

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 7th September, 2009*
Judgment Delivered on: 11th September, 2009

+ **CRL.A.468/2001**

KHURSHID AHMED @ TAKLOO Appellant
Through: Ms. Charu Verma, Advocate.
versus

STATE Respondent
Through: Ms. Richa Kapoor, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Vide impugned judgment and order dated 06.11.2000 accused Khurshid Ahmed has been convicted under Section 302/34 of the IPC for having committed the murder of Dr.Mohd.Irfan Khan. He has also been convicted under Sections 25 & 27 of the Arms Act for having been found to be in possession and having used a deshi katta which was the weapon of offence and which had caused the death of the deceased. Accused was sentenced to undergo life imprisonment for the offence under Section 302 of the IPC; for the offence under Section 27 of the Arms

Act he has been sentenced to undergo RI for three years with a fine of Rs.3000/-, in default of payment of fine to undergo RI for one month. No separate sentence has been imposed for the offence under Section 25 of the Arms Act. Co-accused Kaleem and Dulare were not traceable and had been declared proclaimed offenders.

2. The occurrence is dated 17.8.1997. Time is 9.15 PM. The venue was the lane opposite House No.V-299, Arvind Nagar, Ghonda within the jurisdiction of Police Station Bhajanpura. Const. Julita PW-21 posted in the Control Room had at 21.33 hours received a call that a man had been shot at the Main Road, near Ajit Hotel, Gautam Vihar, Budh Vihar Bazar Road, Fateh Singh Marg. This information was passed on to PCR Van Romeo 53 which was thereafter transmitted to the local Police Station and recorded at 9.45PM in DD No.22A Ex.PW-10/A by HC Asif PW-10. This D.D. was marked to ASI Randhir Singh PW-23 who along with Const.Dharampal PW-9 reached the site where a two-wheeler scooter No.DL-4S-E-5432 was lying in the lane and blood was spattered around the scooter. Injured had already been removed to the Guru Teg Bahadur Hospital. At the hospital PW-23 collected the MLC Ex.PW-8/A of the injured, Dr.Mohd.Irfan Khan wherein it had been recorded that the patient had been brought dead. No eye-witness was found in the hospital. Returning to the spot PW-23 met the father-in-law of the injured Meharban Ali PW-5 whose

statement Ex.PW-5/A was recorded. As per this statement Meharban Ali i.e. PW-5 at 9.15PM had heard some gun shots while he was sitting on the roof of his house. He reached the neighbouring house of his daughter. He saw that his son-in-law Dr.Mohd.Irfan Khan who had just returned back on his two-wheeler scooter, lying in a pool of blood; three to four boys were seen running from the scene; Khurshid who was earlier employed with his son-in-law had an evil eye on his daughter as a result of which he had been thrown out by his son-in-law; Khurshid often used to threaten his son-in-law on telephone; on 17.8.1997 at 5.00 PM in the evening he had threatened his son-in-law and again at 8.30PM, he had abused his daughter on telephone; he suspected that Khurshid was involved in this offence and action be taken against him.

3. On this statement Ex.PW-5/A endorsement Ex.PW-23/A was made by PW-23 at 12.15PM and through Const. Dharampal PW-9 the rukka was sent to the Police Station for the registration of the FIR. FIR Ex.PW-2/A was registered by H.C. Prem Singh PW-2. The spot was photographed by Mukesh Kapil PW-12, photographs are Ex.P-7 to P-17, the negatives of which have been proved collectively as Ex.P-13. The blood stained earth and the two-wheeler scooter lying on the spot were seized and taken into possession vide memos Ex.PW-25/C and Ex.PW-25/D. Statement of the eye-witness

Zarifa Khan @ Natho PW-3 the wife of the deceased as also of the second eye-witness Neeraj PW-1 were recorded. Statement of Izaz Ali PW-30 was also recorded by the Investigating Officer to the effect that the accused had made an extra-judicial confession to him disclosing his involvement in the crime.

4. On the following day i.e. on 18.8.1997 post-mortem on the deceased was conducted by Dr.K.K.Banerjee PW-11, who had noted the following injuries on the person of the deceased:

“1. An oval shaped fire arm entry wound 1.2 x1.00 c.m. surrounded by abrasion collar placed almost horizontally on the left side of head. The anterior is 6.00 c.m. away from the anter angle of left eye 2.5 cm above the tragees of left ear. Tatooing was present over an area of 22.00 cm x 19.00 cm on the left side of face from left forehead above to left side of front of neck below and from left nasal ala in front to left ear behind. The margin of the wound was inverted. The depth from ontside was 2.5 cm into the skull cavity going horizontally. A hole 3.00 cm x1.00 cm was found on the left temporal wound. A bullet was found lodged in the hole with the base of the bullet directed anteriorly and the nose end directed posteriorly from right to left and little below upwards. Bone chips were found in the cavity thus created.

2. An oval shaped fire arm entry wound 1.3x1.00cm surrounded by an abrasion collar was present on the front of left side of chest. 4.00 cm away from mid line, 12.00 cm meddle to left interior axillary line 12.5 cm below the middle one third of left clavicle, 11.00 cm below the left sub-costal margin 4.00 cm away from anter boarder of left nipple. A hole 1.5 x1.00 cm was present between the 2 and 3 rib on left side of chest 2.5 cm away from mid line. The wound was cavity deep and was directed from right to left below upwards towards the left shoulder.”

5. The cause of death was shock as a result of ante-mortem injury no.2 on the internal organs produced by a projectile rifled bore fire arm likely from near range. The two bullets which had been retrieved from the dead body were handed over to the Investigating Officer for preservation and subsequent ballistic analysis. The exhibits which included the blood stained earth lifted from the spot as also the two bullets retrieved from the dead body were deposited in the Malkhana with Const. Lokender Singh PW-28 and photocopies of the relevant entries in Register No.19 are Exs.PW-28/A & B.

6. Accused was yet untraceable. On 19.9.1997 ASI Israil Khan PW-25 received a secret information that the accused would be coming towards the bus stop to go to Meerut. PW-25 along with SI Ramesh Kumar PW-19 constituted a raiding party and at the pointing out of the secret informer the accused was apprehended and arrested. His personal search Ex.PW-19/B was recorded. He made 3 disclosure statements; pursuant to the third disclosure statement Ex.25/B accused on 23.9.1997 led the police party to Arvind Nagar, Brijpuri towards the eastern side where on his pointing out the police got a katta recovered which as per his disclosure statement he had used to kill the deceased. This weapon was wrapped in a yellow coloured polythene; sketch of the katta is Ex.PW-24/F. The total length of the katta was 26 cm and its handle

was 11.25 cm in length; it was taken into possession vide memo Ex.PW-24/G. This recovery was witnessed by Const.Rameshwar and Const.Virender Singh PW-24.

7. On the same day i.e. on 23.9.1997, the Investigating Officer PW-31 deposited this deshi katta in the malkhana. On 18.11.1997 Const.Ram Niwas PW-27 delivered a sealed parcel sealed with seal of RK to the CFSL which was received by K.C.Varshney PW-15. Vide reports Ex.PW-15/A and Ex.PW-15/B it was opined that the weapon had a .315" bore and out of the two bullets received one was a deformed bullet and both the bullets correspond to bullets of 8mm/.315 cartridge. Sh.Virender Singh PW-17 Addl. DCP had vide his report Ex.PW-17/A granted sanction under Section 39 of the Arms Act for prosecution of the accused.

8. The trial Judge, had convicted the accused holding that the testimony of the eye-witnesses i.e. Zarifa PW-3, Neeraj PW-1 and the extra-judicial confession made by the accused to Izaz Ali PW-30 were incriminating besides the recovery of the katta which had been got recovered by the accused pursuant to his disclosure statement coupled with the report of the ballistic expert that the bullets which had been retrieved by the Post-Mortem Doctor of 8mm/.315" cartridge corresponded to bullets of 8mm/.315" cartridge and the weapon of offence was a country-made pistol of

.315" bore. These cumulative factors were held as conclusively establishing the guilt of the accused.

9. On behalf of the accused, it has been argued that the eye-witnesses are planted and there is no explanation as to why when the statement of Meharban Ali PW-5 was recorded, there is no mention of the eye-witnesses having witnessed the incident when one such eye-witness, PW-3, being the daughter of PW-5 would have in the normal course of conduct, in the first instance disclosed the name of the assailant to her father. It is submitted that these eye-witnesses have been roped in subsequently and that is why their versions have been recorded by the Investigating Officer one day after the incident; this fact has also not been put to the accused in his examination under Section 313 Cr.P.C, thus giving him no chance to explain his stand. Reliance has been placed on a judgment reported as Ranvir Yadav vs. State of Bihar 2009 7 Scale 60 to substantiate the submission that in the absence of this incriminating circumstance having been put to the accused, the same cannot be read as evidence against him. The recovery of the katta is doubtful as the recovery has been effected on 24.9.1997 but the police had knowledge about the place of recovery as early as 19.9.1997 and this is evident from the testimony of PW-31; recovery stands demolished. It is argued that the Post-Mortem Doctor had opined that the fatal injury was the result of a rifled

firearm and the deshi katta sought to be proved as the weapon of offence is not in consonance with this theory. Accused is entitled to a benefit of doubt and a consequent acquittal.

10. We have perused the record and appreciated the arguments addressed before us.

11. The rukka was dispatched on the statement of PW-5 who is the father-in-law of the deceased. Incident had first been reported in the Police Control Room at 21.33 hours. D.D.No.22A to the said effect had been recorded in the Police Station at 9.45PM and the Investigating Officer i.e. PW-23 along with PW-9 had reached the spot thereafter; they found no eye-witness at the spot; it was learnt that the injured had been removed to the Guru Teg Bahadur Hospital. At the hospital the MLC of the victim showed that he had been brought dead. The Investigating Officer did not meet any eye-witness at the hospital either. He returned back to the spot where in the first instance he met PW-5. His statement Ex.PW-5/A was recorded and the rukka was dispatched on this statement at 12.15PM. Statement of PW-5 has been perused; this version categorically points the needle of suspicion at the accused and two to three other accomplices; contents of Ex.PW-5/A have already been noted and hence the same are not being repeated

12. Meharban Ali PW-5, on oath, in Court, deposed that on 17.8.1995 at about 9.15 PM he had heard two fire shots while he

was lying on the roof of his house. Somebody called him. He rushed to the house of Irfan. Irfan Khan is his son-in-law and was living as a 'gharjawai' in house no.V-299 which is adjacent to his house. On reaching the site he saw that Irfan was lying near his scooter and he had suffered two bullet shots on his body, one on his chest and the other on his head; the assailant had run away. His injured son-in-law was removed to the hospital but he did not accompany him. He suspected Khurshid, who was earlier working as their servant; he i.e. Khurshid had been removed from service as he had bad intentions towards his daughter Zarifa; even after that accused Khurshid continued to threaten his daughter and son-in-law. In his cross-examination, he has stated that he reached the place of occurrence after about one or two minutes of hearing the sound. His daughter Zarifa and Neeraj along with some other person removed the injured to the hospital. His statement was recorded by the police at the spot which was signed by him; his first statement was recorded before the arrival of his daughter from the hospital. He denied the suggestion that he is deposing falsely at the instance of the police.

13. Zarifa PW-3 is the wife of the deceased. She is the eye-witness. She has deposed that the accused Khurshid was working as their servant till about four years ago. He had worked with them for one year. He i.e. the accused had bad intentions towards her

and as a result of which quarrels used to take place between the deceased and Khurshid. Accused Khurshid continued to threaten her as also her husband. Two days prior to the occurrence, Khurshid had given a threat to her on telephone. On 17.8.1997 at 6.00PM Khurshid threatened her husband on telephone. Again at 8.00PM he made a call to her threatening to kill her; at that time Neeraj who had come to take milk from her house heard her conversation and he took receiver from her. Neeraj also heard Khurshid abusing her. Neeraj went towards the STD shop but he could not find anyone there. He returned back to her house. After sometime the door bell rang and from the roof she i.e. PW-3 saw two boys along with Khurshid standing near the door. Her husband had just returned on his scooter and at that time all the three persons including Khurshid attacked her husband; they were all having country made pistols in their hands. Two shots were fired at her husband as a result of which, he fell down. She i.e. PW-3 along with Neeraj removed her injured husband to the hospital. This witness has been subjected to a lengthy cross-examination. She has admitted that when she heard the bullet sounds, she and Neeraj were alone on the roof and her three sons were outside the house. There is a gali between her house and her father's house. The street light was on when she saw the accused fire at her husband. She i.e PW-3 along with Neeraj and one more person removed the

injured to the hospital. Her father also reached the spot of occurrence but at that time no conversation took place between her and her father as she was weeping. Her father did not accompany them to the hospital. Statement of Neeraj was not recorded in her presence. She denied the suggestion that she had not witnessed the accused firing at her husband or that she is deposing falsely at the behest of the police.

14. The second eye-witness is Neeraj examined as PW-1. He has deposed that on the fateful day i.e. on 17.8.1997 at 8.30PM he had gone to the house of Zarifa i.e PW-3. She i.e. PW-3 was having a loud conversation on telephone and when he asked her about it she handed over the telephone receiver to him and he heard some person shouting in an abusive language over the phone. He i.e PW-1 kept the phone and went outside towards STD booth to check but nobody was found there. He returned back. He asked Zarifa Aunti for the milk. The door bell rang; he was standing with PW-3 then they saw two boys as also Khurshid come towards the entrance of the house. Dr.Irfan had just returned on his two-wheeler scooter; at that time Khurshid took out a pistol and placed it on the Kanpatti of the deceased and the two other boys also took out their pistols and aimed at Dr.Irfan who received two injuries and he fell down from the scooter. He i.e. PW-1 along with PW-3 and one neighbour removed the injured to the Guru Teg

Bahadur Hospital. This witness has also been subjected to a lengthy cross-examination. He has stated that he does not know any person by the name of Nasir. They had reached the hospital at 10.00 PM and remained there till 1.00 AM in the night. His statement was recorded by the police on the next day at about 11.00 AM. He had witnessed the incident from the roof of Zarifa where he was standing with her; there was light outside as a bulb was burning. He met Meharban Ali in the hospital but no talk took place between him and Meharban Ali. He spoke to Meharban Ali on the following day at about 2.00-3.00 PM. He denied the suggestion that he did not witness the incident or that he is deposing falsely at the instance of PW-3.

15. In his statement under Section 313 of the Cr.P.C. the accused had pleaded innocence and stated that he has been falsely implicated by PW-5 Meharban Ali with whom he was employed and the witnesses have deposed at the instance of Meharban Ali.

16. It is relevant to state that none of the eye-witnesses i.e. either PW-3 or PW-1 has been given any suggestion by the learned defence counsel that they are deposing falsely at the instance of Meharban Ali or that there was any special enmity brewing between the accused and Meharban Ali. No such suggestion has been given to Meharban Ali PW-5 either.

17. The eye-witnesses i.e. PW-3 and PW-1 have given clear and cogent versions; the picture has been depicted clearly; the incident had occurred at 9.15 PM; Investigating Officer had reached the spot along with his police personnel at 9.45 PM; at that time the injured had already been removed to the hospital. At the hospital, the Investigating Officer learnt that victim had succumbed to his injuries and he was brought dead. He did not meet any witness at the hospital. He returned to the spot where he met Meharban Ali PW-5, the father of victim. Statement of PW-5 was recorded and the rukka was dispatched on this statement at 12.15 PM. The time gap between the incident and the dispatch of the rukka is fairly minimal keeping in view the intervening happenings i.e. the Investigating Officer reaching the spot at Arvind Nagar, going to the Guru Teg Bahadur Hospital and learning about the victim having succumbed to his death and then again returning back to the spot. PW-5, in his cross-examination, has categorically stated that till the time when his statement Ex.PW-5/A was recorded he had not met his daughter; this is thus clearly the reason why the name of Khurshid appeared in Ex.PW-5/A only as a suspect and the eye-witnesses account has not been detailed therein.

18. The rukka was dispatched at 12.15 PM i.e. in the early morning hours of 18.8.1997. Statement of the eye-witnesses i.e. PW-3 and PW-1 have been recorded on the same day i.e. 18.8.1997

itself. PW-23 the Investigating Officer has in his cross-examination stated that he had recorded the statement of Zarifa @ Natho after one hour of having sent the rukka; the statement of Neeraj was recorded at 11.00AM; this has been admitted by Neeraj in his cross-examination. There is no delay in recording the statements of the eye-witnesses. Testimonies of the eye-witnesses inspire confidence and there is no reason why they should be disbelieved; the eye-witnesses had along with Nasir removed the injured to the hospital and this has been corroborated by both PW-3 and PW-1. Non-examination of Nasir does not in any manner dent the version of the prosecution.

19. The judgment relied upon by the learned defence counsel to substantiate her submission that the incriminating circumstance of PW-3 having witnessed the incident not having been put to the accused, vitiates the trial, is clearly distinguishable and not applicable to the facts of the instant case. In that case accused had been convicted by the High Court for the offence of murder; 12 witnesses had been examined; in his statement under Section 313 Cr.P.C. the incriminating circumstance of the appellant having fired the gun had not been put to the accused; it was in the said facts and circumstances that the Supreme Court had held the conviction required an interference. In the present case, while recording the statement of the accused under Section 313 of the

Cr.P.C. accused has been specifically questioned that in the presence of PW Neeraj in front of the house of Zarifa, you i.e. the accused Khurshid Ahmed and his accomplices had fired gun shots at the deceased; the sum substance of the accusation that Khurshid Ahmed had fired from his gun had been put; accused was well aware of this charge; merely because the point that this was also in the presence of PW-3 has not been put does not in any manner prejudice or bias the defence of the accused; the accused was well aware of this accusation leveled against him. PW-3 had also been subjected to a lengthy four page cross-examination and she has been questioned on all possible aspects including the aspect of her presence at the spot.

20. There is no doubt to the proposition that scope of Section 313 Cr.P.C. is not an empty formality and there is a purpose behind the examination under the said provision of law. It is, however, to be kept in mind that what is the effect of not putting a particular incriminating circumstance to the accused; does it lead to a prejudice and a subsequent denial of justice; if not; the accused is not permitted to take the benefit of the same. Mere non-examination or a defective examination under Section 342 of the Cr.P.C. 1998 (Section 313 of the new Code) unless prejudice or miscarriage of justice is established is not a ground for interference. See Vibhuti Bhushan vs. State of West Bengal AIR 1969 SC 381.

21. An extra-judicial confession had been made by the accused to Izaz Ali PW-30 wherein the accused Khurshid had inculpated himself. PW-30 had on oath deposed that on 17.8.1997, at about 10 PM accused Khurshid had come to his house and told him that he had gone to the house of Natho to meet her and at that time a quarrel took place between him and Dr.Irfan as a result of which he caused injuries to Dr.Irfan. He i.e. the accused told PW-30 to settle the matter between them. PW-30 made a telephone call to the house of Dr.Irfan wherefrom he learnt that Dr.Irfan had been removed to hospital as he had sustained injuries. He thereafter learnt that Dr.Irfan had died. In his cross-examination this witness has stated that the accused has come to his house between 9.45PM to 10.00PM. He denied the suggestion that he had implicated the accused in a false case in an earlier matter or that he is deposing falsely.

22. An extra-judicial confession is a weak evidence and taken by itself it may not be always be sufficient to nail the accused; yet the version of PW-30 has corroborated the testimony of the eye-witnesses. Nothing has emerged in his cross-examination which could discredit him; the suggestion that PW-30 had implicated the accused in an earlier case is neither here nor there as no details of any such earlier case have been elicited in this cross-examination; if this was a genuine defence nothing

prevented the accused from producing the record of that case to substantiate this suggestion. PW-30 has given a reliable version.

23. Accused was absconding and it was only pursuant to a secret information that he was arrested on 18.8.1997. He had made three disclosure statements. The first disclosure statement Ex.PW-25/A was made on 19.9.1997 and as per this disclosure, the accused had disclosed that he could point out the place of occurrence, the hotel where the conspiracy had been hatched, the place where he had thrown the bullets as also the role of his co-accomplices. No recovery had, however, been effected pursuant to this disclosure statement. The second disclosure statement PW-24/A of the accused was recorded on 20.9.1997. As per this disclosure statement, the accused had disclosed that the weapon of offence could be got recovered by him from the house of his 'Mama' at Ghat Kopar, Bombay and he had hidden it in the tand of his house. No recovery was effected pursuant to this disclosure statement either. A third disclosure statement Ex.PW-25/B of the accused was recorded on 21.9.1997. Pursuant thereto on the same day i.e. on 21.9.1997 the accused pointed out the place where his co-accused Dulare was residing. This was vide memo Ex.PW-24/D. Vide memo Ex.PW-24/E accused had pointed out the place of occurrence as also the place where he had thrown the bullets but nothing could be retrieved. On 23.9.1997 the accused had led the

police party to the ganda nala Brijpuri near the pulia towards eastern side and pointed out the place where he had thrown the katta after keeping the same in a polythene. The deshi katta was taken into possession vide memo Ex.PW-24/G.

24. The submission of the learned defence counsel that the recovery of the katta had been effected on 24.9.1997 is a wrong fact. The accused had up to 23.9.1997 only pointed out the place of occurrence; the residence of his co-accused and the place where the bullets had been thrown by him. On the day of the recovery i.e. on 23.9.1997 he had led the police party and after pointing out the place where he had thrown the weapon of offence, he had thereafter got the same recovered. Argument of learned defence counsel on this point that the police knew the place of recovery on 19.9.1997 is thus without any substance.

25. Learned defence counsel has further submitted that the place of recovery is a public place which is accessible to all and the deshi katta was not any special weapon having any special mark of identification; it is a weapon easily available in the market and as such there is every possibility that the same has been planted.

26. The witnesses to the recovery, besides PW-31 are PW-24 and PW-29. PW-24 has on oath deposed that accused had in their presence pointed out the place where he had thrown the weapon i.e. deshi katta in the nala; PW-29 and PW-24 had entered

inside the nala and after about 5-7 minutes they found a yellow coloured polythene inside the nala and on opening it they found a country made pistol. In his cross-examination PW-24 had deposed that there was mud inside the nala wherefrom it was retrieved.

27. From this evidence adduced by the witnesses to the recovery it has emerged that the weapon of offence was lying inside the mud in the ganda nala and after cleaning the mud which took more than 5 to 7 minutes, they retrieved this weapon of offence; it was not recovered from an open area Inspector Ravinder Kumar PW-31 has categorically deposed to this effect; he was joined by Const.Rameshshwar PW-29 and Const.Virender Singh PW-24. All the said witnesses have corroborated one another on this score. Recovery stands established.

28. This weapon of offence recovered on 23.9.1997 was deposited in the Malkhana on the same day and this is the categorical version of PW-28 the Malkhana Incharge. On 18.11.1997 it had been sent through Const.Ram Niwas PW-27 to the ballistic expert. The ballistic expert Sh.K.C.Varshney has come into witness box as PW-15. He deposed that on 19.11.1997 he had received one sealed parcel which contained a country made pistol .315" bore which was in working order and report to this effect is Ex. PW-15/A. Vide report Ex. PW-15/B the two bullets retrieved from the dead body and received in the Ballistic Division through

the Biology Division had been examined and as per this report the said bullets corresponded to bullets of 8mm/.315" bore.

29. This piece of evidence has established that the bullets which had killed the deceased were fired from a 8mm/.315" bore pistol which was the pistol recovered at the instance of the accused.

30. A firearm is a generic term for various weapons throwing a missile by the propelling power generated by a charge of explosives which includes rifles and pistols (deshi katta). The Post-Mortem Doctor PW-11 had deposed that the fatal injury i.e. the injury no.2 had been caused by a rifled bore firearm. In his cross-examination he has reiterated this version and has stated that this injury was not from a smooth firearm; on further query about the length of the firearm PW-11 has stated that this pertains to the ballistic expert and he has no knowledge of firearms. The ballistic expert has been examined as PW-15. No cross-examination has been effected of this witness about the resultant difference of firing from a rifled firearm or the injury which could result of firing from a deshi katta. It was for the accused to have cross-examined the expert witness to elicit a distinction, if any, between an injury caused by a rifled firearm and the injury which could be the result of a bullet fired from a deshi katta; in the absence of which this argument of the learned defence counsel has no force. Learned defence counsel is even otherwise not clear as what is the

distinction between the injury from a rifled firearm or a smooth firearm or from a deshi katta. We also note that the sketch of the katta Ex.PW-24/G shows that the barrel is fairly long; i.e. 14.5 cm in length; quite akin to a rifle.

31. The motive for the offence has been depicted in the version of PW-3 as also PW-5. Both the daughter and the father i.e. Zarifa and Meharban Ali have deposed that the accused was working as an employee with the deceased till about four years ago and he had been thrown out of service as he had an evil eye on PW-3. He nevertheless continued to threaten PW-3 and her deceased husband and even on the day of the incident as per the version of both these witnesses threatening calls had been received by PW-3 from the accused. This threatening call had also been heard by PW-1 and corroborated by him on oath. Accused has apparently wanted to vent out his vengeance against the deceased.

32. All these cumulative factors i.e. the version of eye-witnesses i.e. PW-3 and PW-1, the extra-judicial confession made by the accused to PW-30, the motive for the crime, the accused absconding for more than one month and thereafter having got recovered the deshi katta which as per expert evidence was a pistol of .315" bore which corresponded in size to the bullets retrieved from the dead body conclusively point towards the guilt of the accused.

33. Judgment of the trial Court calls for no interference. Appeal is without any merit; it is dismissed. Bail bond and surety bonds are cancelled; accused shall surrender forthwith to suffer the remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

11th September, 2009
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