

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

Date of Hearing : 26th May, 2011

Date of Decision : 6th June, 2011

+ **CRL.A. No. 385/2011**

SURESH CHAND SHARMA

... APPELLANT

Through: Ms. Ritu Gauba, Advocate.

Versus

THE STATE (NCT OF DELHI)

...RESPONDENT

Through: Mr. Jaideep Malik, APP for the State.
Mr. Siddharth Aggarwal with
Ms. Anu Bagai, Mr. Bhuvan Mishra,
Mr. Aditya Wadhwa for the Complainant.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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

J U D G M E N T

G.P. MITTAL, J.

Crl. M.A. No.4692/2011 (u/S 24 (8) r/w S. 301 Cr.P.C.) in CRL.A. No. 385/2011

1. For the reasons stated in the application, the same is allowed.

CRL.A. No. 385/2011

2. By the judgment dated 14.12.2010 and the order on sentence dated 15.12.2010 the Appellant was convicted for the offence punishable under Section 302/307 of the Indian Penal Code (IPC) and under Section 27 of the Arms Act, 1959 and was sentenced to undergo imprisonment as under:-

“(i) to undergo imprisonment for life and to pay a fine of ₹ 3,000/- in default simple imprisonment for six months under Section 302 IPC.

(ii) to undergo rigorous imprisonment for seven years and to pay a fine of ₹ 3,000/- in default simple imprisonment for six months under section 307 IPC.

(iii) to undergo rigorous imprisonment for three years and to pay a fine of ₹ 3,000/- in default simple imprisonment for six months under Section 27 Arms Act, 1959.”

Feeling aggrieved, the Appellant has filed the present criminal Appeal.

3. The prosecution case is that Suresh Chand Sharma (the Appellant) was working as a Machine Operator in FILO Pvt. Ltd. (FILO) owned by PW-1 Mrs. Natasha Kohli. On 16.11.2000 at about 12:00 noon the Appellant walked into PW-1's office. He took out a country made pistol from the pocket of his *Kurta* and aimed it at PW-1's head. The Appellant pulled the trigger but the *Katta* did not go off. PW-1 was dictating something to Prachi Bhargava, the Production Manager (in FILO) across the table. PW-1 screamed, inviting attention of P.V.V.S. Murthy (the deceased) who was at the reception (counter). The deceased went inside the office, caught hold of the Appellant from the back. He pulled the Appellant outside the office. PW-2 Dinesh also helped the deceased in leading the Appellant out of the office. The deceased and Dinesh tried to snatch the country made pistol from the Appellant. He (the Appellant) pulled the trigger, resulting in a shot landing in the deceased's abdomen. The deceased fell down on the ground; the Appellant tried to escape on his motorcycle, No.DL-3SU-8268. PWs 2 and 7 tried to apprehend the Appellant. He was, however, successful in escaping from the spot, leaving his motorcycle outside the FILO office.
4. The deceased was taken to Batra Hospital. A case under Section 307 IPC was registered on the basis of statement of PW-2 Dinesh recorded by PW-13 SI Satender Sangwan, Incharge, Police Post, IGNOU. The deceased succumbed to his injuries on 30.03.2001 and the case was converted to one under Section 302 IPC. Autopsy on the dead body was performed and after completion of the investigation a report under Section 173 Cr.P.C. was filed in the Court.
5. A charge for the offence punishable under section 304 Part-II IPC and section 27 of the Arms Act, 1959 was framed against the Appellant by order dated 22.05.2002.

6. While substantial evidence had been recorded, by order dated 07.11.2006, the charge under Section 304 Part II IPC was altered to the one under Section 302 IPC for attempting the murder of PW-1 and for the offence punishable under Section 302 IPC for committing murder of P.V.V.S. Murthy. The Appellant was given an opportunity to recall the witnesses examined before the amendment of charge. The Appellant declined to recall any of the witnesses and the trial proceeded further.
7. In order to establish its case, the prosecution examined 17 witnesses. PW-1 Mrs. Natasha Kohli, PW-2 Dinesh, PW-3 Sushil Kumar Soni and PW-7 R.K. Dubey are the eye witnesses of the incident; PW-10 Dr. T. Millo, PW-12 Dr. Ashish Jain, PW-16 Dr. Avnish, PW-17 Dr. Vijay Hangloo deposed about the admission, treatment and postmortem examination on the dead body of P.V.V.S. Murthy. PW-13 SI Satender Sangwan is the IO.
8. On closure of the prosecution evidence the Appellant was examined under Section 313 Cr.P.C. in order to enable him an opportunity to explain the incriminating evidence against him. The Appellant denied his presence at the spot on the day and time of the occurrence. He stated that he was innocent and was implicated falsely in the case. He stated that his employer PW-1, whilst in Court for testifying in 2006, had asked him to implicate her husband in the case and that as a result she would withdraw the case against him. She also sent her brother and driver to Central Jail No.4 where he was lodged. He, however, declined to accept PW-1's offer.
9. The Trial Court, by the impugned order convicted the Appellant for the offences punishable under Section 307, 302 IPC and Section 27 of the Arms Act, 1959. The Trial Court held that minor contradictions and discrepancies are bound to occur in the testimony of truthful witnesses, particularly, when an incident like firing takes place. It was held that there was no motive to falsely implicate the Appellant, by PW-1 or any other witnesses. The Appellant had the intention to cause bodily injury actually caused on the deceased P.V.V.S. Murthy. The plea to convert the offence under Section 304 IPC, therefore, also failed.

10. We have heard Ms. Ritu Gauba, learned counsel for the Appellant, Mr. Jaideep Malik, learned Additional Public Prosecutor (APP) for the State and Mr. Siddharth Aggarwal, learned counsel for the victim and have perused the record.
11. Following contentions have been raised on behalf of the Appellant:-
 - (a) The Appellant was not involved in the incident of attempting to open fire at Natasha Kohli or firing at P.V.V.S. Murthy. He was falsely implicated in the case because of his dispute due to leaving employment. According to the prosecution version, at the time the Appellant entered PW-1's office Ms. Prachi Bhargava, Production Manager was taking dictation from PW-1. The said Prachi Bhargava, who was an important witness to describe how the incident started was not produced by the prosecution for reasons best known to it and the Appellant is, therefore, entitled to acquittal.
 - (b) There are discrepancies and contradictions in the testimonies of the prosecution witnesses creating serious doubts in its version. The country made pistol shown to have been recovered from the spot was planted.
 - (c) The conduct of the prosecution witnesses who allegedly took the Appellant out of the office was unnatural as the first reaction in the such circumstances would be to snatch the country made pistol from the hands of the assailant, which was not done.
 - (d) The dying declaration made to PW-13, a police officer and was inadmissible in evidence. Hence, the same cannot be taken into account.
12. It is argued by the learned APP that there was no motive whatsoever for PW-1 or for any other witness to falsely depose against the Appellant or to falsely implicate him. The dispute of his leaving employment or intention of PW-1 to falsely implicate her husband through the Appellant, urged in the defence is unbelievable.
13. The statement dated 21.11.2000 recorded by PW-13 SI Satender Sangwan (IO) of the case was admissible in evidence as the dying declaration can be recorded by any person. The prosecution did not foresee that the deceased would not survive and therefore did not deem it necessary to call any Magistrate for recording P.V.V.S. Murthy's statement.

14. Learned APP submitted that the Appellant may not have had an intention of causing injury in the deceased's abdomen but he definitely had the knowledge that his act was likely to cause death of the deceased.
15. Mr. Siddharth Aggarwal, learned counsel for the victim supported the Trial Court judgment and strenuously canvassed that while determining intention or knowledge, the Court is to see the injury actually caused and if the injury inflicted is sufficient to cause death in the ordinary course of nature, the act of Appellant would amount to murder covered by Clause *thirdly* to section 300 IPC. It is submitted that since the injury caused in this case was sufficient to cause death in the ordinary course of nature, the Appellant cannot escape the conviction under Section 302 IPC.
16. It is not disputed that the Appellant was an employee in FILO owned by PW-1.
17. PWs 1, 2, 3 and 7 have supported the main substratum of the prosecution version i.e. the Appellant pulling the trigger resulting in an injury in P.V.V.S. Murthy's abdomen. The actual infliction of the gun shot injury on P.V.V.S. Murthy was not seen by PW-1. PWs 2, 3 and 7 saw P.V.V.S. Murthy being injured by the gunshot fired by the Appellant.
18. PW-2 deposed that on 16.11.2000 while preparing tea in the kitchen, he heard the noise of someone screaming. On coming out, he saw P.V.V.S. Murthy pulling the Appellant from PW-1's room. He too helped P.V.V.S. Murthy in bringing out the Appellant from the room. He tried to snatch the country made pistol from the Appellant's hand. He (the Appellant) fired the bullet which hit P.V.V.S. Murthy's abdomen. PW-7 R.K. Dubey tried to apprehend the Appellant but he was successful in fleeing.
19. PW-3 Sushil Kumar Soni corroborated PW-2's version and deposed that on 16.11.2000 at about 12:00 noon he was working in the basement. On hearing some noise from the ground floor, he went there and noticed the Appellant being caught from behind by an employee P.V.V.S. Murthy, the deceased. The Appellant had a country made pistol in his hand. The deceased's grip loosened. The Appellant fired a shot which hit the deceased who fell down.

20. PW-7 R.K. Dubey deposed that on 16.11.2000 he was working as a Security Guard in FILO. At about 12:00 noon, while he was standing outside near the gate, he saw PW-2 Dinesh and deceased P.V.V.S. Murthy bringing the Appellant outside the premises of the company. He heard the sound of firing a shot. He immediately rushed towards the Appellant and tried to apprehend him.
21. The learned counsel for the Appellant criticised the prosecution on the ground that there are variations in the testimonies of the three alleged eye witnesses to the occurrence which rendered them unreliable. We do not agree. All the three eye witnesses have stated in unison that the Appellant was forced outside the premises of the company by the deceased and PW-2. All the three are categorical about a shot fired by the Appellant resulting in an injury in the deceased's abdomen.
22. In *Leela Ram v. State of Haryana*, (1999) 9 SCC 525, it was held by the Supreme Court that there are bound to be discrepancies between the narration of various witnesses when they speak about details and unless the contradiction is material, it should not be used to jettison the evidence in its entirety.
23. Similarly, in *Dr. Sunil Kumar Sambhudayal v. State of Maharastra*, 2010 (13) SCC 657, the Supreme Court held as under:-
- “While appreciating the evidence, the Court has to take into consideration whether the contradictions / omissions had been of such magnitude that they may materially affect the trial. Minor contradiction or inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety.”*
24. Thus, we do not find any material contradiction in the testimonies of three eye witnesses to affect the prosecution version.
25. We find the testimony of three eye witnesses to be consistent and reliable about the actual firing by the Appellant and the deceased sustaining injuries.
26. The learned counsel took us through the evidence produced by the prosecution and pointed out the contradictions as to how the country made pistol was thrown on the ground and how the same was recovered by the IO and whether the motorcycle fell down on the ground or was standing while the Appellant allegedly tried to escape.

27. We do not find these discrepancies to be material so as to affect the prosecution case in view of the law laid down in *Leela Ram (supra)* and *Dr. Sunil Kumar Sambhudayal (supra)*.
28. Similarly the conduct of the three eye witnesses in not snatching the country made pistol from the Appellant cannot be said to be unnatural. Different people react differently when faced with the same situation. Rather it is quite natural that any person or for that matter even the employee in a company would try to keep himself away from a co-employee in anger armed with a dangerous weapon like a pistol. In fact, the deceased had to pay dearly for his instinct to serve PW-1 who employed him in the company to earn him bread and butter.
29. It is argued by the learned counsel for the Appellant that the latter's motorcycle had been kept as security by PW-1 and the pistol was planted on him to settle her personal scores and to teach a lesson to an employee. In our opinion, this contention is without any merit and is noted to be rejected. The Appellant tried to build a case that he had purchased a two wheeler scooter on loan given by FILO. The said scooter was sold by him and a new motorcycle was purchased. The motorcycle was retained by the company as PW-1 was of the view that there are certain dues against the Appellant. No specific question was put to any of the witnesses what amount the Appellant had taken as a loan, whether the installments in respect of the scooter purchase were being paid directly by FILO, number of installments and whether the motorcycle was financed by any other company. These were facts within the special knowledge of the Appellant and unless he made a specific case by preponderance of probabilities it had to be rejected as a lame defence.
30. It is contended by the learned counsel for the Appellant that the dying declaration in this case was recorded by a police officer, which is inadmissible in evidence. Reliance is placed on *Gulam Hussain & Anr. v. State of Delhi, 2000 (7) SCC 254*. It is submitted that even if such a dying declaration is held to be admissible, the same is valueless as no effort was made by the IO to get the statement of deceased P.V.V.S. Murthy recorded by a Magistrate before he died on 30.03.2001.
31. We find no merit in this contention. In this case no effort was made by the IO to get the statement of P.V.V.S. Murthy recorded by a Magistrate as the injured

P.V.V.S. Murthy was recovering and died after more than four months of the incident because of septicemia and other complications on account of injuries suffered by him. In these circumstances, the statement of P.V.V.S. Murthy recorded under Section 161 Cr.P.C. became a dying declaration because of his death later, on and was proved as Ex.PW-13/X. PW-13 IO of the case testified that he recorded statement Ex.PW-13/X of the deceased on 21.11.2000 after he was declared fit to make the statement by the doctor. He also deposed that the statement was correctly recorded by him which was read over and explained to him. Obviously, this statement was under Section 161 Cr.P.C. and, therefore, signatures of the deceased were not obtained on it.

32. The Appellant's contention that dying declaration recorded by the IO is inadmissible in evidence on the basis of *Gulam Hussain's case (supra)* is misconceived. In that case, it was not the ratio that a police officer or an investigating officer is not empowered to record a statement of a victim who is dying. There are plethora of judgments to show that anybody including a police officer, a doctor, a Magistrate, a village headman, a friend or a relation can record a dying declaration. The dying declaration can be oral or can be in writing. In *Dalip Singh v. State of Punjab*, (1979) 4 SCC 332, it was held as under:-

"Although a dying declaration recorded by a police officer during the course of investigation is admissible under Section 32 of the Indian Evidence Act in view of the exception provided in Sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfied the Court as to why it was not recorded by a Magistrate or by a doctor."

33. The factum of injuries on P.V.V.S. Murthy at the hands of the Appellant is otherwise proved by ocular evidence as held earlier. The dying declaration recorded by PW-13 IO of the case even if not recorded by a Magistrate cannot be discarded as the IO was not aware that the deceased would die after four months on account of the injuries suffered by him.
34. The question for consideration is whether there was an attempt to commit the murder of PW-1 and whether the act committed by the Appellant amounting to murder or culpable homicide not amounting to murder.

35. In the first part of the incident PW-1 Mrs. Natasha Kohli and Prachi Bhargava were the only witnesses. Prachi Bhargava has not been cited as a witness by the prosecution. It is true that it is not the quantity but the quality of the evidence which is important. However, since there were three other witnesses on the second part of the incident i.e. firing of a gunshot resulting in an injury on P.V.V.S. Murthy there was no necessity to produce Prachi Bhargava as far as the first part of the incident was concerned. But, as far as the first part of the incident is concerned, we just have the testimony of PW-1. Since the FIR was registered on the basis of the statement of PW-2 Dinesh, who was not a witness to the first incident, he did not state anything with regard to the aiming of the country made pistol and pulling trigger by the Appellant towards PW-1.
36. We are conscious of the fact that for the offence of attempt to murder it is not at all necessary that an injury must be caused to the victim. The same may be relevant only for the purpose of awarding punishment. Yet, it was required to be proved by the prosecution that the Appellant not only aimed the pistol on PW-1 but also pulled the trigger and it was only on account of some super intervening event i.e. the pistol not working etc. that PW-1 was able to escape. As per report Ex. PX of FSL, the Pistol Ex.P-1 was found to be in working order and the test fire was conducted successfully. It cannot be disputed that there was some grievance which made the Appellant barge into PW-1's office with the loaded country made pistol. PW-1 thus becomes an interested witness. In view of the fact that country made pistol was in working order as per FSL report Ex. PX and in fact just thereafter a shot was fired which resulted in an injury in P.V.V.S. Murthy's abdomen and consequently his death, it is unbelievable that the Appellant pulled the trigger yet the pistol failed to fire the bullet. For this reason it would be difficult to sustain the conviction of the Appellant for the offence under Section 307 IPC.
37. Now coming to the second question about the intention of the Appellant to cause injury which the deceased suffered. The facts stated earlier are not in dispute about how the injury was caused. The Appellant was being forced outside the office of FILO by the deceased and PW-2 Dinesh. The deceased in fact had

captured the Appellant from behind. It was in that process that the Appellant fired and the injury landed in the abdomen.

38. The deceased was immediately removed to Batra Hospital where he succumbed to the injury on 30.03.2001. (After about four months of the incident). PW-10 Dr. T. Millo, Assistant Professor, Department of Forensic Medicine, AIIMS conducted autopsy on the dead body of P.V.V.S. Murthy and opined cause of death *“septicemia consequent upon fire arm injury which is sufficient to cause death in ordinary course of nature.”*
39. The circumstances under which the deceased sustained the gunshot injury have been dealt by us earlier. At the cost of repetition, we may say that while the Appellant was being taken out by the deceased and PW-2 and was just outside the office when he pulled the trigger and the shot hit in the deceased’s abdomen While this shot was fired by the Appellant the deceased was holding the Appellant from behind and was forcing him out. It is not the case of the prosecution that the Appellant aimed the pistol at the abdomen or any other vital part of deceased’s P.V.V.S. Murthy.
40. The question to be seen is what was the degree of intention / knowledge of the Appellant.
41. *Virsa Singh v. State of Punjab, AIR 1958 SC 465* is an often referred report of the Supreme Court to draw distinction between culpable homicide and murder. In Paras 12 and 13, it was held as under:-

“(12).....the prosecution must prove the following facts before it can bring a case under s. 300, "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; these are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient

to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

(13) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s. 300, "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death....."

42. There may be cases where a single injury intended to be caused and found to be sufficient to cause death in the ordinary course of nature would make the offender guilty of committing murder. In all cases the Court has an onerous duty to find out the intention to cause the injury.
43. In *Jagrup Singh v. The State of Haryana*, AIR 1981 SC 1552, while dealing with a case of single blow, the Supreme Court held as under:-

"6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either Clause Firstly or Clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death".

44. The distinction between culpable homicide and murder was aptly drawn by the Supreme Court in *Kandaswamy v. State of Tamil Nadu*, (2008) 11 SCC 97. We would like to extract Para 9 of the judgment hereunder:-

"9. 11. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically

recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

12. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

Section 299	Section 300
<i>A person commits culpable homicide if the act by which the death is caused is done -</i>	<i>Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-</i>
INTENTION	
<i>(a) with the intention of causing death; or</i> <i>(b) with the intention of causing such bodily injury as is likely to cause death; or</i>	<i>(1) with the intention of causing death; or</i> <i>(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or</i> <i>(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or</i>
KNOWLEDGE	
<i>(c) with the knowledge that the act is likely to cause death.</i>	<i>(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.</i>

45. Turning to the facts of this case, what is required to be seen is whether the Appellant possessed the intention of causing injury in the abdomen which was actually caused or whether the injury was unintentional or accidental.
46. There is nothing to suggest that the injury caused to P.V.V.S. Murthy was accidental. At the same time, it has to be noticed that the Appellant was already captured by the deceased and was being led out with the assistance of PW-2. According to PW-2, he even tried to snatch the pistol from the Appellant. Thus, if the Appellant had any intention, he would have shot or at least caused some harm to PW-2 also. Appellant's act cannot be said to be so imminently dangerous as to draw an inference that in all probability it must cause death of some person.
47. A reference to the report of the Supreme Court in *Daya Nand v. State of Haryana*, AIR 2008 SC 1823 would be most appropriate. In Para 20, it was held as under:-

"20. Clause (c) of Section 299 and Clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid".

48. In *State of Andhra Pradesh v. Rayavarapu Punnayya & Anr.*, 1976 (4) SCC 382, the distinction between culpable homicide and murder was vividly drawn in Paras 20 and 21 of the report which are extracted hereunder:-

"20. Clause (c) of Section 299 and Clause (4) of Section 300 both require knowledge of the probability of the causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that Clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general - as distinguished from a particular person or persons-being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by

the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code".

49. Appellant's act of pulling the trigger without aiming at anybody would be sufficient to clothe him with the knowledge that his act was likely to cause death of the deceased P.V.V.S. Murthy or of someone else. In these circumstances, we are of the view that the Appellant could not have been held guilty of the offence of committing murder of P.V.V.S. Murthy. Rather, he was guilty of the offence of culpable homicide punishable under Section 304 (II) IPC.
50. The possession of the pistol and firing a shot from it is proved for the reasons stated by us earlier.
51. In view of the foregoing discussion, the Appeal has to partly succeed. We, accordingly, acquit the Appellant for the offence punishable under Section 307 IPC; convert his conviction for the offence punishable under Section 302 IPC to one under Section 304 (II) IPC. Consequently, the imprisonment of life awarded to the Appellant under Section 302 IPC is altered to rigorous imprisonment for ten years and a fine of ₹ 3,000/- or in default to undergo simple imprisonment for six

months. The conviction and the sentences awarded under Section 27 of the Arms Act, 1959 are maintained. The sentences shall run concurrently.

52. The Appeal stands disposed of in above terms.

Crl. M. (Bail) No. 516/2011

53. In view of the above, this application has become infructuous, the same is accordingly dismissed.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

JUNE 06, 2011
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