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his life, leaving behind the crestfallen parents.

2. The appellant Parvinder @ Moti challenges his conviction by the impugned judgment dated 1st October, 2013, for having murdered Varun by a gunshot wound on 28th November, 2007. The appellant, by order on sentence dated 22nd October, 2013, has been sentenced to undergo imprisonment for life and pay fine of Rs.20,000/- for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC, for short). In default of payment of fine, Parvinder @ Moti has to undergo simple imprisonment of one year. The appellant has also been sentenced under Section 201, IPC to rigorous imprisonment for three years, fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months. The punishments are to run concurrently and benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) has been granted.

3. The impugned judgment acquits Rajat Passi @ Doctor and Amit @ Amar. Neither the State nor the victim has preferred an appeal against their acquittal and, therefore, the subject matter of the present appeal is the challenge to the conviction and sentence awarded to the appellant Parvinder @ Moti.

4. The prosecution in the present case relies upon the testimonies of eye witnesses, Sachin, Nitin and Yashwant, who had appeared and deposed as PW-1, 2 and 8, respectively. The challenge is to their testimonies and other evidences relied upon by the prosecution. We would refer to the depositions of PWs 1, 2, and 8, and deal with the contentions made and decide the grounds raised.

5. Sachin (PW-1) has deposed that on 28th November, 2007, at

about 6 P.M., he along with Nitin (PW-2) were driving in their car on the Nelson Mandela (Grand) Road, when they received a call from the deceased Varun. They reached a coffee shop at C-6, Vasant Kunj, New Delhi, where deceased Varun joined them. They then went for a drive in Sachin's (PW-1) car. Varun proposed that they should have dinner together. Thereupon, Varun had made a call to his friend Mikhel (*sic*, Michael) as they did not have sufficient money. Mikhel met them in front of B-11, Vasant Arcade and they proceeded to his house and collected money. They drove around in the Vasant Kunj area before parking the car near Vasant Arcade. There, they met Yashwant (PW-8) and Yogender. All of them sat in the car, drove and purchased "fruit beer" from Pushpanjali Petrol Pump, Vasant Kunj. The appellant Parvinder @ Moti spoke to Sachin (PW-1) on his mobile phone and informed he would meet them at Vasant Arcade. When they reached Vasant Arcade, Parvinder @ Moti was present and standing by his car. They exchanged greetings. Parvinder @ Moti took out a pistol from his car and fired in the air. They got scared as it was a public place and there was a police station nearby. Nitin (PW-2) got out from the car. The appellant Parvinder @ Moti then aimed the pistol at Varun, and fired the second shot. Deceased Varun informed Sachin (PW-1) that he had received a bullet injury. PW-1 touched Varun's chest and found that blood was oozing. PW-1 took the deceased to the Fortis Hospital, Vasant Kunj, where Varun was admitted for treatment. The police was informed. After some time, Nitin (PW-2) came to the hospital. Varun's parents and others also came there. Subsequently, Varun was declared dead. Sachin (PW-1) identified the present appellant in the Court. The car bearing registration No.DL9CH-0111 involved in the occurrence, was

produced by PW-1, and marked Ex.P-1.

6. The deposition-in-chief of Nitin (PW-2) is similar and equally unequivocal. On 28th November, 2007 at about 6 P.M., he and Sachin (PW-1) were roaming on Nelson Mandela Road in a car. Subsequently, Varun joined them. They had visited a coffee shop at Vasant Kunj. Request was made by Varun to Mikhel for money, consequent to which they visited Mikhel's house for the said purpose. They met Yashwant (PW-8) and Yogender and purchased "fruit beer" from Pushpanjali Petrol Pump and had called on the mobile phone of the appellant Parvinder @ Moti. Nitin (PW-2) identified the present appellant Parvinder @ Moti and testified that Parvinder @ Moti in his Maruti Esteem car had come to the Vasant Arcade Market. They had exchanged greetings and then appellant Parvinder @ Moti took out a fire-arm from his car and fired in the air. PW-2 got down from the car as it was a public place and the police station was also nearby. He affirmed that Parvinder @ Moti had then aimed and fired at Varun, who was sitting in the car. Varun told them that he had received a bullet injury. Sachin (PW-1) placed his hand on the chest of Varun and noticed blood. PW-1 then drove Varun to the hospital. Nitin (PW-2) remained there and had asked the appellant Parvinder @ Moti to take him to the hospital. Thereupon, the appellant Parvinder @ Moti dropped PW-2 in his car at the gate of the Fortis Hospital, Vasant Kunj. The appellant did not go inside the hospital.

7. Yashwant (PW8) has accepted his presence at the spot on 28th November, 2007 at the time of firing. He had earlier seen the vehicle of Sachin (PW1) standing near Vasant Arcade, whom he knew as a native from his village. He along with his friend Yogender sat on the back seat of the car of Sachin (PW1), with Nitin (PW2). Sachin was

driving the car and the deceased Varun was sitting on the front passenger seat. He knew the deceased Varun as he was his classmate. They had gone to an outlet at Pushpanjali Petrol Pump at 7:15 or 7:20 PM to purchase 'fruit beer'. Thereafter, Varun attended a call on Sachin's phone pursuant to which they returned to Vasant Arcade to meet someone. Outside Vasant Arcade, a person got down from his Esteem car and had greeted the deceased Varun and Sachin (PW1). PW8 did not know the said person. PW8 further deposed that the said person took out a pistol from his car and fired in the air. Within a few seconds, he again fired towards the deceased Varun. Varun had then informed that the bullet has hit him and PW8 had seen blood on Varun's left chest. Thereupon, Yashwant (PW8), Yoginder and Sachin (PW1) had taken Varun to Fortis Hospital in Sachin's (PW1) car. He and Yoginder went back home and later came to know that Varun had died.

8. The aforesaid testimonies are not only believable but also inspire trust and confidence to be accepted as the true and correct version that the appellant Parvinder @ Moti had come in his own car near Vasant Arcade Market. He had exchanged greetings with Sachin (PW-1), Nitin (PW-2) and the deceased Varun. Thereafter, the appellant had taken out a fire arm from his car and fired in the air, upon which Nitin (PW-2) became scared and alighted. The appellant Parvinder @ Moti stood by the side window adjacent to the left passenger seat of the car. The appellant Parvinder @ Moti purportedly aimed and fired the second shot resulting in a gun-shot wound to Varun (The contention regarding "aimed and fired" has been examined separately). Sachin (PW-1) took Varun in his car to the Fortis Hospital along with Yashwant (PW-8) and Yogender. Nitin

(PW-2) had then asked the appellant Parvinder @ Moti to take him to the said hospital. The appellant Parvinder @ Moti dropped Nitin (PW-2) at the gate of Fortis Hospital.

9. The presence of Sachin (PW-1) and Nitin (PW-2) at the spot is not doubted by the appellant. Learned counsel appearing for the appellant, has also accepted that the cause of death was fire arm injury. What is disputed is the involvement of Parvinder @ Moti and the factum that he had fired or used the fire arm. The assertion of the appellant being that Sachin (PW-1) or Nitin (PW-2) could well be and in fact were the perpetrators. It was urged that mother of the deceased Varun, Madhu Malik knew and was aware that Sachin (PW1) and Nitin (PW2) were involved and were the perpetrators. She had filed Crl. Misc. Appl. No.1972/2008 before the High Court of Delhi. However, Madhu Malik was not examined as a prosecution witness in the present appeal. She, it is alleged, had last spoken to deceased Varun on mobile phone at 7:46 PM on 28th November, 2007. She was the crucial and vital witness who would have heard and narrated the dying declaration made by deceased Varun immediately after the incident while being taken to the hospital. Our attention is drawn to the Call Record Details (CRD, for short) marked as Ex.PW30/DB relating to mobile phone No.9811072727 belonging to the deceased Varun. It is highlighted that the statements of Sachin (PW1) and Nitin (PW2) under Section 161, Cr.P.C. were recorded on 13th December, 2007, and it is alleged that both of them had 'connections' and contacts in Delhi Police. On the question of deposition of Yashwant (PW8), it is alleged that his statement under Section 161, Cr.P.C. was recorded on 10th December, 2007, 12 days after the occurrence. On the question of delay in recording of statement under Section 161,

Cr.P.C. and the legal effect, reliance is placed upon the decisions of the Supreme Court in *Maruti Rama Naik versus State of Maharashtra* 2003 (10) SCC 670, *Harjinder Singh @ Bhola versus State of Punjab* 2004 (11) SCC 253, *Jagjit Singh alias Jagga versus State of Punjab* 2005 (3) SCC 689 and *State of U.P. versus Gambhir Singh & Ors.* 2005 (11) SCC 271. It is submitted that presence of Yashwant (PW8) at the time of firing is a concocted and false assertion. Yashwant (PW8) and his friend Yoginder had left the spot before the incident of firing. It is highlighted that Yashwant (PW8) was not present in the hospital.

10. We have considered the contentions but do not find substantial merit to acquit the appellant Parvinder @ Moti. The contention of the appellant that Madhu Malik, mother of the deceased, was the person who had last spoken to deceased Varun and would have deposed as to the dying declaration is rather far-fetched and too presumptuous to be believed. Madhu Malik was cited as a witness in the charge-sheet but was dropped as she was bed-ridden (see order dated 16th October, 2012 passed by the Trial Court). None of the witnesses including Sachin (PW1) and Nitin (PW2) were cross-examined on the said aspect. Even the Investigating Officers, namely SI Mahinder Lal (PW28), Insp. Rajender Pal (PW30), Insp. Satyavir Singh (PW4) and Insp. Satish Sharma (PW41) were not subjected to any cross-examination, alleging that Varun had made a dying declaration to his mother. It is noticeable that the appellant had filed an application bearing CrI. Misc. Appl. No.9374/2014 under Section 391 read with Section 482, Cr.P.C. for taking on record true copy of CrI. Misc. No.1972/2008 as additional evidence but later on as recorded in the order dated 14th January, 2015, the Senior Advocate appearing for the

appellant, on instruction, had stated that he would be only pressing for placing on record the orders dated 11th August, 2009, 16th September, 2009 and 13th September, 2010 passed by the High Court in Crl. Misc. Appl. No. 9374/2014. The said orders were collectively marked as Ex.HC/1. Nowhere in the said orders is there any indication or assertion to the effect that the deceased Varun had made a dying declaration informing Madhu Malik about the perpetrators. In fact, the assertion that Varun Malik had made a dying declaration to Madhu Malik is not supported by the CRD (Ex.PW30/DB). It is apparent from the said records that Varun had received two incoming calls from telephone number 9310006177 at 7.14 PM and then at 7.35 PM on 28th November, 2007. It is stated that 9310006177 was the telephone number of Madhu Malik. The last call on 7.35 PM was received when deceased Varun was connected through Cell Tower No.1333, located at Munirka. Thereafter, another call was received by deceased Varun on his mobile No.9811072727 from his father's mobile phone No.9810006177 at 7:46 PM and this call was connected through cell tower No.1213, located at Aruna Asaf Ali Road, Vasant Kunj. Father of the deceased Varun, namely Sulekh Malik was examined as PW6. In his court deposition, he had stated that he had spoken to his son, the deceased Varun after receiving a call from his wife who had informed him that Varun appeared to be in some distress. PW6 has alleged that Varun, in his conversation with him, had informed him that he was shot by appellant Parvinder @ Moti. Thereafter, he had received a call from his nephew Amarjeet who had informed him that his son Varun was shot dead by the appellant Parvinder @ Moti. We would refer to the deposition of Amarjeet (PW3) subsequently, but at first we refer to the testimony of Sulekh Malik (PW-6).

11. Sulekh Malik (PW6) has not stated that Madhu Malik had informed him that Varun had been shot or that Sachin (PW-1) or Nitin (PW-2) had shot Varun. Noticeably, no suggestion was given to Sulekh Malik (PW6) that Madhu Malik was informed by Varun that he had been shot or he had named the perpetrator. We have referred to the deposition of Sulekh Malik (PW6) in detail only to dispel the argument of dying declaration raised by the appellant. However, we agree with the trial court that the deposition of Sulekh Malik (PW6) on his conversation with deceased Varun should not be accepted as this was not what was purportedly stated by Sulekh Malik (PW6) in his statement under Section 161, Cr.P.C. (Ex.PW6/DA). It is not the prosecution case that the deceased had made any dying declaration to Sulekh Malik (PW6).

12. At this stage, it would be appropriate to refer to the testimony of Amarjeet Malik (PW3), who was also the complainant. Deceased Varun was his cousin. He has deposed that on 28th November, 2007, at about 7:40 PM, he was present in Safdarjung Hospital when he had received a call from Nitin (PW2) informing that Parvinder @ Moti had shot dead Varun near B-10 Market, Vasant Kunj. The call was received on his mobile-phone No.9811210202. Nitin (PW2) had also informed him that he along with Sachin were taking Varun to Fortis Hospital. He reached Fortis Hospital and came to know that Varun was admitted to the casualty ward. After 25-30 minutes, the doctors informed him that Varun had died. He accepted that Sachin (PW1) had met him in the hospital. In the cross-examination, PW-3 affirmed that he had also seen Nitin in the hospital. We would like to reproduce the complaint made by Amarjeet (PW3) marked (Ex.PW3/A), which had resulted in registration of FIR No.815/2007,

P.S. Vasant Kunj. The same reads:

“I am residing at address mentioned above i.e. C-61, Third Floor, Arjun Nagar, Delhi. I am doing business of Imports and Exports. On 28.11.2007 at about 7.40 pm, I was present at Safdarjung Enclave. Nitin @ Tinu called me on phone and told about Varun, having been shot by one Moti and that he i.e. Nitin accompanied by Sachin was taking Varun to Fortis Hospital. Hearing all this, I rushed to said hospital and reached there within 15 minutes. I found my cousin Varun undergoing treatment in emergency ward. After some time, treating doctor declared Varun as dead. I have been told by the doctor that Varun had suffered bullet injuries in his chest. Sachin, who was already known to me also told about Moti, son of Mr. Rohtash having fired twice. One bullet struck against Varun.”

(The aforesaid translation is reproduced from the impugned judgment)

13. Presence of Sachin (PW1) and Nitin (PW2) at the hospital is affirmatively asserted by Dr. Subrata Gorai (PW14), Doctor of the Fortis Hospital. He has testified that on 28th November, 2007 at 7:40 PM, he was coming to the hospital from Gate No.2 and had seen a car stop near the main gate of the hospital. An injured patient was ‘falling out’. He had rushed to help the patient and a ward boy came with a wheel chair. The patient was put on the wheel chair. In the meanwhile, the car went out gate No.2. PW-14 could not see the car number as he had to rush the patient to the emergency. The patient had no vital signs and was unconscious. He noticed two wounds: one on the left and one on the right side of the chest of the patient, which on examination looked like gun-shot wounds. They tried to revive the patient. At 8:41 PM, the patient was declared dead. PW-14 had prepared and signed the MLC (Ex.PW14/A). He testified that the wound on the left side was the entry wound and the one on the right side of the chest was the exit wound of the bullet. As the wound on the left side of the chest was higher to the one on the right side, the bullet,

he opined, was fired from a height and had traversed downwards. The MLC (Ex.PW14/A) records the name of the deceased as Varun Malik and that the patient was brought by an unknown person. The words “unknown person” is also mentioned in the history. However, the name ‘Sachin’ is also added above the words, “unknown” at the two places in the MLC (Ex.PW14/A). On the aforesaid aspect, Dr. Subrata Gorai (PW14) testified that as the patient was left at the doorstep, the MLC initially recorded the name of the person who had brought the patient as ‘unknown’. After about 15-20 minutes, one person by the name of ‘Sachin’ had come and informed that he had brought the patient. Accordingly, his name was entered and recorded in the MLC. We have no reason, whatsoever, to disbelieve the said version of Dr. Subrata Gorai (PW14).

14. The statement of Amarjeet Malik (PW3) was recorded by SI Mahinder Lal (PW28) who has, on solemn oath, stated that he had met Amarjeet Malik (PW3) in the hospital and after recording his statement, had made an endorsement for getting the FIR (Ex.PW21/B) registered. Thereafter, Rajender Pal (PW30), the SHO, reached the hospital and interrogated Sachin (PW1) and Nitin (PW2) who were present in the hospital after the occurrence. He has deposed that, thereafter, they went to the place of occurrence, i.e. B-10 Market, Vasant Kunj, Nelson Mandela Marg and a site plan (Ex.PW30/C) was prepared at the instance of Sachin (PW1). From the spot, empty cartridge with words, “KF 7.65” engraved on it was seized and sealed. Another empty cartridge with the same serial number was found in the car of Sachin. He identified the said empty cartridges as Exs.PY-1 and PY-2. He also identified the pistol marked Ex.PX which was recovered at the instance of appellant Parvinder @ Moti.

15. Parvinder @ Moti had surrendered in the court on 1st December, 2007. SI Mahinder Lal (PW28) was present at that time along with Insp. Satyavir Singh (PW40) and SHO Insp. Rajender Pal (PW30). The appellant, thereafter, was arrested and sent on police remand for a period of 5 days. The appellant had made a disclosure statement (Ex. PW28/6) and a supplementary Disclosure statement (Ex. PW25/B). Pursuant to the supplementary disclosure statement (Ex. PW25/B), a pistol was recovered from the bushes along the road near petrol pump, and a sketch (Ex. PW25/C) was prepared by HC Vijender Kumar (PW25), who was present.

16. HC Vijender Kumar (PW25) has similarly deposed about the surrender by appellant Parvinder @ Moti in the court on 1st December, 2007 and that he was interrogated by Insp. Satyavir Singh (PW40) on 2nd December, 2007, when another disclosure statement (Ex. PW25/B) was recorded. He deposed that the appellant had taken the police party to Delhi Cantt., near Palam Road and IOC petrol pump where a pistol bearing words, 'Petro and Brata Auto Pistol' was recovered near the bushes. The pistol was shown after opening the sealed envelope bearing the seal of FSL and marked Ex.PX.

17. SI Mahinder Pal (PW28) had also stated that Insp. Rajender Pal Singh (PW30) had interrogated Sachin (PW1) and Nitin (PW2) at the hospital and the crime team was called to the spot. The crime team had also taken photographs at the spot as also of the cartridge recovered from the car. On being confronted with the photographs, he was not sure that the photographs were taken from spot or at the police station, Vasant Kunj (Trial court records have different sets of photographs of the Honda City car). He denied the suggestion that statements of

Sachin (PW1) and Nin (PW2) were not recorded initially to give different angle to the entire case. Inspector Rajender Pal (PW30) has deposed about the recovery of the two fired cartridges from the place of occurrence and the Honda City car and the fact that he had met Dr. Subrata Gorai (PW14) in the hospital and had taken and sealed the clothes worn by the deceased Varun. He identified the fired cartridges cases (Exs.PY-1 and PY-2). He also identified the clothes worn by the deceased and photographs of the Honda City car. He asserted that he had interrogated Sachin (PW1) and Nitin (PW2) and also Amarjeet Malik (PW3). However, he did not find any bullet leads or pellets in the car. In his cross-examination, he had accepted that Sachin (PW1) and Nitin (PW2) used to regularly visit the police station, Vasant Kunj, after 28th November, 2007 till 7th December, 2007 as long as the investigation remained with them. Assistant Commissioner of Police and Deputy Commissioner of Police had also interrogated both of them but their statements were not recorded under Section 161, Cr.P.C. as they were themselves suspects. He denied the suggestion that Sachin (PW1) and Nitin (PW2) had stated it was a case of accidental firing or that the deceased Varun had tried to snatch the weapon, which fired accidentally. He denied the suggestion that it was a case of negligence which had been given a different colour.

18. We are inclined to accept the deposition of Insp. Rajender Pal (PW30) on the aspect as to why the statements of Sachin (PW1) and Nitin (PW2) were not recorded under Section 161, Cr.P.C. It is noticeable that the names of Sachin (PW1) and Nitin (PW2) find mention in the FIR (Ex.PW21/B) and the statement of Amarjeet Malik (Ex.PW3/A). To this extent, we do not accept the version given by Insp. Satyavir Singh (PW40) in his cross-examination that no person

by the name of Sachin and Nitin had met him during the investigation. Insp. Satyavir Singh (PW40) was investigating officer of the case from 1st to 4th December, 2007. He was the investigating officer till 4th December, 2007. Inspector Satyavir Singh (PW40) had deposed about interrogation of the appellant Parvinder @ Moti, recording of the disclosure statement (Ex.PW28/6) and supplementary disclosure statement (Ex.PW25/B) leading to recovery of the pistol from bushes near IOC petrol pump, Palam Road. The pistol was inscribed with words 'Brata Auto Pistol' thereon. In his cross-examination, Inspector Satyavir Singh (PW40) had deposed about the supplementary disclosure statement (Ex.PW25/B) in which the appellant had corrected the earlier disclosure statement (Ex.PW28/6). In the disclosure statement (Ex.PW28/6), the appellant had disclosed that the pistol used in the commission of offence was concealed and was with his friend at Jaipur.

19. The investigation in the present case, after repeated complaints, was handed over to the crime branch, R.K. Puram, w.e.f. 8th December, 2007. Insp. Satish Sharma (PW41) had deposed that he had recorded statements of Yashwant (PW8) on 10th December, 2007 and had also called Sachin (PW1) for interrogation on 9th December, 2007 as he wanted to verify his role. Sachin (PW-1) and Nitin (PW-2) statements were not recorded on 9th or 10th December, 2007. He accepted that names of Yashwant (PW8) and Yogender were not mentioned in the disclosure statement of Parvinder @ Moti and even in the case diary. Maruti Esteem car was recovered subsequently. He had got CRDs of mobile-phones of Sachin (9899990111), Varun (9811072727) and Parvinder @ Moti (9899990366). He accepted that Madhu Malik had suspected that Sachin (PW1) and Nitin (PW2) were involved in the

death of Varun but they did not find any credible or corroborative evidence to believe and accept their involvement. He denied the suggestion that Parvinder @ Moti had left the pistol at the spot after the occurrence.

20. We are inclined to accept that the recovery of the pistol (Ex. PX) was made pursuant to the statement made by Parvinder (Ex.PW25/B). The said recovery is admissible under Section 27 of the Indian Evidence Act, 1872 and the FSL report (Ex.CW1) in affirmative records that the empty cartridges (Exs.PY1 and PY2) were fired from the pistol (Ex.PX). We are not inclined to accept the contention of the appellant that the pistol was recovered from the spot itself. The suggestion to this fact was given for the first time to Inspector Satish Sharma (PW41). The said witness had taken over the investigation only on 8th December, 2007. The pistol (Ex. PX) was recovered on 2nd December, 2007, by the then IO Inspector Satyavir (PW-40). No such suggestion was given to the earlier Investigating Officers and the witnesses who had visited the spot, namely Insp. Rajender Pal (PW30) Insp. Satyavir Singh (PW40), SI Mahinder Lal (PW28), and HC Vijender Kumar (PW25). The members of the crime team who visited the spot, namely SI Mahesh Kumar (PW20) and Ct. Praveen (PW22) also did not depose to the effect that the pistol was recovered from the crime spot, and neither was any suggestion given to them in their cross-examination.

21. The delay in recording the statements of Sachin (PW1), Nitin (PW2) and Yashwant (PW8) under Section 161, Cr.P.C. was a lapse on the part of the Investigating agency but the said lapse, in the facts of the present case, does not bar or prohibit the court from scrutinising

and carefully examining the court deposition of Sachin (PW1), Nitin (PW2) and Yashwant (PW8). The reason for the delay in recording of the statement is apparently the uncertainty and scepticism of the Investigating Officers. The presence of Sachin (PW1) and Nitin (PW2) at the time of the occurrence is not doubted. They have also deposed about the presence of Yashwant (PW8) at that time. The presence of Sachin (PW1) and Nitin(PW2), it is noticeable stands confirmed from the testimonies of Amarjeet Malik (PW3), Dr. Subrata Gorai (PW14) and other witnesses.

22. In *C. Muniappan versus State of T.N.* (2010) 9 SCC 567, the Supreme Court held that it was a case of highly defective investigation but this was not the end of the matter, for if primacy was given to omissions and lapses by perfunctory investigation, faith and confidence of the people in criminal justice administration would erode. In such cases, there is a legal obligation on the part of the Courts to examine prosecution evidence *de hors* such lapses, to find out whether evidence is reliable or not, and to what extent it is reliable and whether the lapses had affected the object of finding the truth. Reference was made to several decisions in support of the said ratio. In *Ganga Singh versus State of M.P.* (2013) 7 SCC 278, it was held that Courts cannot acquit an accused on the ground that there were some defects in the investigation, unless such defects cast reasonable doubt on the prosecution case. Similar findings were recorded in *Sunil Kundu versus State of Jharkhand* (2013) 4 SCC 422, holding that lapses or irregularities in investigation would not be material if the evidence produced on record, despite the said lapses or irregularities, does not go to the root of the matter and dislodges the substratum of the prosecution case. In *Surajit Sarkar versus State of West Bengal*

(2013) 2 SCC 146, it was held that shoddy or defective investigation could, in a given case, result in acquittal but this would depend upon the defects. If the investigation results in the real culprit not being identified, then acquittal should follow. Similarly, if there are glaring loopholes in the investigation, the defence can exploit the lacunae. The court is to ensure that an innocent person is not put behind bar on trumped-up charges.

23. At this stage, we would like to reproduce the relevant portions of the statement of the appellant Parvinder recorded under Section 313, Cr.P.C. In this connection, we would like to reproduce the appellant's response to question nos. 10, 11, 12, 13, 15, 50 and 76:

“Q.10: It is in evidence against you that there they all went to purchase fruit beer from Pushpanjali Petrol Pump, Vasant Kunj and were on the main road, you accused Moti called Sachin on his mobile phone no. 9899990111 but as he was driving the car, the said call was attended by Varun (since deceased). What do you have to say?

Ans.: I do not know, I received a miss call from Sachin's phone.

Q.11: It is further in evidence against you that after attending the call, Varun (since deceased) told Sachin that you accused Moti will join them at Vasant Arcade. So PW Sachin drove the car towards Vasant Arcade. There they found you accused Moti standing there besides your car bearing registration no. DL9CH3313 make Maruti Esteem. You greeted Sachin, Nitin, Varun (since deceased) and others which was replied by them also. What do you have to say?

Ans: While I was returning from the club, I saw Sachin's car parked and I parked my car next to his and I greeted Sachin, Nitin and Varun.

Q.12: It is in evidence against you that you took out a pistol from your car and fired from the same in the air due to which PW-1 Sachin, PW-2 Nitin, Varun (since deceased), PW-8 Yashwant and Yoginder got scared and within few seconds you fired another shot from your pistol aiming

Varun, who was sitting in car no.DL9CH0111. What do you have to say?

Ans: I admit that I had fired in the air but not aim Sh. Varun.

Q.13: It is in evidence against you that Varun told Sachin that he had received bullet injury, at this the latter touched his chest and found blood oozing from his chest. What do you have to say?

Ans: It is correct.

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Q.15: It is in evidence against you that PW-2 Nitin requested you to take him to the hospital from the spot and you dropped him to the Fortis Hospital and then left from the gate of the hospital in your car. You did not accompany Nitin inside the hospital despite his request. What do you have to say?

Ans: It is true.

xxx

Q.50: It is in evidence against you that mobile no. 9811072727 is registered in the name of Varun Malik, 9899990111 is registered in the name of Sachin Gandas and mobile no. 9899990366 in the name of Parvinder Malik. Certificate under Section 65-B of the Indian Evidence Act in respect of mobile no. 9811072727 is Ex.PW42/A. Customer Application Form, Form No.6, photocopy of SIM, copy of passport issued in the name of said customer is Ex.PW42/B. the computer generated copy of the details of the said mobile phone is Ex.PW42/C. Computer generated copy of CDR in respect of this mobile phone in the name of Varun Malik for the period of 01.08.2007 to 07.12.2007 is Ex.PW42/D (colly.). What do you have to say?

Ans: It is correct that I know the aforesaid three numbers in the name of Varun and Sachin.

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Q.76: Why this case against you?

Ans: On 28.11.2007, I was returning from the club after listening Punjabi singer and when I saw my mobile phone, there was a miss-call from Sachin, I saw his car parked at

Vashant Arcade and I also parked my car there. Sachin, Varun and Nitin were sitting in the car they were all drunk. We greeted each other. Sachin had asked to bring a pistol which he wanted to take it to a wedding for firing purposes. I had the pistol in the car(Maruti Esteem) which I took out and showed to Sachin. I fired in the air to show that it is in working condition. Thereafter I was showing the pistol to Sachin and Varun. Varun tried to snatch the pistol from me and it fired accidentally. After being injured, Sachin asked Varun as why he was joking. But on close inspection of Varun's chest, I saw that blood was oozing out. Thereafter Sachin rushed Varun to the Fortis Hospital. Nitin who was outside the car saw the whole incident and told Sachin that he was following his car. I took Nitin in my car to the hospital. During the entire incident, Yogender and Yashwant were not present. Before I left for the hospital, I threw the pistol at the place of the incident. When I reached the hospital with Nitin, Varun had already been taken to the hospital for treatment. There at the hospital, Sachin told that the matter was very tense as I have already informed the family members of Varun. After that, I left Nitin at the hospital and went away.

The car(Maruti Esteem), which I had borrowed from Sh. Vinod Khandelwal was returned to him. I was scared for my life because the family members of the injured Varun were influential people. I left for Rajasthan Jaipur, from there I had called Sh. Ranvir Singh, SHO, Vasant Vihar the next day. I informed him about the entire incident and told him that I had no intention to shoot Varun and also had no knowledge that Varun will snatch the gun and gun will fire accidentally and injure Varun. Inspector Ranvir Singh advised me to surrender before the court. I followed his advise and surrendered before the court. On the day of surrender Inspector Satayvir Singh had questioned me about the incident and I disclosed what had happened. My disclosure was not recorded.

I was taken to the Police Station. In the police station, till the time I was there in police remand I saw Sachin and Nitin detained in the IO's room. I was not taken for investigation to the place of incident or for the recovery of Maruti Esteem car or the pistol. The Maruti Esteem car was handed over by Sh. Vinod Khandelwal in the PS and the same was photographed in my presence. The pistol had been planted on me by showing that it has been recovered from Rajasthan and the same was worn by me at the time of incident.

Ravinder Malik, Yogender, Yashwant and Arun Lamba are all planted witnesses. I had never gone for any engagement and never met Arun Lamba, Sachin, Varun and Nitin or ever threatened to kill Varun. I had bought the pistol from one drug addict in South Ext., New Delhi. This is false case because the family members of the deceased wanted somebody to pay for the death of Varun. Varun was a good friend of mine. I came to know about co-accused Rajat Passi and Amit @ Amar only during the trial of the case.”

24. We have extensively discussed the evidence of Sachin (PW1) and Nitin (PW2) above. The appellant has accepted their presence at the spot at the time of occurrence. To this extent the appellant accepts Sachin (PW1) and Nitin (PW2) deposition. The appellant, however, claimed that Yashwant (PW8) had left the place before the actual firing took place. On the said aspect, we would accept the version of Sachin (PW-1), Nitin (PW-2) and Yashwant (PW-8). However, we agree with the counsel for the appellant that Sachin (PW1), Nitin (PW2), Yashwant (PW8) and possibly even the deceased Varun had beer and not “fruit beer” after purchasing the same from “In & Out” store at the petrol pump. The assertion by Sachin (PW1), Nitin (PW2) and Yashwant (PW8) that they had “fruit beer” is not acceptable. However, this would not make much difference. The appellant has also accepted that he had taken out the pistol from his car for showing it to Sachin (PW1) and deceased Varun. He had fired the same in the air to show that it was in a working condition. The appellant claims that Varun had tried to snatch the pistol from him and it had fired accidentally in the process. Sachin (PW1) had probably thought that Varun’s injury was a joke, but then they saw blood oozing from Varun’s chest. He also accepts that he had driven Nitin (PW3) to the hospital in his car, while Sachin had taken the deceased Varun to the Hospital. He has also accepted that Sachin (PW1) and Nitin (PW2) were detained for investigation. He had made a call to Randhir Singh,

SHO, Vasant Vihar who had good relations with him. In response to question No.76, he replied that he had not aimed at Varun but accepted that Varun had received bullet injury and Sachin (PW1) had discovered blood oozing out of Varun's chest.

25. On the nature and type of injury suffered by the deceased, we have already referred to the statement of Dr. Subroto Gorai (PW14). However, to complete the medical evidence, we would like to refer to the post mortem report (Ex.PW27/A) which was proved by Dr. Gaurav Vinod Jain (PW27), who had conducted the post mortem on deceased Varun Malik on 29th November, 2007 and had found one fire-arm entry wound 0.8 cm in diameter present 2 cm below the left nipple and the bullet had pierced and gone through the heart making an exit wound of 9 cm below the right nipple. No tattooing or blackening was found. We have referred to the statement of Dr. Subroto Gorai (PW14) on the entry and exit wounds to show that the bullet was fired from a higher position and had a downward trajectory. The aforesaid medical opinion, corroborates the ocular testimony of Sachin (PW1), Nitin (PW2) and Yashwant (PW8). The deceased was sitting in the front left seat in the car and the bullet had been fired from the fire-arm held by the appellant, who was standing near the front left window of the car. The presence and recovery of empty cartridges (Exs.PX-1 and PX-2) also stands affirmed and confirmed.

26. Learned counsel for the appellant has referred to the fact that Investigating Officers namely SI Mahinder Lal (PW28), Insp. Rajender Pal (PW30), Insp. Satyavir Singh (PW40) and Insp. Satish Sharma (PW41) were also cross-examined on the question of accidental fire. Reference is also made to the cross-examination of Sachin (PW1) and

Nitin (PW2). Sachin (PW1) and Nitin (PW2), as also the other witnesses, have denied the theory of accidental fire. Sachin (PW1) was specifically cross-examined with reference to his statement under Section 161, Cr.P.C. (Ex. PW-1/DA) that he had first thought that it was a joke. Inspector Satish Sharma (PW41), who had recorded the statement of Sachin (PW1) under Section 161, Cr.P.C. was confronted. Learned counsel for the appellant has drawn our attention to the Narco analysis report (Mark PX1 and PX2) and the cross-examination of Insp. Satish Sharma (PW41). It is also highlighted that during the said Narco analysis, suggestion and question that the injuries suffered were on account of accident or misfire was specifically put to the appellant, demonstrating that the investigation was credulous aware of the said reality, yet Inspector Satish Sharma (PW-41) and others have hesitated and not spoken the truth.

27. This brings us to the moot question whether the present case is one of deliberate or intentional fire resulting in the injury, which would be a case of murder under Section 302, IPC; or, unintentional or accidental fire. Further, if it is a case of unintentional fire, whether the appellant had requisite and required knowledge to invoke and punish the appellant for murder by applying the Clause Four, or the appellant had committed a lesser offence, i.e. culpable homicide not amounting to murder or an offence of an even lower degree. The question is not easy to answer and in case of doubt, the benefit should go to the accused, i.e. the appellant herein. In the present case, there are eye-witnesses and the question of motive, therefore, may not be material. However, when we examine the question of intention, we have to look at the conduct of the parties including the appellant. In the said examination, the question of motive would have some relevance. The

prosecution to establish motive had relied upon testimony of Arun Lamba (PW7). We agree with the trial court that testimony of Arun Lamba (PW7) is unreliable and not trustworthy. PW7 had referred to an alleged incident on 20th November, 2007, when he along with Varun had gone to a wedding ceremony, where Sachin (PW1) and Nitin (PW2) and the appellant Parvinder @ Moti were purportedly present. In the said wedding ceremony, an altercation had taken place between Parvinder @ Moti and a third person. Parvinder @ Moti it was claimed had then sought help from Varun and Arun Lamba (PW7) but Varun had refused. Parvinder @ Moti, thereupon, became infuriated and had threatened that he had a pistol. Noticeably, statement of Arun Lamba (PW7) under Section 161, Cr.P.C. was recorded on 15th January, 2008. The justification for PW7's belated dissemination is that he had gone to his village, was not recorded in the statement. There is evidence to indicate that Arun Lamba (PW7) was present in the hospital on 28th November, 2007, as accepted by him in his cross-examination. He had met with the parents of Varun in the hospital. Thus, he knew and was aware of the facts. His reticence and initial silence manifests and demonstrates the amoral and falsity of the said assertion. Sachin (PW-1) and Nitin (PW-2) are conspicuously quiet and their taciturnity again negates the said assertion. Thus, the alleged motive, i.e. prior ill disposition or antagonism is not established.

28. On the question whether the appellant had any intention to cause the bullet or fire-arm injury, or it is a case of accidental firing or misfiring, certain aspects in favour of the appellant are required to be noticed: (1) The appellant, deceased Varun, Sachin (PW1), Nitin (PW2) were friends. It is apparent that they liked and enjoyed each other's company. Facts indicate that the deceased, Sachin (PW1),

Nitin (PW2) and Yashwant (PW8) had consumed beer and the appellant also wanted to join them; (2) The act of taking out the pistol and firing the same in the air shows the cavalier, bravado and indiscreet conduct of the appellant Parvinder @ Moti. The appellant Parvinder @ Moti, the deceased Varun, Sachin (PW1), Nitin (PW2) and Yashwant (PW8) were all young adults in their early 20s. This conduct reflects immature boyish behaviour; (3) We are informed that Varun was a body builder. Sachin (PW1) and Nitin (PW2) have stated that the appellant had fired the second bullet at deceased Varun. However, Sachin (PW1) in his statement under Section 161, Cr.P.C. (Ex.PW1/DA) had stated that he felt it was a joke. In other words, he did not believe that appellant Parvinder @ Moti had any intention or desire to kill or even fire a shot at the deceased Varun. Sachin (PW-1) got alarmed only once he noticed blood; (4) Nitin (PW-2) accepts that the appellant Parvinder @ Moti had driven him to Fortis Hospital and dropped him. The appellant-Parvinder @ Moti did not run away. In case Parvinder @ Moti had any intention or desire to kill deceased Varun, and had intentionally fired the said shot, his conduct post the occurrence would have been different. Apparently, he was also taken aback and got startled by what had happened; (5) Sachin (PW-1), Nitin (PW-2) and Yashwant (PW-8) had not attributed any words to the appellant Parvinder @ Moti which would indicate any ill-will or intention to fire the pistol. In fact they had not even stated that they heard the fire-arm going off; (6) The pistol (Ex.PX) is somewhat sophisticated and not a *desi katta*. There is forensic literature (discussed below) to suggest that such pistols can fire on the trigger being depressed/pulled and injuries and deaths can take place due to such accidental or incidental firing.

29. However, the matter does not concluded here for even in the absence of intention, an accused can be convicted for murder under Clause Four of Section 300 IPC. The appellant Parvinder @ Moti knew that he had a fire-arm, a dangerous and lethal weapon in his hand. The fire-arm was loaded. He was aware and conscious that in case the trigger of fire-arm goes off even accidentally or incidentally, somebody could very well die. He was conscious of the consequences, when he in his exuberance and flippantly fired in the air and dangerously with a loaded pistol stood next to deceased Varun. It is not a case of mere negligence. Thus, the question arises whether the case would fall under Section 300, Clause Four, and/or whether the case would fall under Part II of Section 304, IPC. The difference between the two sections is apparent from the language of Clause Four of Section 300 and Part III of Section 299 IPC. The difference in the two lies in the level of knowledge causing the injury leading to death. The question of intention in such cases is not relevant. The difference between the two Sections can be best explained by quoting the relevant provisions, which read:-

“299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

xxx

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done 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—

3rdly.—If it is done 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—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause

death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

(emphasis supplied)

30. IPC recognises and categories culpable homicide into three categories. The most grave and the darkest is the culpable homicide amounting to murder which is punishable under Section 302, IPC. A lighter shade is punished under Section 304 Part I and yet a lighter shade, under Part II of the Section 304, IPC. For culpable homicide to amount to murder's gravest form, the ingredients of any one of the Four clauses of Section 300 should be met and the case should not fall under any of the exceptions. The first three clauses of the Section 300 require presence of definite and specified intention on the part of the accused, while the Fourth clause punishes the requisite knowledge on the part of the accused where the person knows that the act to be so imminently dangerous that consequence of it, in all probabilities, would cause death or such bodily injury likely to cause death.

31. The difference between intention and knowledge has been oft explained in various judgements and jurists. The generally accepted legal opinion, according to Glanville Williams in *Textbook of Criminal Law* (1978 Edition), is that 'intention' cannot be satisfactorily defined and possibly it does not need a definition. However, philosophically it can be defined as: "In ordinary language a consequence is said to be intended when the actor desires that it shall follow from his conduct." When a person has a desire and starts to act to that end, the desire becomes the intention. But a desire may be conceived on an instant and need not be premeditated. Williams further explains that a consequence should be taken as intended, although it was not desired,

if it was foreseen by the actor as the *virtually certain* accompaniment of what he intended. This is not the same as saying that any consequence foreseen as *probable* is intended. Hence, for culpability of murder, the accused should be aware that a consequence in the future is certain or practically certain as a result of what he does. However, even where a person has knowledge that a particular consequence will probably result from his act, it is sometimes an insufficient basis for saying that he intends it.

32. Smith and Hogan in *Criminal Law* (8th Ed.) agree that the meaning of the fundamental term ‘intention’ is not settled, but advance a ‘well-settled proposition’ that “a person intends to cause a result if he acts with the purpose of doing so”. The authors support the definition that a person acts intentionally when he acts either in order to bring it about or being aware that it will occur in the ordinary course of events.

33. ‘Intention’, as per Cross and Jones in *Introduction to Criminal Law* (11th Ed.), is not defined in any statute and its meaning must therefore be derived from judicial decisions. They observe,

“It is now clear from the House of Lords decisions in *Moloney* ([1985] 1 All ER 1025 HL) and *Hancock and Shankland* ([1986] 1 All ER 641 HL) that foresight of probability, or even of certainty, is not intention in a legal sense nor the equivalent of it.”

They then refer to Court of Appeals decision in *Nedrick* ([1986] 3 All ER 1, CA), where it was stated that “foresight of a consequence as ‘for all practical purposes inevitable’ could give rise to an irresistible inference of intention (as opposed, in other words, to being intention itself).” They conclude that “the irresistible inference mentioned in *Nedrick* (supra) is likely to mean in practice that foresight of inevitability, at least, will be equated with intention in the minds of a

jury”. They however, cautioned “In some offences, the inference of intention may not be drawn where the jury [or the Court] are not satisfied that the prohibited consequence was the accused’s aim or purpose.”

34. Decisions of the Indian Courts are more illustrative and delineate the distinction between ‘intention’ and ‘knowledge’ in significantly finite and articulate manner. The Supreme Court in ***Kesar Singh versus State of Haryana*** (2008) 15 SCC 753, concluded to draw the distinction as,

“30. It can thus be seen that the “knowledge” as contrasted with “intention” signifies a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, “intention” is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of “intention” mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact.”

The said judgment quotes the following portion from Kenny in *Outlines of Criminal Law* (17th Edn. at P.31) as :-

“Intention: To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connection is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. Thus if one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it: the desire and the foresight will also be the same if a person knowingly leaves a helpless invalid or infant without nourishment or other necessary support until death supervenes. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed.

Again, a man cannot intend to do a thing unless he desires to do it. It may well be a thing that he dislikes doing, but he dislikes still more the consequences of his not doing it. That is to say he desires the lesser of two evils, and therefore has made up his mind to bring about that one.”

Earlier in *Jai Prakash vs. State (Delhi Admn.)* (1991) 2 SCC 32, it was elucidated that knowledge is bare awareness and not something as intention, for the latter requires something more than a mere foresight of the consequences namely, the purposeful doing of a thing to achieve a particular end.

35. Knowledge has to be factually implied from the circumstances, and it may not be necessary that the accused must exactly know what will happen. It is not necessary that the accused should have intended what had actually happened. It is sufficient and adequate that the accused deliberately or voluntarily takes the “risk” that the crime/offence might be committed, even when he hopes that the risk would not lead to any damage or harm.

36. Clause *Four* of the Section 300, IPC relates to the Part III of Section 299, in so far as both punish knowledge without specific reference to any intention. Section 300, Clause *Four*, being the aggravated form of Section 299, Part III, requires the knowledge of the person to be grave enough for him to have known that his act is so imminently dangerous that the ‘practically certain’ consequence of it would be the death of another person, or a bodily injury likely to cause death of another person. The Clause *Four* and the term “knowledge” was explained by this Court in *State (NCT of Delhi) versus Samialam @ Samia*, CrI.Rev.P. No.406/2010, dated 22nd September, 2010, reported as 2010 SCC Online Del 3317, as:-

“The fourth clause requires knowledge of the accused that his act is eminently dangerous and of the nature that in all probability would cause death or bodily injury as is likely to cause death. The act must be committed with the knowledge that the death must be the probable result. ... The expression “knowledge” postulates existence of positive mental attitude. The mental element in culpable homicide requires the positive mental attitude towards consequences of conduct is one of the knowledge in the fourth clause. Such attitude on the part of the accused must be of the highest degree of probability, approximate to a practical certainty. To fall under the fourth clause of Section 300, the accused must have foreseen that he was running the risk of causing death of the victim or such bodily injury as was likely to cause death in all probability. The fourth clause uses the word probability as distinguished from mere possibility. Further, the word ‘probable’ is prefixed by the word ‘all’ to convey the meaning that the act should be eminently dangerous that it must in all probability cause death or bodily injury likely to cause death.”

37. In the facts of the present case as already discussed above, it can be inferred that the accused Parvinder @ Moti did not have the intention to kill Varun. We have also rejected the contention that it is a case of mere negligence. So the inquiry boils down to whether the appellant is liable under Section 299 Part III, or Section 300, Clause *Four* is attracted. The appellant very well knew that he was carrying a loaded gun with him and that it can fire and kill someone, or may cause a bodily injury likely to kill someone. Hence, the question is whether the act of the appellant was so imminently dangerous that it would have caused death in all probabilities and death would have been a ‘practical certainty’.

38. Element of ‘practical certainty’ or ‘all probability’ is missing. In paragraph No.28 above, we have referred to our findings on the question whether or not the appellant had the requisite intention. The said findings are relevant and material even for the decision on the

question whether Clause Four of Section 300 would apply, or whether the case would fall under Part III of Section 299 IPC.

39. A pistol is a hand gun in which cartridges are directly loaded in the chamber of the barrel, unlike a revolver where the cartridges are loaded in the rotating drum or cylinder. Pistols may be single-shot, repeating and semi-automatic or self-loading with a magazine. A pistol can load 6 to 14 cartridges depending upon the model and the calibre. For self-loading pistol, the trigger has to be pressed every time a shot is to be fired. In the present case, we cannot rule out or rather we should accept that the trigger was pressed causing the bullet injury to Varun without the appellant having the intention to either cause the said injury or cause death. Thus, it is a case where the pistol was discharged and fired when the appellant-Parvinder @ Moti, the deceased Varun and others were engaged in a friendly conversation, fascinated and enchanted with the firearm. Exception 4 to Section 300 IPC, which is not strictly applicable, states that culpable homicide would not be murder even when any of the four ingredients are satisfied, when the offence committed is without pre-meditation. In the present case, there was no pre-meditation, though it is apparent that there was a certain amount of inquisitiveness and desire to try out and experiment. In the absence of any previous or even instantaneous grudge or ill feeling, the offence in the present case can be described as one out of impulsive behaviour in the heat of the moment without any malicious intent and desire to cause the said injury or death. It just happened. It would be a case, falling under Part III of Section 299 IPC.

40. In view of the factual background discussed above, we are inclined to hold, by giving benefit of doubt to the appellant, that clause Four of Section 300 would not apply but the case would fall under Part III of Section 299, IPC. We have also given our opinion/finding as to why Part III of Section 299, IPC would be applicable.

41. The last question relates to the question of quantum of sentence, i.e. proportionality of punishment. We have, as noticed, given benefit of doubt to the appellant and have converted his conviction from murder under Section 302 to culpable homicide not amounting to murder under Part II of Section 304, IPC. On the question of quantum of sentence, we feel and hold that the appellant deserves no leniency and the facts justify the maximum punishment. Playing with or showing off a loaded fire-arm is indefensible and cannot be condoned. Varun, a young boy, lost his life on account of asinine and reckless tomfoolery. Thus, we are inclined and sentence the appellant to rigorous imprisonment for 10 years. We also believe that this would not be a fit case for grant of remission and the appellant Parvinder @ Moti must undergo counseling sessions. The appellant must also be substantially fined, which we quantify at Rs.5 lacs. Out of the said amount, Rs.2 lacs will be paid as compensation to the parents of the deceased Varun, in terms of Section 357, Cr.P.C. In default of payment of fine the appellant would further undergo simple imprisonment of one year.

42. Conviction and sentence under Section 201 IPC is maintained. Substantive sentences would run concurrently and Section 428 Cr.P.C. would apply.

43. The appeal is disposed of. The trial court record will be sent back.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

APRIL 20th, 2015
kkb/NA/VKR