Rajinder Kumar Sharma Vs. State

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Court : Delhi

Decided On : May-09-1996

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Judge : P.K. Bahri and; Mohd. Shamim, JJ.

Acts : Indian Penal code, 1860 - Sections 300

Appeal No. : Criminal Appeal No. 187 of 1992

Appellant : Rajinder Kumar Sharma

Respondent : State

Advocate for Pet/Ap. : Mukesh Kalia and; Anil Soni, Advs

Judgement :

Mohd. Shamim, J.

(1) Appellant Rajinder Kumar Sharma was tried by an Additional Sessions Judge for murder of Shri P.R. Sood, (hereinafter referred to as the deceased), under Section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life vide judgment and order dated Aug., 31, 1992.

(2) The facts leading to the present appeal which find a mention in the report under section 173 Cr.P.C, F.I.R. and in the statements of the prosecution

witnesses are as follows: that Asi Samey Singh during the intervening night of 6/7th January, 1988 was posted as Duty Officer at Police Station Chitranjan Park from 8.00 p.m. to 8.00 a.m. He received an information from Police Control Room through Inspector Gurdayal Chand, that he had been informed by some un-known person with regard to an incident of firing at E-510, Greater Kailash, Part Ii, New Delhi. The said information was recorded at Seriall No. 15A in the daily diary (vide Ex. PW13/A). A copy of the said report was prepared and handed over to Asi Hukam Chand (PW10) for the purposes of inquiry. On receipt of the said report Asi Hukam Chand Along with Constable Kishan Singh left for the spot. Sho, Shri B.R. Pal (Public Witness 27) was also apprised of this fact who also Along with Constable Lilu Ram (Public Witness 1) set out for the place of occurrence. Asi Hukam Chand met on the spot i.e. E-510, Greater Kailash, Part Ii, Narsig Singh (Public Witness 3) and Rajinder Kumar Yadav (Public Witness 2). He came to know over there that the deceased had already been removed to the hospital. Consequently, Asi Hukam Chand went to the hospital leaving behind Constable Kishan Singh (Public Witness 4) to guard the place of incident. He secured the injury report in respect of the deceased vide Ex. PW22/A. Here corded the statement of PW3 Narain Singh (vide Ex. PW3/A). He sent the same to the police station for registration of a formal F.I.R. trough Constable Lilu Ram (Public Witness 1) Along with his endorsement (vide Ex. PWIO/A) whereupon the formal F.I.R. (Ex. PW13/E) was recorded by Asi Samey Singh (Public Witness 13). Copies of the F.I.R. were dispatched to the higher-ups, including the Metropolitan Magistrate concerned.

(3) Narain Singh (Public Witness 3) in his statement informed the police that he was working as a Field Officer with a Company under the name and style of Seven Star Security. The deceased, Shri P.R. Sood was the Director of the said Company. A function was held in a park opposite the house of Shri B.L. Vohra resident of E-510, Greater Kailash, Part Ii, New Delhi, in order to celebrate the betrothal ceremony of a girl. A pavilion ('pandal') was put up in the park in order to celebrate the said function. Rajinder Kumar Sharma i.e. the appellant Along with one Omvir, guardsman, was posted on the main gate. The guests who attended the said function had taken their supper. However, the appellant was not served any thing till 11.30 p.m. He thus felt very much annoyed. The deceased who

reached there in order to supervise the arrangement of the security guards sent for the appellant through Lankush, another guard (Public Witness 14), to have his meals. On being requested so the appellant kicked the scooter belonging to the deceased which was parked on the road near the main gate and declared that he would not take the meals. PW14 Lankush thereupon returned and narrated the above said fact to the deceased. The deceased on hearing the same came out of the pavilion ('pandal'). He, Rajinder Kumar Yadav (Public Witness 2) and Gian Parkash Dubey (PVV15) followed him. The deceased accosted the appellant and asked for the reason for kicking the scooter and for not having the meals. The appellant went into his tantrum and again declared that he would not take his meals. The deceased on hearing the same moved forward towards the appellant whereupon the appellant warned him not to approach him otherwise he would shoot him down. Even then the deceased continued to advance towards the appellant. The appellant retreated 15 or 20 paces from the gate of the pavilion. He then fired at the deceased which hit him on the chest from the gun with which he was armed as a corollary whereof the deceased fell down by the side of the road. PW15 Gian Parkash Dubey tried to give support to the deceased. Rajinder Kumar Yadav (Public Witness 2) tried to apprehend the appellant. However, the appellant loaded his gun over again and fled from the spot towards W-Block,GreaterKailash. PW15 Gian Parkash Dubey and Lankush (Public Witness 14) removed the deceased to the Aiims in a police van. Later on he succumbed to the injuries sustained at the hands of the appellant.

(4) Shri B.R.Pal (Public Witness 27) flashed the message with regard to the incident through the wireless set. He also deputed the police officers to search out the appellant. He lifted the blood stained earth and control earth from the spot. The same were taken into police custody vide Ex. PW2/A and sealed with the seal of 'HC'. The scooter belonging to the deceased was taken into possession vide memo Ex. PW2/B. He got the site plan of the place of occurrence prepared which is Ex. PW27/A. The place of occurrence was also got photographed through Asi 0m Prakash (Public Witness 5) vide Ex. PW5/1 to Ex. PW5/5. The negatives of the said photographs are Ex. PW5/6 to Ex. P5/10. He prepared the inquest report vide Ex. PW24./D. Brief notes of the facts are Ex. PW24/C. He moved an application for post-mortem of the deceased vide Ex. PW24/B.Thepost-mortem on the dead

body of the deceased was conducted by Dr. M.S. Sagar. The report of the post-mortem is Ex. PW24/A.

(5) He received a message in the morning at 6.U5 a.m. while he was on the Outer Ring Road, Masjid Moth, on wireless that the person who was involved in the present incident had been apprehended by the police picket at Bhisham Pitamah Marg at Lodhi Road Flyover. On receipt of the said message he immediately went to the said place. The app

(6) After completion of the investigation a charge-sheet was submitted against the appellant before the Metropolitan Magistrate who on his turn on a finding that the case was exclusively triable by the Court of Session committed the same to the said Court with a direction to the appellant to stand his trial.

(7) The learned Sessions Judge found the appellant guilty under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life.

(8) It was in the above circumstances that the appellant has approached this , Court.

(9) Learned Counsel for the appellant Mr. Mukesh Kalia has urged that there is no evidence on record to show and prove that the appellant was on duty during the intervening night of 6/7th January, 1988 on the spot where the function with regard to the betrothal ceremony is alleged to have been organized. Thus how he could have committed the alleged murder of the deceased. The next limb of the argument advanced by the learned Counsel for the appellant is that in fact, one Rajinder Parshad Sharma (Public Witness 26), a security guard with Seven Star Security was deputed on the said date. Thus it was he who shot the deceased at and who later on succumbed to the injuries sustained at his hands. Hence the murder in the instant case is the handiwork of the said Rajinder Parshad Sharma. Since the name of the appellant happens to be also Rajinder Kumar Sharma he has been falsely implicated in the instant case. He further goes on to argue that the murder in the instant case is alleged to have been committed by the side of a road where admittedly,according to the prosecution version the function was being organized, yet no independent witness, for the best reasons known to the

prosecution, was examined to substantiate the said prosecution theory. It casts a suspicion on the entire case of the prosecution. There was absolutely no motive on the part of the appellant to have committed the murder of his own employer.

(10) The learned Public Prosecutor, Mr. Soni, on the other hand, has argued to the comrary. According to him, the prosecution has examined as many as three ocular witnesses namely Rajinder Kumar Yadav (Public Witness 2), Narain Singh (Public Witness 3) and GianParkashDubey(PW15)whowitnessedtheoccurrencewiththeirown eyes. All of them are independent witnesses. There is absolutely no reason whatsoever as to why they should depose against the appellant.

(11) It is manifest fromabove, that the sheet anchor of the defense version is that the appellant was never present at the spot where the function with regard to the betrothal ceremony was being organized. In fact, he was on duty at Mehra & Sons, Jewellers, at Karol Bagh. He remained on duty over there up to 7.00 p.m. (vide Ex. P8) and thereafter he left for his house. Thus he could not by any stretch of imagination be the author of the fatal injuries which the deceased succumbed to and breathed his last. The contention of the learned Counsel is devoid of any force.

(12) It is in the statement of PW25 Mrs. Anita Bhatia, an employee of Seven Star Security Services that on receipt of a telephonic message from one Mr. Inder Mohan that the services of two gunmen and four guards would be required in connection with a reception to be held in a park in front of E-510, Greater Kailash, Part Ii. New Delhi, she deputed the appellant Rajinder Parshad Sharma and Ombir. She further goes on to state that the guards were not available in the office. Consequently, the matter was left to the Field Officers to arrange the guards from the field area. We further find in her statement that entries with regard to the said duty were made in the register in respect of the persons who were to work as gunmen at the aforesaid function organized by Mr. Kishan Bhasin. She has also asserted that Rajinder Parshad Sharma (PW26) declined to join the said duty at the place of occurrence. Instead he said that he would remain on duty at Mehra & Sons, Jewellers. She has further deposed to the fact on being cross-examined that

she made enquiries on January 12,1988 from Mehra & Sons, Jewellers with regard to the fact whether Shri Rajinder Parshad Sharma was on duty with diem on January 6,1988 during the night. They answered the said query in the affirmative.

(13) Then there is the statement of Public Witness 15 Gian Parkash Dubey. According to him, the appellant was on duty at the place of (occurrence. He was posted, according to him, at the main gate of the pavilion ('pandal'). To the same effect is the statement of PW3 Narain Singh. According to him, he took the appellant and Omvir, gunman, with him in a three-wheeler scooter to the place of occurrence. The appellant was posted to guard the main gate of the pavilion Along with Omvir, gunmen. Both of them were armed with a single barrel gun with cartridges. The above statement further finds corroboration through the statement of Public Witness 14 Lankush. All the above named witnesses are independent witnesses. They have got absolutely no motive to depose against the appellant and in favor of the prosecution inasmuch as the appellant was one of their colleagues.

(14) The learned Counsel for the appellant has laid much stress on Ex. P8 i.e. the duty slip issued to PW26 Rajinder Parshad Sharma to act as gunman at E-510, Greater Kailash, Part Ii, in connection with a function and wants us to conclude there from that duty slip proves beyond any shadow of doubt that PW26 Rajinder Parshad Sharma was very much present as a gunman on the occasion of the said function.

(15) The contention of the learned Counsel no doubt is an ingenious one but can be brushed aside within an anon in view of the statement of PW25 Mis. Anita Bhatia and other ocular witnesses who saw the appellant on duty with their own eyes. PW25 Mrs. Anita Bhatia has asserted in unequivocal terms that it is true that initially Shri Rajinder Parshad Sharma (Public Witness 26) was deputed by her to act as a gunman at the above said place, however, he declined to do so and preferred to remain on duty during the night at Mehra & Sons, Jewellers, at Karol Bagh. In fact, she went even to the extent of verifying the said fact from them on January 12,1988.

(16) Furthermore, PW14 Lankush on instructions from the deceased went out to call the appellant inside to have his meals. On hearing this the appellant went into his tantrums. He kicked the scooter of the deceased and declared that he would not take his meals. The appellant was very much furious on account of the delay in serving the meals to him. On hearing the same he returned and narrated the same to the deceased who was inside the pavilion ('pandal) whereupon the deceased followed by three Field Officers namely, Rajinder Kumar Yadav (Public Witness 2), Narain Singh (Public Witness .3) and Gian Parkash Dubey (Public Witness 15) went out to persuade the appellant to have his meals. The subsequent event has been narrated by PW2 Rajinder Kumar Yadav, an ocular witness in the following words: that the deceased enquired of the appellant with regard to the reason for his not taking the meals whereupon the appellant again declined to do so. The appellant further declared that in case any one advanced towards him he would fire at him. Having said so the appellant moved backward to a distance of near about 20 steps towards Bungalow No. E-510, Greater Kailash, Part Ii, followed by the deceased. The deceased again enquired of the appellant as to why he was not taking his meals? The appellant fired at the deceased which hit him at his chest. The deceased fell down on the ground by the side of the road. He tried to chase the appellant. However, in the meanwhile the appellant loaded his gun over again whereupon he immediately stopped where he was and the appellant made good his escape. To the same effect are the statements of PW3 Narain Singh and PW15 Gian Parkash Dubey. There is absolutely nothing in their cross-examination to render their testimony unworthy of credence.

(17) The testimony of the said witnesses is further strengthened from the statement of Shri Girja Shankar (Public Witness 5), a three-wheeler scooter driver. According to him, while he was taking the appellant in his scooter, his scooter was intercepted by Asi Ram Parshad (Public Witness 9). On search of the appellant he found that the appellant had hidden the barrel and the butt of the gun inside his jacket. On further search of the appellant four empty cartridges and one live cartridge were also recovered from his possession. PW2 Shri Rup Singh, Scientific Officer, Ballistic Division, has given his report vide Ex. PW20/A to Ex. PW20/H. According to him, the 12 bore gun Ex. Pi /a was found in working condition. The cartridge cases Ex. C-1 to Ex. C-5 were fired from the said gun. The six lead

pellets and air-cushion wads could have come from the firing of any one of the four 12 bore cartridge cases marked C/l to C/4 The said pellets and the wad were similar to the ones contained in the 12 bore cartridge marked C/5. He has further opined that the corresponding gunshot hole ontheupper-frontportionsofjacket.shirtand 'baniyan'ofthedeceased could have been caused by die firing of a shot from the 12 bore Sbbl gun from a distance of about two yards or so. Moreover, the above report is to be read in the light of the statements of PW5 Girja Shankar and Narain Singh (Public Witness 3) that the butt of the gun was engraved with letters 'RKS'. Admittedly, the name of the appellant is Rajinder Kumar Sharma. It implies thereby that the initials of the name of the appellan t were found engraved on the gun to distinguish it from other guns. Thus it leads us to the inevitable conclusion that the fatal shot was fired from the said gun.

(18) The above view is further fortified by die statement of Dr. M.S. Sagar who conducted the autopsy on the dead body of tile deceasaed. He has opined that the injury was caused by a fire-arm and it was ante mortem and was sufficient to cause death in the ordinary course of nature (vide Ex. PW24/A).

(19) Learned Counsel for the appellant has then contended that there was no motive on the part of the appellant to have killed his own employer. Admittedly he was earning his bread from the said employment given by the deceased. So why he should have killed him? The contention of the learned Counsel does not hold any water.

(20) It is a settled principle of law that where the prosecution has examined ocular witnesses with regard to the incident who were present at the spot, the question of motive loses us importance. We are tempted here in this connection to cite the observations of their Lordships of the Supreme Court as reported in Gurcharan Singh and Another v. State of Punjab, : 1956 CriLJ827 , ...' Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.' The above view was again reiterated in Rajinder Kumar and Others v. State of Punjab, : 1966 CriLJ960 .....' The absence of a motive is also a circumstance which is relevant for assessing the evidence. The circumstances which have been mentioned above as proving the guilt of the accused Rajinder

are however not weakened at all by this fact that the motive has not been established. If often happens that only the culprit himself knows what moved him to a certain course of action. This case appears to be one like that.'

(21) The learned Counsel contends that admittedly the occurrence in the instant case took place by the side of a road at Greater Kailash, Part Ii at the time when the function was being held. Thus it can be safely concluded there from that a large number of independent witnesses must have been available at that time. The Investigating Officer, PW27 Inspector B.R. Pal for the best reasons known to him did not choose any one from amongst the persons who came to attend the function to depose to against the appellant, who would have been the best possible witnesses in the circumstances of the present case. It casts a serious doubt regarding the authenticity of the case of the prosecution. We are sorry we are unable to agree with the contention of the learned Counsel.

(22) It is a well established principle of law that no particular number of witnesses i s a condition precedent to prove a particular fact (vide Section 134 of the Evidence Act). Admittedly, the prosecution examined quite a good number of witnesses whom we feel are neither interested in supporting the case of the prosecution nor are inimically disposed towards the appellant. We are inclined over here to cite the observations of the Hon'ble Supreme Court as reported in Vedivelu Thevar v. The State of Madras, : 1957 CriLJ1000 , ...' In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that ' no particular number of witnesses shall, in any case, be required for the proof of any fact.' The Legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or dispro of of a fact, to call any particular number of witnesses.....'

(23) The next contention raised by the learned Counsel for the appellant is that none of the ocular witnesses namely PW2 Rajinder Kumar Yadav, PW3 Narain Singh and PW15 Gian Chand Dubey gave any information to the relations of the deceasaed. Thus their conduct is quite unnatural and does not fit in with the

circumstances of the present case. The learned Counsel thereforee, wants us to infer there from that the said witnesses are liars and they have not seen the occurrence. We find no force in the contention of the learned Counsel.

(24) It is true that there is nothing on record to show that the above named witnesses informed the relations of the deceased. However, this fact by itself is not redolent of any suspicion with regard to their presence at the time of occurrence.

(25) It has then been urged for and on behalf of the appellant that there is an inordinate delay in lodging die FIR. According to the learned Counsel, the occurrence in the instant case took place as per the Fir at 11.45 p.m. The statement of Narain Singh (Public Witness 3) was sent to the police station by PW10 Asi Hukam Chand at 1.15 a.m. which formed the basis of the Fir and the Fir was recorded at 1.35 a.m. Thus there is a delay of nearabout two hours. The learned Counsel on the basis of the above urges to conclude there from that there was sufficient time on the part of the prosecution for fabrication and embellishment and for subtraction and improvements from the original version. It thus casts a doubt with regard to the veracity of the case of the prosecution particulary when there was an inordinate delay in the dispatch of the Fir to the Metropolitan Magistrate. According to the statement of PW18 Constable Mohinder Singh a copy of the Fir was delivered at 0.15 a.m. in the Court. The Constable who delivered the Fir left the police station at 9.30 a.m. Thus there is a delay of nearabout 8 hours in the delivery of the Fir to he Metropolitan Magistrate concerned.

(26) It is true that there was a delay of near about two hours in recording of the FIR. It is also true that there was a delay in the dispatch of the Fir to the Metropolitan Magistrate concerned. However, admittedly a precious life was lost in the instant case. The witnesses who saw the incident and who were the employees of the deceased were more concerned with the life of the deceased. They took the deceased to the hospital in a taxi initially. However, they could not find any hospital (vide the statements of PW14 Lankush and PW15 Gian Parkash Dubey). Then the deceased was removed to the hospital in a van. Narain Singh (Public Witness 3) tried to contact the police on telephone but no telephone booth was available. Hence he could not do so immediately. Thus we feel that in the

circumstances of the present case the delay of two hours in lodging the Fir is not such which can be called to be fatal to the case of the prosecution. To our mind, it also does not cast any suspicion on the case of the prosecution inasmuch as we find the statements of die prosecution witnesses to be natural, spontaneous, credit-worthy and inspiring confidence. In this connection we would like to refer to the statement of PW15 Gian Parkash Dubey. It was he who lifted the deceased from the spot and put him in a taxi and in that process his pant got smeared with blood of the deceased i.e. of B Group (vide Ex. P3 and P3/F) Thus the presence of PW15 Gian Parkash Dubey is beyond doubt on the spot and there is no reason, whatsoever, to dis-believe him. The view we are taking is supported by the observations of their Lordships of the Supreme Court as reported in : 1976 CriLJ1888 , Ram Murti & Another v. State of Haryana, ...' It is no doubt true that there was some delay in the filing of F.I.R. by Surja and the Explanationn given for the delay does not appear to be very satisfactory but that cannot by itself be a ground for disbelieving the prosecution evidence and particularly when it has been accepted by the learned Additional Sessions Judge and the High Court.'

(27) This brings us to the point in regard to the delay in the dispatch of F.I.R. The Supreme Court while faced with the same situation observed in : 1976 CriLJ1757 , Sarwan Singh and Others v. State of Punjab, ...'Apart from this, it is well settled that mere delay in dispatch of the F.I.R. is not a circumstance which can throw out the prosecution case in its entirety. The matter was considered by this Court in Pala Singh v. State of Punjab, : 1973 CriLJ59 where this Court observed as follows

'BUT when we find in this case that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there is no other infirmity brought to our notice, then, however, improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.'

(28) There is another aspect of the matter. The delay in the dispatch of the Fir to the Metropolitan Magistrate can at the most be said to be a piece of defective

investigation. An accused in a given case cannot be acquitted simply because the investigation is tainted and defective inasmuch as it would be tantamount to playing into hands of investigating agency. If the Court comes to the conclusion in a given case that the prosecution version is true and worth placing the reliance in that eventuality the Court would be justified in ignoring the lapse, if any, on the part of the investigating agency. The above view was given vent to by their Lordships of the Supreme Court as reported in , : 1995 CriLJ4173 , Karnel Singh v. State of M.P. ....' In case of defective investigation it is not right to acquit the accused as it would be tantamount to playing into hands of investigating officer if the investigation is designedly defective...'

(29) Learned Counsel for the appellant then vehemently argued that even if it is assumed for the sake of arguments that the deceased was killed at the hands of the appellant even then the learned lower Court fell into a grave error by coming to the conclusion that it was a case under Section 302 of the Indian Penal Code. The learned Counsel contends that the appellant did not nurse any grievance against the deceased. He was his employer. The appellant was hungry and as such very angry at the time of occurrence. He is alleged to have fired only once at the deceased. However, as ill luck would have it the gunshot hit the deceased at the chest and he died as a corollary whereof. Thus, according to the learned Counsel the present case falls within the domain of Exception 4 and Exception 5 appended to Section 300 of the Indian Penal Code which deals with murder. Since we arc concerned with the construction of the said Exceptions, the same can be adverted to with profit. They are in the following words :-

'EXCEPTION4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. Explanationn.-It is immaterial in such cases which party offers the provocation or commits the first assault. Exception 5.-Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.'

(30) It is fully manifest from the relevant provisions of the law alluded to above that culpable homicible is not murder if it is committed without premeditation in a sudden fight in the heat of passion. Admittedly, in the instant case there was no fight in between the deceased and the appellant. Thus there is no question of the heat of passion. It is also not the case of the prosecution that there was some incident in between the appellant and the deceased which led to a quarrel. Thus we can say straightaway without any hesitation that the case of the appellant does not tall within the ambit of Exception 4.

(31) The learned Counsel, however, in support of the above argument has referred to certain decisions. We have very carefully examined the said decisions and we are firmly of the view that they are not applicable to the facts of the present case.

1.1987(1) Crimes 479, Radha Kishan v. State of Haryana. According to the facts of the said case the Supreme Court came to the conclusion that the appellant killed the deceased Darya either on account of some grave and sudden provocation or in the course of a sudden quarrel attracting Exception I or Exception 4 to Section 300. Indian Penal Code .

2. : 1984 CriLJ478 , Tholan v. State of Tamil Nadu. According to the facts of the said case the appellant was abusing the organisers of the chit fund and used filthy language in the presence of certain ladies. The deceased objected to the same which led to a flaming row and an altercation in between them. Whereupon on the spur of the moment he hit the deceased with a knife which proved fatal and the deceased succumbed to the injuries. It was held in the above circumstances that there was no invention to commit murder on the part of the accused and as such he was held to have committed an offence under Section 304, Part II.

3. : 1983 CriLJ346 , Han Ram v. State of Haryana, ...' It does seem that in the heat of the altercation between Ran Singh on the one hand and the appellant and his comrades on the to he hand, the appellant seized a jelly and thrust it into the chest of Ran Singh..... On the evidence it does not appear that there was any intention to kill Ran Singh. We are thereforee satisfied that the conviction under Section 302 cannot be sustained and that, on the contrary, the facts make out an offence under the second part of Section 304.'

(32) The next limb of the argument of the learned Counsel is that the instant case squarely falls within the purview of Exception 5. According to the learned Counsel the appellant was admittedly armed with a gun as per the prosecution version. He has declared that whosoever would come forward he would fire at him (vide statements of PW2 Rajinder Kumar Yadav, PW3 Narain Singh and PW15 Gian Parkash Dubey). However, even then the deceased did not desist from moving forward whereupon as per the prosecution case, the appellant fired at him. Thus according to the learned Counsel it can be gathered from the facts of the present case that the appellant took the risk of death voluntarily with his own consent. The contention of the learned Counsel is devoid of any force.

(33) The deceased in the instant case was the employer of the appellant. It is true that the appellant was angry as he was not provided with any meals till 11.30 p.m. He was very hungry. There is no evidence that the relations were strained in between the appellant and the deceased at any point of time. Thus the deceased could not have thought even in the wildest of his dreams that the appellant would behave like a brute and a monster and would have the audacity and the courage to kill a person who was trying to persuade him to take his meals. Thus we are unable to agree with the contention of the learned Counsel that the deceased took the risk of death with his own consent. We feel that an accused who wants his case to bring within the domain of Exception 5 to Section 300 must not only show that the deceased took the risk voluntarily, he must further prove that he had the requisite knowledge that he would die by doing so. We are tempted here to cite the observations of Lower Burmah Chief Court as reported in 1910 Crl. L.J.345, Posef v. Emperor, ...' The words of the exception themselves and consideration of the other provisions of the Penal Code appear to me to show that it is not sufficient for a claimant to the benefit of this 5th Exception to satisfy the Court that the person whose life he took voluntarily took the risk of death. He must prove that person consented to the particular act being done and that he did so with knowledge that if done, he would die or incur risk of losing his life.'

(34) In the above-stated circumstances we do not see any justification to differ from the view taken by the learned lower Court inasmuch as the appellant was admittedly armed with a gun. He has openly declared that whosoever would come

forward would be fired at. He accordingly fired at the deceased which hit at his chest, one of the most vital parts of the body. He did so without grave and sudden provocation from the side of the deceased. Thus he can be imputed with the requisite intention and knowledge that the act which he was doing was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. In a situation very much akin to the situation in hand it was observed by their Lordships of the Supreme Court in : 1990(2)SCALE542 A.N. Chandra v . State of IIP., ...' The learned Counsel, however, submitted that there is only a single gunshot injury and thereforee it cannot be said that the accused intended to cause death. According to the learned Counsel, the occurrence was due to a quarrel and the accused in the heat of passion without knowing what he was doing, must have inflicted the single injury and thereforee it is only a culpable homicible. We see absolutely no force in this submission. The single injury theory cannot be made applicable to a case where a deadly weapon like firearm is used. Even a single injury caused by a firearm would only lead to the inference that death was caused intentionally.' In the aforestated circumstances we find no merit in the present appeal. Consequently, the same is hereby dismissed.