

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on : 6.2.2019

Date of decision : 15.2.2019

1. CRA-D No. 318-DB of 2003 (O&M)

Anand Kumar and others

.... Appellants

versus

State of Haryana

... Respondent

2. CRA-D No. 327-DB of 2003 (O&M)

Ashok Kumar

.... Appellant

versus

State of Haryana

... Respondent

3. CRR No. 210 of 2004 (O&M)

Subhash

.... Petitioner

versus

Anand Kumar and others

... Respondents

4. CRR No. 1518 of 2004 (O&M)

Subhash

.... Petitioner

versus

Sudhir and others

... Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Avneesh Jhingan**

Present Mr. Vinod Ghai, Senior Advocate with
Mr. Amrit Singh Kang, Advocate, for the appellants
in CRA-D No. 318-DB of 2003,
Mr. Satpal Bhasin, Advocate for
Mr. Harkesh Manuja, Advocate, for the appellant
in CRA-D No. 327-DB of 2003.

Mr. J. C. Malik, Advocate, for the petitioner in
CRR Nos. 210 and 1518 of 2014.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these cases bearing CRA-D No. 318-DB of 2003 - Anand Kumar and others vs State of Haryana and CRA-D No. 327-DB of 2003 - Ashok Kumar vs State

of Haryana, CRR No. 210 of 2004 - *Subhash vs Anand Kumar and others*, and CRR No. 1518 of 2004 - *Subhash vs Sudhir and others*, therefore, the same are being disposed of by a common judgment.

2. The present appeals and criminal revisions are directed against the judgment dated 7.3.2003 and order dated 11.3.2003, rendered by learned Sessions Judge, Jind, in Sessions Case No. 68 of 10.8.1999. Accused Sudhir, Anand Kumar, Pyare Lal, Smt. Maya Devi, Hardeep, Narender, Om Parkash, Surat Singh, Ashok Kumar, Kismat and Smt. Balesh were charged with and tried for the offence punishable under Sections 148, 149, 302, 307, 324 IPC and Sections 25 and 27 of the Arms Act. Accused Sudhir, Hardeep, Om Prakash, Surat Singh, Kismat and Smt. Bimlesh were acquitted by the learned trial Court. Another named accused Rajesh was declared proclaimed offender. Accused Anand Kumar, Pyare Lal, Narender, Ashok Kumar and Smt. Maya were convicted and sentenced under Section 302 read with Section 149 IPC to undergo life imprisonment and to pay fine of ₹ 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two years. They were also convicted and sentenced under Section 307 read with Section 149 IPC to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹ 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. They were also convicted and sentenced under Section 324 read with Section 149 IPC to undergo rigorous imprisonment for a period of two years. They were further convicted and sentenced under Section 148 IPC to undergo rigorous imprisonment for two years. Accused Narender was also convicted and sentenced under Section 25 of the Arms Act to undergo rigorous imprisonment for a period of two years and to pay fine of ₹ 500/-

and in default of payment of fine to further undergo rigorous imprisonment for six months. Accused Anand Kumar was also convicted and sentenced under Section 27 of the Arms Act to undergo rigorous imprisonment for a period of two years and to pay fine of ₹ 500/- and in default of payment of fine to further undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that PW1 Subhash son of Ram Chander lodged the complaint, Ex.P1, to the effect that they were seven brothers. They have seven killas of land. It was in the name of his father Ram Chander. On 28.12.1998 at about 5.30 A.M., he, his elder brothers Deva Singh and Ranbir went to irrigate the wheat crop. The fields of Pyare Lal were adjoining to their fields. His father Ram Chander and his *bhabhi* Roshni wife of Ranbir also came to the fields after about an hour. When Ranbir reached to divert the water in the killa situated near the killa of Pyare Lal, he saw that *dol* (embankment) of their field was dismantled and a new *dol* was raised. He told this fact to the family members. His father Ram Chander went on the tubewell of Pyare Lal and asked him why they have done so. Pyare Lal started abusing his father. On hearing this, he (complainant) and his *bhabhi* also reached there. Accused Anand Kumar gave *lalkara* that they should be taught a lesson, upon which Maya wife of Pyare Lal, who was armed with *gandasa*, gave *gandasa* blow to his *bhabhi*. Accused Ashok son of Surat Singh, who was armed with *gandasa*, gave *gandasa* blow to his father. Accused Pyare Lal, armed with pistol, accused Anand Kumar, armed with gun, accused Surat Singh, armed with illicit pistol, started firing. Accused Kismat was also armed with pistol. Accused Ashok gave *gandasa* blow to him (the complainant), which hit his left

thumb. Wife of accused Anand Kumar had also caused injuries to his *bhabhi* with *gandasa*. Accused Pyare Lal, Anand Kumar, Surat Singh and Kismat fired shot on his brother Ranbir. Bullet hit on temporal region of his brother Ranbir. He fell down and died at the spot. Some other persons were also with them, who were armed with deadly weapons like *jelli* and *gandasa*. The dead-body was sent for post-mortem examination. The injured were medically examined. FIR was registered. The disclosure statements were made by the accused on the basis of which weapons of offence were recovered. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The appellants were convicted and sentenced, as noticed above. The appeals have been filed by the convicted accused persons against the judgment and order of the learned trial Court. Petitioner Subhash (complainant) filed the aforesaid criminal revisions for enhancement of sentence imposed upon the appellants and also challenged acquittal of six accused persons.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below, whereas learned counsel for the petitioner submitted that sentence awarded to the appellants be enhanced and the accused, who were acquitted by the trial court, be convicted.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW1 Subhash testified that they were seven brothers. On 28.12.1998 at 5.30 A.M., he along with his brothers Ranbir and Deva Singh had gone to irrigate their fields. After about 1½ hour, Smt. Roshni wife of Ranbir Singh had also reached there. In the meantime, his father Ram Chander had also come. His brother Ranbir went to the field abutting the fields of accused Pyare Lal. He found that the old *dol* was damaged. New *dol* was being raised by all the eleven accused present in the Court, namely, Sudhir, Anand Kumar, Pyare Lal, Smt. Maya Devi, Hardeep, Narender, Om Parkash, Surat Singh, Ashok Kumar, Kismat and Smt. Balesh, besides Rajesh. His brother Ranbir told his father that the old *dol* had been dismantled and a new one has been raised. His father went to them to lodge the protest. Accused Pyare Lal started abusing his father. He and his brother Deva Singh also reached there. Accused Anand Kumar raised a *lalkara* that '*le lo hath ghal ke*', meaning thereby that they should be attacked. Accused Ashok, Maya, Balesh, Sudhir and Rajesh were armed with *gandasas*, Pyare Lal was armed with country made pistol, Surat Singh, Kismat, Hardip, Narender and Om Parkash were also armed with country made pistols, whereas accused Anand Kumar was armed with his licensed gun. First, Smt. Maya Wati gave a *gandasa* blow to his *bhabhi* Smt. Roshni and her thumb of the left hand was injured. The second blow was given by Smt. Bimlesh and the *gandasa* blow hit the middle finger of her left hand. Accused Ashok gave a *gandasa* blow repeated by another blow on the hands of his father Ram Chander. Third blow was again given by accused Ashok from its blunt side on the head of his father. Accused Ashok also gave a *gandasa*

blow to him, which hit the thumb of his right hand. All the accused armed with country made pistols, namely, Pyare lal, Surat Singh, Kismat, Hardeep, Narender and Om Parkash started firing. Accused Anand Kumar while aiming at his brother Ranbir fired a shot from his DBBL gun, which hit him on the left temporal region and he fell down. He died. All the accused ran away towards canal along with their respective weapons. His brother Deva Singh shifted his sister-in-law Smt. Roshni and his father Ram Chander to a hospital in Safidon. He went to his village to bring his brother Sewa Singh. He proceeded to the police station. He lodged the report. He accompanied the Investigating Officer to the place of occurrence. During the inspection, the Investigating Officer took into possession two motor-cycles, a two-wheeler scooter. He also lifted blood stained earth from two places. He prepared two parcels. Some pieces of glass bangles of red colour were also taken into possession. On further inspection many empty cartridges of different bores from three different places were also taken into possession. All the parcels were sealed in his presence. In his cross-examination, PW1 Subhash admitted that he had not stated before the police in his statement, Ex.P1, that all the eleven accused present in the Court, besides accused Rajesh, were raising new *dol*. When he reached the *dol*, all of them were present near the *dol*. His statement was recorded on 9.10.1999. He told the police that accused Smt. Balesh had given a *gandasa* blow on the right hand of his sister-in-law Smt. Roshni. He was confronted with his statement, Ex.P1, wherein it was recorded that wife of accused Anand Kumar had given a *gandasa* blow to Smt. Roshni and thereby the seat of the injury and the name of accused Balesh were not specifically mentioned. He had not stated before the police in Ex.P1 that his father suffered a gun shot injury.

He told the police that the shot fired by accused Anand Kumar hit deceased Ranbir on his temporal region and the gun was aimed at him. He was confronted with his statement, Ex.P1, where it was stated that the gun was aimed at him and the gun shot of accused Anand Kumar hit deceased Ranbir was not mentioned. He told the police that Pyare Lal, Surat, Kismat and Anand Kumar fired at his brother Ranbir, while he was running and it was hit on his temporal region. He was confronted with his previous statement portion 'B' to 'B' in Ex.P1, where it had not been specifically mentioned that it was a shot fired by accused Anand Kumar, which struck the temporal region of the left side of deceased Ranbir. He had not given the names of five persons, namely, Hardip, Sudhir, Narender, Om Parkash and Rajesh in the FIR. He simply stated that he could identify five persons but he did not know their names. He told the police that three persons, whose names were not given by him in the FIR, were armed with pistols. He was confronted with his statement, Ex.P1, where neither the names of these persons were given nor they were stated to be armed with any weapon. He did not state before the police that the outsiders were constructing the *dol*. It was after 2 or 3 months of the occurrence that he came to know the names of the assailants i.e. Hardip, Narender, Sudhir, Om Parkash and Rajesh. These names could not be incorporated in the FIR. He knew their names on the day when his statement was recorded on 9.10.1999. He did not state before the police on 9.10.1999 that he did not knew the names of five assailants, whose names were not mentioned in the FIR. Attention in this regard was drawn to his statement dated 9.10.1999 where it was recorded '*Five other persons were standing there armed with jallies and gandasas behind the aforesaid persons and they were there to assist the assailants but I cannot*

tell their names,'. He did not state in his statement dated 9.10.1999 that they were armed with pistols or fired with pistols. His supplementary statement was recorded by the police on 4.2.1999. He stated before the police that on account of nervousness, he could not give the names of the outsiders at the time of occurrence. He was asked to join the test identification parade on 22.3.1999. He admitted that accused Om Parkash could not be correctly identified. In his cross-examination, he admitted that previously there was no altercation or fight or dispute with regard to *dol*. He also admitted that their land was demarcated. There was no water in the canal on the day of occurrence. They had to irrigate their fields from the water taken from the tubewell. Accused Anand Kumar had only fired once and it hit the deceased when he was at a distance of 10 feet. Though there were fires from the pistols on them but none of them received fire arm injuries. His brother Ranbir collapsed at a point where the '*plati rasta*' to the field of Tara and that of Pyare Lal accused meet. No firing was aimed at the accused party from their fields. The incident lasted in about 15 minutes. The accused fled away from the spot along with their respective weapons, leaving their motorcycles and scooters. All the empty cartridges were recovered either from the fields of Tara Chand or accused Pyare Lal. No empty was recovered from their fields.

8. PW4 Smt. Roshni widow of Ranbir deposed that her husband had six brothers. Their fields were adjacent to the fields of the accused. On 28.12.1999, Deva Singh, Subhash and her husband Ranbir had gone to the fields known as 'Mahnawala'. They had to give water to their fields. They had left for the fields at about 5.00 A.M. Thereafter, she and her father-in-law went there to serve tea after about 1½ hour. After taking tea, her

husband Ranbir had gone to the water course to get water of their turn at a place near the land of accused Pyare Lal. Her husband noticed that the old *dol* was demolished by accused Anand and five others. Her husband informed this fact to his father. Her father-in-law went to accused Pyare Lal to lodge protest. On this accused Pyare Lal started abusing his father-in-law. In the meantime, she accompanied by Subhash, Ranbir and Deva went there. On seeing them, accused Anand gave *lalkara* that they should be attacked “*le lo hath ghal ke*”. First of all, accused Smt. Maya opened attacked and gave a *gandasa* blow on her hand, which hit her thumb of the left hand. Thereafter, Smt. Balesh gave a *gandasa* blow, which hit her left hand finger. Accused Ashok gave a *gandasa* blow to her father-in-law Ram Chander, which hit both of his hands and the head. Accused Ashok also gave a *gandasa* blow on the right hand of Subhash. All the accused armed with fire arms started firing including accused Anand Kumar. She and other family members started retreating through the fields of Tara Chand, whose fields adjoined to their fields. On receipt of a gun shot injury fired by accused Anand, which hit on the left temporal region of her husband Ranbir, he fell down on the ground. He died. Thereafter, all the accused ran away from the spot towards canal. Her husband was taken to Safidon. She and her father-in-law Ram Chander were also taken to Safidon by Deva in injured condition. They waited for the doctor for 2-3 hours in the hospital but the doctor was not available. Thereafter, they came to Jind Hospital, where they were admitted for treatment. Her statement was recorded on the next day. In her cross-examination, she admitted that except Ranbir, no other person from her side received gun shot injury. According to her, 10 or 12 number of fires were fired. She did not see the accused or Anand Kumar in

particular while loading or re-loading their fire arms.

9. PW6 Mukesh son of Ram Chander deposed that on 10.1.1999, accused Anand Kumar was interrogated in his presence. He made disclosure statement, Ex.P11, on the basis of which he got recovered his licensed gun of 12 bore, which he had kept concealed in his bed room. The same was taken into possession vide seizure memo. Ex.P12. after its sketch, Ex.P13, was drawn. The gun is Ex.P14. In his cross-examination, he deposed that deceased Ranbir and complainant Subhash (PW1) were his brothers. The sister of accused Anand Kumar was found present in the house. The gun was recovered from the box of the bed, which was not locked.

10. PW7 HC Tara Chand deposed that on 15.1.1999 he was posted in Police Station, Pellukhera. On that day, accused Smt. Maya Devi was interrogated in his presence regarding the recovery of *gandasa*. She made a disclosure statement, Ex.P15, which was reduced into writing. She got recovered *gandasa* from behind the almirah. The *gandasa* is Ex.P18. In his cross-examination, he admitted that the *gandasa* was soiled but no blood-stains could be seen.

11. PW8 SI Sher Singh deposed that on 27.7.1998, accused Hardeep, present in the Court, was interrogated by Badri Parsad, District Inspector, in his presence. He stated that he (Hardeep), Sudhir, Om Parkash and Narender had gone to the fields of accused Anand Kumar to irrigate the fields. A quarrel took place on account of *dol* in the morning time. He disclosed that accused Anand Kumar was armed with a gun. Accused Rajesh was armed with a pistol. Accused Narender and Sudhir were armed with *gandasas*. Accused Narender stated that he had kept concealed the *gandasa* in his fields. In his cross-examination, he admitted that in

pursuance to disclosure statement, accused Narender led to the recovery of country made pistol, which he had kept buried near a canal in the area of village Hadwa. It was a country made pistol of .315 caliber.

12. PW9 Dr. Mrs. Manjula had medico-legally examined PW4 Smt. Roshni wife of Ranbir. She had noticed the following injuries on her person:-

- “1. There was an incised wound of 4 cm x 2 cm bone deep obliquely placed over the base of left thumb. Fresh bleeding was present. X-ray of left hand and thumb was advised.
2. There was an incised wound of 2 cm x .5cm obliquely placed over the posterior aspect of middle finger of left hand with separating the nail. Fresh bleeding was present. X-ray of middle finger of left hand was advised.”

The duration of injuries was within eight hours. Weapon used was sharp for both the injuries. On the same day, PW9 Dr. Manjula medico-legally examined Ram Chander. She found the following injuries on his person:-

- “1. There was an incised wound of 4 cm x 2 cm bone deep obliquely placed over the right thumb. Fresh bleeding was present. X-ray of left hand and thumb was advised.
2. There was an incised wound of 2 cm x .5cm skin deep obliquely placed over the dorsum of left hand.
3. There was a lacerated wound of 4 cm x .5 cm obliquely placed over the distal part of parietal bone.”

The duration of injuries was within eight hours. Weapon used for injury nos. 1 and 2 was sharp and for injury no. 3, it was blunt. She gave opinion that injury nos. 1 and 2 on the person of PW4 Smt. Roshni could be caused by

the *gandasa*. She had seen *gandasa*, Ex.P18, in the Court. The injuries on the person of PW4 Smt. Roshni were not on her vital parts. The injury nos. 1 and 2 on the person of Ram Chander were on the thumb and dorsum.

13. PW10 Dr. V. P. Kakkar, deposed that on 29.12.1998 at 9.30 A.M., he conducted the post-mortem examination on the dead-body of deceased Ranbir. He noticed the following injuries on the body of deceased:-

1. There was a lacerated wound of size 1.5 cm diameter oval shape present on left side of scalp in front of left ear 2 cm above and anterior to root of left pinna at the level of left eye brow. Margins of the wound were inverted and blackened. Clotted blood was present. Corresponding to this injury there was a tear in the Toppa wore on the head at that time along with blood stains on the Toppa.
2. There was a lacerated wound of size 3.5 cm star shaped (irregular) present on right side of scalp. The margins of the wound were everted. The wound was present on right parital area 4 cm above the root of right pinna and 2 cm above the level of right eye brow. Clotted blood was present. On dissection, under injury no.1 there was a gap in the underlying bone of size 1.5 cm diameter. The bone under injury no. 2 was also fractured in star shape and gap of bone of 3 cm diameter was present. This part of bone was missing. The bone around this gap was fractured in multiple line in star shape. There was a track joining injuries no. 1 and 2 in the Brain and meninges. It was directed from left to right and slightly upward and backward direction. The track was of 1.5 cm diameter and index finger could be passed and it was lying above the base of scalp in

the full thickness of brain from left to right. The track from inside was blackened and haemorrhage was present in the track. The track at right end near the bone was more wide and lacerated. Clotted blood was present. No bullet pellet or any other foreign body could be traced from the skull or any other part of body. However, A.P. lateral X-ray view of skull was taken which showed no foreign body and these were handed over to the police.”

As per the opinion of the doctor, the cause of death was haemorrhage, shock and injury to brain. The injuries were ante mortem in nature and sufficient to cause death in normal course of nature. The time elapsed between injury and death was within few minutes and between death and post-mortem examination was within 4 to 48 hours. Injuries no. 1 and 2 on the person of Ranbir were caused by a fire arm. In his cross-examination, he deposed that injury no. 3 was an old wound. Injury no. 2 was the exit of injury no.1. The entry of wound was from left front side. There was no scorching or tattooing around the track. There was blackening on the margins as well as inside the track. The blackening inside the track was possible when the injury of fire arm was from a contact range. On 23.3.1999, he had given his opinion, Ex.DC, on an application, Ex.DC/1 that no opinion could be given regarding injury no. 2 being caused by .12 bore gun.

14. PW12 Inspector Med Singh deposed that on 28.12.1998, he went to the spot. The dead-body of Ranbir Singh was lying there with injuries on the body. Statement, Ex.P1, of PW1 Subhash was recorded. He made endorsement thereon, Ex.P1/A. The scene of the crime was got photographed. Site-plan was prepared (Ex.P48). Broken glass bangles were lifted from point A1, as depicted in the site plan. From point A2, four empty

cartridges and wads were taken into possession. From point A3 a live cartridge of .315 caliber was also taken into possession. From point B1 four empty cartridges were taken into possession. From point B2 one live cartridge was recovered. Four other empty cartridges were also recovered. From point B3 blood stained earth was taken into possession. From point B4 an empty cartridge of .315 caliber was also taken into possession. From point B5 one live cartridge of .32 bore was recovered. From point C5 eight cartridges of 12 bore with wads were also lifted. Two motorcycles and two wheeler scooter were also taken into possession from the spot. On 10.1.1999, accused Anand Kumar was interrogated by District Inspector Badri Parsad. He made disclosure statement, Ex.P11, on the basis of which gun, Ex.P14, was recovered. In his cross-examination, he admitted that PW1 Subhash (complainant) could not give the names of all the assailants, except the family members of accused Pyare Lal and Surat Singh. Perhaps he did not know the names of other assailants. He also admitted that the complainant could not specify the assailants, who had fired at Ranbir to cause his death. He had not shown the point in the site plan where from accused Anand Kumar fired at Ranbir. The witness did not tell that specific place to him so he had not shown it in the site plan. He also admitted that point C5 was in the fields of the deceased and in the southern direction from the dead-body. He further admitted that he did not investigate the matter regarding the empties recovered at point C5 in the site plan to find out as to who had fired from that point. He also admitted that PW1 Subhash was with him when the empties were taken into possession but he did not enquire from him as to how the empties had fallen at point C5. Accused Anand Kumar was interrogated by District Inspector Badri Parsad. He admitted that

he did not notice any injury on his person. He was vigorously questioned. He admitted that the house from where the recovery of the gun was effected was found open and there was a girl inside. He could not say that it was a licensed gun of the accused.

15. PW13 Dharam Pal deposed that on 4.2.1999, he arrested accused Hardeep.

16. PW15 Patwari Ram Kumar had prepared the site plan, Ex.P107.

17. PW16 Dr. R. N. Bura had medico-legally examined PW1 Subhash son of Ram Chander. He noticed the following injuries on his person:-

An incised wound was present over right hand at the base of right thumb 4 cm long. Margins were well defined. No odema. It was muscles deep. Blood clots were present. No apex obliquely situated.

The injury was simple in nature caused by a sharp edged weapon within a duration of 24 hours.

18. PW17 Inspector Badri Parsad deposed that on 28.12.1998, he was posted as District Inspector at Jind. He moved an application before the doctor to seek his opinion regarding the fitness of the injured admitted in the hospital to make statement. The doctor opined that both of them were not fit to make statement. He recorded the statement of Deva Singh in the hospital under Section 161 Cr.P.C. On 10.1.1999, he arrested accused Anand Kumar and Pyare Lal. They were interrogated. On the basis of disclosure statement made by accused Anand Kumar, Ex.P11, a DBBL gun of 12 bore, Ex.P14, was recovered. On 11.1.1999, he recorded the supplementary statement of Deva Singh under Section 161 Cr.P.C. wherein he disclosed the names of more assailants. On 15.1.1999, he arrested

accused Smt. Maya Devi. She made disclosure statement, Ex.P15, on the basis of which *gandasa* was recovered. On 17.2.1999, accused Narender was interrogated. He made a disclosure statement, Ex.P22. He got recovered a country made pistol, Ex.P25, which was taken into possession. It was an illicit fire arm. In his cross-examination, he admitted that no weapon of offence was recovered from accused Pyare Lal. He also admitted that none from the adjoining houses was associated when recoveries were effected from the accused. He also admitted that the place of recovery of weapon at the instance of accused Narender was an open place accessible to all and sundry. It was an illicit fire arm of .12 bore and not a pistol of .315 caliber.

19. PW20 Constable Rajbir Singh deposed that on 26.3.1999, he was posted in Police Station, Pillukhera. On that day, HC Laxmi Narain had entrusted to him three parcels duly sealed. One was containing a DBBL gun, the other containing a *gandasi* and the third one was containing a country made pistol. All the three were deposited with the Forensic Science Laboratory.

20. The precise case of the prosecution is that PW1 Subhash along with his brother Ranbir and Deva Singh had gone to irrigate their fields. His *bhabhi* Smt. Roshni and his father Ram Chander also came to the spot. His brother Ranbir noticed that the old *dol* was damaged and new *dol* was being raised by the accused. He brought this fact to the notice of his father. His father went to the tubewell of accused Pyare Lal. He lodged the protest. According to the prosecution, accused Anand Kumar gave a *lalkara*. Smt. Maya Devi was the first, who gave *gandasa* blow to Smt. Roshni. The other assailants also gave injuries to the complainant party including father of the complainant, Ram Chander. The assailants were also armed with pistols and

country made pistols. They started indiscriminate firing. Accused Anand Kumar fired at Ranbir from his DBBL gun, which hit him on the left temporal region. He collapsed. The accused ran away along with their respective weapons from the spot. Injured Smt. Roshni Devi and Ram Chander were taken to the hospital. They were medico-legally examined by PW9 Dr. Manjula. According to her, the duration of injuries on the person of PW4 Smt. Roshni Devi was within eight hours. Both the injuries were caused by sharp edged weapon. She also opined that injury nos. 1 and 2 caused on the person of Ram Chander was caused with sharp edged weapon and for injury no. 3, it was blunt.

21. The post-mortem examination was conducted by PW10 Dr. V. P. Kakkar. The cause of death was haemorrhage, shock and injury to brain. The injuries were ante mortem in nature and sufficient to cause death in normal course of nature. The time elapsed between injury and death was within few minutes and between death and post-mortem examination was within 4 to 48 hours. Accused Anand Kumar made disclosure statement, Ex.P11, on the basis of which licensed gun of 12 bore, Ex.P14, was recovered, which he had kept concealed in his bed room.

22. The face of the prosecution case is that accused Anand Kumar fired at Ranbir from his DBBL gun, which hit him on the left temporal region, which resulted in his death. The post-mortem report is Ex. P33. It has come in the statement of PW10 Dr. V. P. Kakkar that injury no. 2 was the exit of injury no.1. The entry of wound was from left front side. He noticed the following injuries on the body of deceased:-

1. There was a lacerated wound of size 1.5 cm diameter oval shape present on left side of scalp in front of left ear 2 cm above and anterior to root of

- left pinna at the level of left eye brow. Margins of the wound were inverted and blackened. Clotted blood was present. Corresponding to this injury there was a tear in the Toppa wore on the head at that time along with blood stains on the Toppa.
2. There was a lacerated wound of size 3.5 cm star shaped (irregular) present on right side of scalp. The margins of the wound were everted. The wound was present on right parital area 4 cm above the root of right pinna and 2 cm above the level of right eye brow. Clotted blood was present. On dissection, under injury no.1 there was a gap in the underlying bone of size 1.5 cm diameter. The bone under injury no. 2 was also fractured in star shape and gap of bone of 3 cm diameter was present. This part of bone was missing. The bone around this gap was fractured in multiple line in star shape. There was a track joining injuries no. 1 and 2 in the Brain and meninges. It was directed from left to right and slightly upward and backward direction. The track was of 1.5 cm diameter and index finger could be passed and it was lying above the base of scalp in the full thickness of brain from left to right. The track from inside was blackened and haemorrhage was present in the track. The track at right end near the bone was more wide and lacerated. Clotted blood was present. No bullet pellet or any other foreign body could be traced from the skull or any other part of body. However, A.P. lateral X-ray view of skull was taken which showed no foreign body and these were handed over to the police.”

As per the opinion of the doctor, there was no pellet or any other foreign body could be traced from the skull or any other part of the body. In X-ray also, no foreign body was shown. In case DBBL gun was used, the bullet

pellet were to be present in the body in scattered form. There was scorching or tattooing around the entry wound. There was blackening on the margins as well as inside the track. The blackening inside the track was possible when the injury of fire arm was from a contact range. This kind of injury could be caused by pistol of .315 caliber and not by a DBBL gun, Ex.P14, which was recovered from accused Anand Kumar, on the basis of his disclosure statement, Ex.P11. Confronted with the situation, the Investigating Officer had moved an application, Ex.P4, before the Licensing Authority whether accused Anand Kumar was in possession of another gun of .315 bore. The Licensing Authority has made the following endorsement (Ex.P5):-

“As per record in the AL No. 110/DM/ Jind/ Nov./98 which has been issued to Sh. Anand Kumar son of Pyare Lal resident of H. NO. 2040, U/E, Jind, 12 bore DBBL gun no. 41985-97 has been entered.”

23. Thus, accused Anand Kumar was in possession of one 12 bore DBBL gun. Confronted with the post-mortem report, Ex.P33, the prosecution moved another application, Ex.DC/1, before PW10 Dr. V. P. Kakkar to the effect that whether injury no. 2, which was stated to be gun shot injury as shown in the P.M.R. dated 29.12.1998 of deceased Ranbir, could be caused by a country made gun of .12 bore or not. PW10 Dr. V. P. Kakkar has given his opinion, Ex.DC, as under:-

“No opinion can be given regarding the injury No. 2 being caused by the above weapon.”

24. Thus two applications, Ex.P4 and Ex.DC/1 were filed after the post-mortem examination, which was conducted on 29.12.1998.

25. FSL report is Ex.P10. According to result, the firing mechanism of country made pistol W/I (chambered for .315 cartridges) and 12 bore DBBL gun W/1 were found in working order. 12 bore fired cartridge case marked C/16 and misfired cartridge C/13 had been fired and misfired respectively from country made pistol W/1 and not from any other fire arm even of the same make and bore, because every fire arm has its own individual characteristic marks. 12 bore fired cartridge cases marked C/2, C/3, C/4, C/6, C/7, C/15, C/17, C/18, C/19, and C/1, C/5, C/8, C/11, C/12, C/21, C/22 have been fired from right and left barrel respectively of DBBL gun W/1 and not from any other fire arm even of the same make and bore. 12 bore fired cartridge cases marked C/9 and C/10 have been fired from one and the same fire arm but not from W/1 and W/2. No opinion on fired cartridge case C/20 could be formed in respect of weapons W/1 and W/2 due to insufficient characteristic marks. Wads/ splits contained in parcels No. III, IV, V and VII were found to be part of 12 bore cartridges of type C/1 to C/12 and C/15 to C/22.

26. According to FSL Report, Ex.P9, the blood was detected in Exhibit-1 (Blood stained Earth) and Exhibit-2 (Blood stained Earth). Exhibit-8a (shirt), Exhibit-8c (Banian), Exhibit-8e (Jersey) were stained with small blood stains. Blood could not be detected on Exhibit-8d (sweater), Exhibit-8f (Kachha), Exhibit-8g (Pants) and Exhibit-8h (Juti). Exhibit-9a (Kurta) and Exhibit-9b (Dhoti) were stained with blood. Blood could not detected on Exhibit-12 (Gandasi).

27. PW1 Subhash in his cross-examination admitted that gun shot fired by accused Anand Kumar hit Ranbir on his temporal region and the gun was aimed at him, however, in Ex.P1, the fact that the gun was aimed at

him and the gun shot of accused Anand Kumar hit deceased Ranbir was not mentioned. Similarly, PW4 Smt. Roshni Devi wife of deceased Ranbir deposed that on receipt of gun shot injury fired by accused Anand, her husband Ranbir fell down on the ground as the fire hit on the left temporal region. This type of injury could be caused by pistol of .315 caliber, whereas the gun recovered from accused Anand Kumar was DBBL gun, Ex.P14, on the basis of his disclosure statement, Ex.P11. Further the empties were also found at point C5 in the site plan, from the fields of the complainant party, where the dead-body was lying.

28. PW12 Inspector Med Singh in his cross-examination has admitted that there was no mention regarding the recoveries of empties or live cartridges in column nos. 22 and 23 of the inquest report. Even the number of such empties or the brand of such cartridges was not mentioned in the inquest report. He has also admitted in his cross-examination that he had not shown the point in the site plan from where accused Anand fired at Ranbir. He has also admitted that point C5 is in the fields of the deceased and in the southern direction from the dead-body. Again stated that it was South-East. As per prosecution, the empties were found at point C5 in the site plan, from the fields of the deceased. In case the empties were found and recoveries were made, then these should have been mentioned in the Inquest report, Ex.P36, which was prior in time. According to column no.7 of the inquest report, lining shirt of '*Naswari*' coloured full arms Jersey of '*Naswari*' coloured half arms coca-cola white coloured swatter and blue coloured Baniyan in the neck, Tagri of black thread, grey coloured underwear having plastic string and Khakhi woolen trouser in the waist, brown coloured old juti (shoes) in the feet and gray coloured woolen cap on the

head were recovered. Blood stained earth, two motorcycles and one scooter were found near the dead-body as per column 23 of the inquest report.

29. As per medico-legal examination report of PW4 Smt. Roshni (Ex.P26) and of Ram Chander (Ex.P27), PW9 Dr. Manjula has given opinion (Ex.P30), that on seeing the report of X-ray of PW4 Smt. Roshni and Ram Chander, injuries no. 1 to 3 were simple in nature. The doctor has also given opinion, Ex.P32. According to her, she had examined the weapon (*gandasa*), which was 6 feet in length, 3½ inch in breadth, having seven *pori*. Injury nos. 1 and 2 on the person of PW4 Smt. Roshni could be caused with the *gandasa*.

30. PW16 Dr. R. N. Bura had medico-legally examined PW1 Subhash (complainant). According to him, the injuries received by the complainant were simple in nature by a sharp edged weapon within a duration of 24 hours.

30. In 13th edition of Taylor's Principles and Practice of Medical Jurisprudence by A. Keith Mant, the learned author has explained in Chapter 11 'Wounds and their interpretation' and the characteristics of fire arm injuries, including investigation of firearm wounds. The same are extracted below:-

Firearm injuries

There are very many varieties of firearms and ammunition, of which only the basic types will be described below. Some knowledge of these basic types is essential in order to interpret and understand the injuries they may inflict.

All firearms have the following features in common. Essentially they consist of a tube (the barrel) which may measure anything from an inch or so to over

3 ft in length. The tube is closed at one end (the breech) and open at the other (the muzzle). The projectile is forced down the barrel by the ignition of the propellant explosive at the breech end. The firing mechanism is operated by a lever (trigger). The firearm is held in the hand or shoulder by the stock. If the weapon carried more than one cartridge or round, these are stored in a box or magazine or in a revolving chamber.

Cartridges either hold a single projectile or bullet or a number of pellets or shot. The latter are intended for sporting purposes, i.e., killing small animals or game.

Firearms fall naturally into two groups: those designed to fire a single projectile and those designed to fire shot.

Firearms designed to fire a single projectile have a spiral groove cut into the inner surface of the barrel (rifling). The diameter or bore of the barrel is smaller than the diameter of the projectile or bullet to ensure an airtight fit when it enters the barrel. The spiral grooves impart a rotational spin to the bullet to ensure that it follows a regular flight.

The raised parts of the barrel lying between the grooves are known as the lands. The bore of a barrel is its maximum diameter and may be measured in millimeters or inches. The number of grooves, the width of the lands and grooves, and the length of the spiral and its direction of twist differ in most makes of firearms, thus enabling a ballistics expert to identify the actual make and type of firearm from which a bullet was fired by examination of the marks left by the rifling upon the surface of the bullet. The interior of each barrel is different from every other and specific scratches on the bullet may enable a gun to be positively identified.

Guns firing single projectiles are divided into two types:

Side arms. These are guns which are held in the hand and are usually called revolvers or pistols. They have short barrels.

Shoulder arms. These are heavy, long-barrelled guns which are fired from the shoulder – one arm supporting the barrel and the other hand holding the stock and operating the trigger mechanism.

Guns are further classified for descriptive purposes by the method used to reload the breech after firing. The non-automatic weapons have to be reloaded by hand or from a magazine by a specific action on the part of the firer. A self-loading or semi-automatic gun (pistols which are semi-automatic are often called automatic) is self loading after each firing until the magazine is exhausted – the trigger being pressed each time the gun is fired. An automatic gun is one which reloads and fires continuously as long as the trigger is depressed and the magazine is charged.

Light automatic guns are relatively short-barrelled anti-personnel firearms, which are normally fired from the shoulder. The barrel length is intermediate between the hand gun and the conventional shoulder gun.

Modern combat rifles and light automatic guns are designed so that they can fire semi-automatic or full automatic at the control of the firer.

Sporting guns are usually single or double-barrelled shoulder guns and the majority do not carry any form of magazine although 'pump guns', in which extra cartridges are contained in a cylindrical tube beneath the barrel and loaded by a pump action after each firing, are popular in some parts of the world.

Pistols, firing shot cartridges, exist for the shooting of small birds and rodents, but are illegal in Great Britain where a legal shot gun barrel must have a minimum length of 24 inches.

Sporting guns usually have barrel lengths about 28 inches, although for clay bird shooting they may be shorter, and for duck shooting longer.

The bore of a shotgun is measured in inches upto $\frac{1}{2}$ inch diameter e.g., 0.410. Over $\frac{1}{2}$ inch the bore is calculated by the numbers of equal spheres which make up a pound of pure lead which can be placed in the barrel – thus, in a 16 bore there are 16 equal spheres of lead which will fit into the barrel and in a 12 bore, 12 spheres. Therefore, the lower the bore number the greater the diameter of the barrel. These guns vary from 20 bore to 4 bore – the latter being used exclusively for duck shooting.

Before discussing gun-shot wounds a brief description of the cartridge or shell is essential for their interpretation. These must be divided into those firing single projectiles and those firing shot. The cartridge for a rifled firearm consists of a brass case in which the bullet or projectile is firmly held and which also contains the propellant charge. At the base of the cartridge case is a cap containing the detonator, a sensitive chemical which explodes upon percussion and ignites the propellant charge. When the propellant charge is ignited it burns rapidly with the production of a large volume of gas, which forces the bullet into the barrel where it is trapped by the rifling and passes up the barrel with increasing speed, reaching its maximum velocity (muzzle velocity) as it leaves the barrel. The pressure of gases inside the barrel varies from about 1 ton/ square inch in a revolver to some 25 tones/ square inch in the modern rifle.

The enormous pressure generated in the barrel of a gun when it is fired forces the base of the cartridge, and especially the thin copper casing of the detonator, against the firing pin and breech block. A mirror image

of any irregularities of the firing pin and breech block is reproduced upon the base of the detonator cap, enabling the ballistics experts to identify the gun from which the cartridge was fired by comparing the marks form the cartridge case at the scene with that fired by the suspect weapon.

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Shot gun cartridges consist of a metal base containing the detonator. The metal base is attached to a cylinder of cardboard which contains the propellant powder, thick plunger wads (which act as a piston behind the shot when the gun is discharged), the shot and a retaining wad or crimp at the end of the cartridge to keep the shot in place.

The propellant powder varies in amount according to the purpose for which the ammunition is designed. The shot also varies in size from fine shot used for shooting small birds, such as snipe, to buckshot used for deer shooting. No. 12 shot is very small, there being roughly 38000 to the pound, whereas there are only 130 of the larger buckshot to the pound.

The effective range and penetrating power of a shot gun will depend upon the quantity of propellant charge, the size of the shot, the length of the barrel, and whether or not the barrel is narrowed towards the muzzle end (choked). These factors also determines the rate of spread of the shot once it leaves the muzzle.

External characteristics of firearm wounds. When a firearm is discharged the projectile or projectiles leave the muzzle, followed by the gases from the propellant under great pressure, by flame, by unburned powder and by carbon. The gases of the charge also contain carbon monoxide.

The gases, after leaving the muzzle, expand at once to atmospheric pressure. If the muzzle is in contact

with the skin then some of these gases will expand in the tissues immediately below the entry wound. If the gun is held far enough from the skin for the gases to expand without entering the tissues the entry wound will be surrounded by unburnt powder and carbon particles.

Powder tattooing. The size and intensity of the surrounding powder tattooing will depend upon the constituents of the propellant charge, i.e., black powder or smokeless, and the distance between the skin and the muzzle.

Wounds are usually classified by their external appearance as:

1. close contact,
2. near contact,
3. distant.

Close contact. In these wounds, by definition, the muzzle is held in close contact with the skin. The projectile or projectiles, gases of the propellant charge under great pressure, unburned powder and any wads, will all enter the body. If the gun is fired into a body cavity such as the chest or abdomen the cavity will contain the gases, even if there is no exit wound, and the entry wound will be circular. If, however, there is a plate of bone beneath the entry wound (i.e., the forehead) the gases will expand between the skin and the bone and escape through the entry wound, both enlarging, splitting and everting it. The wound, therefore, is stellate, larger than the diameter of the barrel and the skin is blackened on its inner side by powder and carbon.

If the gases are not of sufficient volume, i.e. 0.22 calibre rifle, or the propellant has deteriorated, there may not be sufficient pressure to cause this type of close contact wound and the wound will remain circular although in other respects it follows the criteria for a

close contact wound.

Near contact. In these wounds the muzzle is an inch or so away from the skin when fired. The entry wound is circular and the surrounding skin is blackened by smoke and unburned powder. The size of the halo and its intensity will depend upon the distance between the muzzle and the skin and the type and quality of the propellant charge.

Distant wound. Wounds resulting from guns fired from over 3 ft from the body are divided into:

1. rifled firearms,
2. sporting guns.

Wounds from rifled firearms: the wound is circular unless the missile has ricocheted and will be of slightly smaller diameter than the caliber of the gun. The edges will be narrowly abraded (abrasion collar) due to the inversion and stretching of the skin by the missile as it enters the body. Where a bullet has been greased some grease may be detected in the edges of the wound.

Wounds from sporting guns: at distances further than 3 ft from the end of the muzzle the shot begins to disperse or spread from the cylindrical shape in which they leave the barrel. The rate of spread of shot will depend upon the charge, the size of the pellets, the length of the barrel and whether the barrel is narrowed at the muzzle end (choked) to increase the range of the gun. In order to determine the rate of spread of shot with accuracy it is essential to fire the gun at different distances using the same ammunition. A rough guide, however, may be used for rapid calculation – from a barrel which is a true cylinder the average size of the pattern of spread is 1 inch/ yard from the muzzle, less 1 inch. Thus at 5 yards one would expect a pattern of spread of 4 inches.

Internal injuries caused by firearms. The

internal injuries due to gunshot wounds vary according to the calibre and velocity of the missile. Once the missile has penetrated the skin, which offers the most resistance to its passage, the missile may pass through the body unless it is slowed or deflected by bone. The character of the internal injury is greatly influenced by the velocity of the missile when it enters the body. When a rapidly travelling object is slowed by passing from a thin to a dense medium, there is a release of kinetic energy which may be so violent as to fracture bone in the immediate vicinity of the track although the bones are not actually struck. Shock waves will also pass through the tissues causing injury remote from the actual wound. For instance, the passage of a high velocity missile through the soft tissues of the thigh may fracture the femur and cause damage to blood vessels in the pelvis as a result of the changes of hydrostatic pressure in the blood vessels.

When a high velocity missile passed through soft tissue it is followed by cavitation as a result of the released energy. This primary cavity then collapses but is followed by lesser secondary cavitation.

When this secondary cavitation occurs a negative pressure is created and debris is sucked into the track and may set up infection, including tetanus. Another feature of a high velocity missile entering a denser medium is that it momentarily tips up on its axis, sometimes even beyond the vertical, and although it corrects itself immediately extensive soft tissue damage will occur at the site of the tipping.

When a high velocity missile strikes a relatively solid internal organ such as the heart, this organ may disintegrate as if an explosive charge has been detonated in its substance.

Internal injuries from shotguns. When the

cylinder of shot meets any resistance it breaks up at once – when a gun is discharged through a glass panel the spread may amount to several inches during its passage through the glass. If a hand is held over the muzzle when discharge occurs the pattern may be 3 inches across as it leaves the hand. Thick clothing, such as a leather jacket, will also accelerate dispersal of the shot.

The types of wound depend upon the distance from which the gun is fired, the weight of the charge, the size of the shot and the part of the body struck.

If a standard shotgun (20 bore or greater) with a normal load cartridge is fired at contact range through the head, the skull will often disintegrate, whereas if fired at contact range into the chest no injury other than the entry wound may be visible, the chest cavity containing the expanding gases. In both the skull and the chest cavity the shot is widely dispersed.

When a shot gun is fired from greater distances the penetration of individual pellets will vary. Some may merely penetrate skin. Others will pass deep into the tissues.

The plunger will enter the tissues behind the main mass of shot for distances up to several feet and even beyond this may make a circular wound on the skin adjacent to the main entry wound.

If the shot cartridge is loaded with a heavy powder load, or if it contains buckshot, the shot may pass through the chest at close range. Whereas number 6 shot may do little damage to a person at 25 yards, buckshot at this range is lethal if directed against the head or chest.

Exit wounds.

Single projectiles: the size, shape and sometimes multiplicity of the exit wound from a single projectile

will depend upon the shape and composition of the bullet, its velocity and whether it has rotated, struck bone or altered its shape during its passage through the body.

In other than a close contact entry wound the exit wound is larger than the entry wound. Although the exit wound may be circular it is more commonly elliptical, split or occasionally stellate. With a high velocity missile it may be very many times larger than the entry wound owing to the explosive release of kinetic energy during its passage through the body.

In the majority of cases the difference between the entry and exit wound is easily identifiable. Confusion may arise when the exit wound occurs below some firm resistance, for instance a pocket book against the skin, or where the exit wound is against some resistance such as the back of a wooden chair or bench.

If doubt exists upon external examination the confusion may be resolved by examination of the clothing, by X-rays and by the post-mortem examination.

Shot guns: conventional shot guns with standard loads rarely have an exit wound unless the gun is discharged against the head, causing the skull to disintegrate. With heavy charges and a load of large pellets such as B.B. Or buckshot exit wounds will occur. As shot rapidly disperses when passing through any resistance the pattern of the exit wounds may be spread over a wide area. The only exception will be with a very heavy load such as buckshot fired from close range. In these cases the dispersal of the shot through the body may be minimal.

Investigation of firearm wounds. It is always desirable to X-ray the body in a case of shooting and in a case of homicide or suspected homicide shooting this

is essential and especially when a rifled firearm has been used and there is no exit wound. Bullets may be deflected by bone, may break into several fragments or, in the case of frangible bullets, i.e. (iron bullets), completely disintegrate. On rare occasions the bullet may actually enter a major blood vessel and travel in the vessel until it becomes arrested (bullet embolism). Correctly taken X-rays will enable the exact location of the missile to be identified.

The pathologist must recover the missile without causing it further damage for its examination by a ballistics experts. Attempts to locate a bullet blindly are likely to result in its mutilation by instruments.

With shot gun injuries it may be desirable to enumerate all the pellets. This is only feasible by the use of radiographs.

Besides the actual recovery of the missile or missiles the pathologist must ascertain the direction of the missile as it entered the body.

Small caliber guns produce small wounds which may be mistaken for stabbed wounds or missed entirely on external examination of the body.

31. In H. W. V. Cox Medical Jurisprudence and Toxicology, Sixth Edition, the learned author has elaborated the gunshot, wads, characteristics of firearm wounds, entrance wounds, exit wounds, regional firearm wounds, smoke blackening and powder tattooing, etc. The same are extracted below:-

(c) **Shot**. - In a shot gun cartridge, up to several hundred small lead spheres constitute the shot, the actual number depending upon the size of the load and the size of the individual pellet. The variations of number and size can vary greatly with different manufactures. In homemade or modified cartridges, as

are commonly seen in India, there may be no constancy whatsoever about the type or amount of propellant or missiles. In a regular shot gun, sometimes one single large projectile, such as a Foster rifled slug may be loaded into a shot gun. In country guns and in exceptional circumstances such as the terrorist weapons used during the Malayan emergency, bolts, metal fragments, wood screws and any available missiles may be used in place of shot, including beads, stones, kanker and seeds.

(d) **Wads**.- These are fitted into the shot gun cartridges above the propellant substance. Usually there is a thin cardboard disc immediately on top of the propellant, followed by a thick felt wad, then another thin cardboard disc. The shot comes next and the upper end of the cartridge is closed by another cardboard or plastic disc, over which the edges of the cartridge cylinder walls are crimped. With modern ammunition, plastic is being used more and more, so that some of these older constituents are no longer present.

New types of cartridges are being invented all the time. One well known modification is the “Power Piston” in which the shot are carried in a plastic cup which opens during flight. Some of these cups are star or cross-shaped, so that when the cup hits the skin in a near discharge, it can produce in a cross shaped bruise or abrasion.

Sometimes a shot gun may actually discharge parts of the cartridge case itself, such as fragmented cardboard, plastic and pieces of primer. The cartridge may be deliberately tempered with to produce this effect. At close range, these may contribute to the wound.

With rifled weapons, gas, propellant and primer fragments may emerge as with a shot gun discharge. In

addition there may be grease, wax, copper or cadmium coating the bullet and functioning as a lubricant. In all types of weapons there may be fragments of metal torn from the inside of the barrel by the passage of the bullet, especially if, for example, the cylinder chamber of a poorly made or damaged revolver is not correctly in line with the axis of the barrel. Homemade country guns may also partly disintegrate and emit pieces of metal. All these elements may contribute to the appearance of the wound and these foreign bodies may be found in the depths of the wound. In these circumstances, they may help to identify the weapon and should be carefully preserved for examination by the police laboratory.

Most cartridge and shell cases have a central percussion cap in the base, but some .22 ammunition have a circular detonator, called "Rim-fire".

Rifled-weapon bullets are conical or elongated. They may be of lead or other metals and many have a jacket of cupro nickel or other hard metal. If the dP has been illegally cut or filed into a cross, the bullet will fragment on impact causing severe damage: this is known as the 'Dum-Dum' bullet.

5. Characteristics of Firearm Wounds - There are many different characteristics of firearm wounds, depending upon the type of weapon, the distance, the direction and variations in ammunition etc. These can cause a confusing number of permutations, but an appreciation of these variations, is essential if the interpretation of the wound is to be correctly carried out.

6. Entrance wounds - The size of the entrance wound gives no direct measurement of the size of the weapon, except that a shot gun wound (especially with peripheral pellet marks) is obviously recognizable at first sight, though it can be confused with a contact

wound from a rifled weapon. Factors such as range and gas penetration greatly modify the size of the wound. The experienced eye can often differentiate between say, a .22 and a .38 bullet hole, though this first impression is no substitute for later confirmation by all possible means.

The reason for the difference between the size of the hole in the skin and the missile size, is that the projectile indents the skin before penetrating it, so that the perforation is made with the skin under tension. After the bullet passes through, the elasticity of the skin causes it to return to its former size and the edges of the wound contract. Conversely, there may be enlargement of the hold caused by gas pressure when the wound is made on contact or at very short range: this will be discussed more fully later.

7. Skin damages and Soiling - Splitting of the skin is an important sign in firearm wounds. Gross splitting of the skin may be seen in the case of a contact or near contact wound. Gas under high pressure is forced from the muzzle into the wound and greatly distends the subcutaneous tissues. This is much more marked where there is a hard structure immediately beneath the skin, such as skull or sternum. This prevents the gases from dispersing and back pressure causes a ragged tear in the region of the wound. Over soft areas such as the abdominal wall or fatty tissue, this tearing of the wound is usually absent as the elasticity of the tissues allows the gas pressure to disperse less violently.

Contact wounds may be stellate (star-shaped), cruciate (cross-shaped) or totally irregular. The surrounding skin and underlying tissues may be distinctly pink in colour owing to absorption of carbon monoxide from the gases, which combine with the hemoglobin and myoglobin. Even if not visible, the

monoxide may be detectable by chemical or physical means. In cases in which there has been doubt as to which the entrance was and which was the exit wound, this examination for monoxide has occasionally proved useful, though in the case of shot gun wounds, monoxide may be present throughout the length of the track. However, it would almost certainly be higher in concentration near the entrance wound and this phenomenon may be recognized even after putrefaction or immersion in water for a considerable time.

(a) **Abrasion collar**. There may be abrasions or even bruising at the site of entry, from two causes. Firstly, around the margin of the entry wound there is almost invariably a ring of skin damage due to the longitudinal and rotatory movement of the missile. This is called the 'abrasion collar' or the 'marginal abrasion'. It may not be visible in contact wounds over firm tissue. This abrasion collar, especially after some post mortem interval, is of a reddish brown colour sometimes of the "parchment" appearance seen on any abrasion or ligature mark where the epidermis has been rubbed off. This colouration may be obscured by grease marks, racial pigmentation, smoke or powder deposition. If the bullet has entered perpendicularly to the skin surface, the abrasion ring is circular and uniform. But if a bullet has entered obliquely, it presents a more elliptical shape, the longer axis pointing in the direction of the approach of the missile.

If the projectile approaches at a very small angle to the skin, there may be a furrow ploughed through the epidermis before complete entry occurs. Occasionally a bullet may strike the body tangentially and never actually enter, so that an elongated furrow or groove is caused. Sometimes this may be so deep as to cause exposure of the underlying tissues and muscle. It has

sometimes been mistaken for laceration due to some weapon and not to a bullet wound.

Apart from an abrasion collar, there may sometimes be a wider zone of bruising around the entrance would owing to general tissues trauma in the area. Sometimes this may be seen as petechial stippling or ecchymoses but these lesions are frequently absent.

The other cause of a skin lesion in the region of an entrance would is not the effect of the projectile itself, but due to the muzzle of the weapon in a contact discharge. Where the end of the barrel is in contact with the skin at the time of firing, the body surface may be ballooned by the entry of gases. This forces the surface against the muzzle and the skin may take a bruised imprint of the face of the weapon. This is sometimes erroneously said to be due to recoil of the weapon, but this cannot be so, as recoil tends to move the weapon away from the skin. In fact, probably many muzzle impressions fail to be recorded because of the rapid removal of the weapon by recoil. In any event, the mark left on the skin may be an incomplete, indistinct bruise or occasionally may be perfect imprint of the end of the weapon.

Apart from the actual tip of the muzzle, the rib of a revolver sight on the barrel may produce a linear mark above the wound of entrance. Similarly, the retractor spring rod of some automatic pistols may produce small circular abrasions below the entrance wound. Similar patterns may be sometimes discovered on clothing, especially when viewed by special techniques such as infra red photography. The interposition of clothing may, of course, prevent any distinct skin mark being made in a contact wound, though this is not invariably the case.

(b) **Grease ring** - In addition to the abrasion, a coating

of foreign material may often be found around the margin of the entrance wound this is sometimes called the 'grease ring'. It is due to removal of substances from the bullet as it passes through. Bullet lubrication, gun oil from the interior of the barrel, lead from the surface of the bullet, barrel debris and the like may contribute to this mark. With jacketed bullets of hard metal, such soiling is less common.

Though modern propellants produce far less smoke and flame than the old black powder, contact and very close discharges may still cause appreciable heat effects, which may leave their own marks upon the body. Where old fashioned weapons or home made country guns and propellant are used., these effects may be marked. The flame from the muzzle reaches a few inches in the case of a revolver and up to a foot from a shot gun. Where no clothing is interposed, the surface hairs, if present, may either be completely removed by burning down to skin level or may be shrivelled, blackened and clubbed owing to burning and melting of the keratin. The skin itself may show all the characteristics of burning from any cause, with scorching of the epidermis, a reddish-brown flare and if the victim survives for any length of time, reactive hyperemia, with swelling and possibly blistering as with other types of burn.

8. Smoke blackening and power tattooing- Smoke blackening is sometimes called “smudging or fouling” and like other characterizes, is far more marked with black powder than with the modern nitro cellulose type propellants that are now far more commonly encountered. These tend to deposit a greyish discolouration rather than black. Along with the flame from the barrel, black powder produces a jet of carbon containing gas which at contact and close ranges may be

deposited upon clothing or skin. Apart from considerations of range, this smoke mark may be useful in demonstrating the direction of impact, as the circular deposition typical of a perpendicular would will become progressively, elliptical as the angle to the skin decreases.

Powder tattooing is also referred to as “stippling or peppering”. These marks are due to unburned and partly burned propellant. They may range from a millimeter size down to minute specks, either black, blue or orange in colour, though pigmentation of skin may obscure the finer appearances. If large grains were still burning when they hit the skin, there may be a halo of skin burn around them when viewed with a lens. With modern propellants this stippling may be absent, though small flakes and threads of a gelatin-like substance may be visible on close examination, due to melted but unburned cellulose-based propellant. The presence and extent of powder tattooing and also of smoke effects can be more readily demonstrated by infra-red photography on both skin and clothing. Propellant stippling occurs at a longer distance from the muzzle than does smoke soiling, due to large particle size.

9. Characteristics of the wound- The nature of the wound may vary greatly according to factors such as the part of the body injured, the range and the type of weapon. An intermediate range rifled weapon injury would typically show a clean cut circular hole with inverted edges. This of course, refers to the entrance wound. It has been described as similar to “poking a lead pencil through the skin”.

Towards the extreme range of a weapon, a single projectile striking the body may cause a larger, jagged entry would because the steady gyroscopic spin of the

bullet, maintained by the initial velocity, is being lost. The bullet may then begin to pursue an erratic course with marked tail wage and even tumbling, the bullet turning head over heels along its path. In this situation, it may cause a most close contact wound, unless other criteria are carefully examined. Such a bullet may not have sufficient momentum at the end of its flight to traverse the body and there thus may be no exit wound.

The tail wag referred to may also occur at close ranges before the bullet has had time to settle down into a steady gyroscopic progression. The tip of the bullet may follow the axis of the trajectory but the tail of the bullet may describe a circle around the line of flight. If the bullet strikes the body during this phase, the entrance wound may be larger than if the bullet had been fired from an intermediate distance. This again accentuates the dangers of making a hasty judgment about the caliber of the weapons from the size of the entrance wound.

Considering the shot gun injury, except at contact or short range, the wound can hardly be confused with that from the single projectile fired from a rifled weapon, as at any range beyond a few feet, there will be multiple entrance wounds in all but the most unusual circumstances. The lead pellets of a shot gun cartridge emerge from the muzzle of the gun as a single mass but soon begin to diverge into a long narrow cone. Thus at the muzzle they will cause a single large wound, but as the distance increases, this wound will be progressively smaller. The central mass of packed shot becomes smaller, owing to divergence of the peripheral pellets which will then make their own individual marks in a circular fashion around the diminishing central core.

At a certain distance which varies greatly according to circumstances, there will be no central

hole, only a diffuse peppering with shot and this state of affairs will continue (with increasing distance between the individual shot holes) until the maximum penetrating range of the weapon is reached.

A well known formula used for many years suggests that the diameter of the spread of the shot pattern on the skin in inches is roughly equal to the distance from the muzzle in yards (about 3 cm to the metre).

Unfortunately, the word 'roughly' is the most important feature of this “rule-of-thumb” and it is imperative that test firing of such weapons be carried out with similar ammunition in order to arrive at a more trustworthy estimate of range. Even in this situation, variations in the type, condition and age of the ammunition may still make the differences between the testing and the original circumstances.

Many factors modify the spread of the pellet pattern in a shot gun discharge. Firstly, the configuration of the gun barrel is very important. The parallel side barrel is referred to as the “cylinder” and a barrel that tapers slightly towards the muzzle is known as the “choke” barrel. The degree of taper varies with the manufacturer and the model of the weapon and there are intermediate degrees such as “modified choke”, “improved cylinder” and “half choke”. Frequently a double barreled shot gun has a cylinder on the right and a choke barrel on the left. Some modern weapons are equipped with the facility for removing one particular type of barrel so that it may be replaced with a different degree of choke. In addition, modern accessories can convert a cylinder to a choke barrel- for example, variable chokes such as the Poly-Choke, Kutts Compensator and Weaver-Choke are available, especially in American weapons. These technical

matters are for the fire-arms expert to investigate, but naturally his findings must be correlated with the interpretation of the physical wound found at autopsy. In India particularly, the infinite variety of old and home-made weapons, such as country guns, makes the interpretation of gunshot injuries extremely difficult unless then particular weapon can be obtained for test firing.

Another complication with shot guns is the increasing modern tendency to fire a single projectile through the smooth bore. This is done particularly for hunting purposes and a number of devices are available. One of the older ones is the solid round, "pumpkin-ball" or the Brenneke rifled slug, but more recent types include the Foster rifled slug and the French Blondeau, which is dumb-bell shaped.

Other modern modifications of shotguns which may be seen in imported guns from Europe and the United States include the increase use of plastic especially to replace traditional wads. Some of these - such as the "Power Piston" - have the shot contained inside a polythene plastic cup, which may itself be involved in the wounding process. In some modern cartridges, plastic granules may be used as filler between the lead pellets and this highly coloured material may also be found within the wounds or upon the skin.

Shotgun wounds at close or contact range may cause far more destruction of tissues than rifled weapons because the amount of gas produced is far greater, owing to the larger amount of propellant employed. Gross tearing and laceration of the tissues is a common feature of shot gun wounds, especially those contact wounds of the head frequently seen in suicide.

Estimates of range of discharge of the shot gun may be further complicated by the fact that even one particular weapon may produce totally different divergence patterns when different cartridges are fired. This may be due not only to differences in type and manufacture of the ammunition but to aging and deterioration due to storage. Also, deliberate tampering may radically alter the discharge properties. For example, tampering with the cartridge contents may include remove the top closure card and fusing the shot together with melted paraffin wax or even black pitch in order to prevent dispersion. The cartridge case may also be partially cut through at the level of the plunger wad so that the top half becomes detached on firing and acts as a receptacle for the shot, the whole upper part of the cartridge sometimes entering the body.

The components of the shot gun cartridge, being so different from revolver or automatic loads are important in the autopsy examination of firearm wounds. Apart from the shot and propellant described earlier, the wads of cardboard or felt or plastic may also be found within the wound or they may cause separate wounds of their own. The latter are usually limited to superficial bruising or abrasions but on occasion wads can actually cause laceration and penetration. Their presence in a wound is important in the estimation of range.

10. Exit wounds- Like entrance wounds, there may be great variation in the appearance of the exit wound from a firearm. In many cases, there will be no exit wound because the projectile or projectiles remain within the body. This is a common occurrence, either because the bullet from a rifled weapon is fired from an extreme range, so that its momentum is insufficient to traverse the body completely and exit on the other side-

or because it strikes a hard body structure that fragments it or dissipates its energy. Similarly, it is the exception rather than the rule for shot gun pellets to emerge on the farther side of the body, unless this is in a narrow area such as the head, neck or limbs. Conversely, high powered military weapons almost always traverse the body.

Discussing first the single projectile fired from a rifled weapon, the exit wound commonly presents a larger and more ragged appearance than the corresponding entrance wound, though exceptions are numerous. A bullet that hits the body from intermediate range may cause a very small entrance wound because of its steady trajectory and the elasticity of the skin. On leaving the body on the farther side, it tends to produce an everted wound as opposed to the inverted entrance wound, and there may well be enlargement and tearing of the margin of the exit wound due to the disturbance of the steady gyroscopic path that existed before impact.

Because the unsupported skin is struck from within, the wounds tend to burst outward and frequently fragments. Tags of subcutaneous tissue are often seen either at the margins or actually extruded. An important exception to this is the exit of a bullet at a point that is well supported, either by tight clothing such as a belt, waistband or corset or where the victim was pressed against a firm surface such as a wooden or plasterboard wall, upholstery, etc. Here the pressure of the external substance tends to hold the skin surface rigid, causing the exit wound to be a clean puncture, sometimes indistinguishable from the entrance wound except for the absence of inversion, abrasion ring and other soiling.

Another cause of a large ragged exit wound is the tumbling of the bullet due to resistance against the body tissues, in which case the steady motion of the bullet is totally disturbed and the missile smashes its way out of the body in an irregular fashion. Even more severe tissue destruction is caused when the bullet strikes a hard body component such as bone or a solid organ such as liver, heart or kidney. In this case, the trajectory will be greatly distorted and the bullet itself may become fragmented, some of the fragments emerging from the body in separate places causing multiple exit wounds. Another cause of extensive damage may be that the energy of the bullet is transmitted to fragments of bone, which then themselves become projectiles. These may cause severe and sometimes multiple exit lacerations that can be mistaken for other types of wound, including knife wounds and lacerations due to instruments.

When the energy of the missile is spent before exit occurs, the projectile may come to rest immediately beneath the skin, which is second only to bone and cartilage in its resistance to penetration. Shot gun pellets are frequently found in this position and may be palpated under the skin.

Difficulties in distinguishing entrance from exit wounds may be accentuated if the body is decomposed, especially after maceration due to immersion in water. Sometimes fragments of clothing and other foreign material may be found in the track between the two wounds and their position may assist in differentiating the two lesions. Carbon monoxide is usually confined to contact or close range entrance wounds, though the amount generated by a large shot gun cartridge may be sufficient to produce chemically detectable monoxide right through the exit wound, though there is usually a

gradient of concentration from one end of the track to the other.”

32. In Mohinder Singh s/o Inder Singh vs The State - AIR 1953 SC 415, their Lordships of Hon'ble the Supreme Court have held that in a case where death is due to injuries or wounds caused by a lethal weapon, it is always the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they have alleged to have been caused. Para 10 thereof is reproduced below:-

“(10) On a careful reading of the judgment under appeal, it appears that the learned Judges of the High Court strongly felt that they had no adequate explanation in the oral evidence before them for certain puzzling features of the injuries on Dalip Singh. This is exactly what we also feel in this case, and it seems to us that the evidence which has been adduced falls short of proof in regard to a very material part of the prosecution case. in a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it must prove the whole of that case. In the present case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle. Indeed, it seems more likely that they were caused by a rifle than by a gun, and yet the case for the prosecution is that the appellant was armed with a gun and, in his examination, it was definitely put to him that he was armed with the

gun P-16. It is only by the evidence of a duly qualified expert that it could have been ascertained whether the injuries attributed to the appellant were caused by a gun or by a rifle and such evidence alone could settle the controversy as to whether they could possibly have been caused by a fire-arm being used at such a close range as is suggested in the evidence.”

33. In State of Punjab vs Rajinder Singh 2009 (15) Supreme Court Cases 612, their Lordships of Hon'ble the Supreme Court have held that in this situation, if prosecution story was to be accepted, pellets would have entered the body of the deceased, making individual pellet holes and not en masse, as appears herein. Injury being on head, along with single exit wound, held is compatible with the use of a rifle and not a shotgun. Relevant paras 22, 23, 24, 25 and 30 thereof are extracted below:-

“22. As per the ocular account, the shot gun had been fired from a distance of 10 or 12 karm i.e., 50 or 60 feet or about 20 yards. In this situation, and if the prosecution story was to be accepted the pellets would have entered the body making individual pellet holes and not en-masseas appears in this case. The injury being of the head along with single exit wound is compatible with the use of a rifle and not a shot gun.

23. In *Modi's Medical Jurisprudence & Toxicology* 23rd Edn. it has been observed:-

“.... At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges corresponding in size to the bore of the muzzle of the gun, as the shot enter as one mass, but are scattered after entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with unburnt grains of

powder. On the other hand, at a distance of six feet, the central aperture is surrounded by separate openings in an area of about two inches in diameter made by a few pellets of the shot, which spread out before reaching the mark. The skin surrounding the aperture may not be blackened or scorched, but is tattooed to some extent. At a distance of 12 feet, the charge of the shot spreads widely and enters the body as individual pellets producing separate openings in an area of five to eight inches in diameter depending on the choke, but without causing blackening, scorching or tattooing of the surrounding skin. At a distance of about 50 feet a pattern measuring about 14 inches from a fully choked barrel and 28 inches from an unchoked barrel are produced and at about 100 feet the spread pattern on the target unchoked one. A rule of thumb in long usage is that the diameter of the spread of the shot pattern on the skin in inches is roughly equal to the distance from the muzzle in yards.”

24. It is true that in cross examination PW1 - Dr. Iqbal Singh stated that the injury was possible from a rifle as well. However, in view of the categorical statement in his examination in chief that the injury was possible with a single projectile 12 bore cartridge the use of a shot gun becomes suspect, as single projectile cartridges are not available in India and even, otherwise can be used with a measure of accuracy only in specialised shot guns.

25. We also find from the statements of PW9 ASI Devinder Singh the first investigating officer, that on preliminary investigation he had found that as per the statement of Mohinder Singh, one of the injured though not an accused, a .315 bore rifle belonging to Anil

Kumar and a 12 bore gun belonging to Madan Lal had been used in the occurrence and had caused the injuries including the fatal one on Harinder Kumar (although as pointed out by Mr. H.M. Singh), this fact had been denied by Inspector Malinder Singh, the subsequent Investigating Officer. Be that as it may, in the fact that the eyewitness account does not support the medical evidence and vice versa, we are of the opinion that some serious doubt is cast on the prosecution story.

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30. We also observe that a shot gun and a rifle (both licensed) belonging to Madan Lal and Anil Kumar had been taken into possession and though two empty cartridges of a .315 rifle had been recovered about 120 feet away from the spot on the 30th November, 1999 they had not been sent to the forensic laboratory for comparison with Anil Kumar's weapon. Mr. Sushil Kumar is, therefore, justified in submitting that the investigation in this matter was tainted and the defence version had not even been taken into consideration by the investigating officer, more particularly when two senior officers had given a report favourable to the accused.”

34. In the instant case, according to the material placed on record by the prosecution, the alleged shot was fired from a distance of 10 feet by accused Anand Kumar and that hit the deceased. None of the other members of the complainant party received any fire arm injury. As per medical evidence, the track from inside was blackened. The track at right end near the bone was more wide and lacerated. No pellet or any other foreign body could be traced from the skull or any other part of body. In case DBBL gun was used, the bullet pellets were to be present in the body in scattered form. The injury could be caused by pistol of .315 caliber and not by a DBBL

gun. Accused Anand Kumar was in possession of one 12 bore DBBL gun as per the prosecution.

35. Thus, the prosecution has failed to prove the case against the appellants under Section 302 IPC. Thus, all the appellants are entitled to acquittal under Section 302 read with Section 149 IPC. Let now the case under Sections 148/307/324 IPC and Sections 25 and 27 of the Arms Act be considered.

36. According to PW1 Subhash and PW4 Smt. Roshni Devi, accused Maya Devi had caused injuries to PW4 Smt. Roshni Devi with *gandasa*, which hit her thumb of the left hand and accused Smt. Balesh gave *gandasa* blow, which hit her left hand finger. Thereafter, accused Ashok inflicted *gandasa* blow to Ram Chander, which hit both of his hands and the head. Accused Ashok gave *gandasa* blow on the right hand of Subhash. All the accused armed with fire arms started firing. No recovery was effected from accused Pyare Lal. The witnesses has admitted that none, except deceased Ranbir, had received the bullet injury, though the role attributed to accused Surat Singh and Kismat was that they used fire arms i.e. pistol and gun.

37. Accused Smt. Maya Devi inflicted *gandasa* (Ex.P18) blow on the person of PW4 Smt. Roshni Devi, but as per FSL Report, Ex.P9, no blood could be detected on it. It was also admitted by PW7 in his cross-examination that the *gandasa*, Ex.P18, was soiled but no blood-stains could be seen on it.

38. There was no previous enmity between the complainant and the accused party as admitted by PW1 Subhash in his cross-examination. The dispute arose only on account of *dol*. He also admitted that their land was

demarcated. It is reiterated that no recovery was effected from accused Pyare Lal, though it was stated that he was armed with pistol. Accused Narender and Sudhir were armed with *gandasas*, but they have not caused any injury to anyone.

39. The presence of only five persons had been proved i.e. accused Pyare Lal, Anand Kumar, Ashok Kumar, Narender and Smt. Maya Devi, as per the statements of PW1 Subhash and PW4 Roshni Devi. PW1 Subhash has admitted that he did not give the names of five persons in the FIR and simply stated that he could identify them as he did not know their names. He also admitted in his cross-examination that he told the police that three persons, whose names were not given by him in the FIR, were armed with pistols. However, when he was confronted with his statement, Ex.P1, he admitted that he did not state before the police that the outsiders were constructing the *dol*. It was after 2 or 3 months of the occurrence that he came to know the names of the assailants as Hardip, Narender, Sudhir, Om Parkash and Rajesh. It is not believable that he did not know their names when he had made his statement, Ex.P1, at the initial stage.

40. In his cross-examination, PW1 Subhash has also admitted that the accused who were armed with pistols were present at the tubewell when they received the injuries at the hands of those accused, who were armed with *gandasas*, Anand Kumar was also present at the tubewell at a place located at a distance of 10 feet. Accused Anand Kumar had fired only once and that hit the deceased when he was at a distance of 10 feet. None of the member of the complainant party received fire arm injuries. PW1 Subhash has also admitted in his cross-examination that his father Ram Chander was having a gun license but his gun was stolen about ten years back and the

arm license was also lost during renewal thereof when it was entrusted to the authorities. Thus, the defence of the appellants is also probablised that the fire arms were also used by the complainant party since the empties were recovered from their field side at C/5 as per the statement of the Investigating officer.

41. Further the fact of the matter is that the appellants had constituted an unlawful assembly. They were carrying deadly weapons, namely, guns, pistol, gandasas, etc. Further the fact of the matter is that the fire arms were used at the spot, which is duly proved from the empties recovered from the spot along with FSL report, Ex.P10. It has come in the statement of PW1 Subhash that no one had received gun shot injury but the fact of the matter is that in order to prove the offence under Section 307 IPC, the injury is not necessary, only the intention is to be seen. The gun and pistols were used which did not hit the complainant, still the case would fall within the ambit of Section 307 IPC. The gun recovered from accused Anand Kumar was .12 bore DBBL. The prosecution could only prove charges against them under Sections 148/307/324 IPC and Sections 25 and 27 of the Arms Act. Their conviction and sentence under these sections is upheld.

42. In view of the findings recorded hereinabove, there is no merit in the revision petitions filed by the complainant -petitioner against the order of acquittal passed by the learned trial Court. The acquittal is based on correct appreciation of ocular and medical evidence produced on record coupled with the fact that the names of some of the assailants were not disclosed at the earlier point of time. PW1 Subhash has not mentioned their names when his earlier statement was recorded. It is settled law that in the

criminal jurisprudence if the acquittal is recorded by the learned trial Court, the judgment is only to be reversed if the judgment is perverse and contrary to the ocular and documentary evidence. Even if two views are possible on the evidence adduced in the case, in that eventuality the Appellate Court will not alter the judgment from acquittal to conviction. No case for enhancement of sentence is also made out qua the convicted persons.

43. Accordingly, criminal appeals bearing CRA-D No. 318-DB of 2003 - Anand Kumar and others vs State of Haryana and CRA-D No. 327-DB of 2003 - Ashok Kumar vs State of Haryana are partly allowed. The appellants are acquitted of the charge framed against them under Section 302 IPC read with Section 149 IPC. Their conviction and sentence under Sections 148/307/324 IPC and Sections 25 and 27 of the Arms Act, are upheld. Criminal revision petitions bearing CRR No. 210 of 2004 - Subhash vs Anand Kumar and others, and CRR No. 1518 of 2004 - Subhash vs Sudhir and others, are dismissed.

(Rajiv Sharma)
Judge

15.2.2019
vs

(Avneesh Jhingan)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No