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Tarun Vikram Vs. State

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Court : Delhi

Decided On : Dec-02-2014

Judge : Sunita Gupta

Appellant : Tarun Vikram

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

2. d December, 2014 + CRL.A. 1336/2011 TARUN VIKRAM Through: ..... Appellant Mr. K. Singhal with Mr. Shashi Mohan, Advocates versus STATE Through: ..... Respondent Mr. M.N. Dudeja, Additional Public Prosecutor for the State CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
: SUNITA GUPTA, J.

1. The challenge in this appeal is to the judgment dated 26.09.2011 and order on sentence 27.09.2011 by which the appellant was convicted under Sections 307 of Indian Penal Code 1860 (IPC) and was sentenced to undergo rigorous imprisonment for a period of ten years and fine of Rs.25,000/- and in default of payment of fine, further six (6) months simple imprisonment. The appellant was also given the benefit of the provisions of Section 428 of Cr.P.C.

2. Facts germane to the Prosecution case succinctly stated are as follows:On 17.09.2004 at about 12:30 AM, Investigating Officer SI Rajnikant received DD No.3A Ex. PW18A to the effect that someone in a black colour Santro Car No.1121 has fired upon some person near Acharya Niketan Apartment. SI Rajnikant alongwith Constable Raj Kumar started for the spot but in the meanwhile, they came to know that the injured has been shifted to Kailash Hospital, Noida. They reached Kailash Hospital where injured Subhash was found admitted in the ICU and was declared unfit for statement. SI Rajnikant also came to know that the injured Subhash has been fired upon his chest. Thereafter, he alongwith Constable Raj Kumar reached near Upkar Apartment where the guard of Upkar Apartment namely Raghav Tiwari met them and told them that he had heard the noise of firing from a distance of about 100-150 metres and he also produced the I-Card of Delhi Police, ATM Card and Reliance Nokia phone of the accused/appellant which were seized vide seizure memo Ex.PW7/C. Thereafter, they returned back to Police Station Mayur Vihar. After some time, constable Satender of Police Station Kalyan Puri reached PS Mayur Vihar and produced the accused alongwith one .38 revolver, 4 live cartridges and one used cartridge. Constable Satender also produced MLC of the accused Ex.PW3/A. Sunder Singh (PW2) came to the Police Station and identified the appellant and informed that Santro Car No.1121 was being driven by the accused himself. During the course of investigation, the Santro Car used in the commission of the offence was seized. After completing the investigation, chargesheet was submitted against the accused for offence u/s 307 IPC.

3. Charge for offence under Section 307 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution examined in all 18 witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr.P.C. wherein he denied the case of prosecution and alleged his false implication in this case. He took the plea that one criminal complaint case bearing No.699/2004 filed by him titled Tarun Vikram v. Subhash & Sunder u/s 392/397/353/372/186/307/323/506 IPC is pending before Sh. Devender Garg Ld. Metropolitan Magistrate KKD Courts, Delhi. In his defence, he led one defence

witness besides examining himself as DW1.

5. After analysing the evidence adduced by the prosecution, vide impugned judgment, the learned Additional Sessions Judge convicted the accused for offence under Section 307 IPC and sentenced him as mentioned hereinbefore.

6. The finding of the learned Trial Court has been assailed by the learned counsel for the appellant. Broadly, the submissions made by him may be categorized as under:i) Prosecution has failed to prove the crime spot itself which is otherwise disputed. No crime team was called at the spot. No photographs of the alleged crime scene were taken. No blood, blood stained earth or sample earth control were lifted from the spot. Apart from failure to discharge his duty to prove the crime scene, further prejudice has been caused to the appellant as the appellant is claiming the place of incident as near the nala side towards main road from the side of Subhash Market, Trilokpuri where the incident of robbery was committed with him whereas the so called injured PW1 and his companion PW2 initially claimed the place of incident as East End Apartment as mentioned in MLC Ex. PW11/A of Kailash Hospital whereas in their statements before the police as well as Trial Court, they claimed the place of crime as Upkar Apartment. This is a serious lacunae in the prosecution case. Reliance was placed on Buta Singh v. State of Punjab, AIR 1991 SC1316 ii) Injuries on the person of injured has not been proved by the operating doctor. In the absence of examination of operating doctor, injuries, manner of injuries, track of wound, distance of wound were not proved. iii) So far as the factum of receiving bullet injury on the chest, the appellant having the possession of revolver and the FSL report, same are not disputed by him. Rather they support the defence of appellant that injured along with his companion robbed the appellant, tried to snatch the revolver and during that scuffle a bullet accidently fired due to the fault of the injured. iv) The appellant was working as Constable in Delhi Police. As such, under Section 140 of Delhi Police Act r/w Section 197 of Cr.P.C., sanction was required to be obtained launching his prosecution which as per Section 140 of Delhi Police Act was to be obtained within one year of the date of offence, however, it was obtained belatedly. As such, the sanction is bad in law. Reliance was placed on SI Manoj Pant v. State, 1999 CriLJ844. v) PW1 & 2 are false witnesses. Their testimony suffered from various

discrepancies. As such, no reliance can be placed on the same. vi) The appellant examined himself on oath under Section 315 of Cr.P.C. No cross-examination was done qua the allegations levelled by the appellant. Apart from examining himself, he also examined DW2 Jagbir Singh who was an eye-witness to the incident. Defence witnesses are entitled to the same weight as that of prosecution witnesses. Reliance was placed on Atender Yadav v. State, 2013(4) JCC2962 vii) The complainant and the Investigating Officer was the same person which is not permissible under law. Prejudice has been caused to the appellant. Reliance was placed on Megha Singh v. State of Haryana, 1996 11 SCC709 viii) The appellant sustained injuries which the prosecution has failed to explain. ix) Alternatively, there was no intention on the part of the appellant as the parties were not known to each other from earlier. There was no previous enmity. Moreover, the appellant is protected under Section 80 IPC.

7. On the basis of aforesaid submission, it was submitted that the appellant has come up with a probable, reasonable and truthful version, as such, his conviction is liable to be set aside as the prosecution case itself is full of doubts and based upon inconsistent version.

8. Per contra, it was submitted by Mr.M.N. Dudeja, learned Additional Public Prosecutor for the State that the testimony of the injured witness PW1 Subhash stands at a higher pedestal than any other witness and the same is also corroborated by the testimony of PW2 Sunder who is also the eye witness to the incident. Their testimony finds substantial corroboration from the other evidence on record including the medical evidence. This is a case where the appellant being a Police constable and holding a public office has misused his official service revolver and caused grave injury to a person in a fit of anger. As a public servant, the appellant had the duty to protect public persons and be extra cautious with respect to his revolver but instead due to a petty quarrel on the road, he attempted to commit murder of the injured by firing the bullet on his chest. As regards the sanction under Section 197 Cr.P.C. is concerned, it was submitted that even though sanction was obtained for prosecuting the appellant, however, it was no part of his duty to fire upon an innocent person without any rhyme and reason, therefore, even sanction was not required to launch prosecution against him. In

any case, no such plea was taken by the appellant before the learned Trial Court and, as such, such a plea taken for the first time before this Court is not tenable. Reliance was placed on State of Orissa through Kumar Raghvendra Singh & Ors. v. Ganesh Chandra Jew, (2004) 8 SCC40 Under the circumstances, no fault can be found with the finding of the learned Trial Court and the appeal is liable to be dismissed 9. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have carefully perused the record.

10. It is not in dispute that the appellant was posted as a constable in Delhi Police. On the fateful day he was assigned patrolling duty within the jurisdiction of Police Station Kalyanpuri; he was having a service revolver with him which fired and PW1 sustained bullet injury on his chest. After the incident, the appellant himself had surrendered his service revolver, four live cartridges and one fired cartridges to Constable Satender Kumar (PW13) which were seized vide seizure memo Ex.PW7/B. Blood stained baniyan of injured Subhash was also seized vide Ex.PW7/G. During the course of investigation, same were sent to FSL, Rohini and were examined by PW9Mr. Puneet Puri, Senior Scientific Officer, Ballistic-cum-Chemical Examiner who gave his detailed report Ex.PW9/A, according to which revolver was in working order. Fired empty cartridge was fired from this revolver. The hole on the baniyan was caused by a cupro jacketed bullet discharged from a firearm as the gunshot residue particles were detected around the hole.

11. The prosecution case primarily rests on the testimony of the injured PW1 Subhash and his nephew PW2 Sunder who was accompanying the injured when the incident took place and is an eye witness to the incident. Before referring to the testimony of PW1, it will be relevant to note the evidentiary value of an injured witness.

12. It is trite law that the evidence of injured witness has greater evidentiary value and unless compelling reasons exist, his statement is not to be discarded lightly. In Akhtar and Ors. v. State of Uttaranchal, (2009) 13 SCC722 their Lordships held that credence to the testimony of injured eye witness is to be given since his presence at the scene of crime is seldom doubtful.

13. Normally an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence or to involve anybody falsely and in the bargain, protect the real culprit.

14. In Mano Dutt & Anr. v. State of UP, (2012) 2 SCC (Crl.) 226 Honble Supreme Court referred to the earlier decisions and observed as under:

31..... We may merely refer to the case of Abdul Sayeed v. State of Madhya Pradesh [(2010) 10 SCC259, where this Court held as under:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness.

[Vide Ramlagan Singh v. State of Bihar, Malkhan Singh v. State of U.P., Machhi Singh v. State of Punjab, Appabhai v. State of Gujarat, Bonkya v. State of Maharashtra, Bhag Singh, Mohar v. State of U.P. (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan, Vishnu v. State of Rajasthan, Annareddy Sambasiva Reddy v. State of A.P. and Balraje v. State of Maharashtra.].

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

28. Darshan Singh (PW4 was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka this Court has held that the deposition of the injured witness should be relied upon unless there are

strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4 has rightly been relied upon by the courts below.

30. Crl. A. 1336/2011 the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

15. This view was reiterated in Balwan & Ors. v. State of Haryana, 2014 Crl.LJ4321wherein it was observed:

It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished.

16. Testimony of injured witness PW1 Subhash has to be considered in the light of the legal proposition enunciated above. This witness has unfolded that on 16.09.2004 at around 10:15/10:30 PM, he alongwith his nephew PW2 Sunder were going back to their house from New Ashok Nagar on a motorcycle. As soon as they reached near Upkar Apartment, one Santro car of black colour bearing

registration No.DL-3C-AB-1121 being driven by accused came from behind and suddenly the aforesaid car took a turn and hit their motorcycle. When the car stopped at some distance, he asked the driver how he was driving the vehicle to which the driver of the said car became annoyed and started quarrelling with them. The driver then took out some weapon which was concealed by him under the socks and fired upon him causing injury on the left portion of his chest. Thereafter, the accused ran away along with his vehicle. He further deposed that he fell down and became unconscious and regained consciousness only after about one month of the incident in the hospital and was operated upon thrice for the said injury.

17. At the time of incident, this witness was accompanied by PW2 Sunder. Sunder has deposed on the same lines as that of PW1. He testified that on 16.09.2004, he along with his uncle Subhash were going towards their house from Ashok Nagar on their bullet bike bearing No.DIW7756 At about 10:15/10:30 PM when they reached near Upkar Apartment at a distance of 100 yards away from the society, one Santro car bearing No.DL3 AB1121of black colour being driven by accused came from the side of Ashok Nagar. The car took a cut and hit against their motorcycle on which they asked the driver of the car dekh kar nahi chala sakte. On this the accused came out of the car and started abusing and manhandling them and shouted that he is in Delhi Police and that he will kill them. The accused thereafter took out the revolver from his shoe and pointed towards his uncle PW1 Subhash and threatened ab maja chakhata hu and fired as a result of which the bullet hit on the chest of his uncle and he fell on the ground. The accused then started his car and ran away from the spot. It was further stated by this witness that while the accused was taking out the revolver, some documents including ATM/Credit Card of UTI Bank, documents and a mobile phone fell on the ground from the pocket of the accused and that the accused was under the influence of liqour so he did not notice about falling of the mobile and documents etc. He further stated that he took his uncle PW1 Subhash to Kailash Hospital. One chowkidar of Upkar Society had picked up the mobile and documents from the spot and it was revealed from the documents and ATM Card that the accused was in Delhi Police and his name was Tarun Vikram. In cross-examination both these witnesses denied that on the fateful day, accused Tarun Vikram was in the area of Police Station Kalyanpuri in a motorcycle or that PW1 Subhash blocked his bullet

motorcycle in front of the motorcycle of the accused or that Sunder was armed with a danda or that Subhash enquired from the accused as to why he was not driving his motorcycle properly on which Tarun Vikram asked him to drive the vehicle properly. They further denied that on the objection raised by the accused, the witnesses got annoyed and then Subhash exhorted iss saale ko khatm kar do or that thereafter Subhash hit accused Tarun Vikram with lathi as a result of which blood oozed out from his head. They also denied that they apprehended accused Tarun Vikram and snatched his purse containing ATM Card, I-Card or also took out his mobile phone and small diary from his pocket or that they gave beatings to accused with lathi, kick and fists. They also denied that Subhash snatched the revolver from the dub of the pant of accused and during scuffle the shot from the revolver got fired on its own and hit his chest. Both the witnesses were subjected to grilling crossexamination but nothing material could be elicited to discredit their testimony. Learned counsel for the appellant has pointed out certain discrepancies in their testimony, however, it is to be kept in mind that the incident had taken place in the year 2004 whereas the witnesses came to be examined in the year 2009-2010. Human memory is bound to lapse with passage of time. Moreover in Kurai and Anr. v. State of Rajasthan, (2012) 10 SCC433 it was observed as under:

This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancy. Such discrepancies may even in law render credential to the depositions.

18. Moreover, the ocular testimony of both these witnesses finds corroboration from medical evidence. PW11 Dr. (Col.) P Paikaray, has proved the MLC of Subhash Singh Ex.PW11/A prepared by Dr. (Col.) B.K. Patta. The nature of injuries was opined to be grievous.

19. Presence of PW1 and PW2 at the spot; PW1 sustaining injuries on his chest from the service revolver of accused is not even disputed by the appellant. However, he has tried to give a different version of the incident. He examined himself as DW1 and stated that on 16.09.2004, he was posted at PS Kalyan Puri as a constable on duty from 5 PM to 5 AM on patrolling duty. At about 10:30 PM, while on patrolling duty on his motorcycle No.DL-7SZ-1951, he reached at Nala of Subhash Market Trilok Puri and took a turn towards PS Kalyan Puri. In the meantime, two persons namely Subhash and Sunder came on a black colour bullet motorcycle No.7756 and blocked his motorcycle by putting their motorcycle in front of his and caused restraint to him. He further stated that the person sitting on the motorcycle was having a lathi in his hand and he asked them the reason for obstructing his way but without giving any reply, the person namely Subhash and Sunder started beating him and Subhash exhorted Is saale ko khatam kar do and then Sunder gave him a lathi blow on his head and Subhash also gave him fist blow on his stomach and chest. In the meantime, two other associates of Subhash and Sunder reached the spot and caught hold of him and snatched his purse from his pant pocket which was containing Rs 900, one ATM card of UTI, I-Card of Delhi Police. He also stated that Sunder snatched his mobile phone and Subhash snatched his diary and continued beating him and gave him lathi blows due to which blood started oozing out. He cried and told them that he was an employee of Delhi Police. As and when they came to know that he is a Delhi Police employee, Subhash, Sunder and their associates snatched his service revolver from his dub. The said revolver was hooked with a string and in the brawl, a shot was fired by the hand of Subhash. After firing, they all left him and ran away on their motorcycle. He reached PS Kalyan Puri and narrated the incident to the SHO in the presence of one other constable. He handed over his service revolver to SHO who handed over the same to Constable Satender. The SHO took him in gypsy and reached at the place of occurrence where assailants were not found. He was taken to LSB Hospital by SHO where his MLC was prepared. Later on, he was taken to PS Mayur Vihar where he was arrested in this case.

20. Plea of the appellant that he was beaten by PW1 & PW2 and their associates and his belongings were snatched by them is not believable. The appellant was a police officer. If such an incident had taken place, he would have informed the

police control room. Instead of intimating the police control room, he went back to PS Kalyanpuri and got himself medically examined.

21. Further, his version that he was on patrolling duty on his motorcycle is also not substantiated by any other piece of evidence inasmuch as according to him, after getting the brief from SHO, he made departure entry for patrolling duty. DD No.62B Ex.PW18/DA proves that at about 5:15 PM, patrolling staff was briefed in PS Kalyanpuri and Constable were assigned patrolling duty and appellant was one of them. However, no departure entry has been proved by the appellant nor any evidence was led by him to show that at the time of incident, he left for patrolling on a motorcycle. The submission of learned counsel for the appellant that prosecution failed to examine other constables who were deputed on patrolling duty along with accused is devoid of merits because it is not in dispute that vide DD No.62B, appellant along with other constables were assigned the duty of patrolling. In order to prove that the appellant had left on motorcycle and not in black color santro car, it was for the appellant to establish this defence. Moreover he himself could have examined any of the other constables who were deputed with him to prove that he left on a motorcycle.

22. Further plea of the appellant that SHO himself had taken him to LBS Hospital does not find support from any evidence as PW13 Constable Satender Kumar categorically denied the suggestion that he along with SHO took accused to LBS Hospital. Moreover, his MLC Ex.PW3/A goes to show that the appellant went to the hospital and got himself examined. By that time, the only history given by him was that of assault.

23. Further, according to him, he was obstructed by Subhash PW1 and Sunder Singh PW2 along with their associates. Lathi blow was given on his head due to which blood started oozing from his head. Although PW13 also deposed that blood was oozing from the head of accused, but this fact does not find corroboration from medical evidence. His MLC Ex.PW3/A shows that he had received only bruises on his shoulders, upper back and arm and abrasion and swelling over his forehead. MLC does not speak of any injury on the head of accused resulting in flow of blood. Even after the arrest of the accused, he was medically examined

vide MLC Ex. PW4/A which also proves that there was no fresh external injuries on his person, therefore, the accused has failed to probablize his defence that he had received injuries on his head.

24. The other plea taken by the accused that during the course of scuffle, bullet accidently fired due to fault of the injured is also not believable. It is imperative upon any person armed with weapon to keep the same in such a manner that there should not be any accidental fire. Various conditions are imposed even while issuing licence to a private individual that the weapon should be in the control and custody of the licence holder and it should never be kept in such a manner that bullet could be shot accidentally. In the instant case, the appellant is a police official and, therefore, is supposed to be a trained person to carry and use the weapon in a manner that it could not fire unless and until that is need of the hour. Moreover, it is common knowledge that revolver does not fire accidentally as it does not fire until and unless its trigger is pulled with power. Therefore, the plea of the accused that the revolver was in his dub and during the scuffle, it accidentally fired is unbelievable. Moreover, this plea taken by the appellant is contradicted by the averments made in his complaint Ex. DW1/DB1 filed against Subhash, Sunder and two more persons where in para 6, he took the following plea:

That the complainant had fired with his service revolver when it came in his notice that his service revolver can be snatched by the respondents.

25. The appellant had also examined DW2-Jagbir Singh to prove that on 16th September, 2004 at about 10:00 PM he was returning home on his bicycle at about 10:30/10:45 PM. When he reached near nala Subhash Market, he saw 3-4 persons beating a person. One was armed with danda and they were snatching something from that person. The victim was saying that he was a police official. When he came near them, he heard a noise of fire. Out of fear, he remained at a distance and those three persons ran away from the spot. He identified the victim of that incident as accused Tarun Vikram.

26. In cross-examination, he admitted that he did not inform the police about the incident. The incident took place in the year 2004 and he was examined in the Court in September, 2011. According to him, he had given his particulars to the

accused and on the asking of accused, he came to depose in the Court. This plea does not appeal to reason that although he kept mum for about 7 years and on the mere asking of the accused came to depose in the Court. As such, his testimony does not inspire confidence and was rightly not relied upon by the learned Trial Court. That being so, the reliance placed by the learned counsel for the appellant on Atender Yadav (supra) does not help him.

27. The next submission of learned counsel for the appellant that the concerned doctor who examined the injured was not examined by the prosecution with the result that track of bullet and the distance of firing could not be elicited. PW11 Dr. (Col.) P. Paikaray has proved the MLC of injured Subhash Singh Ex. PW11/A and also proved the opinion regarding nature of injuries as grievous. He has further deposed that Dr.(Col.) B.K. Patta who has examined the patient has expired on 23rd January, 2008. Under the circumstances, prosecution could not examine this witness. The accused himself did not chose to cross-examine this witness in order to elicit the track of bullet or distance of firing. Moreover, this aspect would have some relevance if the plea of accused that during the scuffle, the bullet accidentally fired due to fault of the injured had been believed which, as stated above, is negated by the admission of the appellant himself that it was he who had fired upon the injured.

28. Coming to the next limb of argument that the appellant was a police official, therefore, before launching prosecution against him, sanction was obtained under Section 197 of Cr.P.C. but the same is beyond the period of limitation as prescribed under Section 140 of DP Act as the date of offence is 16th September, 2004 and sanction is dated 12th July, 2006. Therefore, the sanction has no value in the eyes of law and entire prosecution against the appellant has to be rejected. Reliance was placed on SI Manoj Pant v. State of Delhi (supra).

29. It is pertinent to note that the objection to the validity of the sanction was not raised by the appellant in the Trial Court at any earlier stage of the proceedings. Rather in cross-examination, he admitted that he did not challenge the sanction of his prosecution. This is a very important factor and, therefore, puts restriction on this Court to consider the validity of the sanction as challenged. Failure of justice

has to be ascertained by the criminal court particularly the superior court by close examination to ascertain whether there was really a failure of justice or it is only a camouflage. Merely because there is an omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceedings unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. Reference is made to State by Police Inspector v. T. Venkatesh Murthy, AIR 2004 SC5117where it was observed:

In this case, no such objection to the validity of the sanction was raised in the trial court. When the appellant failed to raise the question of valid sanction, the trial proceeded to its logical end by making judicial scrutiny of the entire material and since the case has ended in conviction, there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a check under Section 19 of the Act is to safeguard public servants from frivolous or mala fide or vindictive prosecution was frustrated. Once, the judicial filtering process is over on completion of the trial, the purpose of providing for the initial sanction would bog down to a surplusage. An appellant who did not raise such an objection at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court.

30. In Central Bureau of Investigation v. V.K. Sehgal & Anr., (1999) 8 SCC501also, no such objection was raised by the respondents at the trial stage and the issue was raised for the first time in appeal and accepted by the appellate court. The order of the appellate court was challenged by the Central Bureau of Investigation by filing Special Leave Petition. It was observed:

A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is

hardly sufficient to conclude that there was failure of justice. It has to be determined on the fact of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court.

31. In view of the proposition of law as discussed above, the appellant cannot be allowed to raise the plea of invalid sanction for the first time in appeal. Moreover, he has failed to show that the same occasioned any failure of justice.

32. Even otherwise, Section 140 of Delhi Police Act will apply only to those cases where the act concerned would have been done by the person charge sheeted in his official capacity. This Section does not give protection in respect of the acts which has been done by the person in ordinary capacity. Further, Section 140 of the Act does not give any umbrella of protection to acts done in a rash or negligent manner or any illegal act. Sanction under Section 140 of Delhi Police Act is required only in respect of those act or acts which are done by an officer or other person in respect of the offences or wrong committed by him under the colour of duty or authority. The only requirement for sanction under Section 140 of the Delhi Police Act is that the alleged offence must have been done under the colour of duty or authority or in excess of any such duty or authority or it was done in the character aforesaid.

33. In State of Orissa (supra), Honble Supreme Court considered the issue regarding applicability of Section 197 of the Code. Reference was made to Bakhshish Singh Brar v. Smt. Gurmej Kaur and Anr., (1987) 4 SCC663 where while emphasizing on the balance between protection to the officers and the protection to the citizens, it was observed as follows:"It is necessary to protect the public servants in the discharge of their duties. In the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceed his limit. It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts

complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.

7. The protection given under Section 197 Cr.P.C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the

act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

8. At this juncture, reference may be made to P. Arulswami v. State of Madras, 1967 Cri LJ665, wherein Court held as under: "... It is not therefore every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

34. After referring to the aforesaid judgments, it was observed as under:

9. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his

knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

10. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood?. What does it mean?. 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In G. Saha and Ors. v. M.S. Kochar, 1979 Cri LJ1367, it was held: "The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed

by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

Use of the expression, 'official duty' implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefore then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to

be official was explained by this Court in Matajog Dobey v. H.C. Bhari,[1955].28ITR941(SC) thus: "The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

35. To sum up, the sine qua non for the applicability of this Section is that the offence charged be it one of commission or omission must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.

36. In the instant case, act of appellant in firing upon PW1 with his service revolver had no reasonable nexus with the duties attached to the office held by him. That being so, Section 140 of DP Act was not applicable. Therefore, even if, sanction was obtained beyond the period stipulated under this section, same had no repercussion on the maintainability of the prosecution. Under the circumstances, SI Manoj Pant (supra) relied upon by counsel for the appellant has no bearing on the present case as in that case, petitioner was a SubInspector of Police. He was prosecuted for some offence committed during his duties, therefore, he was protected u/s 140 of DP Act and could not be prosecuted without obtaining sanction. Sanction was obtained beyond the stipulated period. Therefore, proceeding was quashed.

37. By placing reliance upon Buta Singh (supra), it was submitted by the learned counsel for the appellant that the prosecution has failed to prove the crime spot itself which is otherwise disputed. Neither the crime team was called at the spot nor photographs by the alleged crime team were taken. No blood, blood stained earth or sample earth control was lifted from the spot. The appellant claims the place of incident as near nala side towards main road from the spot of Subash Market, Trilokpuri whereas the injured initially claimed the place of incident as East End Apartment and later on as Upkar Apartment.

38. Although it is true that the Investigating Officer did not call the crime team at the spot nor any photograph of the scene of crime were taken, similarly, no blood, blood stained earth or sample earth control was lifted from the spot. That, at the most, may tantamount to lapses on the part of investigation but it is settled law that the accused does not get any benefit merely because the investigation has not been carried out properly. Defective investigation, unless it affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the Court. In the case of defective investigation, the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting the accused solely on account of defect, to do so would tantamount to playing in the hands of the Investigating Officer if the investigation is designedly defective. Moreover, in the instant case, the factum of an incident taking place between the accused and PW1&2 is not even disputed by the appellant. It is only the version of the incident which is in dispute. It is also not disputed that from the service revolver of the appellant, a bullet was fired which hit the chest of the injured Subhash, in that scenario, the place of occurrence even otherwise does not assume much significance.

39. Further, it has come in the statement of PW18-SI Rajnikant that the appellant had also given him a complaint Ex.DW1/DB1 whereupon he had gone to nala side towards main road from the side of Subhash Market, Trilokpuri but there were no traces of any such incident having taken place over there. Moreover, the probability of the appellant citing this place of incident because his patrolling duty was confined to Kalyan Puri area whereas the incident had taken place within the jurisdiction of Police Station Mayur Vihar, therefore, it was difficult for him to explain regarding his presence over there cannot be ruled out. Buta Singh (supra) relied upon by the counsel for the appellant is entirely distinguishable inasmuch as a plea of private defence was taken by accused by alleging that the deceased, his wife and his companions attacked the appellant. As a result thereof, the appellant and his wife also picked up weapons in self defence and caused injuries to the prosecution witnesses as well as the deceased. As such, there was a serious dispute between the parties as to where the incident had taken place, inasmuch as, according to the prosecution, the prosecution witnesses had gone to the field in order to till the land whereas the defence version was that the incident took

place at his dera. No blood was found from the field where the occurrence was stated by the prosecution to have occurred whereas blood was found near dera of the accused. Blood stained earth was also picked up from near the tubewell of the accused. Under the circumstances, the defence version found corroboration from the circumstantial evidence and therefore, it was held by Honble Supreme Court that this was an important circumstance which could not have been brushed aside, however, as stated above, when the appellant took the Investigating Officer to the place of incident as alleged by him, there was no trace of any such incident, whereas as per the material available on record the incident had taken place near Upkar Apartment from where the security guard also handed over the ATM Card, ID Card and mobile phone of the accused.

40. The next submission of learned counsel for the appellant that the prosecution has failed to prove the injuries on the person of the appellant again is devoid of merit as it has come in the statement of PW1 and PW2 that a quarrel had taken place with accused. Under the circumstances, during the scuffle the appellant might have sustained some injuries. Therefore, the injuries on the person of appellant stands explained by the prosecution witnesses. His plea that he had sustained injuries on his head as a result of which blood oozed out is not corroborated by the medical evidence. The injuries were opined to be simple only.

41. Moreover, the law as to failure of prosecution to explain injuries sustained by the accused has been so stated in Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors., 2001 Cri.LJ2602:"It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with

that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case".

42. This view was reiterated in Gurmit Singh v. State of Punjab, (2001) 9 SCC681 Manodutt (supra) and Gurmail Singh v. State of Punjab and Anr., (2013) 4 SCC228 43. In view of these legal propositions enunciated above, the injury on the person of the accused was not of a serious nature. As per the MLC, he sustained only simple injuries. Moreover, the evidence of PW1 and PW2 is clear, cogent and creditworthy.

44. By placing reliance on Megha Singh (supra), it was submitted by learned counsel for the appellant that SI Rajnikant was the complainant and he himself has investigated the matter which is not permissible resulting in serious prejudice to the appellant. This submission again is devoid of merits. Megha Singh (supra) was considered by Honble Supreme Court in a subsequent judgment reported as State rep. By Inspector of Police, Vigilance and AntiCorruption, Tiruchirapalli, Tamil Nadu v. V. Jayapaul, (2004) 5 SCC223 In that case also, the question for consideration was whether the High Court was justified in quashing the criminal proceedings on the ground that the police officer who laid/recorded the FIR regarding the suspected commission of certain cognizable offences by the respondent should not have investigated the case and submitted the final report?. In that case, High Court by relying upon Megha Singh (supra) and two other decisions of Madras High Court quashed the proceedings. Honble Supreme Court observed that the approach of the High Court is erroneous and its conclusion legally unsustainable. The relevant observations are reproduced as under:

4. .....There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognizable offence.

A sup motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subba Rao, J.

speaking for the Court in State of U.P. v. Bhagwant Kishore, 1964 Cri LJ140. "Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer; the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise."

5. In fact, neither the High Court found nor any argument was addressed to the effect that there is a statutory bar against the police officer who registered the FIR on the basis of the information received taking up the investigation.

6. Though there is no such statutory bar the premise on which the High Court quashed the proceedings was that the investigation by the same officer who 'lodged' the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation

would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack.

45. After referring to Megha Singh and another judgement reported as Bhagwan Singh v. State of Rajasthan, 1976 Cri.LJ716it was further observed:

12. At first blush, the observations quoted above might convey the impression that the Court laid down a proposition that a Police Officer who in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further Investigation if the FIR was recorded on the basis of the information furnished by him. On closer analysis of the decision, we do not think that any such broad proposition was laid down in that case. While appreciating the evidence of the main witness, i.e., the Head Constable (PW3), this Court referred to this additional factor--namely, the Head Constable turning out to be the investigator. In fact, there was no apparent reason why the Head Constable proceeded to investigate the case bypassing the Sub-Inspector who recorded the FIR. The fact situation in the present case is entirely different. The appellant--Inspector of Police, after receiving information from some sources, proceeded to investigate and unearth the crime. Before he did so, he did not have personal knowledge of the suspected offences nor did he participate in any operations connected with the offences. His role was that of investigator-pure and simple. That is the obvious distinction in this case. That apart, the question of testing the veracity of the evidence of any witness, as was done in Megha Singh's case, does not arise in the instant case as the trial is yet to take place. The High Court has quashed the proceedings even before the trial commenced.

46. Reverting to the case in hand PW18 SI Rajnikant on being entrusted with DD No.3A Ex. PW18/A regarding firing by someone from black color santro car No.1121 upon some person near Acharya Niketan Apartment, went to the spot and came to know that the injured was shifted to Kailash Hospital. was found unfit for statement. On reaching there, injured He returned back near Upkar Apartment. The guard of Upkar Apartment, namely, Raghav Tiwari met him and informed regarding hearing noise of firing from a distance of about 100-150 mtrs. and produced I-Card, ATM Card and Reliance Nokia phone of accused Tarun Vikram. Thereupon he made endorsement on DD No.3A and got the case registered. Thereafter, he carried out investigation of the case. Under the circumstances, role of SI Rajnikant was that of investigator only.

47. In Megha Singh (supra), PW3, Head Constable found the country made pistol and live cartridges on search of the person of accused then he seized the articles, prepared a recovery memo and a rukka on the basis of which FIR was recorded by Sub Inspector of Police. However, the Head Constable proceeded to investigate and recorded the statement of witnesses under Section 161 Cr.P.C. The case of prosecution rested on the testimony of the police officials. Under those circumstances, it was found that the evidence of the witnesses was discrepant and unreliable and in the absence of independent corroboration, the prosecution case cannot be believed. Towards the end, the Court noted another disturbing feature in the case that the Head Constable was not only the complainant but he carried out the investigation. Such practice should not have been resorted to. Things are entirely different as SI Rajnikant was entrusted with DD No.3A and he was investigating the same. During that period, if he got the case registered by making endorsement on the DD that does not mean that he had any personal knowledge of the suspected offence. His role was that of investigator-pure and simple and no prejudice is caused to the appellant.

48. Now I shall avert to the alternative submission made by the learned counsel for the appellant that there was no intention on the part of the appellant to cause harm to any person; the parties were not known to each other from earlier; there was no previous enmity between them; the injured and the complainant were trying to snatch the revolver and during the scuffle fire took place.

49. Reliance was placed on Section 80 of IPC which reads as under:Section 80 of IPC Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. Illustrations 1. A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

50. At the outset, the appellant cannot take benefit of Section 80 of IPC, inasmuch as, the discussion made above clearly shows that the firing was not accidental. The appellant has been convicted for offence under Section 307 IPC. The question for consideration is whether the nature of assault and injuries bring application of Section 307 IPC.

51. Section 307 of the Indian Penal Code, 1860 reads as under:

307. Attempt to murder:-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, Crl.A3282000 Page 9 of 11 shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned. Attempts by life convicts:- When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

52. In Hari Singh v. Sukhbir Singh & Ors., (1988) 4 SCC551 the Supreme Court has discussed as to what the court has to see in order to bring the offence under Section 307 IPC. The relevant portion of the judgment is as under:

Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of attempt to murder. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be

gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

53. The Supreme Court in the State of Maharashtra v. Kashirao and Ors. reported in AIR 2003 SC3901has discussed the essential ingredients required to be proved u/s 307 IPC. The relevant para of the judgment is as under:

(i) That the death of a human being was attempted; (ii) That such death was attempted to be caused by, or in consequence of the act of the accused; (iii)That such death was done with the intention of causing death; or that it was done with the intention of causing bodily injury as; (a) the accused knew to be likely to cause death; or (b)was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act know to him to be so imminently dangerous that it must in all probability (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

54. For the applicability of Section 307, it is not necessary that the injury capable of causing death should have been actually inflicted. In the present case, the appellant fired a shot from his service revolver by pointing it on the chest of the injured Subhash-PW1. As per MLC Ex.PW11/A the injured sustained fire arm injury on left side of his chest. Entry of wound measuring 1x was seen on left side of chest. X-ray of abdomen of injured reflected that he suffered bullet injury. The nature of injuries was opined to be grievous. It has come in the statement of injured that after the incident, he fell down and became unconscious. He regained consciousness after about one month of the incident in the hospital. He was operated thrice for the said injury. The evidence on record clearly establishes that the appellant had caused injuries with an intention of causing death of injured PW1. Even if it is assumed that there was no pre-meditation, the appellant being a member of police force while firing from the service revolver must be knowing the consequence of the act done by him. The learned Trial Court has rightly analyzed

the evidence and convicted the Appellant under Section 307 IPC. The findings do not call for any interference.

55. The appellant has been convicted for a period of 10 years and directed to pay a fine of Rs.25000/- in default to undergo SI for 6 months. In view of the facts and circumstances of the case, the substantive sentence is reduced to 7 years and fine, if realised, a sum of Rs.20,000/- be paid as compensation to PW1 Subhash. With this modification, the appeal is dismissed. Trial Court record along with the copy of the judgment be sent back. (SUNITA GUPTA) JUDGE DECEMBER02 2014 rs

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