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**Manoj Kumar Vs. State**

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**Court** : Delhi

**Decided On :** Oct-01-2014

**Judge** : Pradeep Nandrajog

**Appellant** : Manoj Kumar

**Respondent** : State

**Judgement** :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: September 11, 2014 Judgment Delivered on: October 01, 2014 + CRL.A. 217/1998 MANOJ KUMAR Represented by: ..... Appellant Mr.Vikrant Sarin, Advocate versus STATE Represented by: ..... Respondent Ms.Aashaa Tiwari APP Insp.Nand Kishor, PS Civil Lines CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. The police swung into action on March 27, 1993 at about 10.15 A.M. when one Bhupinder Singh PW-21, came to PS Civil Lines and informed Insp.B.S.Dahiya PW-50, that appellant Manoj is firing shots at his (Bhupinders) father near Quarter No.F-1, Police Colony, Civil Lines, Delhi.

2. Accompanied by SI Prakash Chand PW-24, SI D.D.Sharma PW-30, SI Dharambir Singh PW-33, SI G.D.Pathak PW-23, Ct.Babu Lal PW-31, Ct.Pradeep Kumar PW-40, Ct.Hari Sikander Singh PW-39 and HC Om Prakash PW-12 and

Insp.B.S.Dahiya reached the spot. What happened thereafter is recorded in the endorsement (rukka) Ex.PW-50/A made by Insp.B.S.Dahiya which reads as under:

Respected Duty Officer PS Civil Lines it is humbly submitted that today Shri Bhupinder Singh came to the office and informed me that Manoj is firing shots at his father. On receipt of said information, I along with SI Prakash Chand, SI DD Sharma, SI Pankaj Sharma, SI Dharambir Singh, SI GD Pathak, HC Ilam Singh No.168/N, Ct. Babu Lal No.1978/N, Ct. Pradeep Kumar No.421/N, Ct. Harisikander Singh No.555/N (Armed), HC Om Prakash No.315/N and Wireless Operator Subhey Singh 893/N and Bhupinder Singh reached the spot where Manoj was firing indiscriminately from a gun and he was accompanied by Sunil who was having a rod who was having an iron rod in his hand. On seeing the things getting out of control I ordered HC Harisikander Singh No.555/N (Armed) to fire a round in the air whereupon Ct. Harisikander Singh fired a round in air from his government vehicle. Manoj and Sunil were overpowered after creating pressure upon them from all four sides. A single barrel gun of 12 Bore No.14798/1981 on which Bharat Small Arms (P) LTD Body and Barrel were inscribed and a dark brown raxine bag containing 22 cartridges was found in the hand of Manoj. On checking the gun a live cartridge was found therein. 12 special was inscribed on one live cartridge found loaded in the gun and 22 cartridges recovered from possession of Manoj. The aforesaid gun, cartridge found loaded in the gun, 22 cartridges and raxine bag have sealed in separate pulindas with seal of BSD and handed over to SI Prakash Chand who is present at the spot. It has been known that Mrs.Kanta Sharma, Shri Vinod Kumar Joshi, Smt. Bishambari Devi, Sudesh Kumar, Subash Chander, Shri Onkar Prasad, Smt. Mani Devi, Ramesh Chand Tyagi, Miss Indu, Miss Nisha, Shri Naresh Kumar, Sanjay, Shri Mahendra Singh and Babu Lal who were witnessing the incident from quarters and present at the spot have received injuries due to firing of shots and been removed to Bara Hindu Rao hospital by a PCR. Crime Team, photographers have been called. The statements of witnesses reveal the commission of an offence punishable under Section 307/34 IPC and Sections 25/27/54/59 of Arms Act. Hence, this writing is being sent to the Duty Officer for registration of a case. I am conducting investigation. Date and hour of occurrence:

27. 3.93 at 8.30 A.M. Place of occurrence: Police Colony Civil Lines near Q. No.F-1. Date and hour of dispatch:

27. 3.93 at 10.15 A.M.

(Translated Version) 3. The endorsement afore-noted on basis whereof the FIR was registered was preceded by Insp.B.S.Dahiya recording the statement Ex.PW-21/A of Bhupinder Singh, the gist whereof is that he resides with his parents at Quarter No.72, Civil Lines, Delhi and his father is employed as an ASI (Driver) in Delhi Police. On March 22, 1993 at about 06.30 A.M. he was exercising in a park with his friends Rakesh and Satender, when his neighbours Manoj and Sunil who are sons of Ct.Bishambhar Dayal came and started abusing him for having defamed their sister Nisha in the colony. They threatened him that they would kill him if he would not mend his ways and went away. He returned to his house and apprised his brother Jitender Singh about the incident at which Jitender Singh went to the house of Manoj and Sunil and counselled them not to fight with him. Today i.e. March 27, 1993, at about 08.30 A.M. when Rakesh, Satender and he were returning to their respective houses after exercising they met his father at the gate outside PS Civil Lines who also started walking along with them. As they reached Quarter No.F-1 behind PS Civil Lines, Sunil who was already standing there started abusing him and his father. Sunil took out a knife from the pant of his pocket but he and his father overpowered him and proceeded towards the police station at which Sunil started shouting. Suddenly they heard firing sound from a firearm and saw appellant Manoj, brother of Sunil, coming from his house with a gun. Manoj fired a shot at his father who fell down being hit by a bullet on his left hip. Rakesh and Satender got busy in lifting his father and he i.e. Bhupinder went to the police station to inform the police about the incident. SHO PS Civil Lines along with his staff immediately came to the spot. The sound(s) of firing of shots was still being heard when he along with the police reached the spot. The police officers overpowered Manoj and Sunil. He learnt that Manoj had injured many persons by firing shots from his gun.

4. The statement Ex.PW-21/A on which the endorsement Ex.PW-50/A was made by Insp.B.S.Dahiya was forwarded at 10.15 A.M. to Police Station Civil Lines

where SI Rishi Ram registered the FIR bearing No.95/1993, at 10.30 A.M. on March 27, 1993.

5. As recorded in the endorsement, appellant Manoj and his brother Sunil were apprehended at the spot. A single barrel shrapnel gun (charre wali gun in Hindi) and a bag containing 22 live cartridges were recovered from appellant Manoj. On checking the said gun, a live cartridge was found loaded therein. The aforesaid articles i.e. gun, live cartridge loaded in the gun, bag and 22 live cartridges found in the bag were seized vide memo Ex.PW-24/A.

6. Thereafter the police officers examined the place of occurrence and found eight fired cartridge cases at/near the place of occurrence and the same were seized vide memo Ex.PW-24/D. The details of eight shells of fired cartridges found at at/near the place of occurrence are as under:S. No.1.

2. 3.

4.

5.

7. Number of cartridge recovered Four One One One One fired Location of recovery of fired cartridge cases cases Near front of Quarter No.F-1. Front of Quarter No.59 Rear of Quarter No.D4 Front of Quarter No.33 East side of Quarter No.33 As recorded in the endorsement, fourteen persons were injured and removed to the Bara Hindu Rao Hospital for treatment. The details of the fourteen injured persons and the injuries found on their person are as under:S. Name of injured person No.1. Indu (deceased) Injury found on MLC of injured person of injured person person i) Multiple Ex.PW-3/C punctured wounds on the forehead and face approximately all over the face. ii) CRL.A. 217/1998 Multiple Page 4 of 28 scattered punctured wounds on neck interior.

2. Kanta Sharma PW-27 3. Vinod Kumar Joshi PW-20 4. Bishamberi Devi PW-44 5. Sudesh Kumar PW-14 iii) Multiple punctured wounds on the dorhal aspect of the left hand and distal over arm. i) Punctured wound Ex.PW-3/A over the head above left eye brow medial aspect. i) Scattered Ex.PW-35/C puncture wounds 6 in

number over right lumbar region posterior aspect Multiple punctured Ex.PW-35/B wounds - scattered over i) Right wrist joint ii) Right middle + ring finger iii) Right thigh lateral side iv) Right lower leg medial aspect v) Laceration over right wrist joint i) Two punctured Ex.PW-3/B wounds right side umbilical region. ii) Multiple punctured wounds right lower chest iii) CRL.A. 217/1998 Multiple Page 5 of 28 punctured wounds right thigh antilateral aspect iv) Left knee medial aspects to concern wounds 6. Subhash Chander PW-6 7. Onkar Prasad PW-8 v) Punctured wounds on right forearm aistalend and interior medial aspect of upper arm ---MLC not on record. Multiple punctured Ex.PW-35/A wounds over i) Forehead ii) Above left nasolabial fold iii) Suprasternal fossa iv) Over the marubrium sterni v) 2nd ICS Right MCL vi) 3rd ICS Right 1 cm. away MCL vii) 6th ICS Right MCL viii) 7th ICS Left MCL ix) 7th ICS Right side 1 cm medial to MCL x) 6th ICS left side MCL xi) Anterior superior (illegible) 8.

9. 10.

11.

12. xii) Anteromedial + inferior (3cm) illegible to spine xiii) 2 wounds in umbilical region (illegible) xiv) 2 wounds in illegible xv) illegible region Mani Devi PW-17 i) Pellet (gunshot) Ex.PW-9/A injury mark on right parietal region Ramesh Chand Tyagi PW-2 Multiple punctured Ex.PW-34/B wounds (2 x 2 cm) i) Left anterior aspect of seltoid region ii) Left lateral aspect of seltoid region iii) Left arm, lower, anterolateral aspect iv) 2 punctured wounds at anterior aspect of arm at 8 from lateral end of clavicle v) Left forearm approximately upper middle right position Nisha (sister of appellant Lacerated wound Ex.PW-8/H Manoj and Sunil) DW-1 near right of lumbar spine Naresh Kumar PW-43 Punctured wounds Ex.PW-3/E over lateral aspect of left thigh Sanjay i) Left thigh - Ex.PW-3/D multiple punctured wounds lower part interior aspect ii) Leg-scattered iii) Lower neck interior aspect punctured wound iv) above right patella - Multiple punctured wounds 13. Mahinder Singh PW-1 14. Babu Lal PW-11 v) Right knee - multiple punctured wounds lateral aspect and front of shin, multiple punctured wounds Multiple scarred Ex.PW-34/A punctured wounds over (27 in number) extending from inginal region to anterlateral aspect of right thigh i) Bullet wound Ex.PW-18/A about 5 cm from

medial side of right knee and calf. ii) Abrasion knee 8. on Indu (hereinafter referred to as the Deceased) succumbed to her injuries at about 12 noon on March 27, 1993. Dr.B.K.Barwa PW-25, conducted the post-mortem of the dead body of the deceased and prepared the post-mortem report Ex.PW-25/A. The external injuries found on the person of the deceased as recorded in the post-mortem report Ex.PW-25/A are as follows:

1. One punctured wound on the outer aspect on the left eye size 0.5 cms. in diameter.

2. One punctured wound on left side of forehead close to the hairline size 0.5 cms in diameter.

3. Punctured wound in the middle aspect on left eye 0.6 cms in diameter.

4. Two punctured lacerated wound on lateral aspect on the left cheek prominence of size 0.5 cm x 0.6 cms in diameter.

5. Two punctured wounds on the lateral aspect on the left chin of 0.5 cms to 0.6 cms. in diameter.

6. One elongated grazing abrasion placed obliquely on the left submandibular region of size 0.5 cms. to 0.8 cms.

7. One punctured wound on the middle of neck 2.5 cms. about the base of neck of size 0.6 cms. in diameter.

8. One punctured wound on left side of neck 2.5 cms. lateral to the injury No.7 of size 0.5 cms. in diameter.

9. Two punctured lateral wound on left shoulder front of size 0.5 cms. to 0.4 cms. in diameter.

10. 8 punctured wounds in chin area and submandibular area of size 0.5 cms. to 0.6 cms.

11. 9 punctured wounds on the right cheek area size varies from 0.5 cms. to 0.6 cms. involving in area of 10 cms. X7cms.

12. One punctured wound on right shoulder front 3 cms. right to base of neck size 0.6 cms. in diameter.

13. One punctured wound on the left arm front side at its upper third of size 0.5 cms. with bruising around.

14. 9 numbers of punctured wounds on the left hand on its dorsal aspect including fingers and its size varied from 0.4 to 0.6 cms.

9. The post-mortem report Ex.PW-25/A records that all the injuries found on person of the deceased were ante-mortem caused by firearm projectiles fired from a distant range and that death of the deceased was caused due to hemorrhagic shock resulting from gunshot injuries.

10. During the course of investigation, the police recorded the statements of all afore-noted thirteen injured persons (fourteenth injured person Indu i.e. the deceased had died) who were all residents of Civil Lines, Police Colony under Section 161 Cr.P.C. Save and except Mahinder Singh PW-1, all the other injured persons stated in their statements under Section 161 Cr.P.C. that on March 27,1993 at about 09.00-09.15 A.M. appellant Manoj had fired shots at them when they were standing in the balconies of their quarters and Sunil, brother of appellant Manoj, was exhorting Manoj to kill them at that time. The statement of Mahinder Singh PW-1, under Section 161 Cr.P.C. was on the lines of the statement Ex.PW-21/A of his son Bhupinder Singh.

11. The gun recovered from the possession of appellant Manoj and live cartridge found loaded in said gun, twenty two cartridges found in bag recovered from the possession of appellant Manoj and eight fired cartridges cases recovered from/near place of occurrence were sent to CFSL for ballistic examination.

12. Vide CFSL report Ex.PW-13/A it was opined that the gun recovered from the possession of appellant Manoj was in working condition and had been fired and eight cartridges cases recovered from/near place of occurrence were fired from

the gun recovered from the possession of the appellant Manoj.

13. Armed with the aforesaid material, a challan was filed accusing appellant Manoj and his brother Sunil of having murdered the deceased and attempting to murder afore-noted thirteen injured persons. Charges were framed against the appellant and his brother Sunil for having committed offences punishable under Sections 302 and 307 IPC read with Section 34 IPC. Additionally, charge was framed against the appellant for having committed offence punishable under Section 27 of the Arms Act.

14. At the trial, the prosecution examined as many as fifty witnesses. We need not note in detail the testimonies of the witnesses associated with the investigation of the case for they have deposed on the lines, of factual narratives, noted by us in the foregoing paragraphs, but would be highlighting such testimonies or other evidence which needs to be brought out for evaluating the creditworthiness of the evidence led at the trial.

15. Mahinder Singh PW-1, deposed in harmony with the statement Ex.PW- 2/A of his son Bhupinder Singh with regard to the incident of March 27, 1993. Being relevant, we note the following portion of the cross-examination of the witness:

It is correct that Insp.Bharat Singh is father-in-law of Insp.Bhagwan Sing Dahiya. My elder son is Jatinder. Brotherin-law of Jatinder (Sala) is Ravipal. My son Jatinder used to live with us in those days (when the occurrence took place). He is still living with us. His brother-in-law (Sala) Ravipal is also in Delhi Police. The said Ravi Pal earlier used to live in barracks P.S. Civil Lines but not when this occurrence took place. We are on cordial terms with said Ravipal. He visits us often. Ravipal has got a licensed double barrel gun. It is correct that in a single barrel gun after one shot is fired, the gun has to be re-loaded. It is wrong to suggest that on that day I alongwith Bhupinder my son, and Sanjay attacked the accused persons after procuring the double barrel gun from Ravipal. It is also incorrect that we also procured cartridges from Ravi Pal. On 25.3.1993 my elder son Jatinder had gone to the house of accused Manoj because earlier on that very day there had been a confrontation between my son Bhupinder and both the accused persons Manoj and Sunil. It is wrong to suggest that cause for

confrontation was protest from accused Manoj and Sunil to Bhupinder asking him as to why he was defaming their sister Nisha. It is wrong to suggest that on the date of incident in the morning when we found Sunil passing through the side of the place of occurrence I, my son Bhupinder and Sanjay surrounded him and started thrashing him. It is further incorrect to suggest that at that time Bhupinder was carrying the Double Barrel Gun of Ravi Pal along with some cartridges and when he tried to fire upon Sunil he ran towards his house. It is further incorrect to suggest that while chasing Sunil Bhupinder went on firing several shots which missed the target and hit many residents of the area as a result of which it caused injuries to several people. It is further incorrect to suggest that Sunil entered his house to save his life and at that time also Bhupinder fired upon him which hit a bread seller and when he fired another shot upon Sunil in his house, Nisha the younger sister of Sunil and Manoj received injuries through that gun shot. It is further incorrect to suggest that seeing this attack Manoj who was present in his house picked up the single barrel gun of his father and in self defence fired upon us as a result of which I received pellet injuries when I tried to run away from the spot or that one pellet hit Sanjay also who was also with us. (Emphasis Supplied)
16. Ramesh Chand Tyagi PW-2, deposed that he is employed as Sub- Inspector in Delhi Police and was residing at Quarter No.D-4, Second Floor, Police Colony, Civil Lines, Delhi in the year 1993. On March 27, 1993 at about 08.30 A.M. he heard the sound of firing of a gunshot whereupon he and his daughter Nisha i.e. the deceased went to the balcony of their quarter and saw the appellant Manoj with a gun in his hand and a bag around his neck. Accused Sunil was exhorting Manoj to shoot everybody at that time. Thereafter Manoj fired a shot at Mahinder Singh. Manoj then fired a shot at Sanjay who was a resident of Quarter No.80, Police Colony, Civil Lines. Manoj then fired one or two shots and started going towards his quarter. He asked Manoj not to fire whereupon Manoj and Sunil fired at him and his daughter who was standing by his side. (The witness later stated that accused Sunil was not having a gun at that time). The pellets hit him and his daughter. Thereafter Manoj fired at his own sister Nisha and a person named Babu Lal who was running a bakery.

17. Jitender Singh PW-3, deposed that on March 25, 1993 at about 09.00- 09.30 P.M. his brother Bhupinder Singh had informed him that Manoj and Sunil had

threatened to kill him earlier in the day. Thereafter he went to the residence of Manoj and Sunil and counseled them to not to fight with his brother Bhupinder.

18. Subhash Chander PW-6, deposed that he was residing in Quarter No.E- 1, Third Floor, Police Colony, Civil Lines in the year 1993. On March 27, 1993 at about 08.30 A.M. he was taking a bath when he heard the sound of firing of a gunshot. He came out of the bathroom and saw his mother Mani Devi and father Onkar Prasad standing in the balcony of their quarter. Appellant Manoj was having a gun and bag at that time. Manoj was firing at that time and Sunil was shouting kill kill. They i.e. he and his parents asked Manoj and Sunil as to what were they doing upon which they i.e. Manoj and Sunil fired at him as a result of which they (he and his parents) sustained gunshot injuries.

19. Onkar Prasad PW-8, deposed in harmony with the testimony of his son Subhash Chander PW-6. Additionally, he stated that accused Sunil was exhorting Manoj to fire at the time when he was firing shots from his gun.

20. Insp.Bhim Singh PW-10, deposed that on 27.03.1993 at about 08.30 A.M. he had seen appellant Manoj firing shots at Mahinder Singh, Ramesh Chand Tyagi and his daughter Indu i.e. the deceased, Onkar Prasad, Subhash and his mother Mani Devi, Vinod and Kanta Sharma. Accused Sunil was exhorting Manoj to fire at people at that time.

21. Babu Lal PW-11, who was one of the fourteen persons who had sustained gunshot injuries on March 27, 1993 turned hostile and did not support the case of the prosecution. He deposed that he cannot identify the person who was firing shots on March 27, 1993.

22. HC Om Prakash PW-12, deposed that on March 27, 1993 he accompanied Bhupinder Singh, Insp.B.S.Dahiya, SI Prakash Chand, SI D.D. Sharma and other police officials to the spot. On reaching the spot, he saw Manoj firing from his gun. Sunil was exhorting Manoj to shoot everybody at that time. Thereafter the police officers overpowered accused Manoj and Sunil.

23. Sudesh Kumar PW-14, deposed that on March 27, 1993 he was staying with his relative HC Sudesh Sharma at Quarter No.59, Police Colony, Civil Lines, Delhi. Bishambari Devi and her son Naresh were already standing there. He, Bishambari Devi and her son Naresh sustained gunshot injuries but he cannot identify the person who had fired shots at them.

24. Save and except one difference, Mani Devi PW-17, essentially deposed in harmony with the testimony of her son Subhash Chander PW-6 and husband Onkar Prasad Sharma PW-8. The difference between the three testimonies was that Mani Devi did not state in her examination-in-chief that Sunil was exhorting Manoj to kill everybody at the time when Manoj was firing shots. However, Mani Devi stated in her cross-examination by the prosecutor that Sunil was exhorting Manoj to kill everybody at the time when Manoj was firing shots.

25. Satinder Singh PW-19, deposed in harmony with the statement Ex.PW- 21/A of Bhupinder Singh with regard to incident of March 25, 1993. He however did not support the case of the prosecution with regard to incident of March 27, 1993.

26. Vinod Kumar Joshi PW-20, deposed that on March 27, 1993 he had gone to meet his brother Nathu Ram who was residing at Quarter No.F-4, Police Colony, Civil Lines. On said day at about 08.30 A.M. he was standing in the balcony of quarter of his brother when he saw appellant Manoj firing a shot at Mahinder Singh. He and his sister-in-law Kanta asked Manoj to desist from firing upon which Manoj aimed his gun towards them and fired shots at them. He and his sister-in-law sustained gunshot injuries were removed to the hospital by the police.

27. Bhupinder Singh PW-21, deposed in harmony with his earlier statement Ex.PW-21/A. Being relevant, we note the following portion of the cross-examination of the witness:

It is correct that the name of brother in law of my elder brother is Ravi Pal and he is posted in Delhi Police. It is correct that Ravi Pal had a licensed gun. I do not know if the said gun is a double barrel. It is correct that I have been married to the sister of Ravi Pal and he is my brother in law also. It is incorrect to suggest that I, my father and my companions had fired upon Sunil on the date of incident from

the gun of Ravi Pal. It is further incorrect to suggest that when we were firing upon Sunil, he ran towards his house in order to escape. It is also incorrect to suggest that due to that firing many persons in the area received pellet injury. It is further incorrect to suggest that when firing upon Sunil, we reached at his house and caused injury to his sister Nisha. It is incorrect to suggest that prior to the occurrence I had outrage the modesty of the sister of accused persons Nisha. It is correct that earlier dispute had taken place between me and the accused persons and my elder brother Jatinder had gone to the house of the accused persons for compromise and matter was compromised. It is incorrect to suggest that that dispute had taken place because I had made advances towards Kumari Nisha.

28. Sanjay PW-22, deposed that on March 27, 1993 he was present near Quarter No.F-1, Police Colony, Civil Lines, Delhi when a bullet came from front and after touching the hips of Mahinder Singh the pellets (chare in Hindi) hit him. The police removed him to the hospital. Initially, the witness stated Appellant Manoj was firing the bullet but subsequently he changed his version and stated that he had not seen appellant Manoj firing the bullets but was informed at the hospital that appellant Manoj was firing the bullets.

29. SI G.D.Pathak PW-23, SI Prakash Chand PW-24, SI D.D. Sharma PW- 30, Ct.Babu Lal PW-31, SI Dharamvir PW-33, Ct.Harsikander Singh PW-39, Ct.Pradeep Kumar PW-40 and Insp.B.S.Dahiya PW-50, deposed on the lines of recordings contained in the endorsement Ex.PW-50/A. Additionally, SI G.D.Pathak PW-23, SI D.D.Sharma PW-30, Ct.Babu Lal PW-31, Ct.Harsikander Singh PW-39 and Ct.Pradeep Kumar PW-40, deposed that accused Sunil was exhorting appellant Manoj to shoot everybody at the time when Manoj was firing shots.

30. Kanta Sharma PW-27, who was one of the fourteen persons who had sustained gunshot injuries on March 27, 1993 turned hostile and did not support the case of the prosecution. She deposed that he cannot identify the person who was firing shots on March 27, 1993.

31. Naresh Kumar PW-43 and his mother Bishamberi Devi PW-44, who were two of the fourteen persons who had sustained gunshot injuries on March 27, 1993 turned hostile and did not support the case of the prosecution. They deposed that

they cannot identify the person who was firing shots on March 27, 1993.

32. In their statements under Section 313 Cr.P.C. the accused persons pleaded false implication and innocence. They stated that Bhupinder had attacked their house and firing indiscriminately on March 27, 1993. Bhupinder had fired at them i.e. accused persons, Nisha and other injured persons.

33. In defence, accused persons examined three witnesses viz. Nisha DW- 1, Dr.Arun Kakkar DW-2 and R.K. Gauba DW-3.

34. Nisha DW-3, the sister of the accused persons, deposed that on March 27, 1993 she was sitting with her brother Manoj Kumar in a room in their house when she heard some loud noises upon which she came out of the room. She saw that her brother Sunil was being chased by Bhupinder and his associates and shouting for help. Bhupinder was armed with a gun. Thereafter she and her brother Sunil entered their house at which time Bhupinder fired from his gun. The shot hit her and she fell unconscious. She does not know what happened thereafter.

35. We need note the testimonies of remaining two witnesses for the same are not germane for the purposes of disposal of the present appeal.

36. Vide judgment dated April 23, 1998 the learned Trial Judge convicted appellant Manoj and acquitted his brother Sunil. On the aspect of conviction of appellant Manoj, it was held by the learned Trial Judge that:(i) Testimony of Bhupinder Singh PW-21, inspires confidence inasmuch as no material contradictions appeared in his testimony despite his being subjected to lengthy cross-examination by the defence. (ii) Testimony of Bhupinder Singh PW-21, has remained uncontroverted on material aspects. (iii) Testimony of Bhupinder Singh PW-21, has been fully corroborated by witnesses; Mahinder Singh PW-1, Ramesh Chand Tyagi PW-2 (father of the deceased), Subhash Chander PW-6, Onkar Prasad PW-8, Mani Devi PW-17 and Insp.Bhim Singh PW-10; the presence of which witnesses and factum of injuries found on person of said witnesses have not been controverted by the accused persons. (iv) No suggestions were given to Bhupinder Singh PW-21, by the accused persons to the effect that gun in question was not found in the possession of appellant Manoj at the time of his

apprehension; gun in question was not used by appellant Manoj for firing and that he had used the gun in question for his self defence. (v) Defence sought to be projected by accused persons that Bhupinder had attacked the accused persons by using gun of his relative Ravi Pal was not put to Bhupinder Singh PW-21, in his cross-examination. (vi) Accused persons were holding a grudge against Mahinder Singh PW-1 and Bhupinder Singh PW-21 inasmuch defence itself suggested to Bhupinder Singh and Mahinder Singh that Bhupinder Singh had outraged the modesty of sister of accused persons Nisha. (vii) Plea of accused persons that accused Manoj had used the gun in selfdefence does not inspire confidence in view of the fact that no injury was found on the person of Bhupinder Singh PW-21, who was the main enemy of the accused persons and had allegedly attacked them. (viii) Witnesses; Sanjay PW-22 and Rakesh PW-46 were present at the place of occurrence at the time of occurrence but no suggestion was given to them by the accused persons that accused Manoj had used the gun in question in self-defence. (ix) Ramesh Chand Tyagi PW-2, the father of the deceased, has corroborated the testimony of Bhupinder Singh PW-21, in all material particulars. (x) It is highly inconceivable that Ramesh Chand Tyagi PW-2, the father of the deceased, would spare the assailants of his daughter and instead falsely implicate the accused persons, particularly when no motive has been assigned to Mahinder Singh and Bhupinder Singh (who as per accused persons had caused the death of the deceased) to fire at the deceased.

37. On the aspect of acquittal of accused Sunil, it was held by the learned Trial Judge that it cannot be concluded that accused Sunil shared common intention with accused Manoj to cause death of the deceased and injuries on the person of injured persons for the following reasons:(i) No overt act has been attributed by Bhupinder Singh PW-21, to accused Sunil in his statement Ex.PW-21/A. (ii) There is nothing in the testimonies of Bhupinder Singh PW-1 and Mahinder Singh PW-1, to infer that accused Sunil shared common intention with accused Manoj to cause death of the deceased and injuries on the person of injured persons. (iii) There is nothing on record to show that accused Sunil called accused Manoj at the spot and asked him to bring the gun. (iv) There is nothing on record to show that accused Sunil asked accused Manoj to fire at any person including the deceased. (v) There is nothing on record to show that accused Sunil participated in the

occurrence in any manner or facilitated accused Manoj to fire when he i.e. Manoj was firing indiscriminately. (vi) Sudesh Kumar PW-14, Satinder Kumar PW-20 and Mani Devi PW-17 (in her examination-in-chief), did not depose that accused Sunil had exhorted/instigated accused Manoj to fire at anyone. (vii) Allegations leveled by Ramesh Chand Tyagi PW-2, Subhash Chander PW-6, Insp.Bhim Singh PW-10 and Onkar Prasad PW-8, that accused Sunil had asked accused Manoj to fire are vague and do not prove beyond reasonable doubt that accused Manoj had fired at the instigation of accused Sunil. (viii) The words allegedly uttered by accused Sunil that Fire at everybody (sakbo goli mardo in Hindi) are vague and lead nowhere. (ix) Accused Sunil was not having any enmity with the injured persos to instigate accused Manoj to fire at them. (x) There is nothing on record to show that accused Sunil who was younger to accused Manoj had any control over accused Manoj to restrain him i.e. Manoj from firing indiscriminately. (xi) The claim of the police officers that accused Sunil was exhorting accused Manoj to fire is not creditworthy in view of that fact that it has not been mentioned in rukka Ex.PW-50/A that accused Sunil was exhorting accused Manoj to fire.

38. Aggrieved by the impugned judgment, accused Manoj has filed the above captioned appeal.

39. During hearing of the present appeal, following two arguments were advanced by the learned counsel for accused Manoj:A The testimonies of Mahinder Singh PW-1 and Bhupinder Singh PW- 21, bring out when accused Sunil had taken out a knife from the pocket of his pant accused Mahinder Singh and Bhupinder Singh had overpowered him and were taking him to the police station. Accused Sunil was shouting at that time. It was at this time accused Manoj arrived at the place of occurrence. On seeing his brother i.e. accused Sunil being in the clutches of Mahinder Singh and Bhupinder Singh and shouting for help it was reasonable for accused Manoj to assure that life of his brother is in serious danger. In this view of the matter, accused Manoj fired a shot from his gun upwards to scare off Mahinder Singh and Bhupinder Singh so that they would leave his brother. Since gun used by accused Manoj was a shrapnel gun the pellets spread out in different directions and hit the persons standing in the balconies of their quarters and present near the place of occurrence. It was thus argued by the learned counsel the evidence on

record probablizes that accused Manoj had fired from his gun in private defence in order to save the life of his brother Sunil. As a necessary corollary thereof, accused Manoj cannot be held guilty for the offence of murder punishable under Section 302 IPC. Counsel further argued that even though the aforesaid defence was not taken by accused Manoj at the trial it is still open to him to raise said defence in the present appeal. In support of said submission, reliance is placed upon the decision of Supreme Court reported as (1974) 3 SCC639Thakarda Lalaji Gamaji v. State of Gujarat. B The second submission advanced by the learned counsel was that the evidence on record clearly establishes that accused Manoj had not premeditated or had any intention to fire at any person including the deceased. On hearing the shouts of his brother accused Manoj came to the place of occurrence armed with a gun. In the heat of passion accused Manoj fired indiscriminately in the air and unfortunately one of the pellets hit the deceased and caused her death. It was argued that in view of circumstances pointed by him the offence committed by Manoj would be culpable homicide not amounting to murder punishable under Section 304 IPC and not culpable homicide amounting to murder punishable under Section 302 IPC. In support of said submission, reliance was placed by the counsel on the decisions of Supreme Court reported as IV (2008) SLT342Kesar Singh and Anr. vs. State of Haryana, AIR 1995 SC2466 State of Punjab vs. Tajender Singh and AIR 1977 SC664Ram Swaroop vs. State of Haryana and decision of this Court in Criminal Appeal No.886/2010 titled Vijay Lama vs. State decided on November 16, 2012.

40. In the decision reported as AIR 2001 SC2902 Kashi Ram & Ors. Vs. State of M.P., in paragraph 24 it was observed by the Supreme Court that notwithstanding that at neither three stages: (i) when witnesses of the prosecution are cross-examined; (ii) when examined under Section 313 Cr.P.C.; and (iii) entitled to lead defence evidence, an accused introduces a plea, it can still be raised during the course of submissions by relying on the probabilities and circumstances emerging in the case. In the decision reported as AIR 1990 SC1459 Vijayee Singh Vs. State of U.P. the Supreme Court held that the flimsy, fantastic plea and unreasonable plea taken by the defence is to be rejected altogether.

41. Counsel appearing for accused Manoj has not disputed firing of shots from his gun by accused Manoj. He has also not disputed that as many as fourteen persons including the deceased received gunshot injuries as a result of shots fired by accused Manoj.

42. The defence sought to be set up by accused Manoj while cross- examining the prosecution witnesses was that on March 27, 1993 Mahinder Singh and Bhupinder Singh had surrounded Sunil and thrashed him. Bhupinder Singh was armed with a double barrel gun and tried to fire at Sunil upon which he i.e. Sunil ran towards his house. Bhupinder Singh chased Sunil. While chasing Sunil Bhupinder fired several shots at him which missed Sunil but hit many residents of Police Colony. Sunil entered his house and Bhupinder also followed him in his house. Bhupinder fired a shot at Sunil which hit Nisha, sister of Manoj and Sunil. On seeing his brother Sunil and sister Nisha being attacked, Manoj who was present in the house picked up the single barrel gun of his father and fired at Bhupinder and Mahinder Singh and a bullet/pellet hit Mahinder Singh. (See the cross-examination of Mahinder Singh PW-1, noted by us in the foregoing paragraphs).

43. In his statement under Section 313 Cr.P.C. accused Manoj tweaked his defence a little. He stated that on March 27, 1993 Bhupinder Singh had entered his house and fired shots at him, his brother Sunil and sister Nisha. Accused Manoj stopped here and stated nothing about self defence.

44. Now, in the present appeal accused Manoj has come up with a completely new defence that he had fired upwards from his single barrel gun to scare off Bhupinder and Mahinder Singh as he was fearing for the life of his brother Sunil who was caught hold by Bhupinder and Mahinder Singh and shouting for help.

45. Apart from being contradictory with the (first) defence taken by accused Manoj at the trial, the theory of private defence now sought to be propounded by accused Manoj completely fails in the light of testimonies of injured persons/witnesses viz. Ramesh Chand Tyagi PW-2, Subhash Chander PW-6, Onkar Prasad PW-8, Vinod Kumar Joshi PW-20 and Mani Devi PW17 and police officials viz. HC Om Prakash PW-12, SI G.D.Pathak PW-23, SI Prakash Chand PW-24, SI D.D. Sharma PW-30, Ct.Babu Lal PW-31, SI Dharamvir PW-33, Ct.Harsikander Singh PW-39,

Ct.Pradeep Kumar PW-40 and Insp.B.S.Dahiya PW-50.

46. The injured persons/witnesses viz. Ramesh Chand Tyagi PW-2, Subhash Chander PW-6, Onkar Prasad PW-8, Vinod Kumar Joshi PW-20 and Mani Devi PW-17, have clearly deposed that accused Manoj had fired at them when they had asked him i.e. Manoj who was firing indiscriminately to stop firing. Meaning thereby, accused Manoj had not fired in air in order to scare off Bhupinder Singh and Mahinder Singh as claimed by him but had targeted and fired shots at the persons who were present in the balconies of their quarters and asked Manoj to stop firing. Further, the police officers viz. HC Om Prakash PW-12, SI G.D.Pathak PW-23, SI Prakash Chand PW-24, SI D.D.Sharma PW-30, Ct.Babu Lal PW-31, SI Dharamvir PW-33, Ct.Harsikander Singh PW-39, Ct.Pradeep Kumar PW-40 and Insp.B.S.Dahiya PW-50, have deposed that accused Manoj was firing indiscriminately when they reached the place of occurrence after getting information about Mahinder Singh getting shot by accused Manoj from Bhupinder Singh. By the time police arrived at the scene the so-called threat to the life of Sunil was over inasmuch as Mahinder Singh had already sustained gunshot injury at that time and Bhupinder Singh had gone to police station to call the police. Thus, where was the occasion for accused Manoj to fire in air to scare off Mahinder and Bhupinder Singh.

47. In dealing with second submission advanced by counsel appearing for accused Manoj, we note clause Fourthly of Section 300 IPC and illustration d appended to said section. S.300. Except in the cases hereinafter excepted, culpable homicide is murder, 4thly.-.If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. ILLUSTATIONS (d) A, without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A, is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

48. Where the act by which the death is caused is so imminently dangerous that the accused must be presumed to have known that it would, in all probability,

cause death or such bodily injury as is likely to cause death, then unless he can meet said presumption the offence committed by the accused would be culpable homicide amounting to murder in view of clause fourthly of Section 300 IPC. Clause fourthly of Section 300 IPC is applicable where the knowledge of the offender as to probability of death of a person or persons in general - as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid. Clause fourthly has been designed to provide for the class of cases where the acts resulting in death are calculated to put the life of many persons in jeopardy without being aimed at any one in particular and are perpetrated with full consciousness of the probable consequences.

49. In order to determine the offence committed by accused Manoj, let us reconstruct the scene of incident.

50. On March 27, 1993 at about 08.30 A.M. Bhupinder Singh PW-21 and Mahinder Singh PW-1, had caught hold of accused Sunil at the place of occurrence near Quarter No.F-1, Police Colony, Civil Lines, Delhi and taking him to nearby police station. Accused Sunil was shouting at that time. On hearing the shouts of his brother Sunil, accused Manoj who was present in his house situated near the place of occurrence came at the place of occurrence armed with a single barrel shrapnel gun. (Shrapnel is a projectile that consists of a case provided with powder charge and large number of lead balls designed to explode in flight. The gun which uses shrapnel is shrapnel gun). On seeing this, accused Manoj went completely berserk and started firing indiscriminately. Four shots were fired by accused Manoj at the place of occurrence. The shots fired by accused Manoj hit Mahinder Singh PW-1, Sanjay PW-22 and Babu Lal PW-11 who were present near the place of occurrence. Mahinder Singh PW-1, the enemy of accused Manoj sustained gunshot injury and fell on the ground but this did not end the fury of appellant Manoj. On hearing the sounds of gunshots, people viz. Ramesh Chand Tyagi PW-2, deceased, Subhash Chand PW-6, Onkar Prasad PW-8, Mani Devi

PW17, Sudesh Kumar PW-14, Bishamberi Devi PW-44, Vinod Kumar Joshi PW20, Kanta Sharma PW-27 and Naresh Kumar PW-43, came in the balcony of their quarters and asked to stop firing. This fuelled the fury of accused Manoj who fired four shots at said eleven innocent persons whose only fault was to ask Manoj to stop the firing. Sunil added fuel to the fury of his brother Manoj by exhorting him to fire at people. (We note that one of the factors which has led the Ld. Trial Court to conclude that Sunil did not share common intention with Manoj to fire at anyone was that he had not exhorted Manoj to fire at anyone. The Ld. Trial Court has not appreciated the evidence of prosecution witnesses on the aspect of giving of exhortation by Sunil inasmuch as we find that as many as four injured witnesses viz. Ramesh Chand Tyagi PW-2, Subhash Chander PW-6, Onkar Prasad PW-8 and Vinod Kumar Joshi PW-20, have clearly deposed that Sunil was exhorting Manoj to fire at the time when Manoj was firing indiscriminately.) Accused Manoj stopped firing only when the police arrived at the police of occurrence and overpowered him. As many as fourteen persons sustained gunshot injuries and deceased lost her life due to indiscriminate firing by accused Manoj.

51. In these circumstances, accused Manoj can be attributed with the knowledge committed by fourth limb of Section 300 that as a result of the indiscriminate firing which is an act so imminently dangerous that in all probability would cause death or such bodily injury as is likely to cause death. Accused Manoj had no excuse for incurring the risk of causing death or the injury. The act of accused Manoj is akin to the situation contemplated by illustration d appended to Section 300 IPC. Firing eight shots from a single barrel gun is akin to throwing a loaded cannon. That the shots were fired in a residential colony when the people were standing in their balconies and near the place of occurrence can certainly be said to be a crowd of persons around. We highlight that the evidence brings out that accused Manoj removed the empty/fired cartridge and loaded live cartridge in the gun each time he would fire a shot and continued firing, in spite of being told, by shouts, by injured persons to refrain from so doing.

52. In the decision reported as AIR 2005 SC3120 Suresh Chandra vs. State of U.P. an auspicious occasion of marriage turned out to be a funeral ceremony, following a quarrel that ensued between the invitees on flimsy grounds. A quarrel

ensued between invitees of groom on one hand and bride on the other on trivial grounds. The three accused persons who were invitees of groom were carrying arms started firing indiscriminately as a result of which two persons died at the spot and three persons got injured. It was held by the Supreme Court that even if the appellants had fired indiscriminately without targeting any particular individual, they cannot escape the punishment for offence of murder.

53. In Criminal Appeal No.5878/2011 Ex. Ct./GD Rana Pratap Singh vs. Union of India & Ors decided on September 13, 2011 a Division Bench of this Court, of which one of us is a member, namely Pradeep Nandrajog J, the petitioner who was enrolled as Constable with Border Security Force and fired indiscriminately at the residents of a village in Bangladesh causing death and several injuries of/to several villagers. The petitioner was held guilty of having committed the offence of murder punishable under Section 300 IPC. The act of petitioner of indulging in indiscriminate firing by a rapid fire assault rifle was held to be akin to the situation contemplated in illustration d appended to Section 300 IPC.

54. In Criminal Appeal No.415 of 2000 State of U.P. vs. Vineet Kumar Chauhan decided on October 07, 2005 an accused had a quarrel with his neighbour due to which he indiscriminately fired from his revolver from the door of his house towards the house of his neighbour. The wife of the neighbour of the accused sustained gunshot injuries on her vital organs and died. A Division Bench of Allahabad High Court noted clause fourthly of Section 300 IPC and illustration d appended to said Section and held that the act of accused of firing bullets from the door of his house was so imminently dangerous that anybody (even a passer-by) could be hit and died and thus accused is guilty of committing of offence of murder punishable under Section 302 IPC.

55. The judgments relied upon by the counsel for accused Manoj have no application in the present case for they do not relate to clause fourthly of Section 300 IPC and indiscriminate firing by an accused person.

56. In view of above discussion, the present appeal is dismissed.

57. The bail bond and surety bond furnished by the appellant are cancelled. The appellant shall surrender to suffer the remaining sentence. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE OCTOBER01 2014 mamta

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