

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

+ **W.P.(C) 5331/2006**

ANJU @ PANKAJ Petitioner
Through Mr. Narender Sharma, Advocate.

versus

STATE & ANR Respondent
Through Ms. Zubega Begum, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
% **14.09.2009**

1. The petitioner claims compensation on account of death of her husband Mr. Rajesh Yadav @ Talli on 28th November, 2003 in a shoot out at Tis Hazari Court. Late Mr. Rajesh Yadav was an under trial accused in judicial custody and was produced before the Additional District Judge, Tis Hazari Court, Delhi on the said date. After appearing, Mr. Rajesh Yadav was taken back to the judicial lock up, when suddenly a person came from behind and fired gunshots resulting in his death. The respondents have filed the inquest report under Section 176 of

the Code of the Criminal Procedure. As per the inquest report, Mr. Rajesh Yadav had died because of fire arm projectile fired from a rifled firearm.

2. The respondents in their counter affidavit have stated that one Mr. Prem Chand, who had fired at Mr. Rajesh Yadav was over-powered by the police officials and a Chinese Mouser was recovered. The said Prem Chand is now facing trial for murder and other offences.

3. Mr. Rajesh Yadav while in hospital had made a statement before the doctors that one Mr. Mahender Pehalwan and his associates were involved in the attack.

4. The admitted position is that late Mr. Rajesh Yadav was an under trial prisoner and after production before the learned Additional Session Judge he was taken back to the judicial lock-up, when the incident took place. Constable Ramesh Chand had remained with Mr. Rajesh Yadav throughout. When Mr. Rajesh Yadav and Constable Ramesh Chand reached the interview grills of the lock up, a gunshot was fired, which hit window panes of a car. Immediately, thereafter second shot was fired and the said shot hit the accused Mr. Rajesh Yadav from the back side. Mr. Rajesh Yadav turned, Mr. Prem Chand then fired another

shot which hit Mr. Rajesh Yadav in the front. Immediately, Mr. Rajesh Yadav was taken to Bara Hindu Rao Hospital. The assailant was over powered and captured.

5. As per the respondents, deceased Mr. Rajesh Yadav was involved as many as in 17 cases under different provisions of Indian Penal Code and Arms Act in Delhi and outside Delhi. To what extent past record of the deceased was responsible for this attack is debatable. The respondents have disputed and denied that there was any negligence on their part. Whether or not adequate precaution or care was taken by the police requires oral evidence and is a disputed question of fact. What was the cause and motive behind the murder cannot be decided in a writ petition. The writ petition is accordingly not entertained, leaving open to the petitioner to file appropriate proceedings before another forum, if so advised.

SEPTEMBER 14, 2009
NA

SANJIV KHANNA, J.