

Ramji Lal Vs. State

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Court : Delhi

Decided On : May-27-1987

Reported in : 32(1987)DLT308; 1987(13)DRJ297

Judge : R.N. Aggarwal and; Jagdish Chandra, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 32

Appeal No. : Criminal Appeal No. 120 of 1987

Appellant : Ramji Lal

Respondent : State

Advocate for Pet/Ap. : Shambhu Nath and; R.P. Lao, Advs

Judgement :

R.N. Aggarwal, J.

(1) Ramji Lal was tried by an Additional Sessions Judge for offences under Sections 302 and 307 of the Indian Penal Code and Section 27 of the Arms Act and has been sentenced to death on the first charge and to rigorous imprisonment for five years and a fine of Rs. 1000 and in default to undergo rigorous imprisonment for six months on the second charge, and to rigorous imprisonment for three years and a fine of Rs. 200 and in default to undergo rigorous imprisonment for two months on the last charge.

(2) The charge against the accused was that on 29th November 1984 at about 8.30 a.m. at house No. 585A, Siri Nagar, Shakurbasti, Delhi, he had committed the murder by intentionally or knowingly causing the death of Dhan Singh and Sushila with a gun and thereby committed an offence punishable under Section 302 of the Indian Penal Code. The second charge was that on the same date, time and place he had caused injuries to Raghbir Singh, Ved Prakash, Arun Kumar and Nisha with such intention or knowledge and under such circumstances that if he had caused the death of these persons he would have been guilty of murder, and that pursuant to the said act injuries were caused to the said named persons and thereby committed an offence punishable under Section 307 of the Indian Penal Code. The last charge was that though he was in possession of a double barrel gun duly licensed he had used the said gun for unlawful purposes and thereby committed offence punishable under Section 27 of the Arms Act.

(3) There is a reference for the confirmation of the death sentence. The accused has also filed an appeal against his convictions and sentences. This judgment shall dispose of both the reference and the appeal.

(4) A brief reference to the scene of crime would be helpful in appreciating the evidence. The scene of crime is house No. WZ-585-A Siri Nagar, Shakurbasti, Delhi, the house of the accused. The house has three living rooms. On the back side there is a courtyard. There is open space in front of the living rooms and then comes the entrance gate and the entrance gate opens in gali No. 1. Two of the living rooms are situated side by side and there is a passage in between the said two rooms and the third living room. For the sake of identity we will refer to the third living room as the drawing room.

(5) At the time of the occurrence deceased Dhan Singh was sitting on the sofa chair in the drawing room. Sushila deceased (wife of the accused) was in the kitchen adjoining the second living room. There is a service window in the kitchen opening in the second living room. Nisha daughter of the accused was in the house at the time of the occurrence.

(6) The accused and Sushila were married some 18-19 years ago, They have two daughters and three sons. Nisha is the eldest daughter. The deceased Dhan

Singh was a distant relation of the accused and he was on visiting terms with the accused. The motive for the crime which emerges from the cross-examination of the witnesses is the lurking' suspicion in the mind of the accused about the illicit relations of his wife with Dhan Singh.

(7) The prosecution case as emerges from the statement of Sushila (Ex.Public Witness 28/A) is that on 29th November 1984 the appellant Ramji Lal had called Dhan Singh to his house for accompanying him to Kotia where his brother-in-law lived. Dhan Singh came to the house of the accused at about 8.30 a.m. Sushila prepared tea and served it to Dhan Singh who was sipping tea sitting on the sofa. According to the deceased Sushila the accused suddenly came with a gun in his hand and fired a shot on her through the service window when she was in the kitchen and the shot hit her on the left thigh. Thereafter, the accused shot at Dhan Singh who was badly injured. The accused is alleged to have fired more shots at Sushila which hit her on the right hand, fingers, etc. Sushila ran out of the house in the street and the accused followed her and fired shots at her. Because of the random firing Raghbir Singh, Arun Kumar and Ved Prakash who were passing near the house also received gun shot injuries. Nisha was also injured during the firing of the gun by the accused. The prosecution case further is that thereafter the accused hit the gun against the wall and it broke into two pieces.

(8) Jagdish Sarup (Public Witness 1) brother of the deceased Dhan Singh on being informed by Public Witness 4 Virendra Kumar about the firing incident at the house of the accused came to the house of the accused and he found his brother Dhan. He also saw Raghbir Singh, Ved Prakash, Arun Kumar, Sushila and Nisha in injured condition.

(9) Public Witness 1 removed Dhan Singh, Raghbir Singh Luthra (Public Witness 5) and Ved Prakash (Public Witness 2) to the E.S.I. hospital. Basal Darapur where they were examined and given first aid by Public Witness 12 Dr. Ravinder Kaushik. Dr. Kaushik referred the case to Ram Manohar Lohia hospital. Dhan Singh, Ved Prakash and R.S. Luthra were taken to Ram Manohar Lohia hospital and they were examined by Dr. K. R. Rao, Dr. A. Gautam and others. Sushila, Arun Kumar and Nisha were also removed to Ram Manohar Lohia hospital and

they were also examined by the aforesaid doctors. Ext. Public Witness 23/A and Ext. Public Witness 23/C are the medico legal reports in respect of Dhan Singh and Sushila, respectively. Exts. Public Witness 23/K., Public Witness 23/G, Public Witness 23/E and Public Witness 23/N are the medico legal reports in respect of Ved Parkash, Arun Kumar, Raghbir Singh and Nisha, respectively. The doctors on examination found gun shot injuries on the bodies of all the aforesaid injured persons. The doctors recommended X-rays which were taken. Dr. J.Chatterjee, Radiologist (Public Witness 10) examined the X-ray of Sushila and found presence of multiple rounded small sized foreign body shadows scattered all over and embedded in the soft tissues of the pelvis, both thighs and right hand part of the patient. According to the doctor the appearance of the shadows suggested presence of pellets in the soft tissues. Ex. Public Witness 10/A is the report of Dr. Chatterjee in respect of Sushila.

(10) Dr. Chatterjee on examination of the skiagram of R.S. Luthra found presence of small sized irregular and round shaped foreign body shadows of metallic density present embedded in the soft tissues of the right leg With swelling of the soft tissues Along with presence of haziness and presence of free air in the soft tissues i.e. emphysema Along with fracture of the fibula and tibia bones of the right leg. Ex. Public Witness 10/B is the report of Dr. Chatterjee in respect of Raghbir Singh Luthra.

(11) Dr. Chatterjee also examined the X-ray of Arun Kumar and found small sized rounded and irregular shaped foreign body shadows present embedded in the soft tissues of right knee joint, right leg and left ankle joint. The appearance suggested presence of gun shot pellets in the soft tissues of the right knee joint, right leg and left ankle joint. Ex. Public Witness 10/C is the report of Dr. Chatterjee in respect of Arun Kumar. Dr. Chatterjee further examined the skiagram of Nisha and found small sized rounded foreign body shadows embedded in the soft tissues of right leg. Ex. Public Witness 10/D is the report of Dr. Chatterjee in respect of Nisha. Similar was the report in respect of Ved Parkash and report is Ex. Public Witness 10/E.

(12) Dhan Singh died on 1st December, 1984 at 11.45 p.m. Dr. L.T. Ramani performed post-mortem on the dead body of Dhan Singh on 2nd December at 2.30 p.m. The doctor found the following external injuries on the body of Dhan Singh :

'1. There was a large deep wound of 5'x4' size on the left shoulder region exposing deeper muscles of the shoulder and fractured lateral end of the left clavicle. Margins of the wound were irregular.

2. There was another irregular wound of 1' X 1' size on the middle of neck left side with abrasions above and below the wound. There was a gap of 1' inches between injury No. 1 and 2. There was no evidence of tattooing or charring around any of the wounds. Both the wounds were healthy. There was no evidence of puss deposit or infection.

3. There was an inter costal drainage wound on the left side of front of chest.'

(13) On internal examination the doctor found pellets lodged in the soft tissues of the neck and left shoulder. A few pellets were also found embedded on the laryngeal wall on the left side. The doctor recovered 17 pellets which were preserved and sealed. The doctor gave the opinion that the death was due to respiratory failure following oedema of lungs and laryngeal oedema. The doctor in cross-examination gave evidence that looking at the nature of the injuries the injuries could be the result of one shot.

(14) Sushila was discharged for Ram Manohar Lohia hospital on 5th December 1984. On 10th December 1984 she was admitted in Aggarwal Dharmarth hospital at Shakti Nagar. Dr. V. Thukral (Public Witness 30) gave evidence that Sushila had come with a gun shot injury which had been badly infected along with discharge slip from Willingdon hospital. He further deposed that Sushila died on 19th December 1984. The doctor further stated that as he could not ascertain the cause of death he had handed over the body for postmortem.

(15) Dr. Bharat Singh (Public Witness 31) performed the post-mortem on the dead body of Sushila on 19th December 1984 and the doctor found the following injuries

on the body :

'1.One healed wound over the right parietal area. Size 1' X 1/4' with crushed formation. There was no foreign material over the wound.

2.One healed wound over the palmer surface of distal phalanx of right index finger. Size 1/4' X 1/4' with red base.

3.One healed wound over the palmer surface of distal phalanx of right middle finger. Size 1/4' X 1/4' with red base.

4.One stitched wound over the medial side of left thigh going backwards and then taking a turn Public Witnessed on the outer sides over the left buttock in a circular manner. Total length of the wound was 12 inches. On cutting the suture, wound gaped. Margins were more or less regular. Original wound described in Mlc could not be identified. There was clotted blood in the soft tissues of the thigh. No foreign metal such as pellets or bullets were present in the thigh. There was no injury to the major blood vessels of the thigh. Thigh (left) bone was intact. There was no injury to the bone.'

(16) On internal examination the doctor found pulmonary artery was blocked at its origin by a blood clot which was going in both the branches of artery. The doctor stated that the clot was ante-mortem and resulted in pulmonary embolism. The doctor further gave the opinion that injuries were not sufficient to cause death in the ordinary course of nature. He further opined that the death was due to pulmonary embolism following injury to the left thigh. Dr. Bharat Singh in cross-examination testified as follows :

'EMBOLISM has been classified as solid, liquid and in the form of gases. It is incorrect to suggest that embolism as in the present case could only be detected by only microscopic examination. The pulmonary embolism in the present case could be, because the patient may be lying for long time on the bed, as well as, due to injury to the thigh. It is not possible to be precise in time in pulmonary embolism. It could also occur in 30 hours. In the present case, the clotting could not have been by intravenous injections, because it has been caused in the lower

limb. The clotting could be for any other reason.'

(17) On the receipt of the information about the incident Public Witness 28 Sub Inspector Sham Lal went to the scene of incident. He found that the van of police control room was removing Sushila, Arun Kumar and Nisha from the place of occurrence. Public Witness 28 went to the hospital and recorded the statement Ex. Public Witness 28/A of Sushila at about 11 a.m. Thereafter, Public Witness 28 visited the scene of crime and he took into possession three empty cartridges from the kitchen six empty cartridges from living room and some more cartridges from the various spots. Public Witness 28 also seized the broken gun from the open courtyard in front of the living room. The gun and the empty cartridges were sent to the Central Forensic Science Laboratory for scientific examination. Ex. PX-1 is the report of the Ballistic expert. The Ballistic expert found that the gun had been fired through and that the empty cartridges had been fired through the gun in question.

(18) The accused in his statement at the trial admitted that Sushila was his wife and Nisha Public Witness is his daughter. He further admitted that the deceased Dhan Singh was a distant relation of his. The accused stated that his relations with Sushila were cordial and good. He further admitted that the gun belonged to him and he had a license to possess the gun. The accused denied the rest of the prosecution case. The accused stated that the witnesses had given false evidence against him. He further stated that the case against him is false. The accused produced no evidence in defense.

(19) The prosecution case that on 29th November 1984 at about 8.30 a.m. an incident had taken place in the house of the accused and in that incident the deceased Dhan Singh the deceased Sushila, Nisha (Public Witness 22), Ved Parkash (Public Witness 2), Arun Kumar (P.W. 3) and Raghbir Singh Luthra (Public Witness 5) had received gun shot injuries admits of no doubt. Dhan Singh had died as a result of the injuries on 1st December 1984. Sushila died on 19th December 1984. We have the oral testimony of the injured Public Witnessss 2,3,5 and 22. Public Witness 2 gave evidence that on 29th November 1984 at about 8 or 8.30 a.m. he was of his house and he heard the sound of gun shots, that the

sound of the firing in the gun shots was from the house of the accused, that he came out of the house and as he was proceeding towards the house of the accused he suddenly received a gun shot on his left foot and that gun shot fire was from the side of the house of the accused. The witness further deposed that he did not see anybody coming out from the house and he did not go inside the house of the accused. He further deposed that he had seen the accused standing in the street and at that time he was not having anything in his hand. The witness was declared hostile and was cross-examined by the additional public prosecutor. The witness admitted that the Police had recorded his statement. The witness, however, denied to have stated before the Police that when he reached outside the house of Ramji Lal he saw the wife of the accused coming out of the house and running away, and Ramji Lal had a gun in his hand and he fired at her, as a result of which he, Raghubir Singh and Arun Kumar were injured. The witness was confronted with his statement portion marked A to A of Ex. Public Witness 2/A where it was so recorded.

(20) Public Witness 3 Arun Kumar deposed that on 29th November 1984 at about 8.30 a.m. he was going from his house at Siri Nagar, Shakurbasti towards the railway line and that near the street he had heard the noise of firing, that he saw one woman running out of the house screaming 'Hai Mere Bete Dhanho Ko Bacha lo', that the accused at that time was standing in the courtyard of the house and he was holding a double barrel gun in his hand, that the accused had fired at his wife while she was running away, that Raghubir Singh and Ved Parkash had received gun shot injuries. The witness further testified that after the firing was over the accused had broken the gun by striking it against the well and thereafter thrown it in the courtyard.

(21) Public Witness 5 Raghubir Singh Luthra testified that on 29th November 1984 at about 8 a.m. he was returning to his house after dropping his children in the school and that when he reached in front of the house of the accused he received a bullet injury. The witness further deposed that he saw the door of the house of the accused suddenly opening and the bullet had come from that side. The witness further deposed that the accused had a gun in his hand and he had fired the gun. The witness in cross-examination by the additional public prosecutor

stated that he had seen the wife of the accused coming out of the house. The witness further in cross-examination by the accused testified as follows :

'WHEN the accused had fired, I had seen him enraged. At that time when, I saw the accused firing, he was saying something. But as I had received injury I could not hear as to what he was uttering. Within 5 minutes of my receiving the injury, I was removed from the spot. I had no talk with the accused.'

(22) We next come to the testimony of Public Witness 22 Nisha. Public Witness 22 testified that on 29th November 1984 at about 7.30 or 7.45 a.m. Dhan Singh had come to their house and that at that time her father Ramji Lal had already left for the office, that she and her mother Sushila were in the house, that Dhan Singh was not called by any-one and he had come to their house of his own, that for the last about one year Dhan Singh would come to their house when her father was away to the office, that after Dhan Singh came, her mother asked her to go to bathroom and change the clothes, that her mother and Dhan Singh sat in the drawing room. The witness further testified that she heard the sound of the firing of a gun when she was in the bath room, that she came out and saw her mother running in the passage towards the street that as she came out she was hit by some pellets, that she did not see who had fired the shots. The witness further deposed that her mother Sushila, Dhan Singh, Arun Lal, Ved Parkash and Raghbir Singh Luthra were hurt in that firing of the gun,

(23) The witness was declared hostile and was cross-examined by the additional public prosecutor. The witness was confronted with some of the portions of her statement recorded by the police but she denied to have made the said statements.

(24) We have in the earlier part of the judgment noticed the version given by Sushila to the Police in the statement Ex. Public Witness 28/A.

(25) Shri Shambhu Nath, learned counsel for the appellant, contended that the statement Ex. Public Witness 28/A made by Sushila is not admissible in evidence under Section 32 of the Evidence Act as the said statement was not made by her under expectation of death. The relevant part of Section 32 of the Evidence Act

reads as follows :

'32.Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases : (1) When it relates to cause of death.-When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.'

(26) A reading of Clause (1) of Section 32 of the Evidence Act shows that the statements made by a person as to the cause of his death or as to the circumstances of the transaction which resulted in his death are relevant and admissible in evidence. The later portion of Clause (1) makes it clear that such statements are relevant irrespective of the fact whether the person who made them was or was not, at the time the statements were made, under expectation of death. See *Sharad Birdhichand Sarda v. State of Maharashtra*, Air 1984 Sc 1662 and *Tehal Singh & Others v. State of Punjab*, : 1979 CriLJ1031 .

(27) The condition precedent for the admissibility of a statement under Clause (1) of Section 32 of the Evidence Act is that the statement must relate to the cause of the death of the maker of the statement or as to any of the circumstances of the transaction which resulted in his death. Thus, the important fact for determination is, was the death of Sushila because of gun shot injuries received in the incident to which her statement relates. On this finding also depends the answer whether the statement Ex. Public Witness 28/A of Sushila is admissible or not in evidence.

(28) EX. Public Witness 23/C is the medico legal report in respect of Sushila. She was admitted in the Willingdon hospital on 29th November 1984 at 9.30 a.m. The

doctor who examined Sushila and prepared the medico legal report had left the hospital and, therefore, could not be examined. Public Witness 23 the record clerk of the hospital proved the said report. The report shows that Sushila had a number of gun shot injuries on her body. The nature of the injuries given in the report is 'simple'. The medico legal report further shows that Sushila was discharged on 5th December 1984.

(29) As already referred to earlier on 10th December 1984 Sushila was admitted in Aggarwal Dharmarth hospital at Shakti Nagar Public Witness 30 Dr. Thukral gave evidence that Sushila was admitted in the hospital with a gun shot injury which had been badly infected Along with the discharge slip from. Willingdon hospital. The doctor further deposed that Sushila was given anti-biotics, plus blood transfusion and other supporting measures like protein etc., that after her wound had cleared, stitching was done on 18th December 1984, that he visited her on 19th December 1984 at 9.30 a.m. and she was all right and was conscious, that at 10.20 a.m. he was called by the nurse and he found that Sushila had no pulse and her blood pressure was not record able and that she was declared dead at 10.45 a.m. The doctor further deposed that he could not ascertain the cause of death and, therefore, he had handed over the body for post-mortem. In cross-examination the doctor testified that on 15th December 1984 Sushila was given blood transfusion of one bottle and on 18th December 1984 she was given an intravenous injection. The doctor further deposed that it is correct that pulmonary embolism can be by intravenous injection. The doctor further volunteered that for that there should have been some clot or air to have gone inside.

(30) The autopsy on the dead body of Sushila was performed by Dr. Bharat Singh. We have earlier referred to his deposition. Dr. Bharat Singhs testified that the death was due to pulmonary embolism following injury to the left thigh. In cross-examination Dr. Bharat Singh testified that pulmonary embolism could be because the patient may be lying for a long time on the: bed, as well as, due to the injury to the thigh. Dr. Bharat Singh further deposed that it is not possible to be precise in time in pulmonary embolism. The doctor further in cross-examination stated that the clotting could not have been by intravenous injection, because it has been caused in the lower limb. The doctor further stated that the clotting could be for

any other reason.

(31) The evidence produced on the record proves that on 29th November 1984 Sushila had received gun shot injuries. Sushila was admitted in Ram Manohar Lohia hospital and she was discharged on 5th December 1984. She was admitted in the Aggarwal Dharmarth hospital on 10th December 1984 and she died on 19th December 1984. Public Witness 30 under whose care Sushila was in the Aggarwal Dharmarth hospital could not ascertain the cause of death. He, however, stated that pulmonary embolism can result by intravenous injection. From the evidence of Dr Thukral it is clear that on 19th December Sushila was all right and that her death was sudden and Dr. Thukral could not find out the reason for the sudden death of Sushila.

(32) Dr. Bharat Singh on performing the autopsy found that the pulmonary artery was blocked at its origin by a blood clot which was going on both the branches of artery and the death was due to pulmonary embolism. Dr. Bharat Singh gave the opinion that the pulmonary embolism could be the cause of the injury to the left thigh. Dr. Bharat Singh in cross- examination stated that the pulmonary embolism could be because the patient may be lying for long time on the bed, as well as, due to the injury to the thigh. Dr. Bharat Singh further in cross-examination stated that the clotting could be for any other reason.

(33) From the above discussed medical evidence it is clear that it cannot be definitely concluded whether pulmonary embolism was because of the injury to the left thigh or it was because of some other reason. Dr. Bharat Singh has given evidence that pulmonary embolism could be because the patient may be lying for long time on the bed and it could also be due to injury to the thigh. It was for the prosecution to establish that the death was because of the injuries received during the occurrence. If two views are possible then the view favorable to the accused must be taken. The benefit of doubt must go to him.

(34) The learned Additional Sessions Judge in his judgment (page 152 of the paper book) has observed that Dr. Bharat Singh had found positively that the blood clot was the cause of the injury on the thigh. We have discussed the evidence of Dr. Bharat Singh and, in our view, the above observation of the

Additional Sessions Judge is not wholly correct.

(35) In the above view we hold that the prosecution has not been able to prove that Sushila had died as a result of the gun shot injuries received by her on 29th November 1984. On this finding it follows that the statement Ex. Public Witness 28/A does not relate to the cause of death of Sushila. The statement which does not disclose the cause of death is not admissible under Section 32 of the Evidence Act. See *Ratan Gond v. The State of Bihar*, : 1959 CriLJ108 .

(36) Our above conclusion, however, would not make any material difference on the merits of the case. We find that there is other independent and unimpeachable evidence on the record to connect the accused with the crime. Public Witness 22 tried to save her father by saying that when Dhan Singh came her father had gone to the office. We find that this part of the statement of Public Witness 22 is not true. Public Witness 2 Ved Parkash gave evidence that when he came out of the house he saw the accused standing in the street. Public Witness 3 Arun Kumar and Public Witness 5 have in clear words stated that they saw the accused standing with a double barrel gun in his hand and that the accused was firing at his wife. Public Witnesses 2, 3 and 5 were injured in the incident and their presence in the gail outside the house of the accused at the time of the occurrence cannot be doubted at all. Public Witness 22 admits that Public Witnesses 2, 3 and 5 were also injured by the gun shot fire.

(37) It is in the statement of Public Witness 22 that before she heard the sound of the gun fire, she, Sushila and Dhan Singh were in the house. She does not say that any other person was present in the house. If the statement of Public Witness 22 that her father had gone to the office is not believed it would follow that Ramji Lal was in the house. The evidence of Public Witnesses 2, 3 and 5 puts it beyond doubt that Ramji Lal was in the house. The evidence of Public Witness 3 and 5 further proves that Ramji Lal was seen by them holding a gun and further that Ramji Lal had fired the gun at Sushila while she was running out of the house. The accused in his statement at the trial does not say that he was not in the house at the time of the occurrence. He also does not say if there was any other outsider besides Dhan Singh in the house. The weapon of offence broken in to two pieces

was recovered from the courtyard of the house. On examination by the Ballistic expert it was found that the gun had been fired through. The forensic expert had further found that the cartridges had been fired from the gun in question.

(38) The above discussed evidence, in our view, leaves no doubt that it was the appellant Ramji Lal who had fired the gun at Dhan Singh and Sushila, and that he had further in the shoot out injured Nisha, Arun Kumar, Ved Parkash and Raghbir Singh Luthra.

(39) Dhan Singh had succumbed to the injuries on 1st December 1984. The medical evidence is that the death was due to respiratory failure following oedema of lungs and laryngeal oedema. We are of the view that the death of Dhan Singh was because of the gun shot injuries. However, this finding cannot be returned in the case of Sushila. The injuries found on her body were opined to be simple in the medico-legal report Ex. Public Witness 23/C. We have earlier held that on the evidence produced on the record it cannot be held that she had died as a result of the gun shot injuries received by her on 29th November 1984. The intention of the accused clearly was to kill Sushila. The appellant would be guilty of the offence under Section 307 of the Indian Penal Code for attempt to murder Sushila. The conviction of the appellant under Section 302 of the Indian Penal Code for causing the death of Sushila has to be set aside and instead the appellant convicted the offence under Section 307 of the Indian Penal Code for the attempt to murder Sushila.

(40) The next important question arises what should be the sentence The learned additional Sessions Judge has given death sentence because in his opinion the murders were pre-planned and were cruel.

(41) Though it is not the plea of the accused that his wife had any illicit relations with Dhan Singh but from the cross-examination of Public Witness 3 and 5 and the statement of Nisha it is clear that the appellant at least suspected that his wife had some sort of relations with Dhan Singh. We further find that the appellant has five children. The mother is dead and only the father is left. We shall also have to bear in mind our finding that the prosecution has failed to prove that the death of Sushila was as a result of the injuries received by her during the occurrence on

29th November 1984.

(42) We are of the view that a sentence of imprisonment for life would meet the ends of justice. We accordingly decline the reference and the appeal is allowed to the extent that the sentence of death is commuted to life imprisonment. We maintain the conviction and sentence of the appellant on the charge under Section 307 of the Indian Penal Code except that the sentence of fine is set aside. The conviction of the appellant on the charge under Section 302 of the Ipc for causing the death of Sushila is set aside and instead he is convicted under Section 307 of the Indian Penal Code and sentenced to rigorous imprisonment for five years. We feel no need to pass any separate sentence on the charge under the Indian Arms Act. The sentence imposed on the appellant on the charge under the Indian Arms Act is accordingly set aside. We order that the substantive sentences of imprisonment shall run concurrently.

(43) The appeal is disposed of accordingly.

(44) Before leaving the case we cannot help observing that this case presents a sad state of conditions prevailing not only in the Aggarwal 308 Dharmarth hospital but also in government run Ram Manohar Lohia hospital. The medical evidence shows culpable negligence in the treatment of Sushila at the Ram Manohar Lohia hospital. It is clear that Sushila was discharged from the hospital on 5th December when she was not fully cured. On 10th December 1984 she was admitted in the Aggarwal Dharmarth hospital with her wounds highly infected. The medical care and attention at the Aggarwal Dharmarth hospital also was very poor. Sushila would have been living today in this world if she had received proper medical attention and treatment. This case is an instance showing that poor patients are not only not given proper treatment but are discharged even when they have not fully recovered. We hope that the concerned authorities will look into the working Conditions prevailing in the hospital-particularly the government hospitals.