapse of such a long time. It was also submitted that they are trumped up witnesses and have been pressurized to submit Affidavits by the Police.
61. The learned counsel for the Complainants has also strenuously contested the investigation made regarding the incident. The incident was investigated by Assistant Sub-Inspector Ibrahim Khan DW-8, who was also participant and member of the marching parties of Security Forces. He, in his Affidavit stated that at the relevant time he was posted as Assistant Sub Inspector Police Station, Basaguda. Two search parties were organized at Police Station Basaguda. The Parties were briefed in detail by D.I.G. CRPF S. Elango. One of the parties was led by Commandant Anand Singh, while S Elango led the other party. He has also stated that the Police Force was at the end of the party led by D.I.G. S.Elango There

were total 196 CRPF and Police Personnel out of which 25 persons were of Police Force while remaining 171 persons were from CRPF. He has further stated that at about 10:30 pm the party led by D.I.G. CRPF S. Elango was passing through Sarkeguda Forest, where Naxals were assembled. They shouted that the Police party was approaching and that they should fire at them. Thereafter, there was sudden firing, as a result of which the guide of their party sustained bullet injury.

62. Ibrahim Khan DW-8, has been cross examined at length on behalf of the complainants, during which he had stated that he had also fired two rounds. He has further stated that he also conducted investigation of the incident and that he had scribed a 'Dehati Nalishi', mereg intimation and also prepared the site map or 'Nazari Naksha'. He also prepared seizure memos marked as, from Ex. C-3 to Ex. C-8. He has admitted in cross examination, that detailed description and particulars of fire arms etc. seized on the spot by him, have not been given by him in the seizure memos. He has also not mentioned that loading guns seized by him were sealed by him after their seizure.
63. His statement has been challenged on several grounds on behalf of the Complainants including on the grounds of manipulations, discrepancies and several omissions. It was submitted on behalf of the Complainants, that the drawl of 'Dehati Nalishi' and seizure memos etc. were not factually prepared on spot and infact are ante dated and anti timed, make believe documents in an attempt by the Security Forces - CRPF and Police Personnel, to cover up their faults in the incident.
64. The learned counsel for the Complainants during his submissions in the above reference pointed out to several discrepancies and short comings in the investigation. It was pointed out that investigation was conducted in a shoddy manner and is totally un-reliable. It was submitted that the

'Dehati Nalishi' was recorded by Ibrahim Khan DW-8 who was Incharge of Police Station- Basaguda at the relevant time. He has stated in his cross examination in Para-5, that he had recorded 'Merg intimation' and 'Dehati Nalishi' besides preparing spot map at the spot of the incident. He further states in Para-1 that he prepared "NAJRI NAKSHA" Ex. C-12 on the spot on 29/06/2012 at 9:10 am. He further states that he recorded 'Dehati Nalishi' Ex. C-12 in the morning at 6:00 am on 29/06/2012. He further states in Para-12 of his cross examination that First Information Report (F.I.R.) was recorded at Thana Basaguda at 1:30 pm on the same date. He admits that when he recorded 'Dehati Nalishi' Ex. C-12 at 9:10 am the offence was not registered i.e. F.I.R. Ex. C-13 was not recorded when he recorded 'Dehati Nalishi' Ex. C-12.

65. Obviously, therefore when 'Dehati Nalishi' Ex. C-12 and "NAJRI NAKSHA" Ex. C-12 were prepared offence number could not be given therein, as F.I.R. Ex.C-13 was till then not recorded, which was recorded later on, at 1:30 pm. at the Police Station, while the said 'Dehati Nalishi' Ex. C-12 and "NAJRI NAKSHA" Ex. C-12. were supposedly prepared, at the spot in the morning. It is pertinent to note that several other documents such as seizure memos etc. were also allegedly prepared on the spot in the morning i.e. before F.I.R. was recorded while crime number was not till then allotted, to the incident. Yet those documents bear crime number, which shows clear manipulation in investigation.

66. Pointing out above discrepancies, the learned counsel for the Complainant rightly argued and submitted that the said documents including 'Dehati Nalishi' seizure memos Ex.C-3 to Ex. C-8 and 'NAJRI NAKSHA' Ex. C-12 etc. were prepared at the Police Station after the F.I.R. Ex.C-13 was recorded at the Police Station, and therefore cannot be relied upon. It was submitted on behalf of the Complainants that the investigation regarding the incident is biased and is manipulated.

67. It was further submitted that though the Security Forces claimed presence of Naxals on the spot, but there was no indication or material to show presence of Naxals. It was submitted that no evidence whatsoever in that regard has been collected and produced by the Opposite Party – Security Forces. It was submitted that the Naxalities are supposed to carry 'pittu' and muzzle loading guns (Bharmar) etc. but no material from the spot indicating the possession of any such article has been produced. Ramrods, wads etc. which are essential for firing the muzzle loading guns have not been seized and produced. Further, the articles seized are not duly described and particulars of identity thereof have not been given in the seizure memos. The seizure memos Ex.C-3, Ex. C-4 and Ex. C-5 though indicate that muzzle loading guns were seized, but there is no description which could lead to their identification such as the length, color, weight etc. of the articles seized. It was submitted on behalf of the Complainants that description of the articles given in the seizure memos does not contain any particulars and the description was so general and vague which could apply to any such article, and in no case was sufficient for identification of the article. Similarly, seizure memo Ex.C-8 also does not describe the shape and size of the so called detonators. It was submitted that though Naxalite literature is also alleged to be recovered from the spot. However, the same is also without any description and does not have identification with the Naxalite's ideology and thus cannot be treated as Naxalite literature.

68. Moreover, the seized articles were not sealed on the spot. Further seizure memos have not been prepared in the presence of and not signed by independent witnesses. Therefore, alleged seizures would not carry any weight and cannot be attributed to and establish the presence of Naxals in the meeting. Further, there was also inordinate delay in sending the sealed article to Forensic Science Laboratory which also renders the whole exercise futile and cannot render any assistance and cannot constitute proof of Naxal presence.

he

69. Besides the above witnesses, the Security Forces - Opposite Parties, have also examined Dr. G.S. Dhruv DW-12, who was posted as Medical Officer at Bijapur at the relevant time. He was one of the members of the team which conducted Post Mortem on the bodies of the deceased along with Dr. Shailendra Kumar and Dr. G.K. Samad. Dr. G.S. Dhruv DW-12, has stated that the medical team as above, had collectively conducted Post Mortem on the dead bodies. He has stated that all the Post Mortem reports have been signed by him as well as Dr. Shailendra Kumar and Dr. G.K. Samad. Before proceeding to consider the Oral statement of Dr. G.S. Dhruv, DW-12, it would be apt to refer the substance of the Post Mortem Reports. Details and particulars of Post Mortem conducted by a team of Dr. G.S. Dhruv, Dr. Shailendra Kumar and Dr. G.K. Samad are as below:

S. No.	Name of Deceased and Exhibit of Post Mortem	Nature and location of Injury	Cause of Death
1	Irpa Suresh S/o Irpa Chuchiya Ex. PM-1	- 1 Bullet exit wound Rt. Lateral Aspect of Chest - Intestinal part coming out - 1 Bullet entry wound - Lt. Lateral Aspect Lower Abdomen	- Severe Hemorrhage due to injury Nos. 1 & 2
2	Madakam Ramvilas S/o Kuchcha Ex. PM-2	- Entry wound Right Side of Chest below Axilla. - Exit wound in Lateral wall of Chest.	- Respiratory Arrest due to Severe Hemorrhage resulting from gunshot injury
3	Irpa Munna S/o Ramalu Ex. PM-3	- Bullet exit wound Rt. Chest - Bullet entry wound back side of Chest	- Severe Hemorrhage due to injury No. 1 & 2
4	Irpa Narayan S/o Mutta	- 03 Bullet entry wounds on epigastric region of abdomen	- Severe Hemorrhage due to injury No. 1 & 2

	Ex. PM-4	- 01 big exit wound on Rt. Buttock	
5	Kunjam Mulla S/o Bhakhru Ex. PM-5	- Fracture on Lt. Parietal and occipital bone	- Hemorrhage shock due to Head gunshot injuries
6	Kaka Anita D/o Rama Ex. PM-6	- Bullet exit wound Lt. temporal region and Lt. temporal Bone fracture - 01 Bullet entry wound occipital region of scalp	- Head gunshot injuries No: 1 & 2
7	Kaka Samayya S/o Kaka Dulla Ex. PM-7	- Entry wound on back at the level of Scapula margin inverted - Entry wound on Rt. Hypochondrium at the level of 10th rib - Margin everted with expulsion of abdominal viscera with Hemorrhage - Lacerated open wound on both thigh just about Lt. & Rt. Knee - Fracture of both Rt. & Lt. Femur Shaft due to gunshot injury	- Severe Hemorrhage resulting from multiple laceration due to gun hot injury
8	Korsa Bichhe S/o Gutta Ex. PM-8	- Bullet exit wound Rt. Chest below nipple - Bullet entry wound back side of chest - Lacerated wound Rt. Elbow with fracture	- Severe Hemorrhage due to gunshot injury No. 1,2,3
9	Kaka Nagesh	- Bullet entry wound in frontal area of scalp with fracture - Bullet exit wound occipital area of scalp with bone fracture - Bullet entry wound in upper neck left side of chest	- Head injury and Severe Hemorrhage due to injury

	Ex. PM-9	- Lacerated wound on Rt. Foot with bone fracture	
10	Sapka Mithu S/o Sapke Sukram Ex. PM-10	- Entry wound Rt. Shoulder everted margins - Entry wound on back above Rt. Scapula margins inverted - Exit wound on Rt. iliac region everted, blood stain all over abdomen and back	- Fracture of both ribs - Multiple organ laceration due to gunshot injury.
11	Mandvi Ayatu D/o Doga Ex. PM-11	- Bullet entry wound back side chest - Exit wound on Rt. Axilla Rt. Lung ruptured	- Gunshot injury No. 1 & 2 resulting in Severe Hemorrhage
12	Marakam Dilip S/o Munna Ex. PM-12	- Big lacerated wound with fracture shaft humerus Rt. Arm - Multiple exit wound right & left chest below nipple - Multiple bullet entry wounds on back of chest	- Severe Hemorrhage due to gunshot injury No. 1,2,3
13	Irpa Somlu Ex. PM-13	- Bullet entry wound on occipital region of scalp bone fractured - Bullet exit wound on the mandibule - Maxillary area of face with bone fractured - Wound on thigh with fracture of femur	- Head injury and Severe Hemorrhage due to gunshot injury No. 1,2,3
14	Sarke Ramanna S/o Potti Ex. PM-14	- Entry wound left shoulder inverted margin - Exit wound base of neck at medial end of left clavicle margin everted - Whole chest stained with blood - Fracture of left clavicle	- Severe Hemorrhage due to gunshot injury
15	Madakam	- Entry wound on skull over	- Fracture of skull

	Nagesh S/o Malla Ex. PM-15	right parietal area margin inverted - Exit wound on occipital area margin everted with expulsion of brain matter and hemorrhage. - Blackening of right eye	bone due to gunshot injury - Hemorrhage shock due to laceration of brain matter due to gunshot injury
16	Madakam Suresh S/o Malla Ex. PM-16	- Fracture of seven cervical vertebrae	- Severe Hemorrhage due to gunshot injury
17	Irpa Dharmayya S/o Bhima Ex. PM-17	- Entry wound on back inverted margin - External wound on chest upper part of Sternum margin everted - Inverted entry wound over Sternum margin inverted - Exit wound on right lateral chest below right axilla margin everted with expulsion thoracic viscera and hemorrhage	- Severe Hemorrhage due to multiple organ laceration due to gunshot injury.

70. It may be mentioned here that only substance of the Post Mortem Reports has been summarized as above. It is also to be noted that in all the cases (Post Mortems) nature of death is reported to be homicidal. Other description of injuries etc., which was not relevant, has not been reproduced.

71. Besides the Post Mortem Reports the injured persons belonging to Security Forces were also examined by several Doctors including Dr. Dhruv. Their injury reports are as below:

- (i) CRPF Constable K. Rajan was examined as per injury report Ex. IC-1 according to which he found everted laceration on the left leg, which was reported by him to be grievous.

- (ii) He has examined Krishna Kumar Khatri of 204 CoBRA Battalion CRPF. was examined. His injury report is Ex. IC-2. A bullet entry wound on right cheek near middle of the Mandibular region was found. According to his medical report as per Ex. IC-2 he was referred to Higher Centre.
- (iii) Injured S.S. Rana was examined by Dr. Dhruv and injuries on his person as per report Ex. IC-3 was found including bullet entry wound on right Antero Lateral Middle 1/3 of thigh. Injury was reported to be Homicidal.
- (iv) Wahid-Ul-Islam was examined by Dr. Dhruv. Injury was found as per Injury Report as per Ex. IC-4 including bullet entry injury on Anterior Auxiliary lying at the level of 6th Rib was found. Patient was referred by him to Higher Centre.

72. Besides, the above injured persons injuries of those persons present in the meeting were also examined by Dr. Dhruv. Substance of their reports is as below:

- (i) Chenti Kaka was examined by Dr. Dhruv. His injury report is as per Ex. IC-5. He found gunshot entry wound on the left thigh and bullet exit wound in anus region.
 - (ii) Madakam Soma was examined by Dr. Dhruv. His injury report is as per Ex. IC-6. He found a gunshot injury and a lacerated wound on left palm.
- (ii) Dr. Dhruv also examined Irpa Suresh son of Irpa Chandraiya. His injury report is Ex. IC-7. One bullet entry wound in the right lateral aspect of Chest was found.

73. It may be mentioned that out of the above injured persons examined by Dr. Dhruv - K. Rajan, Krishna Kumar Khatri, S.S.Rana and Wahid-Ul-Islam examined by Dr. Dhruv were members of CRPF Battalion; while the remaining injured

persons namely-Chenti Kaka, Madakam Soma, Irpa Suresh were private persons.

74. It may also be noticed that Dr. G.S. Dhruv has stated that initially injuries of Irpa Suresh were examined by him early in the morning at 7:30 am and he found injury on his person as per report Ex. IC-7. Thereafter he also conducted Post Mortem examination on the body of Irpa Suresh at 9:30 AM as per Post Mortem Report Ex. PM-1. It may be noted in the above context, that though Dr. Dhruv claims to have examined the injury of Irpa Suresh at 7:30 AM on 29/06/2012, however, his Post Mortem was started at 9:30 AM on the same day i.e. on 29/06/2012. As per his Post Mortem report Ex. PM-1, wherein; it has been mentioned that the duration of death of Irpa Suresh was 10 to 20 hours prior to the autopsy. Certainly if Irpa Suresh had died 10 to 20 hours prior to 9:30am on 29/06/2012, then he could not have been alive at 7:30 am on the same date i.e. 29/06/2012, the time on which Dr. Dhruv claims to have examined his injuries. In his explanation regarding the above discrepancy, Dr. Dhruv states in Para 34 of his cross examination that the time of death as mentioned by him in the Post Mortem Report Ex. PM-1 of Irpa Suresh might have been an error on the part of the team of Doctors conducting Post Mortem. However, that explanation does not appear to be acceptable as the bodies of all the deceased were examined and Post Mortem Reports were recorded from the morning of 29/06/2012 to afternoon of 29/06/2012. Thus, clearly there appears to be manipulation in recording the timings of injury and Post Mortem reports of Irpa Suresh. This aspect shall also be later adverted to while dealing with the reliability of the material placed on record on behalf of the Opposite Party – Security Forces.
75. Having brief over-view as above of the material placed on record especially oral evidence led by the Parties, the origin and manner in which the incident took place, will now be considered.

76. To briefly recapitulate as pointed out earlier, the Complainants witnesses in the above regard have stated to the effect that the meeting was taking place on the night of 28/06/2012 in the opening between the three villages-Sarkeguda, Kottaguda, Rajpenta. In the above connection, reference may be made to the statements of Complainants witnesses namely – Rita Kaka PW-4, Sarke Pullaiya PW-5, Shashikala Telma PW-6, Irpa Babu Rao PW-7, Irpa Chinnaka PW-9, Irpa Ram Bai PW-12, Hapka Chinnu PW-13 and Irpa Laxmi PW-17. The above witnesses have also stated that the meeting was convened by the Priests of three Villages viz. Kottaguda, Rajpenta and Sarkeguda. They have also stated that the meeting was called for making arrangements of 'Beej Pandum' festival. It may also be noted that out of the above witnesses, Sarke Pullaiya PW-5, Irpa Babu Rao PW-7, Irpa Chinaka PW-9, Mutta Kaka PW-11, Irpa Ram Bai PW-12 and Hapka Chinnu PW-13 were present in the said meeting and were also injured in the incident.
77. There is yet another set of Complainants' witnesses besides the above persons, who were not actually present in the meeting but claim to have either witnessed the same or heard the sound of firing from some distance, from their houses. It may further be noted that though they were not physically injured themselves, some of their relatives were either injured in the incident or some of their relatives have been killed during the incident.
78. To illustrate, Kamla Kaka PW-1 has stated that her nephew Kaka Rahul aged about 15 years was killed, Sarke Bablu PW-2 states that his brother Sarke Ramanna was also killed in the incident. Kaka Rita PW-4 is the sister of injured Santi Kaka and Madakam Soma. She has also stated about the killing of Irpa Ramesh by the Security Forces on the next morning. Shashikala Telam PW-6 is the sister of three of the deceased namely – Irpa Ramesh, Nagesh and Suresh. Kaka

Nagi PW-8, is the wife of deceased Kaka Samaiya. Madakam Mutta PW-10 is the father of the deceased Dilip and Munna who were killed in the incident. He has stated that Dilip was a student of 8th class who was aged about 12 years. Irpa Laxmi PW-14 is the wife of the deceased Irpa Ramesh who has claimed that he was killed by Security Forces on the next morning of 29th June, 2012.

79. Thus, the two sets of witnesses as above, examined by the Complainants have either claimed to be present in the meeting and were actually injured or were assaulted; while another set of witnesses of the Complainants though admitted that they were not present on the spot of meeting, but they state that either they saw the incident from their houses at some distance from the spot of the incident or heard the sound of firing. It is to be noticed that their close relatives have been injured or killed in the incident.
80. Oral evidence briefly mentioned as above led by the Complainants, has been challenged On behalf of the Opposite Parties and it was submitted that the same is not worthy of reliance. In general it was submitted as against all the witnesses that, none of them had come forward to report the matter to the Higher Authorities, though they had ample opportunity to do so. More specifically it was submitted on behalf of the Opposite Parties by their learned counsel that, Kamla Kaka PW-1 is a 'Mitani' and 12th class pass. Further, she had all the opportunity to report the matter, as being 'Mitani' she had ready access to the Higher Local Authorities. She however did not do so, and submitted a highly belated Affidavit at the instance of interested persons belatedly intervening in the occurrence. It was pointed out in the above connection that the witness herself had admitted that she had also gone to Delhi, in the company of members of the Communist Party namely - Saaje and Manish Kunjam.

81. It was submitted by the learned counsel for Opposite Parties, that the whole content of the Affidavits of the witnesses are only tutored material and that statement in Affidavit sworn by Kamla Kaka PW-1 is not based on her own knowledge. Similarly, Sarke Bablu PW-2, Madakam Ratna PW-3, Rita Kaka PW-4 again were branded, by the learned counsel for the Opposite Party - Security Forces, as trumped up witnesses. It was further pointed out by the learned counsel for Opposite Party - Security Forces that these witnesses are biased and did not narrate the incident earlier to any Authority immediately after the incident, though they had full opportunity to do so, as the Authorities were admittedly visiting and present at the site of incident on days following it. Similarly, the statement of Shashikala Telam PW-6 has also been challenged on the ground that though she is an 'Aanganwadi' worker she also did not come forward to disclose and report the matter immediately after the incident. Therefore, it was submitted that the above witnesses have given statement by way of Affidavits as per the instructions given by the interested parties working for them.
82. Besides the above, the statement of -Kaka Nagi PW-8, Madakam Mutta PW-10 has also been challenged and the veracity and reliability of the Affidavits sworn by them has also been challenged on the ground that they only know 'Dorlee' language while the Affidavit allegedly sworn by them, is in Hindi which was sworn in the presence of and notarized by one Khan Advocate who does not know 'Dorlee'. It was submitted that therefore, not only their Affidavits but their evidence and statements given by them, also deserve to be discarded as un-trustworthy, on that basis.
83. The statement of Mutta Kaka PW-11 and Irpa laxmi PW-14 has also been challenged by the learned counsel for Security Forces on the ground that they have not seen the incident and affidavits are sworn belatedly by them and that their statements cannot therefore be relied upon. Similarly

statement of Sarke Pullaiya PW-5, Irpa Rambai PW-12 and Hapka Chinnu PW-13 has also been challenged mainly on the ground that they are speaking about the incident in biased and prejudicial manner. It is submitted that they are trumped up witnesses and their support has been garnered by the interested parties, to buttress the false case made up by the Complainants.

84. Therefore, the learned counsel for the Opposite Parties – Security Forces, submitted that oral evidence as above, led on behalf of Complainants is not worth relying and cannot be accepted as truthful version of the incident.
85. The Security Forces - the Opposite Parties have also adduced oral evidence of witnesses, which has also been briefly mentioned earlier. All of them claim to be and indisputably were part of the marching team. Injuries of some of them namely – Krishna Kumar Khatri DW-5 and Wahid-UI-Islam DW-2 were examined by Dr. G.S. Dhruv DW-6. Besides the above, Security Personnel K. Rajan and S.S. Rana of Cobra Bn. were also examined by Dr. Dhruv as they were injured in the incident. Their injury reports are from Ex. IC-1 and Ex. IC-4 which have been detailed earlier. Some other witnesses have also been examined on behalf of the Opposite Parties (Police and CRPF) namely – Irpa Ganesh DW-7, Poonam Mangu DW-9 and Kaka Parwati DW-11 who have also claimed that they were present in the meeting.
86. These civilian witnesses namely - Irpa Ganesh DW-7 and Poonam Mangu DW-9 have stated to the effect that the meeting was convened by the Naxals and was attended by many of them, as well as Villagers of the three Villages- Sarkeguda, Kottaguda and Rajpenta. Infact, Irpa Ganesh DW-7 admits to have been Ex-naxal who had subsequently surrendered before State Authorities. Similar is the case with Poonam Mangu DW-9. Irpa Pushpa DW-10 is the niece of the deceased Irpa Ganesh. She has stated that deceased Irpa

Ganesh used to work for Naxals. She has stated that the meeting was attended by about 40 Naxals. Thus by placing the above oral evidence on record the Opposite Party - Security Forces, have tried to establish that the meeting was not for celebrating "Beej Pandum" Festival but was convened by Naxals for depriving those persons of the Villages of their land and crops, who had joined Police Force.

87. Oral testimony, as referred above of the witnesses examined on behalf of the Opposite Party-Security Forces has been challenged by the learned counsel for the Complainants on various grounds which will be presently discussed and summarized. It is submitted on behalf of the Complainants that witnesses examined on behalf of the Opposite Party - Security Forces - Irpa Ganesh DW-7, Poonam Mangu DW-9, Irpa Pushpa DW-10 and Kaka Parwati DW-11 claim to have been associated with the Naxals and that they have later surrendered themselves before the State Authorities. It was submitted that the above witnesses have given contradictory statements. Moreover, they have admitted that they are getting State and Police Protection and also receiving monthly payments towards their services from the State Government. It was therefore, submitted on behalf of the Complainants that they cannot be said to be independent witnesses and their statements are not worthy of reliance. It was also submitted that these witnesses have also filed Affidavits belatedly, which fact also raises serious doubt about the veracity and truthfulness of the statements by them by way of Affidavit.
88. It was also pointed out on behalf of the Complainants that the witness Irpa Ganesh DW-7 has stated that amongst the victims in the incident - Irpa Dinesh alias Iripa Somlu was a Naxalite. Irpa Ganesh DW-7 has also stated that he was also a Naxalite earlier and had surrendered in January, 2014. He has stated that he was associated with Naxal activities for about 10 years. He further states that during the incident his

brother Irpa Ramesh and Irpa Dinesh who were his real brothers were killed.

89. Poonam Mangu DW-8 has also stated about his presence in the meeting on the night of the incident. She further states that other Naxals such as – Korsha Madhu alias Soma, Kapka Somu alias Ramesh, Madakam Shankaraiya along with other Naxals had called a meeting of Villagers of Sarkegude, Rajpenta and Kottaguda along with other 40 Naxalites including Somu Madakam, Irpa Baburao, Poonampulla, Kaka Rajesh, Poonam Sannu, Korsa Nandu, Kaka Senti, Hapka Laxmi, Hapka Bhujji and other Naxals were present in the meeting. The meeting was not called for discussion regarding "Beej Pandum" Festival, but was for grabbing the land and agricultural products of the persons who have joined Police Force. Similar statements have been given by Irpa Pushpa DW-10 and Kaka Parwati DW-11 examined on behalf of Police Administration.
90. Oral statements as above, however; have been strenuously challenged by the learned counsel for the Complainants. It was submitted by him that no reliable material is placed on record by the Security Force – Opposite Party, to establish the fact that the persons present in the meeting were Naxals. It was submitted by him that oral testimony of the above witnesses is not only belated but is contradictory and totally un-trustworthy. They are narrating a tutored version. They are completely dependent on the State Government and the Police for their livelihood and protection, as they are surrendered Naxals and have been granted Amnesty by the State due to their surrender. Therefore, if they choose not to comply or act as per wishes of the State/Police Administration, they are likely to face criminal proceedings and other serious consequences. They have contradicted their own version in cross examination and inconsistency is palpably reflected in their statements which clearly goes to dis-credit them. It was submitted on behalf of the Complainants that the

circumstances in which they have sworn Affidavits clearly go to show that, the said Affidavits are not at the behest of the witnesses themselves, but have been scribed to support version as sought to be presented by the Security Forces - CRPF and Police.

91. It was submitted on behalf of the Complainants that the witnesses as above of the Opposite Party - Security Forces, have not only given mutually contradictory statement due to which their statement is not trust worthy. Besides, it was also pointed out that the above witnesses are tutored witness and though they claim to be previously part of the Naxals outfit, yet they have failed to identify many of the deceased persons, whom they have stated to be Naxals. To illustrate the learned counsel for the Complainants pointed out that Poonam Mangu DW-9 though claims to be present in the meeting on the fateful night and though he claims to have held a rank in the Naxalite organization, when he was confronted with several photographs of the persons who were named by him in his Affidavit as Naxalites, such as Kaka Senti, Kaka Rajesh, Korsa Nandu, Irpa Babu Rao; he failed to recognize the photographs of those Villagers branded by him as Naxalites in his Affidavit.
92. It was thus submitted by the learned counsel for the Complainants that besides, inconsistency and contradiction in his statement, it is clear that witness was not speaking the truth. It was further pointed out in the above reference that similarly statement of another witness Irpa Pushpa DW-10 is full of major contradictions. Moreover, her Affidavit is ad-verbatim copy of Affidavit of Kaka Parwati DW-11. Their identical statement in their respective Affidavits clearly shows that they were not recorded on their instructions. Statements and veracity of statements of Irpa Pushpa DW-10 and Kaka Parwati DW-11 has been challenged on the above count. It was further submitted that they are surrendered Naxals and as such are wholly dependent on the doles meted out by the State Government. Besides, due to several contradictions in

their statements as also delay in making statement by way of Affidavit as pointed out earlier also, it has been submitted that the statements of these witnesses are also totally un-reliable.

93. It was further pointed out on behalf of the Complainants that, though these witnesses have claimed that some of the deceased and injured to be Naxals, but admittedly the families of those persons who have been killed or injured have been provided with financial aid by the State Government. It was submitted by the learned counsel for the Complainants that had those victims been Naxals, the State Government as per its avowed policy, would not have provided financial aid or assistance to their families. Hence, the claim of the witnesses that the persons killed or injured in the incident were Naxals, is not liable to be accepted. It was submitted on behalf of the Complainants that the witnesses cannot be said to be independent and their statements are not only contradictory but the conduct of the Opposite Parties and State Government does not justify and support their oral statements that Naxals were either present in the meeting or had become victims of the firing.
94. From the above discussion, it would appear that oral statements of witnesses as discussed above produced by either of the Parties, suffer from discrepancies and shortcomings and the same do not seem to be wholly reliable. The oral testimony as above of witnesses at best can be said to be half truths, inextricably mixed with exaggerations and embellishments. As such, it is very difficult and in fact almost not possible to separate grains of truth from the chaff of falsehoods. In view of above, golden dictum of appreciation of evidence that "a person may speak a lie but the circumstances do not" will have to be resorted to. Therefore the circumstances that appear on record, will have to be considered and discussed and material placed on record to be assessed on the basis thereof. Accordingly, the circumstances available on record will now be adverted to.

95. It may be noted that Gyanendra Prakash DW-1, Waheed Ul Islaam DW-2, Arnav Ghosh DW-4, Krishna Kumar Khatri DW-5 who are all Constables in the CRPF, and who were admittedly part of the Search Parties led by D.I.G. S. Elango of CRPF, have stated in their Affidavits that when they were passing through Sarkeguda Forest, initially firing started from one side at them and then firing was from both the sides, upon which they had also fired, as a result the persons assembled in the meeting including Naxalites ran away and escaped. Out of the above persons Gyanendra Prakash DW-1, Waheed Ul Islaam DW-2, Krishna Kumar Khatri DW-5 and Arnav Ghosh DW-4, also state that they were injured in the firing by the Naxalites.
96. It would therefore appear from the above statements that the firing took place while they were passing through Sarkeguda Forest at about 10:30 pm to 11:00 pm. However, from the admission of D.I.G. S.Elango DW-6 in cross examination, it would appear that they were in open area between two forest patches. S. Elango DW-6 in his cross examination has also admitted in Para-12 of his cross examination that GPS Coordinates referred by him are of open clear area surrounded by forest. Therefore, it would appear from the material on record as well as admission of DIG CRPF S. Elango DW-6 that the incident occurred in an open area in between the three Villages – Sarkaguda, Kottaguda and Raj Penta, which was adjoining the Forest. It is also clear from the above material on record that the occurrence of firing took place at about 10:30 pm to 11:00 pm, as stated by the above witnesses and also not seriously disputed by the Complainants.
97. It is also admitted by the witnesses of the Complainants that there was no light at the place of incident. It is therefore, highly doubtful that meeting for a social or religious cause would take place in a place adjoining forest without any arrangements of light in darkness at the advanced time of night at about 10:30

pm to 11:00 pm. Consequently, it can be surmised from the above circumstances, that the meeting was not innocuous and was not convened for the purpose of making arrangements of "Beej Pandum" Festival, as has been claimed and asserted on behalf of the Complainants. Though, it is true that it has not been established on record by convincing evidence that the persons assembled in the meeting or those killed or injured belonging to three Villages - Sarkaguda, Kottaguda and Raj Penta were Naxalites, however, at least some of them admittedly had criminal antecedents, as would transpire from evidence on record.

98. In the above context, it has been contended on behalf of the Opposite Party - Security Forces that, the deceased Madakam Suresh and Madakam Nagesh were facing criminal trials. Madakam Suresh was also prosecuted in jail break incident. As against this it was submitted in the above reference on behalf of the Complainants that, orders of conviction against the persons have not been submitted nor any permanent warrants have been proved to be issued against the said persons. It was also submitted that the jail break incident activity, is not a proof of Naxal activity and that criminal antecedent of a person would not go to prove Naxal history.
99. The submission as above, would however not go to show that atleast some of the persons present in the meeting e.g. Madakam Suresh was a peace loving civilian resident. In this connection, it can only be observed that since, Naxalites cannot be identified from their appearance from civilian tribal of the area, only his antecedents throwing some light on the anti-social activities of the person distinguish him from a peace loving tribal which could possibly, though not necessarily be an indication of link with Naxals, but not conclusively proving the said fact.
100. It was also submitted on behalf of the Opposite Party that meeting of the Naxals, as per intelligence reports was to take

place at Silger which is at a distance of about 15 kms. from Basaguda Camp. Therefore, on the date of incident on 28/06/2012 a team of Security Personnel in which witnesses produced by the Opposite Parties were members had proceeded in search operation. It was explained on behalf of Opposite Party – Security Forces, that the Naxals have multi-tier intelligence and security arrangements. The assembly at Sarkeguda with which the team of D.I.G. S. Elango had confrontation, was the team which constituted first line of defense of such multiple layers of defense. In this first line of defense Naxalites belonging to lower cadre who are the members of general militia, create a cordon in order to give advantage and security to Naxalites of higher level, who taking advantage of such a screen, escape before being caught or apprehended. It was submitted, that it was for this reason that Naxalites of high level were not present in the alleged meeting which the security forces had confronted.

101. The learned counsel for the Opposite Party – Security Forces, also submitted that such lower tier form a cordon of civilian tribals locally residing in the adjoining Villages who are made to remain present in such assemblies. Thus, local residents by their forced presence, constitute a cordon and camouflage for the meeting, and thus it is made to appear that the meeting was convened for social or religious purpose. It was thus submitted by the Opposite Parties – Security Forces that, even if, and merely because no Naxalites were injured or apprehended would by itself not lead to the conclusion that the meeting was not convened by the Naxalites or no Naxalites were present therein. Therefore, it cannot be concluded that the meeting was not attended or convened by the Naxalites.
102. Accordingly, on consideration of several factors and circumstances as above, and in view of presence of the Anti-social elements also in the meeting, as also the timing and the venue of the meeting and as it was being held in a clandestine

manner, it appears highly doubtful that it was being held for arrangement of festivity of "Beej Pandum".

103. The next aspect which deserves to be considered is the circumstances throwing light on, as to how and in what manner the firing started and as to how the whole episode occurred?

104. In the above context also, the circumstances in which the incident occurred deserve to be considered. As also referred earlier, according to the Complainants, while the meeting for 'Beej Pandum' was being held in the clearing between three Villages namely - Sarkaguda, Kottaguda and Raj Penta, the Security Forces without any provocation opened fire after surrounding the assembly from all sides. However, as against this, as has been mentioned earlier also, the stand of the Security Forces- CRPF and Police is that, they were under attack initially from one side and then from the other side also, and that they thereafter opened fire in self defense. The circumstances of the incident as brought out from the material on record, will have to be considered and analyzed in order to reach to the conclusion regarding the truth or otherwise of the above two mutually opposite versions.

105. Firstly, the statement of the team leader namely - D.I.G. S. Elango DW-6 may be referred to. He has stated in Para-10 of his Affidavit quoted in extenso earlier, that he was leading his personal party and was in the front, followed by other Parties of Special Action Team "SAT" of various Battalions of CRPF. Their target was Silger which was about 15-16 kms from Basaguda. Similarly Manish Bamola DW-3 who is an Assistant Commandant in CRPF has stated that he was in the fore-front along with D.I.G S. Elango DW-6. He has stated that as soon as the firing started, they had all taken position. Thus, both the aforementioned Senior Officers D.I.G S. Elango DW-6 and Assistant Commandant Manish Bamola DW-3 claimed to be at the fore-front of the marching party. Both the above witnesses

have stated that after facing the firing from the other side (Presumably from the members holding the meeting), the Security Force had taken position and had started firing in defense.

106. The learned counsel for the Complainants pointed out that in view of above situation the instinct of self preservation as well the responsibility as the leaders of the team of Security Force, should have prevailed with both Elango DW-6 and Manish Bamola DW-3. However, it was pointed out that as against the above natural instinct, as per their own admission, both D.I.G Elango DW-6 and Assistant Commandant Manish Bamola DW-3 did not fire a single round, though they were fully armed and had modern arms with them. It is submitted that the above conduct of D.I.G Elango DW-6 as well as Manish Bamola DW-3 clearly indicates that they were not under any threat much less of life, and that they were not fired at by the members present in the meeting, otherwise instinctively they would have certainly fired in retaliation, as well as in self defense.
107. The allegation of firing by the members of the meeting is further negated by the admission of D.I.G Elango DW-6 in cross examination that he did not see any muzzle flashes and therefore he did not fire even a single bullet as would be clear from Para-15 of cross examination of D.I.G Elango DW-6. Further, this statement of S. Elango in cross examination is in contradiction of his statement in Affidavit Para-18 wherein he states to have noticed muzzle flashes.
108. It was further submitted by the learned counsel for the Complainants that though the marching party of Security Forces, had Para-Bombs which could have lighted the spot and its surroundings, and would have given opportunity to the Security Forces to locate and identify, track and apprehend the members of the meeting, yet Para-Bombs were not used by D.I.G Elango DW-6, for quite some time. It was submitted on behalf of the Complainants that this un-natural conduct of

D.I.G Elango DW-6 was tried to be justified by him, stating that delay in firing of Para-Bomb was in order to have the element of surprise. It was pointed out in the above references, by the learned counsel for Complainants that firstly, D.I.G Elango DW-6 tried to justify this action by saying that since they were in forest area and hence, it was not feasible to fire Para-Bomb and that they also wanted to have element of surprise. However, subsequently in further cross examination in Para-12, D.I.G Elango had to admit that they were in open area between the two forest patches and that therefore it was possible to use Para-Bomb. Subsequently, D.I.G Elango DW-6 tried to justify action of belated firing of Para-Bomb by saying that they wanted to retain the advantage of element of surprise. The learned counsel for the Complainants submitted that this explanation is contrary to the stand taken by the CRPF. It was submitted that it was the Security Force that were taken by surprise on account of initial firing by the so called Naxals and it was not the other way round. It was submitted that in the given situation, element of surprise could have been retained by the aggressor and not by the person who was victim of aggression, which according to the Security Forces were they. Therefore, delayed firing of the Para-Bombs according to the learned counsel for the Complainant, also indicates that the persons present in the meeting had not fired on the Security Forces and on the contrary, the Security Force had initiated the firing.

109. It was further submitted by the learned counsel for the Complainant that there is yet another circumstance which goes to show that the Security Forces were not fired at, and that infact the Security Forces had initiated and carried on unprovoked firing on the persons present in the meeting. It was submitted in the above context, that total - 17 persons of the three Villages were killed while another 11 persons sustained injuries. It was further submitted that out of the 17 persons who were killed, 07 were minors. It was pointed out by the learned counsel for the Complainants as against this, only 06

CRPF Jawans allegedly sustained injuries, in the incident. It was submitted that this dis-proportionate high level of injuries and fatalities on the side of Villagers who had assembled for the meeting, as against low number of injured and the nature of injury sustained by members of Security Forces who sustained relatively minor injuries, is a tell-tale circumstance, which leaves no manner of doubt, as to who was the aggressor and who carried out the offensive?

110. It was submitted on behalf of the Complainants that the circumstances as above, when viewed and analysed objectively, would clearly go to indicate that in fact the Security Forces were the aggressors and not the Villagers assembled in the meeting. It was further submitted that injuries sustained by CRPF Personnel were not of such nature which can be treated to have been inflicted on account of firing by the Villagers who were present in the meeting. It was submitted that either the injuries on the persons of the members of Security Forces were subsequently caused or were the result of to cross firing or friendly fire, or may be due to some other cause.
111. In the above reference, the injuries and the material and evidence led on behalf of the Opposite Parties - Security Forces, will have to be considered and scrutinized. As already noted, total 06 CRPF Personnel are alleged to have received injuries in the incident. Out of the said injured persons - Gyanendra Prakash DW-1, Wahid-UI-Islam DW-2, Arnav Ghosh DW-4 and Krishna Kumar Khatri DW-5, have been examined on behalf of the Opposite Parties. In the face of contentions as above, the material and evidence placed on record, in the above regard, is being taken up for consideration.
112. Firstly, the evidence and injury of Arnav Ghosh DW-4 may be adverted to. He stated in his Affidavit dtd. 21/08/2004 that, he was injured on the toe of his right leg. He sticks to the above location of his injury in his cross examination-also, as would be

clear from Para-1 of his cross examination. He has specifically denied that toe of his left leg was not injured. It may be noticed that in his MLC Report dtd/ 29/06/2012, which was recorded soon after the incident, injury as certified by Doctors was on the big toe of his left foot. Similarly, in his Police statement Ex. C-2, which was recorded on 19/07/2012 he had stated that he was injured on toe of the left foot. It is pertinent to note that not only there discrepancy as above, about location of injury of Arnab Ghosh DW-4, but it was also rightly pointed out by the learned counsel for the Complainants that such an injury could not have been caused by firing from a distance of about 200 paces, while the person injured has taken the position and had lied down on the ground, as was the situation, as described by the Opposite Party - Security Forces.

113. Therefore, it is clear that whether the injury was on the left toe of the foot, or right toe of the foot, of Arnab Ghosh DW-4, the same could not have been caused, while he was lying down as has been claimed and stated by Arnab Ghosh. Clearly therefore, the injury of Arnab Ghosh DW-4 on his toe of his right foot could not have been caused due to assault or the gun shot by any member present in the meeting, during the incident under enquiry.
114. Another injured witness is Wahid-UI-Islam DW-2 who has stated in his Affidavit that he was hit by a bullet on the left side of his chest and on the right wrist. Again, there are inconsistencies between the description of location of injuries in statement and reports. In his MLC Report Ex.IC-4 dtd. 29/06/2012, the injury was noted at the level of 6th rib while the side of injury has not been mentioned therein. In his Police Statement Ex.C-1 recorded on 19/07/2012, the injury was stated to be on the right side of the chest However, in his Affidavit dtd. 21/08/2014 injury is said to be located on the left side of his chest, while injured Wahid-UI-Islam DW-2 in his cross examination has stuck to the injury being located in the lower left side of the chest. Thus, the evidence and material

placed on record regarding the injury sustained by him is inconsistent.

115. Similarly, witness and injured Wahid-UI-Islam DW-2 has stated in his Police statement Ex.C-1 dtd. 19/07/2012 that injury was on the right wrist while in his Affidavit dtd. 21/08/2014, he has stated that he was hit by a bullet in his right arm. Further in his cross examination, he states that he was hit in his right elbow. It is pertinent to note that in his Medico Legal Certificate(MLC) Ex. IC-4, there is no mention of any injury on the arm of Wahid-UI-Islam. In the above reference, Dr. G.S. Dhruv DW-6 in his cross examination in Para-80 has categorically admitted that he did not find any injury on the elbow of injured Wahid-UI-Islam. Infact, he has candidly admitted that he did not find any other injury except the injury on his rib cage.
116. Therefore, the statement of Wahid-UI-Islam about he being injured in the incident on the right hand, whether it was on the wrist, arm or elbow stands negated by the statement of Dr.G.S. Dhruv and the MLC Report Ex. IC-4 recorded by him.
117. Statement of Krishna Kumar Khatri DW-5 also suffers from several discrepancies. In his Affidavit he has stated that he was hit by the firing of the Naxals in the incident, on the lower portion of the left calf near the Knuckle. However, as per his MLC Report Ex. IC-2 he was injured in the right cheek, The description of the injury in MLC Report Ex. IC-2 recorded by Dr. G.S. Dhruv DW-6 and in his Affidavit describe injuries of Krishna Kumar Khatri as below:

Document	Date of Preparation	Description of Injury
MLC (Exhibit IC-2)	29/06/2012	One bullet entry wound in the middle of the right leg near the right mandible. Size ¼" x ¼" x 2"
Affidavit (Exhibit C-1/CRPF)	27/08/2014	Hit by bullet in the left leg below the shin by naxal fire

It would thus appear that the statement of Krishna Kumar Khatri DW-5 also does not tally and match with the injury report recorded by Dr. G.S. Dhruv DW-6.

118. Though, it is true that there were several injured to be examined by Dr. G.S. Dhruv DW-6, as also large number of Post Mortem examinations were to be conducted by him, as such there could be some discrepancy regarding the site of injury, as has been submitted on behalf of the Opposite Party – Security Forces. However, such discrepancy cannot be to the extent that, the injury of left leg below the shin or near the Knuckle, could be described by the Doctor as injury on the right cheek. In fact, Dr. G.S. Dhruv in his cross examination has been put specific questions regarding the nature and location of injury of Krishna Kumar Khatri, upon which, he has categorically asserted and denied that he found any injury on the left lower side of calf of Krishna Kumar Khatri, as would be clear from Para-79 of his cross examination. Therefore, discrepancies of the above nature cast serious doubt on the veracity and truthfulness of the evidence on the point, placed on record, on behalf of Opposite Party – Security Forces.
119. So far as injured Gyanendra Prakash DW-1 is concerned, he has stated in his Affidavit dtd. 21/08/2014 that he was hit on the right jaw by bullet due to firing of the Naxals. However, in cross examination in Para-14, he has contradicted himself and contrary to the above mentioned statement in his Affidavit, has stated that he was hit by pellets on his Jaw. It appears that the above statement was given by Gyanendra Prakash DW-1, in order to counter the suggestion given on behalf of Complainants, that he was injured on account of cross firing by a bullet on his jaw. He has tried to make statement as above to counter the suggestion that as the Security Forces do not have muzzle loading gun (in which pellets are used); hence, he could have been hit in cross-firing. However, as his injury was caused by bullet as would be clear from the hospital Note

of MMI Hospital, from which it would appear that on 29/06/2012, three bullets were extracted from the jaw of Gyanendra Prakash DW-1, therefore, the aforementioned claim of witness Gyanendra Prakash DW-1 that he could not have been hit in cross-firing, does not appear to be as per facts and cannot be accepted and it appears more probable that he was injured in cross-firing, as is the submission on behalf of Complainants.

120. The discussion as above, of the testimony of injured witnesses and documentary evidence on record, would show that the witnesses have tried to substantiate defense of the Security Forces that there was firing from the side of the persons gathered near the Villages - Sarkeguda, Kottaguda and Rajpenta, but as has been discussed above, the nature of injuries sustained by the injured Security Personnel could not have been caused by firing from a distance, such as injury on the right toe or near the ankle. Secondly, the bullet injuries could only be caused due to cross firing, as it appears more plausible, as it was dark all around in the place of incident and possibility cannot be ruled out that, the bullets fired by fellow members of Security Forces might have hit other members of the Security Personnel of the team, as has been contended by and on behalf of the Complainants. In the above reference it may be noted that the seizure memos of the pellets etc. were not properly made. The seizure memos allegedly prepared by Ibrahim Khan DW-8 do not have full description and details and particulars of the items seized. Besides, articles seized were not properly sealed. Thus, seizure was not in accordance with accepted laid down procedure which was also highly delayed and not as per the norms.
121. In view of above circumstances and for the reasons stated above, it cannot be said and concluded that any of the injured of the Security Forces, was hit by pellets and not by cartridges. Thus, there is strong possibility that injured Security Personnel

was hit in cross-firing, as has been urged on behalf of the Complainants.

122. The learned counsel for the Complainants also submitted that circumstances of the incident also clearly point out that Security Forces not only directed unprovoked firing on the members of the meeting but also used excessive and disproportionate force. It was submitted that this is obvious from the nature of injuries and large number of fatalities of the members of the assembly. In the above context the nature of injuries sustained by members of assembly clearly goes to show that Security Personnel had exercised un-warranted and excessive force, beyond established principles in this regard which were grossly ignored. It was submitted by the learned counsel for Complainants that the action of the Security Forces shows that innocent persons were targeted deliberately, in order to cause grievous injuries resulting in several deaths in the incident. It was pointed out in the above reference, that many of the persons killed in the incident received bullet injuries on their head and torso, which shows that upper body was targeted by Security Forces which is contrary to the established norms and regulations of using proportionate and appropriate force.
123. In the above context, it may be noticed that persons who died in the incident received injuries as already mentioned earlier, which are being summarized and assessed as below:
1. Post Mortem Report of deceased Irpa Somlu as per Ex. PM-13 shows one entry bullet injury in the occipital area of scalp and one bullet exit injury on the mandibular region. Thus, he was hit on the top of his head which came out from the mandibular region i.e. the bullet injury was shot from the top of the head coming out from the Jaw region i.e. going downwards.
 2. Post Mortem Report of deceased Kaka Anita as per Ex. PM-6 shows that she also received injury on the left

temporal region while exit injury of the bullet was on the occipital area.

3. Post Mortem Report of deceased Kunjam Mulla as per Ex. PM-5 shows entry gunshot injury on the left parietal region while exit wound on the occipital region.
4. Post Mortem Report of deceased Kaka Nagesh as per Ex. PM-9 would show bullet entry wound on the frontal area of scalp while exit bullet wound on the occipital area, while exit wound of the bullet on the upper neck, while another bullet entry wound in the frontal region, and exit wound on the upper neck and on the left side of chest, again showing gunshot injury from the head moving downwards.
5. Post Mortem Report of deceased Madakam Suresh as per Ex. PM-1 would show bullet entry wound on the lateral aspect of lower abdomen while bullet exit wound was on the right lateral aspect of lower chest.
6. Post Mortem Report of deceased Madakam Nagesh as per Ex. PM-15 shows bullet entry wound on the skull at right parietal area and bullet exit wound on occipital area.

124. Besides the above injuries, the other injuries on the bodies of the deceased are also on the torso and are described in the Post Mortem Reports as below:

- 1 As per Post Mortem Report Ex. PM-8, Korsu Bichche received bullet entry wound on the back side of chest while exit wound was on the right side of chest below nipple. He was thus shot at the back on his torso.
- 2 Irpa Narayan as per Post Mortem Report Ex. PM-4 received 03 bullet entry wound on epigastric region of abdomen while one big exit wound was found on the right buttock. Thus direction of bullet was downwards.
- 3 Deceased Irpa Munna as per Post Mortem Report Ex. PM-3 had one bullet entry wound on the left of back of

- chest while exit wound was on the right chest. He was thus shot from and at the back.
- 4 Body of deceased Sapka Meethu as per Post Mortem Report Ex. PM-10 had bullet entry wound on the right shoulder and exit wound on right chest. Entry wound at the back, above scapular region and exit wound on the right iliac region.
 - 5 Body of deceased Irpa Dharmaiya as per his Post Mortem Report Ex. PM-17 had two entry wounds on the back and sternum area and exit wound on right lateral chest below right axilla. He therefore, received two gunshot injures on his back.
 - 6 Body of deceased Madakam Ramvilas as per Post Mortem Report Ex. PM-2 shows fracture of both ribs due to gunshot injury.
 - 7 Body of deceased Kaka Samaiya as per Post Mortem Report Ex. PM-7 with bullet entry wound on the back of Scapula region and exit wound on right Hypo-Chondrium. He was thus shot from the back.
 - 8 Body of deceased Sarke Ramanna as per Post Mortem Report PM-14 with bullet entry wound on shoulder and exit wound on the base of neck at the medial end of clavical.
 - 9 Body of deceased Mandvi Ayatu as per Post Mortem Report Ex. PM-11 had a bullet entry wound on the left back side of chest and exit wound on the right axilla resulting in rupture of lungs. He was thus shot from the back.
 - 10 Body of deceased Madakam Dileep as per Post Mortem Report Ex. PM-12 had multiple bullet entry wounds on the back side of the chest while multiple exit wound on the right and left side of chest below nipple. He was thus shot from the back and received multiple bullet injuries presumably due to burst fire.
 - 11 Body of Irpa Suresh as per Post Mortem Report Ex. PM-1 had entry bullet wound on the lateral aspect of

the lower abdomen and exit wound on the lateral aspect of lower chest. He was thus shot from the back.

125. It was also pointed out that 10 persons present in the meeting out of the 17 deceased namely – Korsā Bichche, Irpa Munna, Hapka Muttu, Irpa Dharmaiya, Madakam Ramvilas, Kaka Samaiya, Sarke Rammna, Mandiv Ayatu, Madakam Dileep and Irpa Suresh received injuries on their back. The injuries on the back of the above named persons, clearly indicate that the Security Forces had not fired in self defense but had fired on the members of the meeting, while they were fleeing away from the scene of occurrence, after firing by the Security Forces was resorted to. It was submitted that such fleeing persons could not have posed any threat to the Security Forces and causing fatal bullet shot injuries to them was totally disproportionate and unwarranted use of force.
126. It was further pointed out on behalf of the Complainants that deceased Kaka Mithu was shot from the top of his head as entry wound was from scapula region while the exit wound was from the iliac region, which shows that the bullet moved downwards, which is a clear indication that he was shot from the top of his head due to which the bullet moved downwards. It was submitted that injuries of the above nature could not have been caused in a defensive firing. It was also submitted on behalf of the Complainants that the nature of injuries also shows that the firing was from close quarters and that the firing was deliberate and certainly not in self defense.
127. It was also pointed out that many of the deceased namely – Irpa Somlu, Korsā Bichche, Irpa Narayan, Hapka Mithu, Irpa Dharmaiya and Madakam Dileep received large number of bullet injuries in a small area as would be clear from their Post Mortem Reports referred above. It was submitted that as also admitted by D.I.G. Elango DW-6 in his cross examination that, such large number of bullet entry wounds in a small area of the body would and could only be caused, as a result of burst

firing option. However, D.I.G. Elango DW-6 and other witnesses have denied that burst firing option was exercised by Security Forces, as there was no justification for doing so. It was thus submitted that this also indicates use of disproportionate and un-warranted force by Security Forces which even otherwise can be inferred from large number and grievous nature of injuries on the bodies of the deceased.

128. It was submitted on behalf of the Complainants that analysis and consideration of the injuries sustained by the persons present in the meeting as above, clearly points out and establishes that the Security Forces were not assaulted by the members of the meeting, but in fact it was the Security Forces who were assailants and had used dis-proportionate force, resulting in several casualties and injuries as shown above. It was submitted that such indiscriminate use of Force was totally un-warranted.
129. There is yet another aspect of the matter. It is pertinent to note that though none of the witnesses produced by the Security Forces - Opposite Party states anything about any member of the meeting being physically assaulted. However, it would appear from the statement of D.I.G. S. Elango DW-6 that as there was hostile fire; therefore, they had fired from their rifles only and that Para Bombs were fired only after the hostile firing had ceased, which was done to enable them to take stock of their situation including the condition of the injured and to dissuade hostiles from remaining present on the spot. Thus, S. Elango DW-6 is totally silent and has not stated that any members of the meeting was directly confronted or assaulted by the Security Personnel. Similarly, the Affidavits of other witnesses of Opposite Party - Security Forces, also do not disclose any personal contact or physical assault to anybody present in the assembly. However, it is pertinent to note that there are several other injuries besides gunshot injuries, on the persons of deceased and also injured in the

ka

incident. This would go to show that they were also physically assaulted by the Security Personnel.

130. In the above reference, Sarke Pullaiya PW-5, Irpa Baburao PW-7, Irpa Rambai PW-12, Hapka Chinnu PW-13 have stated to the effect that they were beaten by the Security Forces. They have sustained injuries during the incident which also support their statements.
131. To illustrate the above aspect, medical evidence may again be adverted to. Dr. G.S. Dhruv DW-12 found contusion on the body of deceased Madakam Nagesh as has been reported by him in Post Mortem Report as per Ex. PM-15. His Post Mortem Report would show that besides the bullet injury his body had also black right eye as is also evident from Photograph Ex. J-4. Similarly, Dr. G.S. Dhruv has testified that he found lacerated wound, on the body of Kunjal Malla and that there were other injuries on his body as seen in Photograph Ex. J-11. Further, lacerated wounds were found on the persons of Korsa Biche as per Post Mortem Report Ex. PM-2, Kaka Nagesh as per Post Mortem Report Ex. PM-8, Kaka Samaiya as per Post Mortem Report Ex. PM-11 and Madakam Dileep as per Post Mortem Report Ex. PM-16. Kaka Ramesh had also sustained simple injury. All the above injuries could not have been the result of and were not caused by firing and evidently were the result of injured persons having been assaulted, which could be nobody else, but the members of Security Force.
132. Therefore, evidently the incident was not confined to and did not end with firing. Infact, it would thus transpire that the firing by the Security Force was un-warranted as had been referred and discussed earlier and moreover, persons of the assembly had also been physically assaulted and severely beaten by Security Forces, as would be clear from the nature of injuries on the persons of deceased and injured as has been briefly discussed above.

133. There is yet another aspect of the matter, the witnesses have stated that, the Security Forces had on the next morning of the incident i.e. on 29/06/2012 got hold of deceased Irpa Ramesh and had beaten and killed him. The material and evidence in this regard will now be discussed and dealt with. The stand of the complainants is that Irpa Ramesh was not killed in the night of 28/06/2012 and infact the Security forces got hold of him on the next morning i.e. 29/06/2012 in the village, much after the night's incident was over. In this context Shashikala Telam PW-6 has stated that his brother Irpa Ramesh alias Irpa Munna was beaten in the morning. Her statement is supported by Mutta Kaka PW-11 who has stated that in the morning while Irpa Ramesh was in his house and was peeping outside from there, the Police Personnel caught hold of him and had beaten and then he was shot dead. Irpa Laxmi PW-14 who is the daughter of deceased Irpa Ramesh has stated that in the morning his father was lying dead in between two houses and that the Police Force had taken the body of his father. It is pertinent to note in the above context that even Irpa Pushpa DW-10 who has been produced as a witness by the Police, has also admitted that Irpa Ramesh who was her uncle, died in the morning while he was in his house.
134. In the above context, it was pointed out by the learned counsel for the Complainants that still taken from the Post Mortem video Ex. J-5 would also show that while 15 dead bodies are lined up in sequence who died in the night, however the body of Irpa Ramesh was lying separately by itself as per photograph Ex. J-8 taken from the video film, which is also indicative of the fact that Irpa Ramesh did not die in the night's incident, along with other deceased. Thus, the beating and death of deceased Irpa Ramesh in the morning of 29/06/2012, much after the incident in the night of 28/06/2012 stands established. It also casts serious doubt about the version of the incident as given on behalf of Opposite Party – Security Forces.

135. On assessing the above material and circumstances on record it would appear that upper bodies including bullet shot on the top of the head of some of the deceased shows that they were shot from close quarters, which could not be the result of firing from a distance, as is the case of the defense force. The result of consideration of material circumstances as above, including the nature and location of bullet injuries as also many other injuries, such as lacerated wounds and contusions, are circumstances which would go to show that the incident did not take place as is being described by Opposite party - Security Forces. It also appears that firing by the Security Forces was not from a distance while they were under attack, and infact it appears that Security Forces had confronted the members of the meeting and had fired from close quarters inflicting injuries on top of their head to some victims, while others were also hit on their torso and on the back. Besides, members of the meeting were also physically assaulted due to which lacerated wounds and contusions were caused. These injuries (other than bullet injuries) could be caused from close quarters only, by weapons with sharp edges or by hard and blunt objects such as butt of the gun or rifles. There is no explanation from the Opposite Party - Security Forces, as to how the said injuries were caused to the deceased and the injured.

136. In the back drop of discussion and assessment of evidence - oral and documentary, as well as other material on record and also circumstances of the incident, which have been discussed, dealt with and considered in detail in the foregoing paragraphs, now the terms of reference of this enquiry, shall be specifically answered with brief notes therefor.

Term of Reference No. 1:

137. Whether in the night in between 28-29 June, 2012 in Village Silger, Police Station Basaguda, District Bijapur and Villages - Sarkeguda and Chimli Penta of Police Station Jagargunda of

District Sukma, an encounter had taken place between the Security Force and Naxalites?

138. It would appear from the material and circumstances placed on record by the Parties and as has been mentioned and discussed in detail and concluded earlier, the confrontation of the Security Forces had taken place on the night intervening between 28th and 29th June, 2012. The said confrontation occurred in the clearing in between the three Villages namely: Sarkeguda, Kottaguda and Rajpenta. However, it has not been proved by satisfactory evidence that, the confrontation was with the members of the Naxal outfit or that they were present in or were participants of the meeting or in the incident of confrontation with the Security Forces.

Terms of Reference No. (2) & (4):

139. Term No. (2) When and how the said incident had occurred?

Term No. (4) What were the circumstances in which the Security Forces had to take up exercise on that night?

140. So far as the circumstances leading to the said occurrence of confrontation are concerned, it is clear from the material on record, especially from the statement of D.I.G. S. Elango that as intelligence was received that very Senior leaders of Naxals were to be present at Village Silger and as such the Security Forces expected a major catch or success in their operation; therefore, after holding meetings in that regard and after due deliberation and planning, marching operation of the combined Force of Security Forces including CRPF and Police Personnel was organized, in between the night of 28th and 29th June, 2012. However during their march to Village Silger, on the way near Sarkeguda Forest, confrontation in the clearing in between the Villages – Sarkeguda, Kottaguda and Rajpenta occurred.

Terms of Reference No. 3:

141. Whether in the said incident any other person besides Security Forces and Naxalite was killed or injured?
142. Admittedly as mentioned above also, 06 Security Personnels were injured in the incident. Besides them, 17 persons were killed and 10 persons were injured who were members of the meeting, being held at the place of incident. It has not been proved that the persons, killed and injured in the incident other than Security Personnel were Naxals, as there is no satisfactory evidence in that regard.

Term of Reference No. 5:

143. Whether before undertaking the exercise, the Security Forces had exercised any precaution or taken other steps?
144. As mentioned earlier with the object of apprehending senior members of the Naxal outfit who were expected to gather at Silger, Security Forces had planned the operation in the meetings held by them. Plan was executed on the night of 28th June, 2012 and Security Forces starting from Camp Basaguda, marched towards Silger. Route chart was planned in a manner that the marching party would not cross settlement of civilian population. Two or Three persons of the marching party in the front, as well as in the back of the marching party (Reference: Statement of Gyanendra Prakash DW-1) were provided with bullet proof jackets. The marching party was also having Para Bombs, they were armed with fire arms.

Terms of Reference No. 6:

145. What were the circumstances in which the Security Forces had to undertake firing? Could the firing be avoided?
146. Exact and precise nature and details of events in which firing started is not ascertainable, as there are totally contradictory

versions given in that regard, by way of oral evidence of the Complainants on one hand, and the Security Forces on the other. According to the version of the Security Forces, initially there was fire from the members of the meeting. However, as discussed in detail earlier, the above version does not stand the test of scrutiny, as leader of team D.I.G. S. Elango had admitted that he did not see any muzzle fire coming from the direction of the place of meeting contradicting his own earlier statement. The conduct of D.I.G. S. Elango as well as Deputy Commander Manish Bamola of not firing a single bullet shot during the incident, as per their own admission, clearly indicates that there was no firing by the members of the meeting; because had there been firing from the persons present in the meeting both the above senior officers who were leading the marching party and were fully armed, would have certainly fired in retaliation and self-defense as has been discussed and considered in detail earlier. The conduct of D.I.G. Elango and Manish Bamola is against the normal human conduct and instinct of self reservation and self-defense.

147. Therefore it appears that possibly the report by the guide Krishna Kumar Khatri that there is some suspicious sound at a distance, resulted in panic reaction in some members of the Security Force; consequently, they resorted to and started firing on the members of the meeting. Possibility therefore appears to be that, suspicion having arisen regarding the presence of Naxals, firing was initiated by members of Security Forces resulting in injury and death of several persons.
148. It also appears that Para Bombs were fired later. It would be clear from the material placed on record and statement of witnesses including the statement of S. Elango, that Para Bombs were fired at a late stage. It may be observed that had Para Bombs been fired earlier, resulting in illumination of the area, it possibly would have helped the Security Forces

as they could have identified the persons present in the meeting, and also in dissuading assembled members thereof and making them to flee the spot. This could also have possibly averted in indiscriminate and directionless firing etc. by the Security Forces.

149. It may also be pertinent to notice that it appears that Security Forces did not have modern communication gadgets such as walkie-talkie etc. which would have made contact with each other better and swifter. (Reference: Statement of Wahid-Ul Islam DW-2). Lack of communication with each other also possibly aggravated the situation.
150. Security gadgets such as night vision, bullet proof jackets etc. should have been provided to all the members of the Force which would have given higher degree of self confidence to them. This would also have avoided the possibility of sudden panic reaction and consequent resorting to firing in panic reaction by the Security Forces.

Terms of Reference No. 7:

151. Suggestions for future.

The Commission suggests following measures to avoid similar occurrence in future:

- 1 Security Forces should be better trained and better and modern gadgets and means of communication should be made available to the forces for swifter command and more balanced and guarded action in critical situation.
- 2 Training to improve mental fabric of the Security Forces, should be imparted, with a view to make them more balanced, so that they act with equanimity and do not succumb to panic reaction even in a critical situation.
- 3 All Security Personnel should be provided with adequate and suitable defensive gadgets and

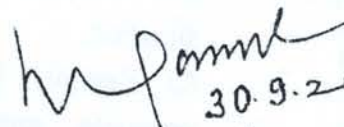
equipments, such as bullet proof jackets, night vision device and other such equipments of defense, so that they feel more secure and confident and do not act due to panic reaction, and in haste.

4 Considering the frequency of such events occurring in the area, Intelligence net-work should be made more strong and reliable, which should be better equipped to gather and provide full information before hand, regarding the whole length of operation of the Security Forces. Such Intelligence could possibly be gathered by surveillance beforehand. Protective cover could be ensured through modern gadgets like Drones or other unmanned mechanized equipments.

5 Communication system should be made more effective and efficient, so as to ensure that internal communication by the members of the marching team with each other is swift and smooth; rather than communication being transmitted from one person to another as was the factual state, in the incident, as mentioned earlier also.

6 Security Forces should be encouraged to have more interaction with the locals, which may improve not only the quality and quantum of important intelligence inputs, but also generate mutual confidence.

152. Before parting with this report, the Commission wishes to place on record, its appreciation and compliments the Counsels appearing on both the sides for their commitment and maintaining professional stance throughout the proceedings, and for their positive contribution, towards the progress of this Enquiry.



30.9.2019

(Justice V.K. Agarwal)
Single Member,
Judicial Enquiry Commission